

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 3905 of 2024

Smt. Kalawati Devi, aged about 71 years, w/o Late Dipti Singh,
resident of Dwarikapuri, Board No. 3, Power House Road No.3,
Chutia, P.O. + P.S. Chutia, District-Ranchi.

... .. **Petitioner**

Versus

1. Union of India through General Manager, South Eastern Railway,
Garden Rich, P.O. + P.S. Garden Rich, District-Kolkata-700043.
2. Chief Commercial Manager, South Eastern Railway, Garden Rich, P.O.
+ P.S. Garden Rich, District-Kolkata-700043.
3. Chief Commercial Manager, Catering, South Eastern Railway, Strained
Road, P.O. + G.P.O.-Kolkata, P.S. Strained Road, Kolkata, District-
Kolkata-700001.
4. Senior Divisional Commercial Manager, South Eastern Railway,
Ranchi Division, P.O. Hatia Railway Colony, P.S. Jagannathpur,
District-Ranchi.
5. Divisional Railway Manager, South Eastern Railway, P.O. Hatia
Railway Colony, P.S. Jagannathpur, District-Ranchi.

.... **Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
 HON'BLE MR. JUSTICE ARUN KUMAR RAI**

.....

For the Appellant	: Mr. Binod Singh, Advocate
For the Respondents	: Mr. Anil Kumar, A.S.G.I. Ms. Chandana Kumari, AC to A.S.G.I. Mr. Ravi Prakash, C.G.C.

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C.A.V. on 29th August, 2024
Per Sujit Narayan Prasad, A.C.J.

Pronounced on 03/09/2024

Prayer:

1. The instant writ petition has been filed under Article 226 of the Constitution of India for issuance of writ of certiorari for quashing of the order dated 12.06.2024 passed by the respondent no.5, Divisional Railway Manager, Ranchi, whereby and whereunder, the claim of the petitioner for renewal of the license of the South Indian food Stall known as

“MaaKaAashirvad” at Platform No.1 at Ranchi Railway Station, has been rejected while dealing with the representation dated 23.03.2024 filed by the petitioner in pursuance of the order dated 14.03.2024 passed in W.P.(C) No. 4019 of 2018. Further direction has been sought for upon the respondent concerned to renew the license of stall of the petitioner, Catalog No.RNCSALON5 for running the South Indian Stall known as “MaaKaAashirvad” at Platform No.1 at Ranchi Railway Station or in alternative to allot the same place/same food stall to the petitioner.

Facts:

2. The brief facts of the case as per the pleading made in the writ petition which requires to be enumerated herein, reads as under:

The husband of the Petitioner namely, Dipti Singh, was allotted South Indian food Stall at Platform No.1 at Ranchi Railway Station in the year 1994, validity of the same was from 21.12.1994 to 28.12.1997 and before expiry of the license of aforesaid food stall was renewed for five years again i.e. up to 2002, but before the date of expiry of the license, the husband of the petitioner namely, Dipti Singh, died on 15.11.2000. The License of said Catering Unit was transferred in favor of the Petitioner being the Legal Heir and widow wife of the deceased by the Railway authority. The License was further renewed from 21.12.2002-20.12.2007, by Adra Division, on the basis of her satisfactory performance and after being satisfied that petitioner has paid all the dues.

Further, renewal of License of the petitioner was made for further 03 Years, for the period from 21.01.2012-20.01.2015, as per Catering Policy 2010, which came into effect on 21.07.2010.

It is the case of the writ petitioner that the license of the Catering Stall of the petitioner was to be renewed for further 03 Years, as per Catering Policy 2010 but, the Respondents have taken the Thumb impression of the Petitioner on a written agreement and accordingly, the extension of license for 90 Days for the period from 21.04.2015-20.07.2015, was extended. Although, the Respondents were supposed to renew the License for further 03 Years, but, the Respondents have not

informed the Petitioner for renewal of License of the Stall for 90 days, moreover, there is no provision for extension of license only for 90 days as the clause 16.2.1 of Catering Policy, 2010, talks about renewal of license every 03 years.

Thereafter, vide letter dated 17.07.2015 issued by Senior D.C.M., Ranchi to Station Master, Ranchi Railway Station, directing therein, to take steps to vacate the food stall of the Petitioner and all of sudden, on 21.07.2015, the Respondent No.5 alongwith the members of Railway Protection Force came to the food stall and ousted the Petitioner

It is also the case of the writ petitioner that the respondents have floated tender at least five times, at the cost of public exchequer, but till date it has not been allotted to any one and the place/food stall is still vacant and also the floating of the tender is against the Catering Policy, 2010 and other catering policy prevalent at the relevant time but on protest, the said tender process was dropped.

Thereafter, the petitioner again made application to the Respondents to renew her license in the light of the direction of the Apex court given vide order dated 29.01.2016 in the case of ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr., (2016) 3 SCC 582.***

Thereafter, the Divisional Railway Manager vide letter dated 24.4.2017 had written letter to the Chief Commercial Manager, South East Railway for implementation of Commercial Circular No. 22/2017 in the case of the Petitioner stating therein that the provisions contained in said circular are implementable in the case of Smt. Kalawati Devi (petitioner herein) as she has approached for renewal of License declaring that she has no other Catering Unit over Indian Railways.

