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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1516 OF 2022
WITH
INTERIM APPLICATION (L) NO.16954 OF 2022**

Sunshine Caterers Pvt. Ltd. Petitioner

Vs.

Union of India and Ors. Respondents

Mr. Subhash Jha a/w Mr.Siddharth Jha i/b M/s.Law Global
for the Petitioner

Mr.Amit Sale i/b M/s.Consulta Juris for the Respondent
no.2

Mr.T.J.Pandian a/w Mr.Dheer Sampat for the Respondent
no.3

**CORAM: S.V. GANGAPURWALA &
MADHAV J.JAMDAR, JJ.**

DATED : JUNE 6, 2022

P.C.

1. The present Petitioner is awarded contract of Pantry Service for Train No.19039-19040 namely Awadh Express having its route between Bandra to Muzaffarpur. The said contract was for a period of five years with renewal clause of further five years. The said contract was entered into in the year 2013 w.e.f. 2014. The Petitioner is operating the pantry service since then.

2. Under the impugned communication, the Respondents have issued a fresh tender for the train re-numbered as Train No.19037-19038. The same is assailed in the present petition.

3. The learned Counsel for the Petitioner strenuously contends that the contract awarded to the Petitioner which is in force for 10 years cannot be unilaterally terminated in the manner in which the show cause was issued to the Petitioner. Only because the train has been re-numbered, may not give right to the Respondents to terminate the contract. Respondents are bound by the terms of the contract. The route of the train for which the pantry service contract was awarded to the Petitioner was from Bandra to Muzaffarpur. Only because the said route is extended upto Barauni, would not be sufficient to revoke the contract. The learned counsel relies upon clause 8.2 to 8.4 of the license agreement between the parties. The learned counsel submits that the other train referred to as 19037-19038 was from Bandra to Gorakhpur. The same was running for four days in a week. No permanent contract was given to any person for pantry service in the said train since 2016. On adhoc / temporary basis for every quarter the contract was given. Only because the Respondents can gain more revenue, would not be the reason to terminate the contract. The learned counsel to substantiate his contention, relies upon the judgment of the Delhi High Court in the case of ***Kishan Freight Forwarders vs. Union of India & others dated 02.06.2011***. The learned counsel further submits that the action of the Respondents is arbitrary. The

Railways is an instrumentality of the State. They have to act fairly. The arbitrary action of the instrumentality of the State cannot be sustained. The learned counsel, to buttress the submission relies on the judgment of learned Single Judge of Delhi High Court in the case of ***R.K.Associates & Hoteliers Pvt. Ltd. vs. Indian Railways Catering & Tourism Corporation (IRCTC) & Ors. dated 18.05.2015***. The learned counsel further submits that once the instrumentality of the State decides to award the contract on the basis of the bid by tender, it must abide by the terms of the tender.

4. Reliance is placed on the judgment of the ***Harmander Singh Arora v. Union of India and Others (1986) 3 SCC 247***. The learned counsel submits that earlier the train for which the contract was awarded used to run thrice a week and other train bearing 19037-19038 four days in a week. If the revenue is increased, then the Petitioner would pay enhanced portion as provided under clause 8.4 and 19 of the licence agreement. The action of the Respondents in terms of the contract is arbitrary. In several matters, wherein the trains were renumbered, pantry service contract has been continued. The Petitioner is discriminated. 200 families are dependent upon the present pantry service contract. More hardships would be caused. The Petitioner company is run by woman.

5. The learned Counsel for the Respondents submits that present case is not mere a change of the train numbers but is a merger of two trains. Train no.19037-19038 was running for four days in a week from Bandra to Gorakhpur

and train no.19039-19040 was running from Bandra to Muzaffarpur. Both the trains were different. The said train used to run for three days in a week. The Petitioner was awarded contract for train no.19039-19040. Under the notification, train numbers 19037-19038 and 19039-19040 are merged and route has also increased. Now the said train runs from Bandra to Barauni. Different contractors were appointed for train 19037-19038. In view of that, fresh tenders have been issued. The Respondents have not acted arbitrarily. In case of trains which have only been renumbered, the contract of pantry service has not been terminated.

