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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22.05.2023

Pronounced on: 26.05.2023

+ FAO(OS) (COMM) 203/2022 & CM APPL. 35282/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 204/2022 & CM APPL. 35292/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 216/2022 & CM APPL. 37546/2022
M/S SATYAM CATERERS PVT. LTD. Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 217/2022 & CM APPL. 37549/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent



- + FAO(OS) (COMM) 218/2022 & CM APPL. 37554/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.
..... Appellant
versus
INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent
- + FAO(OS) (COMM) 219/2022 & CM APPL. 37557/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.
..... Appellant
versus
INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent
- + FAO(OS) (COMM) 220/2022 & CM APPL. 37560/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant
versus
INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent
- + FAO(OS) (COMM) 221/2022 & CM APPL. 37563/2022
M/S ROOP CATERERS Appellant
versus
INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent
- + FAO(OS) (COMM) 222/2022 & CM APPL. 37566/2022



M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 223/2022 & CM APPL. 37569/2022

M/S ROOP CATERERS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 224/2022 & CM APPL. 37577/2022

M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 225/2022 & CM APPL. 37580/2022

M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 226/2022 & CM APPL. 37583/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus



INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 227/2022 & CM APPL. 37586/2022
M/S ROOP CATERERS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 228/2022 & CM APPL. 37589/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.
..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 229/2022 & CM APPL. 37592/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 230/2022 & CM APPL. 37596/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM



CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 231/2022 & CM APPL. 37599/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 232/2022 & CM APPL. 37602/2022

M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 233/2022 & CM APPL. 37605/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 234/2022 & CM APPL. 37608/2022

M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent



+ FAO(OS) (COMM) 235/2022 & CM APPL. 37611/2022
M/S ROOP CATERERS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 236/2022 & CM APPL. 37614/2022
M/S ROOP CATERERS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 237/2022 & CM APPL. 37617/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 238/2022 & CM APPL. 37620/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.
..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) Respondent

+ FAO(OS) (COMM) 239/2022 & CM APPL. 37623/2022
M/S BRANDAVAN FOOD PRODUCTS Appellant



versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 240/2022 & CM APPL. 37626/2022

M/S ROOP CATERERS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 241/2022 & CM APPL. 37629/2022

M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 242/2022 & CM APPL. 37632/2022

M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 243/2022 & CM APPL. 37635/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant



versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 244/2022 & CM APPL. 37638/2022

M/S ROOP CATERERS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 245/2022 & CM APPL. 37641/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 246/2022 & CM APPL. 37644/2022

M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 247/2022 & CM APPL. 37647/2022

M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus



INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 248/2022 & CM APPL. 37650/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC) & ANR.

..... Respondents

+ FAO(OS) (COMM) 249/2022 & CM APPL. 37653/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 250/2022 & CM APPL. 37656/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 251/2022 & CM APPL. 37659/2022
M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus



INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 252/2022 & CM APPL. 37886/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 253/2022 & CM APPL. 37891/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 254/2022 & CM APPL. 37898/2022
M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 255/2022 & CM APPL. 37901/2022
M/S SATYAM CATERERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent



+ FAO(OS) (COMM) 256/2022 & CM APPL. 37906/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 257/2022 & CM APPL. 37912/2022
M/S R.K. ASSOCIATES AND HOTELIERS PVT. LTD.

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

+ FAO(OS) (COMM) 258/2022 & CM APPL. 37926/2022
M/S BRANDAVAN FOOD PRODUCTS

..... Appellant

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED (IRCTC)

..... Respondent

Through: Mr. Nidhesh Gupta, Sr. Advocate
with Mr. Rajat Aneja, Mr. Jasmeet
Singh, Mr. Saif Ali, Mr. Divjot
Singh Bhatia, Mr. Pushpendra S.
Bhadoriya, Ms. Japneet Kaur, Mr
Ruhsheet Saluja, Mr. Anurag, Ms
Vriti Gujral and Mr. Vijay Sharma,
Advocates for Appellants.

