



WP No.24291 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2022

PRONOUNCED ON : 29.06.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.24291 of 2021

and

WMP No.25609 of 2021

P.K.Shefi

... Petitioner

Vs.

1. The Director /CS,
The Indian Railway Catering and
Tourism Corporation Ltd.,
Stateman House,
Barakhamba Road,
New Delhi – 110 001.

2. The Group General Manager,
The Indian Railway Catering and Tourism
Corporation Ltd.,
South Zone,
No.6A, The Rain Tree Palace,
No.9, Mc. Nichols Road,
Chetpet,
Chennai – 600 021.



WP No.24291 of 2021

3. The Joint General Manager CS,
The Indian Railway Catering and Tourism Corporation Ltd.,
No.6A, The Rain Tree Palace,
No.9, Mc. Nichols Road,
Chetpet,
Chennai – 600 021.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of writ of Certiorarified Mandamus, calling for the records relating to the proceedings bearing No.2017/RCTC/DCS/PROD/Take Over/02, dated 04.10.2021 of the 1st respondent herein and the consequential proceedings bearing No.IRCTC/SZ/CK-CGL/2019, dated 28.10.2021 and the proceedings bearing No.2019/IRCTC/SZ/FP-TPJ dated 29.10.2021 of the 3rd respondent herein quash the same and consequently direct the respondents herein to give extension for the static units operated by the petitioner from the date on which normalcy has returned and 100% regular train services as it stood before the lock down due to Covid 2019 are restored.

For Petitioner : Mr.ARL. Sundaresan
Senior counsel
for Ms.AL. Gandhimathi

For Respondents : Mr.V.J. Suresh Kumar



WP No.24291 of 2021

WEB COPY

ORDER

The contract period granted to the petitioner to run two canteens viz., Cell Kitchen at the Chengalpet Railway Station and the other at Food Plaza, Tiruchirapalli was extended by the Railways on account of Government imposed lock-down and the extended period was considered as free days i.e., the petitioner need not pay the license charges.

2. The non-operative period on account of Government imposed lock-down by the petitioner was treated as dies non period.

3. Insofar as the Cell Kitchen at Chengalpet Railway Station is concerned, the petitioner has been informed by the third respondent that he will be granted 246 days extension due to the non-operative period.

4. Insofar as the Food Plaza at Tiruchirapalli Junction is concerned, it is the case of the petitioner that the petitioner has operated it during the optional period and was not able to restart even after 15.07.2021, the date from which it was made mandatory to operate with reduced licence fees. According to the petitioner with regard to the Food Plaza at Tiruchirapalli Junction, the passenger movement was



WP No.24291 of 2021

shifted far away from the original entrance in front of the Food Plaza, and the area around the Food Plaza was cordoned off and there was no passenger movement in the vicinity of the Food Plaza.

5. According to the petitioner, he made several representations to the second respondent requesting the second respondent to appraise the Railway authorities to clear the blockade and reopen the entry / exit gate near the Food Plaza. Therefore, according to the petitioner, he was unable to restart the Food Plaza at Tiruchirapalli on the mandatory date and commenced the operations only from 25.08.2021. The respondents have fixed a reduced rate of licence fee during the period from 01.06.2020 to 31.10.2021. The details are as follows :-

Period	Percentage
01.06.2020 to 30.09.2020	10%
01.10.2020 to 15.11.2020	20%
16.11.2020 to 30.11.2020	35%
01.12.2020 to 31.10.2021	20%

6. The licence fees for the above mentioned periods was reduced by the Railways on account of the fact that there was reduced passenger traffic on account of Covid-19 pandemic, though there was no complete lock-down imposed by the Government.



WP No.24291 of 2021

WEB COPY

7. Guidelines were issued by the first respondent on 04.10.2021 for calculating the number of days for extension which the licensees are entitled to on account of the lock-down and restrictions due to the pandemic and that the said guidelines were issued in supersession of all the earlier directions.

