

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 1089 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Dipika Tanty

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Petitioner

-Versus-

Union of India and Others

Opp. Parties

For Petitioner : M/s R.P. Kar, A.N. Ray and
K.K. Sahoo, Advocates

For Opp. Parties : Mr. P.S. Nayak,
Central Govt. Counsel
[O.P. Nos. 1 to 3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing and judgment: 27.07.2022

DR. B.R. SARANGI, J.

The Petitioner, by means of this Writ

Petition, seeks to quash the Notice dated 01.01.2016

issued by the Opposite Party No.2 under Annexure-8, by which direction has been given to vacate the Stall, within seven day of receipt of the notice, and handover the same to the Station Manager, Sambalpur, for further action. It has further been prayed to quash the Tender Call Notice dated 22.06.2015, issued by the said Opposite Party under Annexure-9, and direct the Opposite Parties to allow her to continue with her operation of the Vegetarian Tea Stall at Platform No.1, Sambalpur Station, Sambalpur.

2. The factual matrix of the case, in a nutshell, is that the Petitioner was running the Vegetarian Tea Stall at Sambalpur Railway Station at Platform No.1, Sambalpur, under the Sr. Divisional Commercial Manager, East Coast Railway, Sambalpur, since long. Prior to 30.04.2013, the license for running the Tea Stall was issued in favour of the father of the Petitioner and after his sudden demise, the license was transferred in the name of the Petitioner. On 30.04.2013, Opposite Party No.1 issued a letter to the

Petitioner regarding transfer of license of Vegetarian Tea Stall at Platform No.1, Sambalpur Station, and directed her to deposit the license fee and other charges, if any, pending against the said stall. Accordingly, the Petitioner deposited the required fees and continued to run that Tea Stall, as per the terms and conditions of the Agreement made on 07.01.2014 between the father of the Petitioner and the Divisional Commercial Manager, East Coast Railway, Sambalpur. No fresh Agreement was executed between the Petitioner and Opposite Party No.1 in spite of repeated request of the Petitioner. The Petitioner has deposited the license fee and the revised license fee for renewal of the Catering Unit, as and when asked by the Authority. The Petitioner has also deposited the provisional license fee up-to 20.01.2016, which was duly accepted by the Opposite Parties. During this period the Authority also issued Registration Certificate under Food Safety and Standard Act, 2006 valid till 29.09.2016. The Petitioner was also issued with Performance Certificate on

29.01.2014 and No Due Certificate mentioning therein that no amount is due from the Petitioner.

2.1 When the matter stood thus, on 22.06.2015, Opposite Party No.2 invited tender for Provision of Catering Services at Minor Unit at Sambalpur Station, over Sambalpur Unit. Thereafter, on 12.11.2015, Opposite Party No.2 issued notice to the Petitioner asking her to keep in readiness to vacate the Stall. In the said notice, it was mentioned that the benefit of renewal/extension provision made in the 2010 Policy is only applicable to the allotment, which has been made under said Policy and not by earlier Policy. Challenging the notice dated 12.11.2015 issued by the Authority, the Petitioner approached this Court by filing W.P.(C) No. 22562 of 2015, which was disposed of, vide order dated 12.01.2016, with a direction that the Petitioner shall be allowed to continue up to 20.01.2016. It was further clarified that it is open for the Petitioner to call in question the tendering process initiated by notice dated

22.06.2015. However, in response to the notice dated 12.11.2015, the Petitioner filed her objection stating inter alia that she may be permitted to continue as before. But without considering the same, Opposite Party No.2, issued another notice on 01.01.2016 stating therein that the said tender has been finalized and the Stall will be awarded to the licensee very soon and directed the Petitioner to vacate the Tea Stall within seven days from the date of receipt of the notice. Hence, this Writ Petition.