Mr. Ciccu Mukhopadhyay, Sr.
Advocate with Mr. Saurav Agrawal



and Mr. Anshuman Chowdhury,
Advocates for IRCTC/Respondent.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

NAJMI WAZIRI, J.

1. These appeals under section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') read with section 13 of the Commercial Courts Act, 2015 impugn the order of the learned Single Judge dated 24.05.2022 which dismissed their petitions under section 34 of the Act against the Arbitral Award dated 02.03.2021 by the learned Sole Arbitrator ('Arbitral Tribunal').
2. The appellants say that on 21.07.2010, a Commercial Catering Policy of 2010 ('CCP 2010') was announced by the Ministry of Railways, it covered all mobile catering services including base kitchens. The policy was amended on 31.12.2012 to include renewal of license of major mobile units; bids were invited for catering services in trains; Standard Bid Document ('SBD') was shown to the bidders; the appellants were successful bidders for various trains routes; they served for an initial period of 5 years under the Master License Agreement ('MLA'); an *ad hoc* extension of license was granted to them by the respondent IRCTC on the same terms and conditions for another period of 5 years with an enhancement of 10%



in the existing license fee on the basis of Clause 17.5 of CCP 2010.
The said clause provides as under:-

“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.”

3. The appellants continued with the contract but have impugned the imposition of 10% enhancement of the existing license fee. During the pendency of these proceedings, the appellants have paid the revised license fee of 10% for the previous years, subject to the outcome of the arbitral proceedings.

4. Mr. Nidhesh Gupta, the learned Senior Advocate for the appellants contends that:

(i) both the Arbitral Award and the impugned section 34 order too, have erred in not considering that the terms of the MLA are to prevail over CCP 2010;

(ii) the bid was made on the basis of the SBD of 27.05.2013 which led to signing of the MLA on 21.04.2014, in which the tenure of 5 years was stipulated, alongwith one renewal for another 5 years but there was no mention of a minimum 10% increase in license fee, upon the renewal;

(iii) the only clause of the MLA dealing with renewal of license fee is Article 4.2(b), whereunder it was incumbent upon Railways to reassess the sales and only after such reassessment could the licence fee be varied i.e. it did not necessarily contemplate an increase, let



alone impose a minimum 10% increase in license fee. According to the said Article the license fee could be varied, (“may be varied”), i.e. it could be increased or decreased depending only upon a reassessment of sales. The said Article 4.2(b) reads as under:-

*“4.2(b) In consideration of the provision of the services and the Bid submissions of the Licensee, the Licensee shall pay to Railway an agreed sum of License Fee for the entire duration of the license payable on 2+2+ 1 yearly basis in advance. In case of renewal for another period of five years after completion of initial 5 years, railway **shall** make re-assessment of sales and accordingly License fee may be varied.”*

(iv) neither in the SBD nor in the MLA is there any mention of enhancement of 10% of the existing license fee upon renewal, the only reference to 10% is in CCP 2010 but the occasion to refer to CCP 2010 would arise only when there was a cause or occasion for interpretation of any clause of the MLA;

(v) the Arbitral Tribunal is a creation of the contract-the MLA, between the parties, therefore, the scope of its adjudication would cover only the terms of the contract and the contractual obligations and responsibilities of the parties as agreed in the MLA, it is only essentially this document that was required to be examined by the Arbitral Tribunal;

(vi) Referring to the second sentence of Article 4.2(b) of the MLA, the appellants contended that for variation in the license fee upon renewal of the license for another period of 5 years after completion of



initial 5 years, it was mandatory upon the Railways/IRCTC to first complete the exercise of reassessment of sales;

(vii) the word 'shall' is a mandatory and this is the only method by which the license fee could be varied, let alone impose a minimum of 10% increase on the existing license fee.

(viii) in the statement of claims before the Arbitral Tribunal, the issue of non-applicability of Clause 17.5 of CCP 2010 was raised by the appellants as under:-

“49. Condition No. (ii) - Enhancement of quoted license fee by 10% as a condition of renewal:

49.1 The respondent IRCTC also sought to impose Condition No. (ii) to the effect that as a condition of renewal, quoted license fee will be increased by 10% as per clause 17.5 in Catering Policy of 2010 and clause 3.2 and 21.1 of the Master License Agreement of the Standard Bid Document contracts.

