[2023:PHHC:051975-DB]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 324 of 2023 (O&M)
Reserved on: 28.03.2023
Date of Decision:12 .04.2023

K.K.KAPOOR AND SANJEEV KAPOOR

. . . . Appellant

Vs.

INDIAN RAILWAY STATIONS DEVELOPMENT CORPORATION LIMITED AND OTHERS

. . . . Respondents

CORAM: ***HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO.***
HON'BLE MRS.JUSTICE SUKHVINDER KAUR.

Present: - Mr.Narinder Pal Bhardwaj, Advocate
for the applicant-appellant.

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M.S. RAMACHANDRA RAO, J.

In this Letter's Patent Appeal, the appellant have challenged the judgment dt.14.3.2023 passed in CWP-19356-2021 (O & M).

The Appellant is a partnership firm and is represented by it's partner Sanjeev Kumar.

It is running a 'snack bar' at platform No.1, Chandigarh Railway Station.

The appellant claims that it was running the same since it was allotted to the appellant's partner's forefathers. In 1972, the allotment of the same was made to a firm by name M/s Ram Lubhaya and Roshan Lal, a firm run by father of appellant's representative and his uncle.

They died subsequently and the vending contracts in their name (M/s Ram Lubhaya and Roshan Lal) was transferred to their legal heirs i.e, Sanjeev Kumar on 14.10.2004 (P-1). Another partner K.K.Kapoor also died on 15.3.2021 leaving behind his legal representatives.

The appellant had lastly entered into an agreement dt.8.11.2012 (P-6) with the Northern Railway regarding the running of the snack bar at Platform No.1 at Chandigarh Railway Station. The licence agreement was for one year commencing from 21.1.2012 and renewal thereafter was at the discretion of the railway administration.

The appellant continued to run the snack bar and on 15.3.2017 (P-9) , treating it's snack bar as a *minor catering static unit licence,* it was given a renewal by referring to a decision of the Supreme Court in **Senior Divisional Commercial Manager & others v. SCR caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Another**[1]**.**

This arrangement continued and the appellant was again granted extension by the respondents upto 31.3.2021 vide letter dt.16.3.2021.

Appellant vide letter dt.17.3.2021 sought further extension/renewal but no action was taken thereon.

The appellant filed CWP-7480-2021 in this Court seeking renewal/extension of it's catering licence.

On 17.7.2021, this Court disposed off the Writ petition taking note of the stand of the respondents that fresh tender process was initiated by them and till it is finalized, the appellant will be permitted to continue to run it's snack bar. The court disposed off the writ petition recording the statement of the official respondents and stating that it's order is without prejudice to appellant's rights to participate in the process of fresh allotment as well as seeking renewal of it's licence in terms of the above Supreme Court judgment. P-17 is the said order.

Appellant again filed a letter dt.21.8.2021 seeking fresh renewal.

[1] 2016 (3) SCC 582

In the mean time the official respondents had floated a fresh tender notice dt.26.7.2021 (P-17) inviting open tenders 'for setting up, operation and management of snack bar at Chandigarh Railway station' for 5 years.

They rejected appellant's claim for renewal of it's licence vide letter dt.9.9.2021 (P-2). In the said letter it was stated that as per policy of the Railway Board, the Snack Bar has been categorized as a *major* unit, and not a *minor* unit; that the IRSDC had floated an open tender for the contract for the Snack Bar and appellant was also free to participate in the open tender which was finalized.

CWP-19356-2021

Challenging the same, the appellant had filed CWP-19356-2021 in this Court.

The appellant contended that Policy decisions of the Railway Board are binding and relied on the catering policies for the 2005, 2010 and 2017; that it is entitled to renewal in view of the judgment of the Supreme Court referred to Supra; that it had provided quality eatable products to the utmost satisfaction of the respondents and their customers and has an unblemished service record; and non-renewal of its license would result in unemployment of its staff and also revenue loss.

The official respondents filed reply opposing grant of any relief to the appellant. They contended that the appellant did not want to participate in the open tender process which would generate three times more revenue to the Indian Railways and wanted to continue to enjoy the premises for very meager rent; that this Court had upheld the tendering process for grant of catering licenses on railway platforms in CWP-5039-2022 on 12.05.2022; that 'snack bar' is treated as a *major* catering unit even under the 2017 Policy of the Railway Board; the decision of the Supreme Court is inapplicable as it relates to only *minor* catering units; that once a member of the partnership firm of the appellant by name Sh. K. K. Kapoor died, the firm stood automatically dissolved as per the Indian Partnership Act, 1932 and the partnership came to an end; and therefore, the Writ Petition be dismissed.