The petitioner made several representations to the Respondents to comply with the order of the Apex Court as well direction issued by the Chief Commercial Manager vide Letter dated 20.6.2017 then, the Divisional Commercial Manager, South Eastern, Ranchi Railway sent Letter dated 15.12.2017.

The petitioner filed Writ Petition being W.P.(C) No.4019/2018 before this Court praying therein for issuance of the direction upon the Respondents to renew the License of the Petitioner for running South Indian Stall, known as "MaaKaAashirvad" at Platform No.1 at Ranchi Railway Station, which is being run by the Petitioner since 1994, wherein, the learned writ court directed the petitioner to submit a fresh representation for allotment of South Indian Stall at Platform No. 1, at Ranchi Railway Station and if such representation is submitted within two weeks, the Respondents No.5 is directed to consider the same in accordance with the law within three months from the date of the receipt/production of the said representation.

The petitioner, in compliance of the order dated 14.03.2024, made representation dated 23.03.2024, requesting therein to renew License of Catalogue No.RNCSALON5, for running South Indian Stall, known as "MaaKaAashirvad" at Platform No.1 at Ranchi Railway Station.

The respondent No.5 vide order dated 12.06.2024, in response to representation dated 23.03.2024 made by the petitioner, has negated the claim of the writ petitioner against which the present writ petition has been filed.

3. It is evident from the factual aspect that the petitioner is the widow of the original allottee of the South Indian food Stall situated at Platform No.1 at Ranchi Railway station. The license which originally was granted in the year 1994 was extended time to time. The husband of the petitioner had died on 15.11.2000 and thereafter, the aforesaid food stall was transferred in the name of the writ petitioner vide order no. 104 dated 12.01.2001 by the Railway authority as per the Catering Policy, 2000 subject to verification of claim. The arrears of license fee have also been paid by the petitioner as was directed. The license was renewed further from 21.12.2002-20.12.2007. The Ranchi division of South Eastern Railway was formed w.e.f. 01.04.2003 and in pursuance of the Catering Policy as was issued by the Railway Board, the IRCTC took over the catering unit of Ranchi Division.

The renewal for the license was made by the petitioner for further three years for the period from 21.01.2012-20.01.2015 which was as per the Catering Policy of 2010 but it was not renewed for three years rather it was renewed for 90 days for the period s from 21.04.2015-20.07.2015. The said extension was made by taking thumb impression of the petitioner which was given in good faith, however, the respondent were supposed to renew the license for further three years but it was not renewed which led the petitioner to prefer a writ petition before this Court being W.P.(C) No. 4019 of 2018 seeking a direction for renewal of the license.

The learned Single Judge of this court while disposing of the writ petition has given liberty to the petitioner to approach before the concerned authority who in turn was directed to take appropriate decision within a reasonable period.

In pursuance thereof, the petitioner made representation based upon which the ratio laid down by the Hon'ble Apex Court in *Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.* (supra) but the authority has rejected the claim by passing an order on 12.06.2024 on the ground that the said claim is not permissible since the case of the petitioner is not coming within the ambit of Circular No. 22/2017 since on the day of its issuance, the petitioner has ceased to be the licensee.

The aforesaid order has been questioned by filing the present writ petition.

Argument on behalf of the Writ Petitioner:

4. Learned counsel for the writ petitioner has taken the ground that the impugned order rejecting the claim of the writ petitioner by assigning the reason that the case of the petitioner is not coming under the ambit of Circular No. 22/2017 cannot be said to be just and proper reason in view of the issue already been decided by the Hon'ble Apex Court in *Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.* (supra) wherein the Hon'ble Apex Court has been

pleased to held that the propositions of the Catering Policy, 2010 are applicable to the respondents concerned.

5. It has been submitted that the Hon'ble Apex Court in the said judgment has come to such conclusion in view of the provision at Para 16.1.3 of the 2010 Policy that the allotment of all General Minor Units at A, B and C category stations shall be awarded for a period of five years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Units at D, E and F category stations will be for a period of 5 years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.
6. It has been contended that based upon the aforesaid proposition and decision taken by the Hon'ble Apex Court, the authority has come out with a Circular being Circular No.22 of 2017, whereby and whereunder, the provision has been made on the basis of the judgment passed by the Hon'ble Apex Court in ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra) which is in furtherance to the Catering Policy, 2010 for renewal of the license of the contract subject to verification of the condition which is to be given by way of declaration that the licensee is required to declare that he/she is not holding more than one unit under a single or multiple licenses he/she shall forgo all other units except the unit he/she wishes to be renewed.
7. It has been contended that the ground which has been taken in the impugned order that the case of the petitioner is not coming within the ambit of Circular No.22 of 2017 is absolutely incorrect and arbitrary decision on the basis of the fact that when the said issue has already been decided by the Hon'ble Apex Court upholding the judgment passed by the Division Bench of the Andhra Pradesh High Court dated 12.09.2013 wherein the judgment passed by the learned Single Judge of the Andhra Pradesh High Court on 16.08.2013 was upheld holding therein that the Catering Policy, 2010 did not differentiate among the licensees based on

the number of years for which they have been carrying on their business. It was further held that under the Catering Policy, 2010, the license fee is liable to be revised based on the potentiality of each railway station and the turnover of the licensees during the previous years.