49.2 This condition is also contrary to the Master License Agreement (MLA) which nowhere provides increase of license fee at the time of grant of renewal. The solitary condition stipulated in the Master License Agreement is "satisfactory performance" which stands fulfilled. Once the claimant has fulfilled the sole condition agreed between the two parties, the Respondent cannot impose any further onerous condition by abusing its dominant position and superior bargaining position.

49.3 It may be further pointed out that Clause 17.5 of the CP of 2010 is not attracted ipso-facto since the same was neither incorporated in the Standard Bid Document nor into the Master License Agreement executed between the parties. This was only a general clause in the policy



which will have no binding force unless included in the agreement between the parties. On the contrary, the fact that the predecessor-in-interest of the Respondent namely Indian Railways which had taken out the Standard Bid Document and published the tender document and executed the Master License Agreement by omitting this condition despite being conscious of the provision of the Catering Policy of 2010, shows that the Indian Railways never intended to increase the license fee at the time of grant of renewal for these licenses.

49.4 The reliance placed upon Clause 3.1 and 21.1 of the Master License Agreement as mentioned in this condition, is wholly misplaced as none of these two clauses provide for such a condition. In fact, if the Master License Agreement had already contained this condition, there was no need to seek unconditional acceptance of the Claimant as the claimant would have been otherwise bound by the same. The fact that the respondent is seeking unconditional acceptance in prescribed format shows that these conditions are not part of the earlier Master License Agreement.

49.5 Even this condition is financially onerous and it will lead to financially disastrous consequences for the Claimant who works on very thin margin as the catering charges offered by the Respondent are hardly sufficient to account for the costs involved in cooking and serving the food at such large scale.”

The appellant contends that despite the above pleadings and arguments on the issue, the Arbitral Award has erroneously returned a finding contrary to the appellants’ contentions; the finding overlooks the fact that the rights and obligations of the parties flow from the MLA, the latter does not impose any obligation upon the appellant to pay a minimum 10% increase on license fee; such obligation brought



in by the Arbitral Award, in effect, alters the substantive and unambiguous terms of the MLA.

(ix) CCP 2010 is a policy framed by the railways, the MLA is a subsequent document containing specific terms to which the parties have consciously agreed and it is this document which binds the parties; the policy cannot alter the specific unambiguous terms of the contract, by which the parties are bound; there was no requirement to travel beyond the MLA; Article 21.1 of the MLA primarily deals with the interpretation of the terms and arrangement between the parties and nothing more; therefore, it is not a provision which would determine the substantive rights and obligation of the parties.

5. The learned Senior Advocate further says that, interestingly the Arbitral Award has held, *inter alia*, as under:-

“21.1 From the above clauses, it is clear that the tenure agreed by the parties is for a period of 5 years from the date of commencement. Upon the completion of 5 years, one renewal for a period of 5 years may be given subject to satisfactory performance. The tenure shall continue until a period of 5+5 years from the commencement date and such renewal shall be on the recommendations provided by the evaluation committee in terms of Clause 3.2 Clause 4 provides for the license fee, the mode of payment of license fee, and the catering charges in built in the ticket fare. The license fee was payable in advance for the duration of the license calculated on 2+2+1 yearly basis. In case of renewal, the license fee may be varied. The license fee was to be renewed for the additional period of 5 years calculated as per terms of the contract. The Railways could take any action as per the terms of the contract for delay in deposit of license



fee. Without prejudice to which, there was a liability on the licensee to pay an interest of 14% per annum for the number of days or default in payment of license fee. The response of the licensee to the bid is also relevant as under Article 6.1. The licensee had agreed to fulfill all the commitments made in its response to the bid. It was the obligation of the Claimant being the licensee, to comply with the Food Adulteration Act and other statutory laws. The working of the base kitchens and serving of food, by the licensee, was subject to inspection by the Railways or any person authorized by the Railways.”

