

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9962 OF 2022
WITH
INTERIM APPLICATION NO.20078 OF 2022
IN
WRIT PETITION NO.9962 OF 2022**

Dinesh Singh Tomar Catering Services
Through its sole proprietor Mr.Dinesh Singh ... Petitioner

Vs.

Indian Railways Catering and Tourism
Corporation Limited and others ... Respondents.

Mr. Induprakash Tripathi i/by C. K. Tripathi for the
Petitioner/Applicant.

Mr. Amit Sale i/by Consulta Juris for Respondent No.1.

Mr. J S. Saluja a/w Ms. Desiree A. for Respondent Nos. 2 and 3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 28th NOVEMBER, 2023

P.C.

1. Heard Mr. Induprakash Tripathi, learned counsel representing the Petitioner, Mr. Amit Sale, learned counsel representing Respondent No.1 and Mr. J.S.Saluja, learned counsel representing Respondent Nos.2 and 3.

2. By instituting these proceedings under Article 226 of the Constitution of India a prayer has been made by the Petitioner to quash E-Tender Notice dated 2nd August 2022 issued by Respondent No.3 in respect of setting up and managing a Fast Food Unit at Satara Railway Station. A further prayer made by the Petitioner is that Respondents may be directed not to interfere or obstruct the Petitioner from providing the services under the contract vide LOA dated 10th May 2022 issued in its favour by Respondent No.1. Subsequent to the filing of the Writ Petition, by way of amendments, two more prayers have been added in respect of LOA dated 4th November 2022 issued by Respondent No.3 in favour of Respondent No.4, and accordingly a prayer has been made to quash the said LOA and also to direct the Respondents not to implement and execute the said LOA dated 4th November 2022.

3. Respondent No.1 – Indian Railways Catering and Tourism Corporation Limited (“IRCTC”) is a Government of India Undertaking which has been created by the Government of India

and Ministry of Railways to provide catering and other related services.

4. For giving a boost to the business of IRCTC, the Ministry of Railways issued Catering Policy 2017 which is embodied in the Circular dated 27th February 2017. In respect of the Fast Food Units to be run at the Railway Stations, a provision is made in Clause 4.2 of the said policy which provides that IRCTC shall be responsible for management of catering units mentioned in Paragraph 3.8.1 of the said policy and also for operations of Food Plaza, Food Courts and Fast Food Units within the ambit of the policy. Clause 4.2 of the Catering Policy 2017 is extracted herein below :-

4.2 IRCTC will be responsible for management of catering units mentioned in Para 3.8.1 and for operations of Food Plaza, Food Court, fast food units within the ambit of this policy."

Clause 3.8.1 provides that the base kitchens which had been under the departmental operation of Zonal Railways shall be handed over to IRCTC on '*as is where is basis*' that is to say the infrastructure including equipments would be transferred to

IRCTC. In terms of the said policy, management of catering services in Static Units mentioned in Paragraphs 3.8.1 and 4.2 were to be managed by IRCTC.

5. The Railway Board (Ministry of Railways), however, issued Commercial Circular No.08/2022 dated 8th March 2022 which contains certain guidelines in respect of setting up of Food Plaza/Fast Food Units/ Multicuisine restaurants by Zonal Railways at the vacant/non utilised spaces available at Railway Stations over Indian Railways. The said circular dated 8th March 2022 is extracted herein below :-

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.2018/Catering/600/01 New Delhi, dated 08.03.2022

The Principal Chief Commercial Managers
All Zonal Railways

The Chairman and Managing Director, IRCTC,
Statesman House Building,
Barakhambha Road, New Delhi

(Commercial Circular No.08/2022)

Sub:-Setting up of Food Plaza/Fast Food Units/
Multicuisine restaurants by Zonal Railways at the
vacant/non utilised space available at Railway
Stations over IR.