3. Mr. R.P. Kar, learned Counsel appearing for the Petitioner, contended that a Shop was allotted in favour of the father of the Petitioner at Platform No.1, Sambalpur Railway Station, Sambalpur, for a period of 5 years and during that period the father of the Petitioner expired. Subsequently, request was made for transfer of the shop room in favour of the Petitioner, which was considered and also the transfer of license was granted in favour of the Petitioner on 30.04.2013. Accordingly, she was called upon, vide letter dated 26.11.2013, to deposit

Rs.2,75,000/- per annum towards the license fee for a period of three years starting from 22.01.2012. In compliance of the same, the Petitioner had deposited the revised license fee of Rs.2,75,000/-, which was duly acknowledged by the Authority concerned. It is further contended that when the period of license was subsisting, a letter was issued to the Petitioner to vacate the shop room. Against which the Petitioner approached this Court by filing W.P.(C) No.22562 of 2015, in which an Interim Order was passed protecting the interest of the Petitioner to allow her to complete the balance period and accordingly, the Petitioner completed the balance period pursuant to the Interim Order passed by this Court. But, thereafter, on after expiry of the period of license on 20.01.2015, she has been directed to vacate the Stall on 01.01.2016 under Annexure-8 and consequently putting the Stall into auction under Annexure-9 dated 22.06.2015, which are challenged before this Court in this Writ Petition. It is further contended that putting the Stall into auction is contrary to the provisions of Catering

Policy, 2010, which has been upheld by the apex Court in ***Senior Divisional Commercial Manager, South Central Railways and others v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another***, (2016) 3 SCC 58, Therefore, in view of the ratio decided in ***Senior Divisional Commercial Manager, South Central Railways*** (supra), the Stall in question should not have been put to auction and, as such, the same should have been settled in favour of the Petitioner granting licence to her.

4. Per contra, Mr. P.S. Nayak, learned Central Government Counsel, appearing for the Railway Authorities, contended that admittedly the Stall in question was allotted in favour of the father of the Petitioner. During subsisting of contract, which was for a period of five years, since the father of the Petitioner died, the licence was transferred in favour of the Petitioner for remaining period and the said period was expired and, as such, the Petitioner having not vacated the Stall, notice

was issued under Annexure-8 to vacate same, and consequently the Stall was put to auction. Pursuant to notice inviting tender under Annexure-9, dated 22.06.2015, the Petitioner participated in the auction and could not come out successful. After becoming unsuccessful, she could not have turned around and approached this Court by filing the present Writ Petition. As such, at her behest, the Writ Petition cannot sustain in the eye of law and is liable to be dismissed in limine. It is further contended that the Catering Policy, 2010 having been upheld by the apex Court in **Senior Divisional Commercial Manager, South Central Railways** (supra), as per the direction of the apex Court, only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have licence of more than one shop or kiosk in their name or benami licence at Railway Stations, with periodical reasonable increase of license fee. In view of such position, the Opposite Party No.4, who owned two Stalls, has already vacated one Stall by 28.06.2021, which has been placed on record by way of

an affidavit filed by the Opposite Party No.4 on 23.05.2022 in reply to the Additional Affidavit filed by the Petitioner. It is therefore, contended that Opposite Party No.4 is only in possession of one Stall, in terms of the Catering Policy, 2010, and thereby, the Judgment of the apex Court has been given due regard by the Opposite Parties.

5. This Court heard Mr. R.P. Kar, learned Counsel for the Petitioner and Mr. P.S. Nayak, learned Central Government Counsel appearing for the Union of India by virtual mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned Counsel for the parties, this Writ Petition is being disposed of finally at the stage of admission.

6. The undisputed fact is that the Petitioner was running a Vegetarian Tea Stall at Sambalpur Railway Station at Platform No.1, Sambalpur, under the Senior Divisional Commercial Manager, East Coast Railway, Sambalpur, since long having a valid license issued by the Opposite Party No.1. Prior to 30.04.2013, the license for