6. Therefore, he contended that (a) when the Tribunal largely agrees with the appellants' contentions, its conclusions could not be to the contrary, (b) the clause for a minimum 10% increase of the previous license fee was never incorporated by the respondents either in the SBD of in the MLA, (c) the language of Article 4.2(b) of the MLA is unambiguous, imperative and does not call for any interpretation, therefore, the reference by the learned Arbitrator to Article 21.1 of the MLA was erroneous and unwarranted. There was no occasion to interpret any article, phrase, terminology or words of the MLA necessitating a linkage with Clause 17.5 of the CCP 2010.

7. He further contended that the MLA was the only document which ought to have been referred to and by ignoring the terms of the said Agreement, the Arbitral Award has gone beyond the scope of section 28(3) of the Act, which mandates as under:-

“While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”



8. The appellants further contended that the Arbitral Tribunal was aware of Article 4.2(b) of the MLA, yet it did not appreciate the same in its entirety. The said Article does not mention an interim arrangement of a compulsory/minimum increase of 10% of the existing license fee in the event of a renewal, pending mandatory reassessment of sales for variation of license fee. Only Clause 17.5 of CCP 2010 makes a mandatory enhancement of a minimum 10% of the existing license fee, there is no such mandatory clause under Article 4.2(b) of the MLA. The latter does not even contemplate an increase of license fee. All it says is that there would, necessarily, have to be a reassessment of sales for “variation” of license fee. Therefore, the two clauses would have to be read separately in their specific contexts and not conjointly. It is argued that insofar as the Arbitral Award has overlooked the specific terms of the contract, it suffers from patent illegality and should, therefore, be set aside.

9. The learned Senior Advocate for the appellants contended that the interpretation of a statute or a clause or an agreement should always be meaningful i.e. a meaning should be given which would be reasonable and sensible. In support of this contention, he relied upon *Percy and Anr v. Hall and Ors*, 1996 (4) All ER 523, wherein it was observed that:

“The rival approach urged by Mr. Howell is to be found in Lord Denning’s speech in the Fawcett case [1961] A.C. 636, 677-678:

“...I can well understanding that a byelaw will be held void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning. But if the uncertainty stems only from the fact that



the words of the byelaw are ambiguous, it is well settled that it must, if possible, be given such a meaning as to make it reasonable and valid, rather than unreasonable and valid.... I am of the opinion that a planning condition is only void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning, and not merely because it is ambiguous or leads to absurd results. It is the daily task of the courts to resolve ambiguities of language and to choose between them; and to construe words so as to avoid absurdities or to put up with them.”

10. There can be no dispute about the proposition. In the present case it has been applied fairly looking into the facts and circumstances of the case and a plausible view has been taken.

11. In similar view, the learned Senior Advocate for the appellants also relied upon the decisions of the Supreme Court in *Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 1; *Bank of India v. K. Mohandas*, (2009) 5 SCC 313; *Nabha Power Ltd. v. Punjab SPCL*, (2018) 11 SCC 508; *Raghunath Rai Bareja v. Punjab National Bank*, (2007) 2 SCC 230; *United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd.*, (2016) 3 SCC 49; *State of Maharashtra v. Shri Vile Parle Kelvani Mandal*, (2022) 2 SCC 725.

12. Refuting the aforesaid contentions of the appellants, Mr. Ciccu Mukhopadhyay, the learned Senior Advocate for the respondents has submitted that:

i) There is a wide difference between the Proforma Master License Agreement and actual Agreement signed between the parties. Furthermore, the document contemplated revision of enhancement of license fee as under:-



*“8.3 In the case of any revision in catering tariff, the License fee payable to Railway **shall be varied based on the re-assessment of sales**, from the date of revision of catering tariff.”*

