

October 4, 2024
Sl. No.19
Court No.9
s.biswas

WPA 25439 of 2024

Bibha Ray
vs.
The Union of India and others

Mr. Md. Sarwar Jahan

Ms. Tapati Sarkar

... for the petitioner

Mr. Asok Bhaumik

... for the respondents

1. Due to paucity of time, the railway authorities could not be served with due notice. As this court closes for vacation and there is some urgency, the court requested Mr. Asok Bhaumik, learned advocate who usually appears for the Eastern Railways in similar matters, to appear for the railway authorities. The appointment of Mr. Bhaumik by the court be regularized by the authority.
2. The petitioner prays for renewal of the agreement and/or the licence, so that the petitioner can run the stall from Kharagpur station by an extension for a further period of 400 days. The licence of the petitioner had expired sometime in August 2024. The petitioner prays that a writ of mandamus be issue upon the authorities directing such extension, upon taking note of the loss suffered during the COVID period.
3. Mr. Bhaumik, learned advocate representing the railway authorities, submits that the agreement

had expired in August 2024. Taking note of the COVID situation and the fate of such stall owners who were jobless during the COVID period, extension was given for a further period of 68 days from the date of expiry of licences. The period of 68 days also expired in 2024. It is further submitted that as per the agreement entered into between the petitioner and the railway authority, there was no scope for renewal of licence.

4. The petitioner counters such objection of Mr. Bhounmik, inter alia stating that a scheme for renewal had been published by the railways, later.
5. Be that as it may, it is submitted that the railway authority has decided to go for fresh tender, upon expiry of the term. The petitioner was also allotted the stall being successful in a previous tendering process. Thus, the petitioner cannot object to issuance of a fresh tender notice.
6. It appears to this court that the Delhi High Court had decided a matter similar in nature. Stall owners of multi-purpose stalls had approached the Delhi High Court with similar prayers for extension of licences. The Delhi High Court was of the view that the property of the railways could not be vested to the stall owners, without a

proper tendering process. Accordingly, the writ petitions were dismissed, allowing the railway authorities to take steps in accordance with law.

7. Under such circumstances, the prayer of the petitioner for renewal of the licence/agreement which has expired, cannot be granted. The decision of the Delhi High Court is noted and accepted as the matter has been decided in detail as to why the licence could not be renewed. The relevant portions of the judgment are quoted below:

“31. It is evident from the perusal of the aforesaid letter dated 21.05.2020 that it takes into consideration the ground reality that there were variations across the stations regarding the impact of Covid-19. The actual date on which the stalls could be made operational, and the timeline for restoration of passenger traffic, varied from station to station. It was directed that the period during which license was non-operational shall be treated as dies non period and the contract period shall be extended accordingly. As noticed above, the determination in this regard was left to be made by the respective zonal/divisional railways.

32. Taking into account the above, the concerned zonal/divisional railway had worked out the dies non period based on the ground realities prevalent at the concerned railway stations and have accordingly extended the license period. It cannot be said that the extent of extension to which the petitioners are entitled, has been worked out on a completely

arbitrary basis. The contentions in this regard are devoid of merit.

33. The petitioners' reliance on a larger extension of tenure granted to certain licensees, is misplaced. The facts and circumstances which necessitate such action by the concerned zonal/divisional railways have to be tested independently. Notably, the petitioners have not impugned the aforesaid letter dated 21.05.2020 issued by the Railway Board. Instead, the petitioners have sought a writ of mandamus to be issued to the respondents to frame policy in a particular manner. Such a direction cannot be issued under Article 226 of the Constitution. In *Rachna v. Union of India*", it has been held as under:

"48. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the Ist respondent has granted relaxation in the past for the reason that there was a change in the

examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the Ist respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right"

34. In **Vivek Krishna v. Union of India**, it has been held as under:

"9. Even otherwise, a writ of Mandamus cannot be issued to direct the Respondents to enact law and/or to frame rules even under the wider powers conferred under Article 226 of the Constitution. A Mandamus lies for enforcement of a fundamental right or a statutory right, or the enforcement of a fundamental duty related to enforcement of a fundamental right or a statutory right. In exceptional cases, a writ may even lie for enforcement of an equitable right. The breach or threat to breach a fundamental, statutory or may be enforceable equitable right, is the sine qua non for issuance of a writ of Mandamus."

35. Once the respondents have disclosed the basis for working out the dies non period, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot get into intricacies of the factual situation subsisting at each railway station to virtually exercise appellate jurisdiction in respect of the extent of extension granted to individual licensees. It is noticed that individual license agreement executed between petitioner and the

concerned railway authorities as well as the 2017 Policy (provisions of which are applicable to the licensees with whom the formal execution of the license agreement is yet to take place), contain an arbitration clause if the petitioners are aggrieved on account of insufficiency of extension on account of the Covid-19 situation or if they wish to claim damages on any account, they are at liberty to invoke the arbitration clause and initiate appropriate proceedings. The rights and remedies of the petitioners in this regard are kept open.

36. In the circumstances, this Court finds no merit in the present petitions and the same are accordingly dismissed. However, since the petitioners have been operating the concerned multi-purpose stall for a very long period of time, to enable the petitioners to make a transition and make alternative vending arrangement/s, this Court considers it apposite to grant a period of 3 months to the petitioners (from the date of the extended license period after taking into account the dies non period; OR from the date of this judgment, whichever is later) to vacate the stalls in questions. It is directed accordingly.

37. The present batch of petitions is disposed of in the above terms.

38. All pending application/s also stands disposed of.”

8. Under such circumstances, this court cannot interfere with the policy of the railways to go for a fresh tender in the matter of allotment of stalls and the existing stall owners cannot claim a

vested right of renewal/extension. The petitioner is at liberty to participate in the tender process. However, on humanitarian grounds, no coercive measures against the petitioner shall be taken for a period of three months from the date of communication of this order. Thereafter, the railways shall proceed, in accordance with law. The licence fees/rent for the period upto which the petitioner intends to run the stall, shall be paid to the railway authorities along with arrears, if any.

9. The writ petition is accordingly disposed of.

10. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)