running the Tea Stall was issued in favour of the father of the Petitioner and after his sudden demise, the license was transferred to the Petitioner. Accordingly, Opposite Party No.1 issued a letter dated 30.04.2013 to the Petitioner regarding transfer of license of Vegetarian Tea Stall/PF No.1, Sambalpur Station and directed to deposit license fee and other charges, if any, pending against the stall. When demand was raised for payment of license fee under Annexure-2 dated 26.11.2013 for a period of three years amounting to Rs.2,75,000/-, the same was paid by the Petitioner and the amount has been duly acknowledged by the Authority concerned, vide letter dated 02.12.2013, and the license was extended till 20.01.2015. But, the Petitioner, instead of vacating the said Stall, wanted to continue as such till 20.01.2016. Consequentially, vide Annexure-8, notice was issued to the Petitioner to vacate the Stall on 01.01.2016, and consequentially, tender was invited pursuant to Annexure-9 dated 22.06.2015. Challenging the said action of the Opposite Parties, the Petitioner had earlier

approached this Court by filing W.P.(C) No.22562 of 2015, which was disposed of vide Order dated 12.01.2016. In Paragraphs 5, 6, 7 and 8 of the said Order, this Court observed as follows:

“5. Learned counsel for the petitioner fairly conceded that in absence of any challenge to the subsequent tendering process and award of licence if any, the petitioner cannot claim in equity or in law, for her further continuing in occupation of the stall in question. Therefore he requested to protect the possession and occupation of the petitioner only up to 20.01.2016 on the statement made on instruction that the petitioner will voluntarily hand over peaceful and vacant possession of the stall to the opposite party by the evening of 21.01.2016, subject to other rights and contentions of the petitioner.

6. In view of the limited and reasonable request made on behalf of the petitioner, learned Standing Counsel for the Railways, Mr. Sahoo appearing for the opposite parties was requested to take instruction by today itself. He submitted that the opposite party may not have any objection if the petitioner will continue in possession and occupation of the stall in question upto the evening of 21.01.2016.

7. Accordingly, in view of the aforestated facts, the writ petition is partly allowed with the direction that the petitioner shall be allowed to continue in occupation of the stall in question at Platform No.1 of the Sambalpur Railway Station upto 20.01.2016 and shall handover the vacant and peaceful possession of the said stall to the opposite party no.2 by 5 P.M. on that date.

8. It is clarified at the request of the learned counsel for the petitioner that it is open for the petitioner to call into question the tendering process initiated as aforesaid by notice dated 22.06.2015 and pray for such order as the petitioner may be advised. However, mere initiation of any such proceeding will not absolve the petitioner or her obligation to vacate the premises as mentioned above.”

7. Thereby, this Court has already expressed a view that initiation of any such proceeding will not absolve the Petitioner of her obligation to vacate the premises only on 20.01.2016. Thereby, for the period she remained in unauthorized occupation of the premises, she is also liable to pay licensee fee. But fact remains, the Petitioner filed an application for renewal, which was not considered by the Authority and it went for tender process. As a matter of fact, pursuant to Tender Call Notice, the Petitioner had applied for and participated in the tender process and having become unsuccessful, has now turned around and challenged the same by filing the present Writ Petition. The conduct of the Petitioner is not sacrosanct as the Petitioner has evidently tried her level best to grab the Stall in her favour by hook or crook. But,

after having not come out successful in any manner, she has approached this Court on the plea that as per the Catering Policy, 2010, the Tender could not have been held. In any case, Clause 16 and 17 of the Catering Policy, 2010 read as follows:

“16. TENURE

16.1 TENUE OF MAJOR UNITS & GENERAL MINOR UNITS.

16.1.1. *Tenure of all major units including food courts, fast food units (except Food Plazas, Base Kitchens and AVMs) will be for a period of 5 years. There will be no renewals.*

16.1.2. *Tenure of AVMs will be made for a period of 5 years. There will be no renewals as per policy as these are major units.*

16.1.3 *Allotment of all General Minor Units at A, B & C category stations shall be awarded for a period of 5 years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Units at D, E & F category stations will be for a period of 5 years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.*

16.1.4 *Tenure of Food Plaza will be for 9 years with an extension of 3 years on satisfactory performance and payment and payment of all dues and arrears and withdrawal of court cases, if any.*

17. RENEWAL

Renewal will not be a matter of right. The licensee must apply for renewal minimum 6 (six) months in advance before the expiry of the contract. Renewal will be based on the following:-

17.1 Satisfactory performance of the licensee during the tenure of the contract. An imposition of fine/warnings on more than 5 occasions will result in rejection of the application for renewal

17.2 Payment of all dues/arrears – No Dues Certificate from the concerned authority, must be attached along with the application for renewal.”