8. The third respondent informed the petitioner by its letter dated 28.10.2021 that as per the guidelines, the petitioner having total of 246 days residual period (free days) as on 22.03.2020, including the dies non period has operated Cell Kitchen Unit at Chenglepet for 180 days with reduced license fee (till 31.10.2021), hence the remaining contract period for the Chengalpet Cell Kitchen, is 66 days, as per the tabular column, shown hereunder :

Sl. No.	Period of operations		No. of days	Reduced License Fee %	Days accounted
1	01.06.2020	30.09.2020	122	10%	12
2	01.10.2020	15.11.2020	46	20%	9
3	16.11.2020	30.11.2020	15	35%	5
4	01.12.2020	31.10.2021	335	20%	67
Total number of days					93

9. Insofar as Tiruchirapalli Food Plaza is concerned, the extended contract period on account of Covid-19 Government imposed lock-down



WP No.24291 of 2021

was 2193 days. By proceedings dated 29.10.2021 applying the directions given in the Circular dated 04.10.2021, the first respondent has arrived at 93 days as the number of days to be accounted for the payment of license charges during the period when the Food Plaza was paying a reduced license fees on account of the reduced passenger traffic. The first respondent has adjusted 93 days out of the total 2193 days(free days) and has fixed 2100 days as the extended contract period with no requirement to pay additional license fee in respect of Food Plaza at Tiruchirapalli Railway Junction.

10. The contention of the petitioner is that the Circular dated 04.10.2021 issued by the first respondent sought to be implemented by the third respondent by its letters dated 28.10.2021 and 29.10.2021 are arbitrary, illegal, unjust and unsustainable in law. According to the petitioner, he participated in the tender for grant of licence for static units and he did not foresee a force majeure event like that of Covid-19 Pandemic. According to him, the passenger traffic and the number of trains coming to the respective stations will have a bearing on his income. Hence, according to him, the bid amount given by the petitioner earlier before the award of the contract was dependant on the business



WP No.24291 of 2021

income likely to be generated. According to the petitioner during the reduced passenger traffic, he cannot be expected the same volume of business or even business equivalent to the percentage of the license fee that was fixed by the Railways from time to time. Hence, the days during which full train services were not restored should not be accounted for the purpose of calculating the total number of free days, which are available for operation under the contract, pursuant to the extension granted by the respondents on account of Covid-19 Pandemic.

11. According to the petitioner, the respondents ought to have granted extension of contract reckoning the restart date from the date on which 100% normalcy of passenger traffic was returned. According to the petitioner, the impugned formula for calculating the number of days of the contract during the period when the license fees was reduced on account of reduced passenger traffic by the respondents suffers from fallacy and is arbitrary and illegal.

12. According to the petitioner for Cell Kitchen at Chengalpet, the extension of the contract has been reduced from 246 days to 153 days and for Food Plaza, Tiruchirapalli, it has been reduced to 93 days. According to the petitioner, the said reduction is arbitrary, illegal, unjust



WP No.24291 of 2021

and unsustainable in law and violative of Article 14 of the Constitution of India. According to the petitioner 246 days extension for Chenglepet Cell Kitchen and 2193 days extension for Tiruchirapalli Food Plaza ought to have been calculated only from the date when the passenger traffic and operation of trains were restored to full normalcy.

13. A counter affidavit has been filed by the respondents stating as follows :-

a) The Policy guidelines issued by them on 4.10.2021 for management of static units is applicable uniformly for all static unit contracts under the management of IRCTC on pan India basis.

b) Since, the onset of the pandemic, multiple dispensations / relaxations have been issued by IRCTC to the licensees of the Static catering units. As the situation was gradually returning to normalcy and in order to review the dispensation already provided, IRCTC issued the policy guidelines on 04.10.2021, wherein claiming the license fee based on the footfall percentage and methodology for arriving at the balance tenure and residual contract period was issued.

c) The guidelines duly factored the uncertainty and is based on the logical principle of comparing the footfall during the pandemic period