8. The learned Single Judge of the Andhra Pradesh High Court has further held that the members of the Welfare Association are entitled for renewal of the licenses of the members subject to their satisfying the conditions stipulated in Paras 16.1.3 and 16.2.1 of the Catering Policy, 2010.
9. It has been contended that the said judgment passed by the learned Single Judge has been upheld by the Division Bench and subsequently by the Hon'ble Apex Court.
10. The argument has been advanced that once the benefit of renewal has been decided to be given by the judicial pronouncement of the Andhra Pradesh High Court having been affirmed by the Hon'ble Apex Court, it is incorrect on the part of the respondent concerned to take the ground that the case of the petitioner is not coming within the ambit of Circular No.22 of 2017.
11. It has been contended that the Circular No.22 of 2017 cannot be said to be an independent circular rather it is in furtherance to the Commercial Circular No.35 of 2010 and reason for coming out with the Circular No.22 of 2017 is the order passed by the Hon'ble Apex Court which would be evident from bare perusal of the said circular along with the judgment passed by the Hon'ble Apex Court.
12. The argument has been advanced that the license of the petitioner has expired in the year 2015 and as such, renewal application was filed but it was not renewed on the garb of the condition available under Circular No.22 of 2017 by taking the plea that the day when the Circular No.22 of 2017 has been issued, the writ petitioner cannot be considered to be the allottee of the said stall.

13. Learned counsel for the petitioner, based upon the aforesaid ground, has submitted that the decision so taken by the authority is not sustainable and as such, the same is fit to be quashed and set aside.

Argument on behalf of the Respondents:

14. Mr. Anil Kumar, learned Additional Solicitor General of India appearing for the respondent-Railway has taken the ground by raising objection with respect to the prayer made in the writ petition.
15. It has been contended that there is no error in the impugned order passed by the authority reason being that the day when the circular no.22 of 2017 has been issued, the petitioner was not having locus to retain the possession of the said stall.

It has been contended that the Circular No.22 of 2017 will only be given effect to in favour of the allottees who are in the possession on the basis of the valid allotment order.

16. The ground has been taken that the judgment has been delivered by the Hon'ble Apex Court on 29.01.2016 the day when the lease of the writ petitioner has already expired and as such, it is incorrect on the part of the petitioner to take the ground that the judgment passed by the Hon'ble Apex Court is applicable in the facts of the case of the petitioner.
17. Learnd ASGI has further argued that the petitioner is having no right to claim the renewal of the said stall due to non-availability of any right said to be accrued and based upon the aforesaid ground, it has been submitted that the decision so taken by assigning the reason of non-availability of the Circular No.22 of 2017 on the ground that the terms of the lease had already been expired in the year 2015, therefore, cannot be said to suffer from error.

Analysis:

18. This Court has heard learned counsel for the parties, gone across the pleading made in the writ petition as also the affidavit filed on behalf of the

respondent as also the finding recorded by the respondent authority while passing the impugned order.

19. The undisputed fact in this case is that the license which originally was granted in the year 1994 in favour of the husband of the petitioner was extended time to time. The husband of the petitioner had died on 15.11.2000 and thereafter, the aforesaid food stall was transferred in the name of the writ petitioner vide order no. 104 dated 12.01.2001 by the Railway authority as per the Catering Policy, 2000.

The license for the stall got expired in the year 2015 and thereafter, the petitioner made application for renewal and when no decision was taken, the petitioner preferred writ petition being W.P.(C) No.4019 of 2018 seeking a direction for renewal of the license, wherein, the learned Single Judge while disposing of the writ petition has given liberty to the petitioner to approach before the concerned authority who in turn was directed to take appropriate decision within a reasonable period but the said claim was rejected by the respondent authority assigning the reason that the Circular No. 22 of 2017 cannot be made applicable since the license of the petitioner had already expired in the year 2015.

20. This Court, appreciating the argument advanced on behalf of the parties as referred hereinabove, deems it fit and proper to refer first the Commercial Circular No. 35 of 2010 (Catering Policy of 2010) which contain conditions under 16.1.3 and 16.2.1 wherein it has been provided that the license is to be renewed for the further period subject to fulfilment of conditions, i.e., on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.
21. Further, the Circular No. 22 of 2017 has come on 15.03.2017 wherein it has been provided that the license of the licensees will be renewed subject to compliance of condition stipulated in the aforesaid circular by giving a declaration of having no license of more than one refreshment room at B and below category stations or one catering stall or one trolley or one Khomcha/Dallah/Chhabba/Wheel Barrow/Hand Barrow/Tray/Table/Tea

Balta at any Railway Station over Indian Railways in their name or benami license.

