



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P (MD)No.18351 of 2021

and

W.M.P. (MD) .Nos.15165 to 15167 of 2021

1.M.Mohamed Asraf

2.Jerrys Anbunayaham

... Petitioners

Vs.

1.The Senior Divisional Commercial Manager
Tiruchirappalli Division, Southern Railways,
Tiruchirappalli.

2.The Chief Commercial Manager,
Southern Railways,
Central Branch, Park Town,
Chennai - 600 003.

3.Trichy District Co-operative Milk Producers Union Limited,
Pudukottai Road,
Kottapatti,
Trichy - 628 023.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, by directing the first and second respondents to renew the license for running the milk stall at Madurai end and Chennai end of Platform No.1 of Tiruchirappalli Railway Junction and permit the petitioners to open their milk parlour in consideration of the representation dated 17.09.2021 by the third respondent on behalf of the petitioners.

For Petitioners : Mr.G.Prabhu Rajadurai

For R-1 and R-2 : Mr.S.Manoharan

For R-3 : Mr.K.S.Selva Ganesan,
Counsel for State.



ORDER

The petitioners seek a direction to the first and second respondents to renew the licence for running the milk stall at the Madurai end and Chennai end of Platform No.1 at the Tiruchirappalli Railway Junction.

2. The third respondent is a milk producers co-operative society, which is under the control and supervision of the Government of Tamil Nadu, and is popularly known as Aavin. The said third respondent functions through agents. The two petitioners were each granted a licence by the third respondent to operate milk booths/parlours. As regards the Tiruchirappalli Railway Junction, the first respondent allotted two spaces to the third respondent in Platform No.1. The first petitioner was granted licence at the Madurai end and the second petitioner was granted licence at the Chennai end.

3. The petitioners state that the licence fee is fixed every three (3) years on the basis of sales at the particular outlet. For such purpose, sample data is collected by the second respondent. The petitioners point out that an yearly licence fee of Rs.1,19,151/- (Rupees One Lakh Nineteen Thousand One Hundred and Fifty One only) was collected from the first petitioner and a sum of Rs.1,53,800/- (Rupees One Lakh Fifty Three Thousand and Eight Hundred only) was collected from the second petitioner in the year 2018.

4. Subsequently, it is stated that the licence was not renewed for the next three year period. Instead, a fee was demanded every three (3) months with a considerable escalation from the fee prevailing earlier. In these facts and circumstances, the COVID-19 pandemic intervened and thereby adversely impacted the business and livelihood of the petitioners.

5. The petitioners rely upon the judgment of the Hon'ble Supreme Court in W.P.(C).No.373 of 2017, whereby renewal of licences was directed especially with regard to Co-operative Societies. In fact, it is pointed out that more than one licence was permitted to be renewed for Co-operative Societies.

6. Mr.K.S.Selva Ganesan, learned counsel for the State, appears on behalf of the third respondent. He submits that the third respondent has made a representation seeking renewal and that the third respondent is desirous of continuing to operate the parlours at the Tiruchirappalli Railway Junction. He also points out that the judgment of the Hon'ble Supreme Court was also adverted to in the said representation.



7. Mr.S.Manohar, learned Standing Counsel, appears on behalf of the first and second respondents. He points out that the policy of the Railways is to grant licences to operate such shops or parlours pursuant to an auction. As regards the petitioners, he submits that the petitioners do not have privity of contract with the Railways and, therefore, the petitioners do not have *locus standi* to maintain the present Writ Petition. He also points out that the licence of the third respondent was recently terminated on 12.10.2021 as per written instructions received by him.

8. The first issue to be considered is that of *locus standi*. Judicial notice may be taken of the fact that the third respondent operates through agents in the State of Tamil Nadu. The facts on record also disclose that the petitioners were the agents, who were operating the parlours at the Tiruchirappalli Railway Junction. As such, the petitioners have the *locus standi* to maintain the present Writ Petition.

9. The Hon'ble Supreme Court in Writ Petition W.P.(C). No.373 of 2017 specifically considered the question as to whether a Co-operative Society is entitled to the renewal of more than one licence. Upon such consideration, the Hon'ble Supreme Court held as under:

"We accordingly direct that the aforesaid associations of persons viz., the co-operative societies, partnership firms and HUF, in respect of the units covered by the judgment in Senior Divisional Commercial Manager, South Central Railways and Others (supra), shall be entitled to renewal of all the licences they hold as on the date of the expiry of those licences".

10. In light of the aforesaid conclusion of the Hon'ble Supreme Court, at a minimum, the third respondent is entitled to the consideration of its representation for renewal of the licences. Indeed, the first and second respondents are under an obligation to take into account the judgment of the Hon'ble Supreme Court while considering such representation.

11. Accordingly, W.P.(MD).No.18351 of 2021 is disposed of by directing the first and second respondents to consider the representation dated 17.09.2021 of the third respondent and dispose of the same by a reasoned communication after taking into account the judgment of the Hon'ble Supreme Court in W.P.(C). No.373 of 2017. Such reasoned communication shall be issued within a period of two (2) months from the date of receipt of a



copy of this order. There will be no order as to costs. Consequently, W.M.P.(MD).Nos.15165 to 15167 of 2021 stand closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

tsg/nsr/LM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Senior Divisional Commercial Manager
Tiruchirappalli Division, Southern Railways,
Tiruchirappalli.

2.The Chief Commercial Manager,
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Chennai - 600 003.

3.Trichy District Co-operative Milk Producers Union Limited,
Pudukottai Road,
Kottapatti,
Trichy - 628 023.

+1 CC to M/s.S.MANO HAR, Advocate (SR-33161[F] dated 29/10/2021)

+1 CC to M/s.SPL.GP (SR-33039[F] dated 28/10/2021)

+2 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-33083[F] dated 28/10/2021)

**W.P (MD) No.18351 of 2021
27.10.2021**

RK/PM(19/11/2021) 4P 8C