8. In view of Clause 16 of the Catering Policy, 2010, it is made clear that the tenure of all major units including Food Courts, Fast Food Units except Food Plazas, Base Kitchens and AVMs, will be for a period of 5 years and there will be no renewals. Clause 16.1.2 of the said Policy provides that tenure of AVMs will be made for a period of 5 years. There will be no renewals as per Policy as these are Major Units. But, the Petitioner comes under Clause 16.1.3, where the Allotment of General Minor Units at A, B & C category stations shall be made for a period of 5 years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and

arrears and withdrawal of court cases, if any. But for allotment of General Minor Units, i.e., Stall in question, the tender has been issued under Annexure-9, which relates to B Category. Therefore, it will be for a period of five years with a provision for renewal. But Clause-17 of the said Policy provides that a renewal will not be a matter of right and, as such, the licensee must apply for renewal minimum 6 months in advance before the expiry of the Contract and renewal shall be based on Clauses-17.1 and 17.2 of the contract. Therefore, even if the Petitioner applies for renewal, that itself is not automatic one and the same is subject to fulfilling other conditions. More so, nothing has been placed on record to indicate that the Petitioner, having participated in the tender process, subsequently applied for renewal and the same was not considered.

9. The ratio decided by the apex Court in **Senior Divisional Commercial Manager, South Central Railways** (supra) makes it clear that one shop shall be

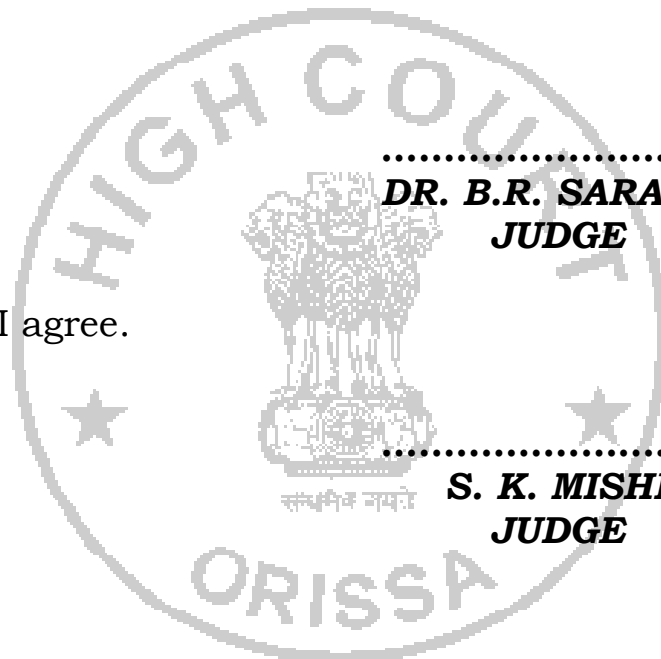
allotted in favour of one licensee, but in the present case, the Petitioner has no subsisting right to claim for allotment of shop automatically, unless she satisfies the requirement of Catering Policy, 2010. Therefore, if the Petitioner had participated in the tender process and was not come out successful, she cannot ask for the relief, which has been sought in the present Writ Petition. More so, in the meantime, pursuant to Tender Call Notice under Annexure-9, the period of 5 years has already lapsed since long. Apart from the same, pursuant to the notice issued on 01.01.2016, the same has already been acted upon by vacating the Stall and, as such, the relief in the said regard has become infructuous. Therefore, the only question, which is to be considered is as to whether the Opposite Parties can be directed to allow renewal of shop in favour of the Petitioner. But the same is also no more available because the Petitioner has already vacated the premises, as per direction of this Court in the earlier Writ Petition.

10. In view of such position, the relief sought in the present Writ Petition does not subsist any more and, as such, the same cannot be acceded to.

11. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed. However, there shall be no order as to costs.

S.K. MISHRA, J.

I agree.



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DR. B.R. SARANGI,
JUDGE

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S. K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 27th July, 2022, Ashok/Padma/GDS