22. The ground has been taken while rejecting the claim of the petitioner as would appear from the impugned order that the Circular No.22 of 2017 is a fresh circular and the petitioner is not fulfilling the criteria, as such, the said circular is not applicable reason being that prior to coming into effect of the said circular, the lease period of the stall in question had already expired in the year 2015, therefore, this Court is of the view that the following questions requires consideration:

- (i) Whether the Circular No.22 of 2017 is an independent circular or it is in furtherance to the Catering Policy of 2010?
- (ii) Whether the right of the petitioner can be said to be not in existence on the ground that the judgment passed by the Hon'ble Apex Court in ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra) was delivered on 29.01.2016 which is after the expiry of the period of license of the stall in question.?
- (iii) Whether the judgment passed by the Hon'ble Apex Court on 29.01.2016 in the aforesaid case will be said to be effective from 29.01.2016 or will it relate back to the judgment passed by the learned Single Judge of the Andhra Pradesh High Court which has been upheld by the Hon'ble Apex Court.

23. All the issues since are co-related, as such, are being dealt with together.

24. The brief history leading to delivering the judgment in ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra) needs to be referred herein as would be evident from the said judgment that pursuant to the Catering Policy, 2010, the South Central Railway granted renewal of licenses in favour of the licensees for a period of three years with effect from 21.07.2010, the date on which the Catering Policy, 2010 was made effective in respect of the General Minor Units (GMUs) and Special Minor Units (SMUs) taken over from IRCTC, subject to the conditions stipulated in Paras 16.1.3 and 16.2.1 of the Catering

Policy, 2010. The renewed licenses were to expire on 20.07.2013. On 26.04.2013, the Senior Divisional Commercial Manager, Vijayawada, issued a bid notice inviting sealed bids on the single stage two-packet system from food and catering service providers for provision of catering services at the various GMUs of Categories 'A' and 'B' railway stations in the Vijayawada Division. A similar Notification dated 03.05.2013 was issued for establishment of catering stalls/fruits and fruit juice stalls in SMUs in 'A1', 'A' and 'B' category railway stations.

Being aggrieved therewith, the respondent-association, the members of which had existing licenses, filed a writ petition before the Single Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad. The respondent Association urged that the said action of inviting fresh bids is discriminatory and also contrary to the provisions of the Catering Policy, 2010. The main plea of the respondent Association was that in terms of the Catering Policy, 2010, the existing licensees were entitled for renewal of their licenses for a period of three years, subject to their satisfactory performance, payment of all dues and arrears and withdrawal of court cases, if any.

The learned Single Judge of the Andhra Pradesh High Court vide judgment and order dated 16.08.2013 came to the conclusion that the Catering Policy, 2010 did not differentiate among the licensees based on the number of years for which they have been carrying on their business. It was further held that under the Catering Policy, 2010, the license fee is liable to be revised based on the potentiality of each railway station and the turnover of the licensees during the previous years. Since the license fee is subject to continuous revision and does not remain stagnant, the question of the Railways suffering any loss due to renewals would not arise. The learned Single Judge held that the members of the Welfare Association are entitled for renewal of the licences of the members subject to their satisfying the conditions stipulated in Paras 16.1.3 and 16.2.1 of the Catering Policy, 2010. For ready reference, paragraph-5 of the said judgment is being referred as under:

“5. Vide judgment and order dated 16-8-2013 [S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn. v. South Central Railways, 2013 SCC OnLine AP 168 : (2013) 5 ALD 553] , the learned Single Judge came to the conclusion that the Catering Policy, 2010 did not differentiate among the licensees based on the number of years for which they have been carrying on their business. It was further held that under the Catering Policy, 2010, the licence fee is liable to be revised based on the potentiality of each railway station and the turnover of the licensees during the previous years. Since the licence fee is subject to continuous revision and does not remain stagnant, the question of the Railways suffering any loss due to renewals would not arise. The learned Single Judge held that the members of the Welfare Association are entitled for renewal of the licences of the members subject to their satisfying the conditions stipulated in Paras 16.1.3 and 16.2.1 of the Catering Policy, 2010. On appeal filed by the appellants, the judgment and order of the learned Single Judge was upheld by the Division Bench of the High Court in the writ appeals vide its judgment and order dated 12-9-2013 [South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn., 2013 SCC OnLine AP 770] . Hence, the present appeals are filed by the appellants.”

25. The Railway filed appeal against the order of the learned Single Judge before the Division Bench of the Andhra Pradesh High Court by way of writ appeal which was dismissed on 12.09.2013. Thereby, the matter travelled to the Hon'ble Apex Court. The Hon'ble Apex Court in the said judgment has considered the provisions as contained in para-16.1.3 of the Catering Policy, 2010 and after appreciating the rival submissions advanced on behalf of the parties has been pleased to observe at paras-22, 23 and 24 that the contentions which had been advanced on behalf of the respondent to the effect that the Railways had the right to enact the Catering Policy, 2010. In terms of the said Policy, only such licensees who were granted license under the 2010 Policy were entitled to get their contracts renewed and the same benefit could not be extended to those licensees who were granted license prior to the 2010 Policy.

As per the respondent-Railway who were appellant before the Hon'ble Apex Court it has been submitted that according to the Catering Policy, 2010, no provision is made for the renewal of the existing catering units on the expiry of the term of the licenses. The renewal of the licenses of the licensee under Para 16 of the Policy would apply only to licensees who were allotted licenses under the Catering Policy, 2010. Further ground has been taken that the renewals of the licenses by the Zonal Railways up

to 2013 was only meant to operate as a temporary arrangement till the bidding and allocation process was finally completed. But, the aforesaid plea of the appellant had not been accepted.