References have been received from Zonal Railways seeking permission to operate major static units (Food Plazas, Fast Food Units and Multi Cuisine restaurants) in view of the fact that many spaces allotted to IRCTC have continued to remain vacant thus leading to non-provision of passenger service and loss of railway revenue. They have requested a delegation of power to operate such commercial catering units. The matter has been examined in Board's office in the interest of provision of facility to passengers, the Competent Authority have decided the following:

1. Delegation is given to General Managers of Zonal Railways to conduct review of sites for major catering units operated under commercial model, i.e. Food Plazas, Fast Food Units, Food Courts and Multicuisine restaurants, that have been vacant for one year or more and set up Food Plazas/Fast Food Units etc by Zones with provision of local/regional cuisine.
2. The sites being taken over from IRCTC may follow due process of coordination and take into consideration the terms and conditions of existing contracts/agreements, if any.
3. The Food Plazas/FFU/Multicuisine restaurant will be allotted through open tender process for a period of 9 years as stipulated within the Catering Policy 2017.
4. Minimum Reserve Price for tendering to be fixed in terms of Para 12.1 of Catering Policy 2017.

Zonal Railways are advised to take necessary action in accordance with the above.

This issues with concurrence of Finance Commercial Directorate of Ministry of Railways

sd/
(Sumeet Singh)
DTCG as Dir. (Tourism & Catering)
Railway Board.

No.2018/Catering/600/01

New Delhi, dated 08.03.2022

Copy to : PFA/All Zonal Railways for information & necessary action please.

Sd/-
For Member Finance, Railway Board."

6. The aforesaid circular was issued by Railway Board on receiving information that many spaces allotted to IRCTC remained vacant for more than a year which led to loss of railway revenue. The said circular was, thus, issued in the wake of permissions sought by the Zonal Railways to operate static units which will include Fast Food Units at the Railway Stations, where such units have continued to remain vacant. Considering such requests by Zonal Railways, the Railway Board while issuing the said circular dated 8th March 2022 has delegated the powers to General Managers of zonal Railways to conduct review of sites for major catering units that had been vacant for one year or more, and also to set up Food Plazas/Fast Food Units by the Zones with provision of local/regional cuisine. It has further been provided by the said circular that the sites which were to be taken over from IRCTC would follow due process of

coordination and take into consideration the terms and conditions of the existing contracts/agreements, if any. As per the said circular, the Food Plazas/Fast Food Units/Multicuisine restaurant were to be allotted through open tender process as stipulated within the Catering Policy of 2017. The said circular was issued with the concurrence of Finance Commercial Directorate of Ministry of Railways and all Zonal Railways were directed/advised to take necessary action in accordance with the said circular.

7. So far as Fast Food Unit site at Satara Railway Station is concerned, there is no dispute amongst the parties that the said Unit has remained vacant for more than one year and accordingly, in our opinion, the said Unit would be clearly covered by the circular dated 8th March 2022. However, instead of taking action in accordance with the circular of the Railway Board dated 8th March 2022, the IRCTC issued a tender notice on 11th March 2022 inviting bids for operating the Fast Food Unit at Satara Railway Station. Pursuant to the said invitation of bids,

dated 11th March 2022, the Petitioner submitted its bid and has qualified. Accordingly, the IRCTC issued a license in its favour on 10th May 2022 for setting up and to operate and manage the Fast Food Unit at Satara Railway Station. After the license was awarded to the Petitioner, the Petitioner deposited security deposit of Rs.1,66,875/- as per the information contained in its letter dated 18th May 2022. The Petitioner thereafter wrote a letter dated 15th June 2022 to the Group General Manager, Western Zone of IRCTC requesting him to hand over the site so that it can operate/run the Fast Food Unit at Satara Railway Station. Despite the said request, the site was never allotted to the Petitioner by the IRCTC, hence this Writ Petition.

8. In view of the circular dated 8th March 2022 and having completed the tender process by awarding the license in favour of the Petitioner on 10th May 2022, the IRCTC wrote a letter dated 29th July 2022 to the General Manager, Central Railways stating therein various reasons giving some kind of rationale for the site at Satara Railway Station lying vacant. The

IRCTC by the said letter dated 29th July 2022 thus sought directions from the Zonal Manager to allow opening of the IRCTC static site including Fast Food Unit which would include Fast Food Unit at Satara Railway Station as well. Various other correspondences are said to have been made by the IRCTC to the Railway authorities seeking permission to allot the site of Fast Food Unit at Satara Railway Station.