WP No.24291 of 2021

against the corresponding period of pre-covid and accordingly, licence fee was claimed and tenure reduced proportionately, for each contract exhausted without giving undue advantage for operating the contracts beyond the original awarded tenure under the pretext of Force Majeure clause nor depriving the licensees of their genuine interests. The guidelines of IRCTC have addressed the issues of uncertainty posed by multiple variants in the foreseeable future.

d) By applying the footfall of the particular station, the guidelines have also addressed the area specific effect of the pandemic.

e) The guidelines also provided an opportunity to the static unit licensee for honourable exit without penalty, if applied on or before 31.12.2021, in the case of licensees who are not in agreement to the conditions of the guidelines.

f) The guidelines of IRCTC have been liberal to the licensees in terms of the calculation of the tenure on pro-rata footfall basis whereas the Railways have not provided the concession to their licensees.

g) The orders of Railway Board have been made in compliance with the directions of the Hon'ble Delhi High Court dated 2.06.2021 made in W.P. No.5722 of 2021.



WP No.24291 of 2021

h) The original contract for the Cell Kitchen at Chengalpet Railway station expired on 23.11.2020. The tabulation on the residual period of the unit as on 31.03.2022 is as follows :-

Sl. No.	Period of operations		Number of days	Reduced License Fee %	Days accounted	Residual period
	From	To				
1	Residual contract period as on 22.03.2022 (date of closure on account of COVID) till 23.11.2020				246	
2	'01/06/2020	'03.09.2020	122	'10%	12	153
3	'01/10/2020	15.11.2020	46	'20%	9	
4	16.11.2020	30.11.2020	15	'35%	5	
5	'01.12.2020	31.10.2021	335	'20%	67	
6	'01/11/2021	31.12.2021	61	'59%	36	117
7	'01/01/2022	31.03.2022	90	'57%	51	66
8	'01.04.2022	30.06.2022	91	-	-	-
Total			760	-	180	
The residual period of 66 days as on 31.03.2022 has to be reduced based on footfall to be obtained from Railways for the month of April and May 2022						

i) From the above, it is evident that the residual tenure for the licence for Cell Kitchen at Chengalpet as on 31.3.2022 is only for 66 days.

j) As the residual period for Cell Kitchen, Chenglepet is only for 66 days as on 31.03.2022, IRCTC had issued notice inviting tender for tendering the unit as Refreshment room (Kitchen Unit) and the last date for submission of bids has been fixed as 29.06.2022.



WP No.24291 of 2021

k) After opening the bids on 29.6.2022, the process of issuing the Letter of Award (LOA) after the technical scrutiny, Financial bid opening and E-auction process etc. will again consume minimum of around 60 more days.

l) The residual period of 66 days will get exhausted well before the tender finalisation and hence the decision of IRCTC to float the tender is correct.

m) The Railway board under its letter dated 12.11.2021 had directed the Zonal railways to operate the train services included in the Working table 2021 with regular numbers and accordingly Southern Railway had issued directions on 12.11.2021 to restore the original train services. Based on restoration of normal trains

Residual contract period as on 22.03.2020 (date of closure on account of COVID) till 23.11.2020	246 days
Date of expiry of the contract from 13.11.2021 as per 246 residual days	17.07.2022

n) The petitioner has fully utilised and enjoyed the contract awarded for Cell Kitchen at Chengalpet and Food Plaza at Tiruchirapalli and is trying to take undue advantage in the current pandemic situation.

o) IRCTC, in order to ensure continuity of catering contracts, and



WP No.24291 of 2021

uninterrupted catering coverage floated an open e-tender on 07.06.2022, with the last date for bid submission fixed as 29.06.2022.

p) The Cell Kitchen at Chengalpet was included in the tender as the residual contract period as 66 days as on 31.03.2022 and the unit was permitted for operation with license fee claimed upto 30.06.2022.

q) It is evident that petitioner in place of 246 days residual period has already enjoyed the contract for 760 days with a fraction of quoted licence fee and even if either way of calculation is adopted, that is as per the guidelines of IRCTC or the restoration of the normal train services, the residual number of days is very less.