- ii) In the section 34 proceedings, the appellant's challenge was limited to the extent that the appellant was entitled to renewal of the license on the same terms and conditions i.e. without increase in the previous license fee and if at all there would be a change in the previous license fee, it would be a variation based upon the reassessment, as is mentioned in aforementioned Article 4.2(b) of the MLA,
- iii) The agreement and arrangement between the parties provide for variation of license fee based on the reassessment of sales, however, renewal under the revised policy provides for a minimum enhancement of 10% in the license fee; this minimum enhancement is a condition of the renewal and is embodied in the foundational document-the CCP 2010, the same would be applicable and cannot be limited or ignored. In effect, on renewal for another period of 5 years, a minimum 10% tariff can be applied on pro-rata basis under the CCP 2010 and the Commercial Circular bearing No. 82/2012.
- iv) The MLA between the parties was entered on 21.04.2014 in terms of the renewal master plan. Article 21.1 of the MLA dated 21.04.2014 read as under:

“21.1 This Agreement and the arrangement between the parties shall at all times be read along with the terms of the Bid and the response of the Licensee to the Bid. In the event of any interpretation of the provisions of this arrangement between the parties, the documents shall be read in the following order of precedence:-



- (i) Railway' latest catering policy as applicable from time to time*
- (ii) the Articles of this Agreement;*
- (iii) the contents of the Annexure(s) to this Agreement;*
- (iv) Licensee's response to the Bid*
- (v) The Bid ”*

v) In the event of interpretation, the order of precedence/for reference to documents is already specified. Clauses 17.5 and 18.3 of the CCP 2010 provide for minimum increase of 10% license fee over the prevailing license fee. It is argued that in this scheme of arrangement, at least 10% increase in license fee was mandatory and it has rightly been so held, both by the Arbitral Award and the impugned order u/s section 34.

13. The respondents contended that the arrangement contained in the policy was reduced to the terms of the MLA, therefore, the arrangement in the policy would have to be read in the manner as has been done in the Award. The Policy under Clause 26.1.4 also provides that it shall apply to fresh license as well. It reads as under:

“26.1.4 This policy will also apply in case of award of fresh licences and licences awarded in the event of termination, non-renewal, vacation etc. of the existing licenses.”

14. In this regard, the Award has held as under:

“53. Condition 2 relates to license fee by 10%, as per Clause 17.5 of the Catering Policy of 2010. The Claimant has challenged imposition of this condition amongst other but primarily on the ground that the Master License Agreement does not provide for increase of License Fee at the time of grant of renewal. Furthermore, the Catering Policy of 2010 also does not contain any provision for renewal of



mobile major unit. The Clauses of the Catering Policy of 2010 had provided for renewal of minor units on enhanced license fee. The only condition as per bid documents for renewal of license was satisfactory performance and it did not include the enhancement of 10% or license fee, Clause 17.5 or any other clause of the Catering Policy of 2010 has no Application in the present case in this regard. Clauses 17.1, 17.3, 17.4 and 17.5 are inconsistent with the Clauses of the standard bid documents which state that renewal will not be a matter of right. Even renewed is subject to a minimum increase of 10%, of existing license fee is a condition applicable to minor units. Clause 18.2 was modified in terms of Clause 16.1.1 of the Policy of 2010 and the provision of Clause 17 have not been incorporated in the Amendment dated 31.12.2012, which means that they have been excluded specifically. As such, the condition of enhancement of license fee is illegal and unjustifiable. The Respondent, on the other hand, contends that the Catering Policy of 2010 provided for minimum enhancement of license fee by 10% in the event of renewal of license under Clause 17.5. The licensees were in the third or second year of operation at the time of announcement of Catering Policy of 2017. The renewal, in fact, is grant of a fresh license and in terms of the judgment of the Hon'ble Supreme Court in Provash Chandra Dalui & Anr. V. Biswanath. Banerjee & Anr, [1989 AIR 1834, 1989 SCR (2) 401], it was held that new licensing coming into creation enables the licensor to provide for such fresh condition as it may deem fit as essential. There is no vested right to unconditional extension or renewal of the license to the licensee. IRCTC is mandated to implement Government Policies. The license agreement provides for the applicability of the latest Catering Policy as well as grant of precedent, which over the