The aforesaid conclusion had been arrived at by taking note of the Commercial Circular No. 37 dated 09.08.2010 which provides as follows –

“1. Transfer of Licence Units:

... ..

(d) Zonal Railways should renew all agreements which have expired or are due for expiry in the next 6 months by giving an extension, subject to a maximum extension of six months from the date of issue of the Catering Policy, 2010.”

It has been observed that the aforesaid circular clarifies that the renewal of the licence is required to be granted to all the existing licensees of the Minor Units as per Paras 16 and 17 of the Catering Policy, 2010. It has also been observed that that the existing licensees need not be included in the tender process.

26. The reference of another Circular dated 23.08.2011 issued by the Chief Commercial Manager of South-Central Railway has also been taken whereby direction was issued to all the Divisional Commercial Managers and other subordinate officers of the South Central Railway to confirm that the tenure of all GMUs and SMUs at ‘A1’, ‘A’ and ‘B’ category stations shall be renewed after every 3 years on their satisfactory performance and payment of all dues and arrears as per the 2010 Policy.
27. The Hon'ble Apex Court, based upon the aforesaid consideration as also by taking note of the duty of every welfare State to generate employment has been pleased not to interfere with the decision so taken by the learned Single Judge of the Andhra Pradesh High Court and further it has been clarified that only those licensees may be eligible for renewal of their licences who can declare on affidavit that they do not have the licence of more than one shop or kiosk in their name or benami licence at the railway stations with periodical reasonable increase of licence fee. For ready reference, paragraphs-24, 33 and 34 are being referred as under:

“24. The Circular dated 23-8-2011 issued by the Chief Commercial Manager of South Central Railway directed all the Divisional Commercial Managers and other subordinate officers of the South Central Railway to confirm that the tenure of all GMUs and SMUs at ‘A1’, ‘A’ and ‘B’ category stations shall be renewed after every 3 years on their satisfactory performance and payment of all dues and arrears as per the 2010 Policy. In view of the said circular, catering licences of all the members of the respondent Association were renewed till July 2013. On this aspect of the case, the learned Single Judge of the High Court has held as under: (S.C.R. Caterers case [S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn. v. South Central Railways, 2013 SCC OnLine AP 168 : (2013) 5 ALD 553] , SCC OnLine AP)

“... While the 2010 Policy proper has not envisaged renewal of the existing licences for a period not exceeding six months, the Immediate Operative Instructions issued in commercial Circular No. 37/2010 dated 9-8-2010 has directed the Zonal Railways to renew the licences for a maximum period of six months from the date of issue of the 2010 Policy. If the 2010 Policy is understood as providing renewals only in respect of the licences issued under the said Policy, there was no reason why Respondent 3 has not called for tenders on the expiry of six months' period from the date of coming into force of the 2010 Policy. Instead of calling for tenders, Respondent 3 has renewed all the GMU and SMU licences for a period of three years in terms of Paras 16.1.3 and 16.2.1 of the 2010 Policy. This was done even before Para 16.3 of the said Policy was amended. Having understood the 2010 Policy in its true spirit even before the amendment of Para 16.3, it is incomprehensible that Respondent 3 projects the said Policy in a different light by seeking to give it an interpretation which runs contrary to its plain language. Nowhere in the 2010 Policy, the licensees are classified into two categories, namely, those who were granted licences prior to the commencement of the 2010 Policy and those who were granted licences after the said Policy. On the contrary, all the GMUs and SMUs were treated under one category. Irrespective of whether the licences were granted by the Railways prior to 2005 or by Irctc from 2005 and by the Indian Railways after 2010, renewal of licences is envisaged for all these categories of licensees subject to their fulfilment of the three requirements as referred to hereinbefore.”

(emphasis supplied)

The findings of the learned Single Judge have been upheld by the Division Bench and we do not find any reason to interfere with the same.

33. Therefore, we have to hold that the provisions of the Catering Policy, 2010 are applicable to the respondents concerned. The action of the Railways in not granting renewals of the licences to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law.

34. For the reasons stated supra, this Court cannot interfere with the impugned judgment and order [South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn., 2013 SCC OnLine AP 770] of the High Court. The civil appeals are dismissed. The order dated 11-4-2014 [South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn., 2014 SCC OnLine SC 1639, wherein it was directed: “Heard the learned counsel

for the parties. Application for intervention is allowed. There shall be stay of the order and the judgment of the High Court. The petitioners are permitted to continue with the tender process and however, we make it clear that the respondents shall not be displaced for the present, so also the intervenors. Further, their continuance will be subject to further orders after finalising the tender process. The respondents are also permitted to participate in the tender. The petitioners are permitted to seek further orders after finalisation of the tender process.”] granting stay of the impugned order shall stand vacated. We, however, make it clear that only those licensees may be eligible for renewal of their licences who can declare on affidavit that they do not have the licence of more than one shop or kiosk in their name or benami licence at the railway stations with periodical reasonable increase of licence fee. All pending applications are disposed of.”