14. Heard Mr.ARL. Sundaresan, learned counsel for the petitioner and Mr.V.J. Suresh Kumar, learned Standing counsel for the respondents.

15. The respective learned counsels in their submissions reiterated the contents of the respective affidavits filed by the petitioner as well as the respondents.



WP No.24291 of 2021

16. Mr.AR.L. Sundaresan, learned Senior counsel would submit that the impugned Circular dated 04.10.2021 of the first respondent and the consequential proceedings dated 28.10.2021 and 29.10.2021 issued by the third respondent is arbitrary, illegal, unjust and unsustainable in law.

17. However, Mr.V.G.Suresh Kumar, learned Standing counsel for the respondents would submit that the Circulars and the Proceedings have been issued only after taking into consideration the pandemic situation which resulted in reduced passenger traffic. He would further submit being a policy decision, which is not arbitrary or illegal and applicable to the whole of India, the present writ petition is not maintainable.

Discussion :-

18. The challenge made in this writ petition is to the Circular dated 04.10.2021 issued by the first respondent under which a formula has been prescribed for calculating the extended days (free days) during the period when due to reduced passenger traffic on account of Covid-19 pandemic, the licence charges payable by the petitioner was reduced. It



WP No.24291 of 2021

is an admitted fact that the petitioner even during the time when the licence fees was reduced on account of reduced passenger traffic, the petitioner was running both the Cell Kitchen at Chengalpet and Food Plaza at Tiruchirapalli. The petitioner claims that the free days(extended days) will commence only from the date when the passenger traffic and movement of trains at the respective railway stations are restored normalcy to the pre-Covid-19 level. According to the petitioner unless and until normalcy is restored, the respondents are prohibited from introducing a formula for calculating the number of free days (extended period) during the time when due to reduced passenger traffic the licencees were paying the reduced licence charges. According to the petitioner, Covid-19 like situation was never foreseen by him at the time of participating the tender for running the Cell Kitchen at Chengalpet and Food Plaza at Tiruchirapalli. His contention is that his income and profit is based on the operation of both the Railway stations in its full capacity. According to him, since the Railway stations were having less train traffic and there was drastic reduction in passenger traffic, the respondents ought not to have included those days for the purpose of calculating the free days (extended days) by the introduction of a



WP No.24291 of 2021

formula.

WEB COPY

19. However, the respondents deny the allegations of the petitioner and they would state that the policy decision under the Circular dated 04.10.2021 is not arbitrary and illegal. According to them, the said Circular is applicable Pan India and only after due deliberations considering the pandemic situation, the said Circular was introduced. The petitioner having operated the Cell Kitchen at Chengalpet as well as the Food Plaza at Tiruchirapalli and having paid the reduced licence fees during the said period cannot now claim that the respondents shall not calculate the free days(extended period) during the period when the petitioner was paying the reduced licence fees on account of reduced passengers and train traffic. The petitioner was also granted by the respondents to exit from the licence during the Pandemic and a dead line was fixed for such an exit. The petitioner having chosen not to exercise the exit option cannot now challenge the impugned circular dated 04.10.2021 introducing a formula for fixing the number of free days during the Covid-19 Pandemic when the petitioner was paying the reduced licence charges.

20. The impugned Circular dated 04.10.2021 is in the nature of



WP No.24291 of 2021

policy guidelines. It is applicable Pan India. Admittedly, the petitioner was also operating the Cell Kitchen at Chengalpet and Food Plaza at Tiruchirapalli paying the reduced licence fees for which period, the free days based on a formula has been calculated by the Proceedings of the third respondent dated 28.10.2021 and 29.10.2021. The Circular dated 04.10.2021 has duly factored the uncertainty and is based on the logical principle of comparing the footfall during the pandemic period against the corresponding period of pre-Covid and accordingly, licence fee was claimed and tenure reduced proportionately, for each contract exhausted without giving undue advantage for operating the contracts beyond the original awarded tenure under the pretext of Force Majeure clause nor depriving the licensees of their genuine interests.

