

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-18812-2017 (O&M)
Date of decision: 21.02.2023**

MANJIT SINGH

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr.Kunal Mulwani, Advocate
for the petitioner.

Mr. Parminder Singh Kanwar, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The present petition raises a challenge to the order dated 10.07.2017 (Annexure P-20) passed by respondent No.4 whereby the request of the petitioner for transferring of the catering/vending contract license of M/s Mohan Singh Makhan Singh in his name has been rejected.

2. Briefly summarized the facts of the present case are that the petitioner claims that originally the license of vending contract had been issued in favour of a partnership firm namely Mohan Singh Makhan Singh for running stalls, trolleys, trays and shops at Railway Station, Jawala Mukhi under Ferozepur Division for selling different commodities like snacks, water, tea, coffee, meals, biscuits etc. Mohan Singh is stated to have died on 24.02.2005 and he was survived by one Gurmeet Singh. The vending license

however continued to operate by the second partner namely Makhan Singh-father of the petitioner alongwith Manjit Singh i.e. the petitioner herein. The abovesaid Makhan Singh is stated to have died on 04.03.2014 where after the petitioner had been carrying on the business under the above said license. He submits that the license in question continued to be operated till the year 2015 whereafter an application was submitted by the petitioner for seeking renewal of the aforesaid license in his favour. The aforesaid application was duly supported by the affidavits/no objections from the other LRs of Makhan Singh. He submits that LRs of Mohan Singh had already issued a 'No Objection' in favour of mother of the petitioner. He thus contends that as there is 'No Objection' to the transfer and renewal of license in favour of the petitioner from all the stake holders, the renewal ought to have been allowed. It is further averred that a commercial circular No. 52 of 2013 had been issued by the respondents and as per Para No.21 thereof, the transfer of license is permissible in favour of the spouse/legal heir of the licensee for the unexpired period of the agreement only, with the approval of the Chief Commercial Manager/Divisional Railway Manager/MD, IRCTC. Nomination was required to be obtained from the license holder at the time of entering into contract and the nomination had to be amongst the family members only. The renewal, allotment or grant of license etc. are thus required to be done by the implementing agency as per the Catering Policy of 2010. The respondents notified a new policy in February, 2017 vide No.2016/TG-III600/1/Pt. for the year 2016-2017. Clause 18 of the aforesaid policy reads thus:

*"Transfer of license to the legal heir would be allowed only in the event of death of the original licensee.
The license shall be transferred in the name of the legal*

heir for the unexpired period of the contract as per General Conditions of contract (GCC) of Railways. No subletting will be allowed.."

3. The Legal heirs of the licensee were thus held entitled to transfer of a license in their favour for the unexpired period of the contract as per the general conditions of contract of Railways.

4. On the basis of the above said policy, various representations were submitted to the respondent-authorities and orders allowing the same to the other persons are stated to have been passed. Such orders are attached as Annexure P-13 to P-17. The petitioner also submitted his claim and when it failed to yield any result, the petitioner filed CWP-4859 of 2017 titled "*Manjit Singh versus Union of India and Others*" with a prayer to seek transfer of the vending contract of late Makhan Singh in his favour. The aforesaid writ petition was disposed of vide order dated 14.03.2017 whereby the Senior Divisional Commercial Manager, Northern Railway, Ferozepur Cantt. was directed to consider the representation Annexure P-10 appended alongwith the said writ petition and to pass a reasoned order thereupon. The impugned order dated 10.07.2017 has been passed in compliance to the aforesaid directions rejecting the claim. Hence, the present petition.

5. Written statement on behalf of respondents though Senior Divisional Commercial Manager, Northern Railway, Ferozepur has been filed wherein the respondents have averred that the Railway Board had introduced the revised Catering Policy, 2010 vide Commercial Circular No.35/2010 dated 21.07.2010 to be implemented with immediate effect. As per the above said policy, Zonal Railway was to manage the vending machines through the licensees. The above said policy was modified vide

Commercial Circular No. 52 of 2013 wherein Para 21 was introduced which empowered transfer of the license in favour of the legal heir, for the remnant period of the agreement. Emphasis was laid that the entitlement of an heir to seek transfer of the license only for the unexpired period of the Agreement/license and that too with the approval of the Chief Commercial Manager/Divisional Railway Manager/ MD, IRCTC. It is stated that even though Mohan Singh had expired on 24.02.2005 and the second partner Makhan Singh expired on 04.03.2014, the transfer of license could be allowed in favour of the spouse/legal heir, on death of original owner of the license, for the remaining period only. Makhan Singh deceased had nominated the petitioner Manjit Singh as his legal heir in the year 2013, however, Mohan Singh i.e. the other partner did not nominate any legal heir. The LRs of Mohan Singh had submitted an affidavit that they have no objection to transfer the vending contract in name of Satnam Kaur-widow of late Makhan Singh. However, Satnam Kaur had not been declared as legal heir by late Makhan Singh. Satnam Kaur widow claimed and submitted an affidavit that she has no objection if the contract is transferred of Manjit Singh. Said Satnam Kaur also died on 09.11.2014. An application for transfer of the contract was submitted by the petitioner after the death of Satnam Kaur. However, Gurmeet Singh son of Mohan Singh and other partners of the firm did not submit no objection to the transfer of the contract in favour of Manjit Singh. It is thus submitted that the application in question was rightly declined.