28. It is thus evident that the issue of renewal has been decided by the learned Single Judge of the Andhra Pradesh High Court by delivering judgment on 16.08.2013 which has been upheld by the Hon'ble Apex Court vide judgment dated 29.01.2016 in the case of ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra) wherein while upholding the view of the learned Single Judge as also by making reference of the Circular No. 37 of 2010 dated 09.08.2010 and 23.08.2011 wherein decision was taken for renewal after every three years of their satisfactory performance and payment of all dues and arrears as per the Catering Policy of 2010.
29. The respondent-Railway, thereafter has come out with a Circular No.22 of 2017 which is in pursuance of the judgment passed by the Hon'ble Apex Court in ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra). It is evident from the content of the said circular which was issued on 15.03.2017 wherein as under para-(ii) it has been decided for the purpose of renewal, one refreshment room at B and below category stations or one catering stall or one trolley or one Khomcha/Dallah/Chhabba/Wheel Barrow/Hand Barrow/Tray/Table/Tea Balta shall be treated as one shop or one kiosk or one unit. If a licensee holds more than one unit under a single or multiple licenses he/she shall forgo all other units except the unit he/she wishes to be renewed.

It is further evident from para-(i) of the said Circular which starts with the words “Notwithstanding any provision in Catering Policy 2010 and earlier catering policies, only those minor catering static unit licensees

would be eligible for renewal of their licenses who declare on affidavit that they do not have the license of more than one refreshment room at B and below category stations or one catering stall or one trolley or one Khomcha/Dallah/Chhabba/Wheel Barrow/Hand Barrow/Tray/Table/Tea Balta at any Railway Station over Indian Railways in their name or benami license...”.

30. The petitioner made an application for renewal but the same has been rejected on the pretext that the case of the petitioner is not coming within the ambit of Circular No.22 of 2017.
31. This Court fails to understand that on what basis the said reason has been assigned when the respondent-Railway itself has taken a decision by making insertion in the Catering Policy of 2010 for the purpose of renewal of the license subject to fulfilment of conditions as has been referred in the Circular No. 22 of 2017.
32. The learned Additional Solicitor General of India has taken the ground that since the license was expired in the year 2015 and the Circular No. 22 came in the year 2017, as such, the day when the Circular No.22 of 2017 has come the petitioner was having no license in her favour.
33. The question which is to be considered whether the Circular 22 of 2017 issued on 15.03.2017 will be the primary consideration for consideration of right of renewal of the petitioner or; the judgment passed by the Hon'ble Apex Court in the case of ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra) on 29.01.2016 or; it will be on the day when the learned Single Judge of the Andhra Pradesh High Court has passed the judgment, i.e., on 16.08.2013?
34. The creation of right will be said to be in favour of one party if the issue has been decided based upon that the circular to that effect, if issued.
35. In the present case, the issue of renewal of the license was raised before the Andhra Pradesh High Court by the association wherein the decision has been taken vide judgment dated 16.08.2013 by the learned Single Judge of the Andhra Pradesh High Court by giving a declaration of renewal of the licenses. The said judgment has attained its finality up to Hon'ble Apex

Court vide judgment dated 29.01.2016 and as such, the question of consideration of right of renewal will be taken into consideration from the day when the issue has been decided by the constitutional court, i.e., High Court of Andhra Pradesh which subsequently has been approved by the Hon'ble Apex Court.

36. The aforesaid fact has also been taken into consideration on the principle of merger since the order passed by the Andhra Pradesh High Court has been upheld by the Hon'ble Apex Court and hence, the judgment passed by the Hon'ble Apex Court will relate back to the date of the original order, i.e., the day when the Andhra Pradesh High Court has passed the judgment.
37. The admitted position herein is, as per the ground taken, that in the year 2015 the period of license of the petitioner was expired but the issue of renewal since has already been decided by the Andhra Pradesh High Court upheld by the Hon'ble Apex Court, hence, the expiry of the license in the year 2015 will be immaterial and further the respondent Railway has come out with the Circular No.22 of 2017 in compliance of the order passed by the Andhra Pradesh High Court and the Hon'ble Apex Court wherein the condition has been given for consideration of right of renewal of the license subject to fulfilment of conditions as referred above.
38. It needs to refer herein that the petitioner is also pursuing her claim which would be evident from the fact that earlier to the present writ petition, a writ petition was filed in the year 2018 being W.P.(C) No. 4019 of 2018 and based upon the observation when the representation was filed which was rejected
39. The question of not coming within the ambit of Circular No.22 of 2017 cannot be said to be justified in view of the fact that the said circular is not an independent one and in supersession to the Catering Policy of 2010 rather it is in furtherance to the Catering Policy of 2010 and reason for coming with the said circular is the judgment passed by the Andhra Pradesh High Court upheld by the Hon'ble Apex Court in ***Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.*** (supra).