21. The original contract for Cell Kitchen at Chengalpet Railway station in favour of the petitioner has expired on 23.11.2020. The Tabulation on the residual period of the unit as on 31.03.2022 as calculated by the respondents is as follows :-

Sl. No.	Period of operations		Number of days	Reduced License Fee %	Days accounted	Residual period
	From	To				
1	Residual contract period as on 22.03.2022 (date of closure on account of COVID) till 23.11.2020					246



WP No.24291 of 2021

Sl. No.	Period of operations		Number of days	Reduced License Fee %	Days accounted	Residual period
	From	To				
2	'01/06/2020	'03.09.2020	122	'10%	12	153
3	'01/10/2020	15.11.2020	46	'20%	9	
4	16.11.2020	30.11.2020	15	'35%	5	
5	'01.12.2020	31.10.2021	335	'20%	67	
6	'01/11/2021	31.12.2021	61	'59%	36	117
7	'01/01/2022	31.03.2022	90	'57%	51	66
8	'01.04.2022	30.06.2022	91	-	-	-
Total			760	-	180	
The residual period of 66 days as on 31.03.2022 has to be reduced based on footfall to be obtained from Railways for the month of April and May 2022						

22. Similarly for the Tiruchirapalli Food Plaza, the first respondent had arrived at 93 days as the number of days to be accounted for during the period when the petitioner was paying the reduced licence fees on account of reduced passenger traffic due to Covid-19 pandemic. The residual period after adjustment of 93 days was fixed at 2100 days for Tiruchirapalli Food Plaza. The calculation of free days during the period when the petitioner was paying the reduced licence fees on account of reduced passengers / train traffic cannot be considered to be arbitrary, irrational and illegal. The petitioner having run the Cell Kitchen at Chenglepet and Food Plaza at Tiruchirapalli is estopped from contending that free days cannot be calculated when the passenger traffic and the movement of trains was reduced due to Covid-19 pandemic and when



WP No.24291 of 2021

the petitioner was paying the reduced licence charges. As observed earlier the petitioner having chosen not to exit from the contract despite the respondents giving such an option is now prohibited from contending that the calculation of free days during the period when the petitioner was paying the reduced licence charges on account of Covid-19 Pandemic is arbitrary and illegal.

22. Being a policy decision, unless and until the said policy decision is found to be grossly arbitrary or irrational, this Court cannot exercise its judicial review by interfering with a policy decision i.e., the Circular dated 04.10.2021 and the consequential proceedings dated 28.10.2021 and 29.10.2021. The Courts cannot usurp the jurisdiction of the decision makers in the garb of judicial review. The scope of judicial review when examining the policy of the Government is to check whether it violates the fundamental rights of the citizens or it is opposed to the provisions of the Constitution or opposed to any statutory provisions or manifestly arbitrary. Courts cannot interfere with a policy decision either on the ground that it is erroneous or on the ground that a better, fairer or vicer alternative is available. The legality of the policy,



WP No.24291 of 2021

and not the wisdom or soundness of the policy, is a subject of judicial review. The impugned Circular, dated 04.10.2021 and the consequential Proceedings dated 28.10.2021 and 29.10.2021 cannot be considered to be issued with malafides, unreasonable, arbitrary or unfair.

23. For the foregoing reasons, this Court does not find any merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.06.2022

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Director /CS,
The Indian Railway Catering and
Tourism Corporation Ltd.,
Stateman House,
Barakhamba Road,
New Delhi – 110 001.



WEB COPY



WP No.24291 of 2021

ABDUL QUDDHOSE, J.

vsi2

2. The Group General Manager,
The Indian Railway Catering and Tourism
Corporation Ltd.,
South Zone,
No.6A, The Rain Tree Palace,
No.9, Mc. Nichols Road, Chetpet,
Chennai – 600 021.

3. The Joint General Manager CS,
The Indian Railway Catering and Tourism Corporation Ltd.,
No.6A, The Rain Tree Palace,
No.9, Mc. Nichols Road,
Chetpet,
Chennai – 600 021.

Pre-Delivery Order in
W.P. No.24291 of 2021

29.06.2022