provisions of the contract, the Claimant arc stopped from challenging the applicability of Catering Policy of 2017 as well as imposition of this condition. The Claimant is claiming renewal on the strength of the Catering Policy of 2010 as amended and as such, they cannot challenge the imposition of enhancement of 10% increase in license fee. As already noticed, both parties are ad idem that the Master License Agreement is the paramount document and has to be read and construed with other integral documents as each of the party has referred or relies upon these integral documents in their contention and with reference to one or the other issue. In fact, the claimant has relied upon the judgments of the Hon'ble Supreme Court in the case of P.S. Rana Krishna Reddy u. M.K Bhagya Lakshmi & Anr. 2007(10) SCC 231 and B.K. Muniraju vs. State of Karnataka & Anr. [2008(4) SCC 4511 to support their contention that entire document is to be read and any particular sentence or term used cannot be determined as the intention of the parties. The Claimant also relied upon the judgment of the Hon'ble Supreme Court in the case of DLF Universal Ltd. v. Director, Town and Country Planning Development., Haryana [(2010)14 SCC1 to contend that contract must be interpreted in a manner so as to give efficacy to the contract. The Court or the Tribunal is to determine the ultimate purpose of a contract primarily by the joint intention of the parties at the time the contract was so formed. Respondent has also relied upon the judgment of the Hon'ble Supreme Court in the case of B.K. Muniraju vs. State of Karnataka & Anr. (supra) where it was held that the document should be construed as a whole and a sentence may not determine the real nature of the transaction.



53.1 *The Catering Policy of 2010 was in existence and specifically incorporated as integral part of the Master License Agreement. All these document including the bid documents and even the circulars for amendments will have to be read collectively to arrive at a conclusion which is acceptable in accordance with law and the principles afore-stated. The Policy of 2010 had clearly stated the distinction between major and minor units for which the Railways or the Respondent have issued license and entered into contract. In furtherance to these policy and bid documents, the parties had executed the Master License Agreement that finally determines the rights and obligations of the parties. The Policy of 2010 as well as the Master License Agreement provides difficult headings under which different clauses are slated that deal with distinct aspects. For instance, tenure of the license, method of operation, scale of catering. Inspections, valuation, methodology for determining satisfactory performance of a licensee or otherwise etc. All these clauses deals with different aspect of the same transaction and each clause cannot be termed as an independent contract between the parties. Rights and obligations of the parties would be determined upon the cumulative reading and effect of these documents. It will be entirely contrary to law to contend that a single expression, sentence or a clause should be read, construed and understood de-hors: the other contents of the documents, to decide the rights and obligations of the parties arising from the contract. The Claimant's contention that amendment of Clause 16. 1.1 or the Catering Policy or 2010 has to be read in exclusion to all other clauses of the contract and the policy, is to be noticed only to be rejected. It is equally incorrect that Clause 17 would not be applicable and relevant for the purposes of renewal. The Claimant is also not*



correct in their submission that the amendment dated 31.12.2012 which amended Clause 16.1.1 has to be construed in isolation and that would automatically mean that all other clauses of MLA stood excluded by necessary implication. Under the Catering Policy of 2010, the renewal was prohibited. The Clauses specifically provided that there shall be no renewal (Clause 16.1.2.). Clause 17 had provided for the procedure for renewal. The concept of satisfactory performance was also provided under Clause 3.1, 3.2 and 7.1 of the MLA as well Clause 17 of the Policy of 2010,, including for the purposes of imposition of fine and warning etc. Annual confidential reports on catering performance were to be provided and modified in accordance with the policy. Clause 17.5 which deals with license fee in no uncertain terms provided that the license fee shall be revised or reassessed at the time of each renewal subject to minimum, increase of 10% of existing license fee. This clause originally did not refer to any particular unit i.e. major or minor. However, it could be contended that the policy as it stood un-amended, this could be applicable to minor units only as renewal of major units was prohibited. However, the amendment of 31.12.2012 amended Clause 16.1.1 of the Policy of 2010 and provided that one renewal of 5 years could be granted to major units. It requires to be noticed at the cost of repetition that the Letter dated 31.12.2012 simpliciter modified Para 16.1.1.and substituted the earlier paragraph. Fixation of license fee and revision of license fee upon renewal are two different concepts. Clause 17.5 deals only with the stage of renewal and as already noticed it does not make a reference either to minor or major units. The Claimant themselves are not only taking the benefit, but also Has based their entire claim on other issues on the collective reading of the Policy of 2010. It would be



