

08
06.11.2024
Court No. 14
AGM

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26647 of 2024

M/s. A. H. Wheeler & Co. (Pvt.) Ltd.
vs.
Indian Railways & Ors.

Mrs. Sonal Shah.
Mr. Kushagra Shah.
Mr. Aniket Choudhury.
... For the Petitioner.

Mr. Ashoke Bhowmick.
Mr. Santosh Kumar Pandey.
... For the Respondents.

1. The petitioner is aggrieved by the order dated 28th October, 2024 passed by the Senior Divisional Commercial Manager, Eastern Railway, Asansol rejecting the prayer of the petitioner for extension of the contract period and directing the petitioner to vacate possession of the multi-purpose stall in the Asansol Division after 6th November, 2024.

2. The petitioner seeks extension of the contract period relying upon the circulars of the Railway Board dated 21st May, 2020 and 21st August, 2020.

3. The petitioner has annexed to the writ petition decision taken by other divisions of the railway where the period of contract has been

extended and the licence fee has been accepted at a reduced rate.

4. The Senior Divisional Commercial Manager observed that the Railway Board's letter dated 21st August, 2020 and the subsequent letters dated 24th December, 2020 and 22nd October, 2021 do not relate to the catering and vending contract. The authority was of the opinion that the circulars are not applicable to contract of multi-purpose stalls.

5. From the documents annexed to the writ petition, it appears that similarly placed contractors were given the benefit of the subject circulars and substantial number of days has been extended after the end of the contract period, whereas in case of the petitioner, only sixty-eight days were treated as *dies non* period.

6. It appears that on one hand the authority accepted the period calculated by the Divisional Authority in accordance with the Railway circulars; and on the other, mentions that the circulars are not applicable in respect of the petitioner. The stand of the Senior Divisional Commercial Manager appears to be contrary to the one taken by the Divisional Authority.

7. According to the Railway Board's circular dated 21st August, 2020 the relief in charging licence fee after the *dies non* period was to be considered by the zonal authority taking into consideration eyeballs/footfalls in the station.

8. The petitioner contends that Asansol is a comparatively small station with less footfall than Sealdah and Howrah station where the footfall of passengers is far more. The authority in the case of Sealdah station permitted 231 days relief to the contractor.

9. It has been submitted that the decision taken in respect of the Howrah railway station terminating the contract of a contractor has been set aside by the Court. A further writ petition being WPA 16145 of 2024 in respect of Kharagpur railway station under similar facts and circumstances, is pending consideration.

10. Learned advocate representing the railway authority submits, upon instruction that, decision was taken by the authority in accordance with the prevailing circulars. The petitioner already availed *dies non* period of more than 90 days. It has been submitted that steps for conducting fresh tender will be taken immediately after the petitioner vacates the stall and it will be open for the petitioner to participate in the tender process.

11. Upon hearing the parties and upon perusal of the documents placed before the Court it appears that the Railway Authority adopted diverse stand in respect of different stations. It is true that the footfall of different stations may vary, but a consistent reasonable stand ought to have been taken by the respondent authority specially in view of the unprecedented and unforeseen Covid 19 situation.

12. The Senior Divisional Commercial Manager, Eastern Railway, Asansol admitted in the impugned order that in pursuance of the recommendation which was approved by the Divisional Railway Manager, for the period from June 2020 to March 2022 month-wise rebate upto 100% to 20% at different stations was allowed.

13. The ninety days' relaxation as mentioned in the Railway Board's circular dated 21st August, 2020 has already expired and the petitioner has got

the relief, to some extent, in view of the order passed by the Court on 4th September, 2024 in WPA 22023 of 2024.

14. In the said order the Court directed that the decision of the authority shall be binding and a reasoned order shall be passed and communicated. On perusal of the reasons the Court is not very satisfied with the manner in which the case of the petitioner has been considered.

15. The discrimination between the contractors and the inconsistent stand of the authority with regard to the applicability of the Railway Board's circular is very apparent. It is for this reason that the Court is minded to interfere in the matter.

16. The Senior Divisional Commercial Manager, Eastern Railway, Asansol is directed to revisit the issue after taking into consideration the manner in which similar requests of other contractors have been considered by the other divisions of the Railways. A decision is to be taken in the matter after hearing the petitioner at the earliest but positively within a period of eight weeks from the date of communication of this order.

17. Till a fresh decision is taken and communicated, the petitioner shall be permitted to run the multi purpose stall upon payment of the usual licence fees and after complying with all other necessary formalities.

18. It will be open for the petitioner to rely upon all documents in support of its prayer at the time of hearing to be conducted by the aforesaid authority.

19. The order impugned is, accordingly, set aside.

20. The writ petition stands disposed of.

21. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)