6. Counsel for the petitioner argues that the petitioner is entitled to the transfer of license in his favour and its subsequent renewal on death of Makhan Singh and that the reasons cited by the respondents for declining

the claim of the petitioner solely on the ground that the NOC ought to be obtained from LRs of Mohan Singh is misconceived since Gurmeet Singh had already given his 'No objection' in favour of mother of the petitioner herein who had further submitted an affidavit that the license may be granted in favour of the petitioner.

7. Counsel for the respondent reiterated submission notice above. The same are not being reiterated.

8. I have heard learned counsel for the respective parties and have gone through the documents available on record.

9. A pointed query was raised to the counsel for the petitioner, in view of the specific clause contained in the Catering Policy and the subsequent Circulars issued by the respondent-Railways, as to whether the intimation as regards the death of Mohan Singh on 24.02.2005 was ever sent to the respondent-Railways. The counsel also failed to respond to the same in the affirmative. A further query was also raised as to whether the petitioner had at any later point of time sought renewal/transfer of the license in his favour prior to death of his father and as a sole proprietorship firm. He fairly submits that all subsequent renewals during the pending period had been granted in favour of the partnership firm under the name & style of Mohan Singh Makhan Singh only. A further specific query was raised as to what was the maximum period as per the catering policy notified by the respondent-Railways for which the license could have been granted. He has also fairly submits that the aforesaid period came to an end in the year 2015. Hence, Para 21 of the policy, which permits renewal/transfer of

the license for the balanced period, does not come to the aid of the petitioner.

10. He has, however, placed reliance on the judgment of Hon'ble Supreme Court in the matter of "**Senior Divisional Commercial Manager South Central Railway and others versus S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association**" reported as **2016 (3) SCC 582** and on Para 33 thereof whereby the respondent-Railways had been directed to consider the claim of the members of the Association under the policy.

11. The aforesaid judgment of Hon'ble the Supreme Court is however not applicable to the facts of the present case since it has been noticed in the aforesaid para No. 33 thereof that the provisions of the Catering policy, 2010 were applicable to the respondent's concerned. The action of the Railways by not granting renewals of the licenses to the members of the respondents was held to be illegal and arbitrary. The petitioner not being covered under the policy, since the term of licence has already come to an end, cannot take any benefit thereof.

12. The claim for seeking renewal of a license has to be examined under the applicable policy. The vending license on the Railway property, being a largesse and part of commercial activity, has to be governed by the applicable policy pertaining to revenue maximization or socio-economic goals. Grant or renewal of the license would thus be seen as per the policy/commercial circulars issued by the respondents. The counsel for the petitioner sought renewal of the license as per Para 21 of the Catering Policy and the Commercial circular. However, in response to the specific query, he fairly conceded that right provided thereunder is only for the remnant period

of the license and that the said total period came to an end in 2015. He could not refer to any other clause wherein a right to renewal could be presumed to have accrued in favour of the petitioner. In the absence thereof, it can not be said that there is any denial or suppression of any right of the petitioner by the respondents.

13. Additionally, the license was originally granted in favour of the partnership firm. Mohan Singh died in the year 2005. The petitioner did not inform the said aspect to the Railway authorities. The renewals were sought in the name of Partnership firm even though it became a sole proprietorship in the year 2005 itself. Renewal is being sought for the partnership firm, which is not in existence since 2005.

14. Besides, the petitioner has not appended the alleged NOC given by the LRs of Mohan Singh. In the absence of the said document, there can be no presumption of vesting of any right in Satnam Kaur, especially when, the affidavit of Satnam Kaur is silent qua the same.

15. Hence, considering it from the said aspect as well, renewal in favour of petitioner alone even qua the rights of LRs of Mohan Singh could not have been done. The petitioner cannot seek transfer of rights in Partnership to a sole proprietorship under the garb of renewal of license. The above aspects are however academic at this stage since petitioner conceded that the entire license period has already come to an end, hence, there can be no renewal once the license stands determined on expiry of maximum time period.

16. A direction to the respondents thus cannot be issued to grant lease of life to the license which has already outlived its total permissible discretion.
17. The present petition is accordingly misconceived and is, thus, dismissed.
18. All the pending miscellaneous applications, if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 21, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No