undisputable that the claimant would not be entitled to renewal. Once, they are claiming the benefit on the basis of the Policy of 2010, then, they cannot avoid the onerous obligation that would arise from the same policy Clause 16 and Clause 17 would have to be read conjunctively. Clause 17 of the Policy itself had stated that renewal will not be a matter of right. Thus, it is upon the collective reading of the Catering Policy of 2010 and the Master License Agreement that the contention of the Claimant can be accepted in relation to other Claims and it will have to bear the consequences of the same in relation to this condition. The principle of exclusion cannot be read and applied to say that the amendments specifically did not deal with Clause 17 and amended only Clause 16.1.1 and all other Clauses, application for all purposes and intents would stand excluded by inference as already noticed. Clause 16 by itself or Clause 17 by itself cannot be treated as the contract between the parties. It has to be the collective effect of the Master License Agreement and the other integral documents afore-stated.”

15. On the said issue, the impugned order under section 34 has reasoned as under:

XXX “39. The 2010 Policy, as initially issued, did not provide for renewal in respect of a Major Unit. However, the same was amended by the circular dated 31.12.2012. At the time of issuance of the 2010 Policy, Clause 17.5 of the 2010 Policy, which provided for a minimum increase of 10% in the license fee, was inapplicable to Major Units as there was no provision for renewal of a license of a Major Unit. The Arbitral Tribunal held that after the substitution of Clause 16.1.1 of the 2010 Policy, a license for a Major Unit could be renewed for a further period of five years and therefore, there was



no reason to exclude the applicability of Clause 17.5 of the 2010 Policy to such renewal post amendment of Clause 16.1.1 of the 2010 Policy. The Arbitral Tribunal held that Clauses 16 and 17 of the 2010 Policy were to be read conjunctively. With the substitution of Clause 16.1.1 of the 2010 Policy to provide for renewal of a license for a Mobile Unit and Base Kitchen, the attendant provisions for renewal under Clause 17 of the 2010 Policy also became applicable.

40. The MLA did not expressly provide for any increase in the license fee. However, there was no provision that proscribed increase in the license fee. The recitals to the MLA referred to the 2010 Policy and undisputedly, the tenders for providing catering services were issued in terms of the 2010 Policy.

41. The decision as to interpretation of a contract falls squarely within the jurisdiction of an arbitral tribunal; and unless this Court finds that such interpretation is manifestly erroneous and strikes at the root of the dispute, no interference would be warranted in these proceedings.

42. This Court finds no ground to fault with the Arbitral Tribunal's interpretation of the MLA. Clearly, the said interpretation is a plausible one and therefore, not amenable to challenge under Section 34 of the A&C Act."

16. Lastly, the learned Senior Advocate for the respondents contended that the argument now raised by the appellants that the license fee could not be enhanced in terms of Article 4.2(b) of the MLA, was neither raised during the arbitral proceedings nor was it raised in section 34 proceedings. No fresh adjudication can be done



on an issue which was never framed on a point which was never raised before the Arbitral Tribunal. In this regard, he relied upon the dicta of the Supreme Court in *Indian Oil Corpn. Ltd. v. Sathyanarayana Service Station*, 2023 SCC OnLine SC 597, which has held that the arbitral proceedings come to an end with pronouncement of the Arbitral Award.

17. During the pendency of this appeal, the appellant has paid the enhanced license fee of 10% for the previous years. The said payment was accepted by the respondent in terms of the letter dated 30.12.2019 which stated that the said payment would be subject to the outcome of the arbitral proceedings.