6. We have considered the submissions. In cases of contract, the Court would exercise its jurisdiction of judicial review sparingly. Same cannot be exercised as a matter of course. The Court would be more concerned with the decision making process than the decision. The Court would exercise its power of judicial review only if it is shown that settled procedure has not been adhered to or action is arbitrary or discriminatory. Arbitrariness has no place in the Society governed by the rule of law. Arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscience.

7. In the instant case, the Petitioner was awarded pantry service contract initially for a period of five years with a renewal clause of further five years. Five years have lapsed probably, in the year 2019.

8. The Respondents have issued fresh tender for pantry service. Train number 19039-19040 is also merged with train no.19037-19038. Same appears to be pursuant to the notification issued by the Railways and now the train has been numbered as 19037-19038.

9. At the first blush, the arguments of the learned Counsel for the Petitioner would appear to be attractive. Certainly, only because of the change of train number, respondents would not get right to terminate the contract of pantry service. Change of train number only be ministerial act.

10. In the present case, there were two distinct trains viz. 19037-19038 for a period of four days from Bandra to Gorakhpur. Petitioner was not awarded pantry service contract for the said train. Some other persons were awarded contract may be on temporary basis. Whereas the train for which the Petitioner was awarded pantry service contract bearing train no.19039-19040 was running for three days in a week from Bandra to Muzaffarpur. Now under the notification of the Railways, both these trains have been merged and renumbered as train no.19037-19038 which runs for seven days a week from Bandra to Barauni. Argument extended on behalf of the Petitioner would also apply to the contractor of original train no.19037-19038. Change has been affected because of the notification and merger of two trains into one. The performance of the contract for which the Petitioner was awarded the pantry service contract is not possible of

performance. The said train will be deemed to have been cancelled as two trains have been merged into one, running 7 days a week and for the route longer than for which the Petitioner was awarded the contract i.e. Bandra to Barauni.

11. In the light of the above, Respondents have taken a decision to go in for fresh tender for the merged train. The Petitioner also has right to participate in the fresh tender process. We do not find that the decision of the Respondents is arbitrary or irrational. Same also does not smack of mala fide. In case of *Harmander Singh Arora v. Union of India and Others* (Supra) relied by the learned Counsel for the Petitioner, the Court observed that the contract of supply of milk was to be given to the lowest bidder under the terms of tender notice and the Petitioner therein was the lowest bidder. He should have been granted the contract of supply especially when he had been doing so for the last many years. There the Petitioner had the right being the lowest bidder and a policy decision was taken by the Government to award the contract on the basis of the bid by tender. In that context, the Apex Court observed that the Government shall abide by the terms of the tender. In case of *R.K. Associates & Hoteliers Pvt. Ltd. vs. Indian Railways Catering & Tourism Corporation (IRCTC) & Ors.* (Supra), the Petitioner therein was a successful bidder in the tender floated in the year 2007. The Petitioner created requisite infrastructure and equipment at his own cost. The extension was not granted to the Petitioner as per the terms of clause 3.1 of the agreement between the parties. In the said case, a committee was appointed who did not find

the Petitioner guilty of any breach of the clauses of the contract and earlier recommended extension for six months but thereafter, the Committee took a different stand. The Court in that context observed that the discretion was not properly exercised and that the Petitioner therein had a legitimate expectation. The Court rejected the argument of the Railways that the fresh tender would fetch more revenue.

12. In the present case also, we are not impressed by the argument of higher revenue to be generated by the Railways. However, we are of the considered view that the present contract shall not subsist in view of the fact that two trains have been merged into one and pantry service contract for both trains before merger was awarded to different persons. In that view of the matter, it would not be possible to accept the contention of the Petitioner.

13. Writ Petition, as such, stands dismissed.

14. In view of the dismissal of the Writ Petition, Interim Application stands disposed of.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)