During the pendency of the Writ Petition, the tenders were opened and the respondent no.9 became the successful tenderer by quoting ₹28,12,002/- as annual licence fee for 5 years and the Snack bar in question was allotted to it vide letter dt.3.9.2021 (A-1). The respondent no.9 accepted the same vide A-2 letter dt.3.9.2021. Possession could not be handed over to it as the appellant continued to possess it inspite of the fact that protection in CWP-7480-2021 was only till fresh allotment is made.

The respondents reiterated their stand that a 'Snack Bar' is synonymous with a Fast Food Joint which is a Major Catering Unit as per Catering Policy 2017 and relied on A-5 letter d.28.10.2021 issued by the DTC (G), Railway Board.

The order of the learned Single Judge

Learned Single Judge noted the contentions of the parties and dismissed the Writ Petition.

He held that the decision of the Supreme Court relied upon by the appellant dealt with the Catering Policy of 2005 and 2010, and would not be of any help to the appellant in the absence of an averment in the pleadings as to which Policy is being relied upon by the appellant for seeking the relief of renewal of its license.

He also held that the Writ Petition was filed on behalf of the appellant firm through its partner, and a partnership deed was attached to the Writ Petition bearing dt. 25.01.2012, and since admittedly one of the partners, by name, K.K. Kapoor, died on 15.03.2021, the partnership itself came to an end, and there is no averment that a new partnership had come into existence.

He also held that in February 2017, Annexure P-21 Policy came into existence which superseded the earlier Policies; that the appellant did not plead that its case is covered under the said Policy; and the appellant had also not filed its last renewed license of 2017 which would have disclosed under what Policy the last renewal was made and so it is not entitled to any relief.

Challenging the same, this Appeal is filed.

The LPA

Counsel or the appellant contended that the appellant was entitled to be granted renewal in view of the decision of the Supreme Court referred to Supra, and the learned Single Judge did not go into an important question as to whether a Snack Bar is a “major” or “minor” catering unit, and even respondent had issued letters Annexures P-3 to P-5 treating the appellant as a minor catering unit.

He also contended that the appellant had been paying ₹84,654/- inclusive of GST as monthly license fee, and if its license is not renewed, several persons who are employed by the appellant may lose their livelihood.

Counsel for the respondents supported the judgment of the learned Single Judge and reasons contained therein.

Consideration by the Court

We have noted the respective contentions of the parties.

Admittedly, the appellant and its predecessors had been continuously running the Snack Bar at Platform No.1 of the Chandigarh Railway Station from prior to 1972. Even according to the appellant, it is only paying ₹84,654/- including GST as a monthly license fee which annually comes to ₹10,15,848/-.

Through the tendering process adopted by the official respondents, 9th respondent had become the highest bidder by quoting ₹28,12,002/- excluding GST as annual license fee.

Thus, through the tendering process the official respondent had been able to get almost 3 times annual license fee than what was being paid by the appellant. This is undoubtedly in the public interest.

The appellant cannot claim to continue operating the Snack Bar in question by paying a very meager rent/license fee to the official respondents.

Therefore the Policy adopted by the respondents of awarding the Snack Bar license by open tender process being beneficial to public interest and to the public exchequer, cannot be found fault with. In **Jagdish Mandal Vs. State of Orissa**[2] Supreme Court held that *if the decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest.*

Also as rightly held by the learned Single Judge, once one of the partners of the appellant firm had died in March 2021, as per the Partnership

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[2] 2007 14 SCC 517

Act, 1932 the firm itself stood dissolved, and there is no fresh partnership agreement produced before this Court to enable the appellant to maintain the Writ Petition or the LPA challenging the order of the learned Single Judge.

Further, no doubt the Policies laid down by Railway Board would be binding on the respondents, but the appellant had relied upon the Catering Policies 2005, 2010 and 2017 without actually pleading in the Writ Petition which Policy applies to it.

We agree with the contention of the respondents that a 'snack bar' would be in the nature of the 'fast food' unit and even in the Catering Policy of 2017 filed as Annexure P-21, such units has been treated as a "major" catering unit and not as a "minor" catering unit.

Without noticing this aspect, certain letters such as Annexures P-3 to P-5 were written wrongly applying the decision of the Supreme Court referred to above which dealt with "minor" catering units. Therefore, the appellant cannot place any reliance on the said decision and claim a right to seek renewal.

In view of the aforesaid, we do not find error in the judgment of the learned Single Judge. Consequently, the LPA is dismissed. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 12, 2023.
Ess Kay

1. Whether speaking/reasoned? ***Yes/****No*
2. Whether reportable? *Yes/No*