40. The aforesaid fact will be evident from the very content of the Commercial Circular of 2017 which starts from "Notwithstanding any provision in Catering Policy 2010" which does imply that the Circular No.22 of 2017 is in continuation to the Catering Policy of 2010 which has been issued taking into consideration the interest of the licensees whose licenses have expired and are to be renewed subject to fulfilment of the conditions.
41. This Court, having discussed the fact in detail and coming to the order passed by the authority, is of the view that the reason which has been referred in the impugned order that the case of the petitioner is not coming within the ambit of Circular No.22 of 2017, therefore, cannot be said to be justified reasoning. Further, the reason has been assigned that the Circular No.22 of 2017 cannot be given its retrospective application.
42. But, we have come to the conclusion that the Circular No. 22 of 2017 is in furtherance to the Catering Policy of 2010 in order to take care of the interest of the licensees whose licenses are to be renewed and as such, the finding so recorded of its retrospective applicability is also not justified rather the said circular will be said to be in continuation from the date when the Catering Policy of 2010 has been notified.
43. Accordingly, all the issues have been answered.
44. We are conscious with the principle of issuance of writ of certiorari which can only be issued if there is any error apparent on the face of the order or the order is without jurisdiction. Reference in this regard be made to the judgment rendered in the case of ***West Bengal Central School Service Commission & Ors vs. Abdul Halim & Ors.***, reported in (2019) 18 SCC 39, wherein, at paragraph-30 it has been held which is being referred as under:-

“30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan vs. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two

or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.”

Likewise, the Hon’ble Apex Court in the case of ***T.C. Basappa vs. T. Nagappa***, reported in ***(1955) 1 SCR 250***, wherein, it has been held which is being referred as under:-

“An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e. g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

45. We have considered the impugned order on the basis of the aforesaid principle and basing upon the discussion so made hereinabove, this Court is of the view that the impugned order passed by the respondent- authority, suffers from error and as such, the same needs to be interfered with.

46. Accordingly, the impugned order dated 12.06.2024 passed by the respondent no.5, Divisional Railway Manager, Ranchi, is hereby quashed and set aside.

47. It needs to be referred herein that while passing the order by this Court on 22.08.2024 the fact about issuance of tender has been brought to the notice of this Court and when the counter affidavit was not filed even in spite of the specific direction passed by this Court as would appear from the said order, this Court on 28.08.2024 while deprecating the attitude of the authority has restrained them from taking final decision with respect to the tender which was scheduled on 29.08.2024. For ready reference the said order dated 28.08.2024 is being referred as under:

“1. Reference may be made to order dated 5th August, 2024, on which date the matter was heard on merit and after hearing learned counsel for the parties, on the request of learned ASGI appearing for the respondents-Railways, the matter was adjourned to be listed on 22nd August, 2024 for filing counter affidavit.

2. For ready reference, the order dated 5th August, 2024 is quoted as under:

1.The instant writ petition has been filed under Article 226 of the Constitution of India whereby and whereunder the decision taken by the Divisional Railway Manager, Ranchi dated 12.06.2024 has

been challenged, by which the claim of the petitioner for allotment/renewal of the shop in question has been refused on the ground that the case of the petitioner is not coming under the ambit of Board's Commercial Circular No. 22/2017, since on the date of its issuance the petitioner has ceased to be a licensee.

*2.It has been submitted that reason for such decision, as per the impugned order, is that the Board's Commercial Circular No. 22/2017 cannot be applicable with retrospective effect. The argument has been advanced by referring to the insertion of a particular clause in the policy decision which led the authority in coming out with the Commercial Circular No. 22/2017 which is based upon the judgment passed by Hon'ble Apex Court in the case of **Senior Divisional Commercial Manager, South Central Railways & Ors. Vs. S.C.R. Caterers Dry Fruits, Fruit Juice Stalls Welfare Association and Another [(2016) 3 SCC 582]**.*

3.It has been contended that the Hon'ble Apex Court has protected the right of such licensees whose licenses were either terminated or not renewed for the purpose of renewal, subject to the condition that an affidavit is to be filed by giving declaration that he/she does not have a license of more than one Refreshment Room at 'B' and below category station or one Catering Stall or one Trolley at any Railway Station over Indian Railways in his/her name or benami license.

*4.The submission, therefore, has been made that Commercial Circular No. 22/2017 cannot be said to be in supersession to the circular issued in the year 2010 rather it is in furtherance to the circular issued in the year 2010 by inserting a condition in pursuance to the judgment passed by Hon'ble Apex Court in the case of **Senior Divisional Commercial Manager, South Central Railways & Ors. Vs. S.C.R. Caterers Dry Fruits, Fruit Juice Stalls Welfare Association and Another (supra)** hence on that count the impugned decision rejecting the claim of the petitioner is improper/illegal.*

5.Learned ASGI appearing for the respondents-Railways seeks three weeks' time to seek instruction and file counter affidavit.

6.As prayed for, list this case on 22.08.2024."

3. When the matter was taken up on 22.08.2024, learned counsel for the petitioner informed to this Court that on 5th August, 2024, the learned ASGI has though took time to file counter affidavit but no counter affidavit has been filed rather tender has been floated for the purpose of settlement of the shop in question.

4. Upon this, Mr. Ravi Prakash, learned CGC appearing for the respondents-Railways has submitted that the tender is to be opened on 29th August, 2024 and as such the matter may be posted on 28th August, 2024 so that by that time the counter affidavit may be filed in the matter.

5. This Court considering the submissions advanced by learned counsel for the parties, adjourned the matter to be listed on 28th August, 2024 within top five cases.

6. For ready reference order dated 22nd August, 2024, is quoted as under:

1.Heard Mr. Vinod Singh, learned counsel appearing for the appellant and Mr. Ravi Prakash, learned counsel for the respondent-Railway.