18. What is seen from the above is that in the statement of claims, the challenge was to the minimum 10% increase in the license fee. Reference was made to Articles 3.1 and 3.2 of the MLA and Clauses 17.5 and 18.3 of CCP 2010 whereas the argument now raised is pivoted only on the methodology of computation, which according to the appellants was necessarily to be adopted in terms of Article 4.2(b) of the MLA for variation of license fee. At no stage earlier was any issue raised that the methodology of Article 4.2(b) would necessarily need to be adopted. Instead what was argued is that minimum 10% increase of the license fee was impermissible. The renewal was after the completion of first 5 years. The respondents imposed the minimum 10% increase in the existing license fee under Clause 17.5 of CCP 2010. If it was the appellants' case that such increase or variation could only be made under Article 4.2(b) of the MLA, it should have specifically raised the issue of "mandatory" prior



reassessment of sales. Instead, it simply contended that enhancement of 10% of the license fee was illegal. It did not set up a case for reassessment. Essentially, the argument now raised was never the subject matter of examination or framed as an issue by or before the Arbitral Tribunal. Also it was not raised in section 34 proceedings. Therefore, there is no occasion for it to be raised now in an appeal under section 37 of the Act in which the scope for examination is even lesser and more limited than what it is under section 34 of the Act. The Court is not persuaded with the appellants' argument that insofar as the Arbitral Tribunal has reproduced Article 4.2(b) of the MLA, it was incumbent upon it to return a finding in terms thereof.

19. The issue of revision of 10% of the license fee was neither pleaded nor argued and not made a part of the written statement, hence, the same cannot be allowed to now be raised in these section 37 proceedings as the same is prohibited by law. Reliance is placed on *Union of India vs. Susaka Pvt. Ltd.* (2018) 2 SCC 182.

20. The impugned order has rightly held that:-

“40. The MLA did not expressly provide for any increase in the license fee. However, there was no provision that proscribed increase in the license fee. The recitals to the MLA referred to the 2010 Policy and undisputedly, the tenders for providing catering services were issued in terms of the 2010 Policy.

41. The decision as to interpretation of a contract falls squarely within the jurisdiction of an arbitral tribunal; and unless this Court finds that such interpretation is manifestly erroneous and strikes at the root of the dispute, no interference would be warranted in these proceedings.



42. This Court finds no ground to fault with the Arbitral Tribunal's interpretation of the MLA. Clearly, the said interpretation is a plausible one and therefore, not amenable to challenge under Section 34 of the A&CA Act.

43. In view of the above, this Court finds no merit in Brandavan's petition [OMP(COMM) No.292/2021]. And, the same is liable to be dismissed.”

21. In view of the preceding facts and discussions, it is evident that the arguments now raised apropos Article 4.2(b) of the MLA is being raised for the first time. The appellant's arguments are a little late in the day. Howsoever attractive an argument may be for a party in arbitration, it must be made at the first instance. The Arbitral Tribunal has taken a plausible view which does not call for any interference. It is settled law that the jurisdiction of the Court under section 34 of the Act is narrow and limited. Reliance is placed upon *UHL Power Company Ltd. vs State of Himachal Pradesh*, (2022) 4 SCC 116,

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words :

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on



the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539], wherein it has been observed as follows :

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to



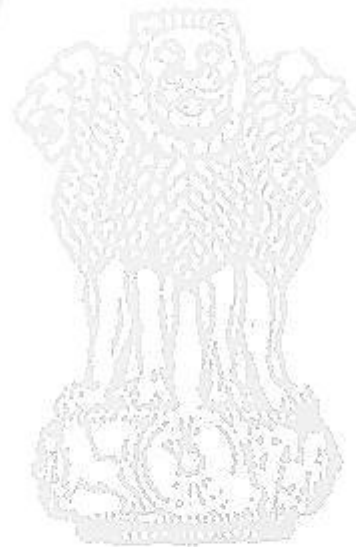
the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

22. As discussed hereinabove, the scope for appeal under section 37 of the Act is limited. We find no reason to interfere with the impugned judgment and order passed under section 34 of the Act. The appeals are without merits and are accordingly dismissed. The pending applications also stand dismissed.

NAJMI WAZIRI, J.

GAURANG KANTH, J.

MAY 26, 2023
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