



W.P(MD)No.28750 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.28750 of 2022

and

W.M.P(MD)Nos.22733, 22734 & 22735 of 2022

A.Habeebullah

... Petitioner

Vs.

The Senior Divisional Commercial Manager,
Divisional Office, Commercial Branch,
Southern Railways,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in No.U/C79/Catg stall/TSI dated 23.08.2022 on the file of the respondent and quash the same and further directing the respondent to renew the license of the petitioner for a period of three years to run the Catering Stall in Tenkasi Railway Station along with platform vending in accordance to the catering policy 2010.

For Petitioner : Mr.K.Jeyamohan

For Respondent : Mr.K.R.Laxman
Standing Counsel



W.P(MD)No.28750 of 2022

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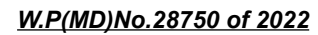
ORDER

Heard the learned Counsel on either side.

2. The writ petitioner was granted license to run catering stall in Tenkasi Railway Station on 24.02.2017. The license is valid for a period of five years. Since during the subsistence of the license period, pandemic struck the entire nation and rail traffic was also suspended, the respondent extended the petitioner's license period by one more year. The extended period came to end on 03.01.2023. The petitioner sought renewal of the license for a period of three years. His request was rejected vide communication dated 23.08.2022. Challenging the same, the present writ petition came to be filed.

3. The learned Counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this petition and called upon this Court to set aside the rejection order and direct the respondent to renew the petitioner's license as prayed for.

4. Per contra, the learned Standing Counsel submitted that the impugned order does not call for interference.



"17.RENEWAL

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.

17.3 The applicant must submit the documents afresh along with the renewal application regarding the details mentioned in para 14.2.1.1, 14.2.1.2 and 14.2.1.3 and in case of GMUs relevant documents as mentioned in the Standard Bid Documents will be



W.P(MD)No.28750 of 2022

required to be submitted afresh along with the above mentioned documents.

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17.4 The Annual Confidential Reports (ACRs) on catering performance will be modified in accordance with this policy. The detailed instructions on ACRs will be issued by the Railway Board. ACRs maintained by the Railways for the Licencee seeking renewal shall be scrutinised by the Competent Authority granting renewal. Based on the ACRs for the period of tenure the marks will be allotted to the licensee. A minimum cut off criteria based on the grading of the ACRs for grant of renewal must be notified by the zonal railways in advance.

17.5 The licence fee shall be revised and reassessed at the time of each renewal subject to a minimum increase of 10% of the existing licence fee."

6. However, the petitioner can no longer claim reliance on the said clause 17 in view of decision of the Hon'ble Apex Court rendered in **Civil Appeal Nos. 618-620 of 2016 (Senior Divisional Commercial Manager and Others Vs. S.C.R.Caterers and Another)** on 29.01.2016. The Hon'ble Apex Court held that even while holding that provisions of the catering policy 2010 are applicable and that the action of the railway in not granting renewal of the licenses is arbitrary and unreasonable, proceeded to hold that only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they did



W.P(MD)No.28750 of 2022

not have the license of more than one shop or kiosk in their name or benami license at the railway stations. Pursuant to the said judgment, the railways issued commercial circular No.22 of 2017 dated 15.03.2017. It can be seen therefrom that the licencees can no longer place reliance of 2010 policy. Subsequently, the railways issued circular No.20 of 2017 setting out catering policy of 2017 on 27.02.2017. The Hon'ble First Bench of our High Court vide order dated 16.10.2020 in W.A(MD)No.1566 of 2018 had categorically held that since through the commercial circular No.20 of 2017, the practice of renewal of license has been discontinued, it may not be open to the Court to give a direction for renewal of licence which even otherwise is not a matter of right. Respectfully following the decision of the Hon'ble First Bench, I hold that the impugned order cannot be interfered with.

7. This is so particularly because even though the petitioner's license was issued under the catering policy of 2010, the petitioner cannot take advantage of the decision of the Hon'ble Apex Court. Admittedly he is having three other catering stalls in the other railway stations. The order impugned in the writ petition is sustained. The writ petition stands dismissed. The respondent is directed to hold fresh tender for the petition mentioned stall and conclude the same within a period of four (4) weeks from the date of receipt of a copy of this order. The petitioner is given four more weeks since as on date, the petitioner is



W.P(MD)No.28750 of 2022

running the stall in question. He is permitted to retain the same for four more weeks or till the tender process conclude whichever is earlier. The petitioner can very well take part in the proposed tender process. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

To

The Senior Divisional Commercial Manager,
Divisional Office, Commercial Branch,
Southern Railways,
Madurai.

G.R.SWAMINATHAN, J.



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