9. It has been contended by learned counsel representing the Petitioner as also by learned counsel representing the IRCTC that the Railways did not clarify; neither did it consider the request made by IRCTC for permitting it to operate the static units at various sties including at Satara Railway Station in view of the reasons given for the said purpose. Instead, the Railways itself issued a tender notice on 2nd August 2022. In pursuance of the said tender notice Respondent No.4 is said to have been selected by Railway authorities to operate the Fast Food Unit at Satara Railway Station.

10. In the aforesaid background facts, it has vehemently been argued by learned counsel representing the Petitioner that the circular dated 8th March 2022 issued by the Railway Board is in complete contravention of the provisions contained in the Catering Policy 2017 contained in the circular dated 27th February 2017 and as such till the Catering Policy 2017 subsists or till it is not rescinded or varied, the circular dated 8th March 2022 could not have been acted upon. It has been further contended by the learned counsel representing the Petitioner that circular dated 8th March 2022 does not make any mention of the Catering Policy contained in circular dated 27th February 2017; neither does it supersede the same and hence the provisions contained in the Catering Policy 2017 are to be given effect to with full force. He has further argued that as per Clause 4.2 of the Catering Policy 2017, Fast Food Units are to be operated upon under the management of IRCTC and thus the tender floated by the Railways for the Fast Food Unit at Satara Railway Station dated 2nd August 2022 is completely illegal being

in violation of the policy of the Ministry of Railways itself. It has been contended further that though merely by qualifying in the tender process or having been declared to be a successful tenderer, the Petitioner would not acquire any right to operate the Fast Food Unit at Satara Railway Station, however, the action on the part of the Railway authorities not permitting the IRCTC and the Petitioner to operate the said unit in terms of the tender finalized by the IRCTC cannot be permitted to be sustained for the reason that the Petitioner having successfully competed in the bid has been issued with the LOA as well and unless there is any compelling reason or any overwhelming public interest involved, the impugned action on the part of the Railway authorities not permitting the Petitioner to operate the Fast Food Unit at Satara Railway Station is absolutely arbitrary.

11. Mr. Sale, Learned counsel representing the IRCTC has contended that the correspondences made by the IRCTC to the Railway authorities in respect of reviewing the provisions contained in circular dated 8th March 2022 have remained

unheard and no heed has yet been paid to concerns expressed in the said correspondences till date. He has further submitted that if the Railway authorities take a decision on the issue raised by IRCTC in the said correspondences including letter dated 29th July 2022, the IRCTC shall abide by the decision of the Railway Authorities. He has however stated that the decision is to be taken in terms of Catering Policy 2017 promulgated vide circulate dated 27th February 2017.

12. Mr. Saluja, learned counsel representing Respondent Nos.2 and 3, vehemently opposing the prayers made in the Writ Petition, has argued that circular dated 8th March 2022 is binding on the IRCTC and before any exercise under the said circular could be undertaken and completed, the IRCTC, in an illegal manner, floated the tender on 11th March 2022 itself i.e. within three days from the date of issuance of circular dated 8th March 2022. He has further stated that there is no dispute that the Fast Food Unit at Satara Railway Station has not been functional for more than a year and the site has remained vacant for more

than a year, and as such the said site is to come back to the Railway authorities in terms of circular dated 8th March 2022 and hence the Zonal Railways had rightly issued the tender notice on 2nd August 2022. In his submission, learned counsel representing Respondent Nos. 2 and 3 has thus argued that the Writ Petition deserves to be dismissed.

13. We have given our thoughtful consideration to the submissions made by the learned counsel representing the respective parties and have also gone through the record available before us on this Writ Petition.

14. The decision of this matter revolves around the applicability and enforceability of the circular dated 8th March 2022 in the light of the Catering Policy 2017 contained in circular dated 27th February 2017. In this regard, we notice that Clause 4.2 of the Catering Policy 2017 clearly stipulates that the Fast Food Units shall be run and managed by the IRCTC, whereas circular dated 8th March 2022 provides that the sites of Fast Food

Units which have remained vacant for one year or more, are to be taken over by the respective Zonal Railways and are to be operated accordingly not by the IRCTC but by the Railway authorities. The provisions thus in the circular dated 27th February 2022 and circular dated 8th March 2022 run opposite to each other so far as management of Fast Food Units are concerned.