2. The learned counsel for the appellant has submitted that the order has been passed by this Court on 5th August, 2024 by making reference to the judgment passed by the Hon'ble Apex Court in the case of *Senior Divisional Commercial Manager, South Central Railways & Ors. Vs. S.C.R. Caterers Dry Fruits, Fruit Juice Stalls Welfare Association and Another* [(2016) 3 SCC 582] reported in and by taking note of the statement made on behalf of the appellant regarding the implication of the Commercial Circular No. 22 of 2017 upon which the learned A.S.G.I. took time to seek instruction and to file counter-affidavit, but the counter-affidavit has not been filed, rather, in the meanwhile, the respondent have come out with a notice inviting the application for the purpose of settlement of shop in question.

3. Mr. Ravi Prakash, learned counsel appearing for the Railway has submitted that the said tender is to be open on 29th August, 2024 and as such, the matter may be posted on 28th August, 2024 so that by the time, the counter-affidavit shall be filed by serving copy of the same advanced upon the learned counsel for the appellant preferably by 27th August, 2024.

4. As such, let this case be listed within top 5 cases on 28th August, 2024."

7. Today, when the matter has been taken up, Mr. Ravi Prakash, learned CGC appearing for the respondents railways, on instruction, has submitted that the matter may be decided on merit since he has instruction not to file any counter affidavit. He has further submitted that the matter may be heard at 12.30 p.m. today itself, but, prior to that the learned ASGI has appeared and submitted that due to some misconception, the counter affidavit could not be filed and sought for time to file counter affidavit.

8. This Court has failed to understand that why there is confusion in filing counter affidavit when it is the learned ASGI who himself has sought for time on 5th August, 2024 to file counter affidavit and again on 22nd August, 2024, Mr. Ravi Prakash, learned CGC took time to file counter affidavit and the matter was listed today for adjudication of issue on the basis of stand which would have been taken by the respondents-railways in the counter affidavit. But, today no counter affidavit has been filed which this Court considers to coming in the way of dispensation of justice. The reason is also obvious that the railways authorities particularly the D.R.M. who has floated the tender wants to go by the process of tender, which is scheduled on 29th August, 2024 and perhaps for the said reason the counter affidavit is not being filed.

9. The learned ASGI appearing for the respondents railways has requested that matter may be posted tomorrow at 10.30 a.m. as a first case.

10. As requested, let this matter be posted on 29th August, 2024 at 10.30 a.m. as a first case.

11. Considering the aforesaid facts into consideration, the respondents are restrained from taking final decision with respect to the tender, which is scheduled on 29th August, 2024."

48. This Court since has interfered with the impugned order by quashing and setting it aside, as such, now the question is that in such circumstances,

whether the notice inviting tender afresh so far as the stall/shop in question, i.e., South Indian food Stall known as “MaaKaAashirvad” at Platform No.1 at Ranchi Railway Station, is concerned, can be allowed to be sustained?

49. It would be evident from the reference as has been made in the order dated 22.08.2024 on behalf of the respondent-Railways that the notice has been issued for allotment of the said shop/stall after rejecting the renewal of license which is being sought for on behalf of the petitioner.
50. The question, therefore, is that when this Court has come to the conclusion that the writ petitioner is entitled for renewal, as such, issuance of the said tender notice afresh can be said to be justified?
51. The Hon'ble Apex Court while dealing with the judgment passed by the learned Single Judge of the Andhra Pradesh High Court has come out with the view that in such circumstances, the renewal of the lease is only an option which has been upheld by the Hon'ble Apex Court as would be evident from the reference of the paragraphs so made hereinabove.

The Hon'ble Apex Court when has accepted the view of the learned Single Judge of the Andhra Pradesh High Court regarding the issue of renewal of license of the members of the association by passing the judgment dated 29.01.2016 upholding the judgment dated 16.08.2013 passed by the learned Single Judge of the Andhra Pradesh High Court then the issuance of notice inviting application for settlement of the stall/shop in favour of a third party when the writ petitioner is ready to furnish the undertaking for the purpose of compliance of the conditions as stipulated in the Catering Policy of 2010 which has been ratified in the Commercial Circular No.22 of 2017 in pursuance of the order/judgment passed by the Hon'ble Apex Court, according to the considered view of this Court, the notice inviting application is nothing but in derogation with the direction passed by the Hon'ble Apex Court in *Senior Divisional Commercial Manager, South Central Railway & Ors. Vs. S.C.R. Caterers & Anr.* (supra).

52. Accordingly, the tender which was notified so far as it relates to the stall/shop in question, i.e., South Indian food Stall known as

“MaaKaAashirvad” at Platform No.1 at Ranchi Railway Station, in consequence of the aforesaid conclusion, is also required to be quashed and set aside.

53. Accordingly, the same is also quashed and set aside.

54. In the result, the writ petition stands disposed of with the aforesaid observations and directions.

55. The respondents are directed to consider the claim of the writ petitioner subject to fulfilment of the conditions as available in the Catering Policy of 2010 and the Commercial Circular No.22 of 2017, based upon the observation made hereinabove, and take such decision in accordance with law within a period of three weeks from the date of receipt/production of copy of this order.

56. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

I Agree,

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Saurabh / **A.F.R.**