15. However, the issue which falls for our consideration for appropriate decision of the matter at hand, is as to whether in the wake of circular dated 27th February 2017, the circular dated 8th March 2022 shall be applicable to the Fast Food Units. It is to be noticed that the Catering Policy 2017 is based on administrative/executive decision of the Ministry of Railways. It is not a statutory policy having been issued or framed under any statutory prescription. The Catering Policy is thus a result of the executive/administrative decision of the Ministry of Railways. Similarly, the Circular No.8/2022 dated 8th March 2022 is also based on an executive/administrative decision taken by the

Railway Board. The circular dated 8th March 2022, thus, in our opinion, can be said to be in furtherance of the Catering Policy contained in circular dated 27th February 2017. The policy decisions based on executive/administrative deliberations are always subject to further consideration, modification, variation and amendment. Thus, if at a particular point of time an administrative need was felt by the Railway Board to take out the vacant Fast Food Sites from the control and management of the IRCTC and to run and manage the said sites by the Railways, no exception can be taken by anyone, including the Petitioner, to such a decision. As already observed above, the circular dated 27th February 2017 contained in the Catering Policy 2017 is an administrative/executive decision which does not have statutory character and accordingly it could be varied or even rescinded by any other subsequent administrative decision, of course, taken at an appropriate level.

16. What we further observe in this case is that no challenge to the circular dated 8th March 2022 has been made in

the Writ Petition, however, even if any challenge was made, in our opinion, the same is bound to fail for the reasons given above.

17. The IRCTC is, in fact, not the owner of the sites. The owner of the sites is the Railways which under the Catering Policy had handed over the sites to IRCTC only for the limited purposes of managing the same. If administratively it was found appropriate by the Ministry of Railways to take over such sites where the Fast Food Units could not be operated for a year or more, such administrative decisions cannot be faulted with.

18. At this juncture, learned counsel for the Petitioner has drawn our attention to the letter dated 29th July 2022 written by the IRCTC to the Authorities of Railways drawing their attention to the reasons and rationale for such sites having remained vacant. In our opinion, that is a matter between the IRCTC and the Railways Authorities and not for this Court to resolve.

19. We also notice a very glaring fact in this case and the said fact is that though the circular dated 8th March 2022 required a certain exercise to be undertaken, however, without completion of such exercise, on 11th March 2022 itself the tender was floated by the IRCTC. It is also to be noticed further that during subsistence of the circular dated 8th March 2022, the IRCTC did not think it proper even to seek permission from the Railway authorities to float the tender which was floated on 11th March 2022. It is only after floating the tender and finalizing the tender process that the permission was sought by the IRCTC from the Railways.

20. Under the arrangement as per the Catering Policy, the IRCTC can, at the best, be said to be an agent/licneseee of the Railways. The ownership of the Fast Food Sites at the railway stations remains with the Railways. Thus before completion of exercise as contemplated and ordered by the circular dated 8th March 2022 or without seeking permission from the Railways, in our opinion, the tender on 11th March 2022 could not have been

floated by the IRCTC. In this view of the matter, we are also of the opinion that no rights can be said to have accrued to the Petitioner on the basis of its participation in the tender process pursuant to the tender notice dated 11th March 2022.

21. For the reasons afore-stated we do not find any good ground to interfere in this Writ Petition, which resultantly fails and hereby dismissed.

22. So far as the tender process initiated by tender notice dated 2nd August 2022 and the letter of award dated 4th November 2022 are concerned, it is for the Railways authorities to take appropriate decision in that regard and while taking decision in that respect, the concerned authority shall provide an opportunity of hearing to Respondent No.4 – M/s. Star Foods Associates – Satna, Pannilal Chowk, Opposit Rama Medical Satna – 485001, Madhya Pradesh, India.

23. It has been informed at Bar that the Fast Food Unit at

Satara Railway Station has not been functional for years together. In this view, we direct that appropriate steps shall be taken by the Railway authorities immediately to ensure that such facility is installed at the earliest.

24. In view of dismissal of the Writ Petition, all Interim Applications stand disposed of.

25. No order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)