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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 194/2024 & CM APPL. 13385/2024****S. RAMACHANDRUDU**

..... Appellant

Through: **Mr. Tamim Qadri, Advocate**

versus

UNION OF INDIA & ORS.

..... Respondents

Through: **Mr. Jatin Singh, Mr. Keshav Sehgal,
Mr. Shivam Gaur, Mr. Kshitij Joshi
and Mr. Aryan, Advocates for R-1.**

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Date of Decision: 5th March, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, ACJ: (ORAL)****CM APPL. 13386/2024(for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 194/2024

1. Present Appeal under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, has been filed seeking setting aside of the order dated 28th February, 2024, passed in W.P.(C) No. 1347/2024, whereby, the learned Single Judge has dismissed an interlocutory application filed by the Appellant seeking stay of the communication dated 01st January, 2024 issued by Respondent, IRCTC declining to extend the license term of the Appellant beyond 28th February, 2024.



Arguments of the Appellant

2. Learned counsel for the Appellant states that the Appellant is entitled to renewal of its license term which expires on 28th February, 2024 as per Catering Policy, 2010 issued by Respondent No.1. He states that the Appellant herein operates a Food Plaza in an area admeasuring 1500 sq. ft. approximately at Dhone Railway Station, South Central Railways. He fairly admits that Appellant unit is a Major Unit and not a Minor Unit as contemplated in the Catering Policy, 2010.

2.1 He states that the right of renewal is sought under Clause 17 of the Catering Policy, 2010 in accordance with the ratio of the judgment of the Supreme Court in ***Senior Division Commercial Manager, South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Anr.***¹. He states that the ratio of the said Judgment applies to both Minor and Major Units. He states that this can be inferred from the subsequent order dated 29th March, 2016, passed in Civil Appeal No. 3196/2016 and order dated 17th November, 2016 passed by the Supreme Court, dismissing the Review Petition (C) No. 3603-04/2016 filed by Respondent No. 1.

2.2 He states that on a conjoint reading of the judgment dated 29th January, 2016, order dated 29th March, 2016 and the order dated 17th November, 2016, it is evident that the issue of renewal of license for all units [Major or Minor] under the Catering Policy, 2010 is covered by the said judgment of the Supreme Court. He states that, therefore, the learned Single Judge erred in not applying the said judgment to the Appellant and

¹ (2016) 3 SCC 582



protecting the Appellant pending the disposal of the writ petition.

2.3 He states that the contention of the Respondent No. 1 that 'Major Units' are not covered by the judgment dated 29th January, 2016 was a ground raised by Respondent No. 1 in the review petition, which was dismissed vide order dated 17th November, 2016.

2.4 He also relies upon the subsequent order dated 30th October, 2018 passed by the Supreme Court clarifying that each member of the association will be entitled to the renewal of the license held by them as on the date of expiry of those licenses in terms of the judgment of the Supreme Court in *South Central Railways (supra)*.

2.5 He states that separately, the learned Single Judge failed to appreciate that the Division Bench of the High Court of Judicature at Patna in LPA No. 364/2019, vide judgment dated 30th July, 2019 extended the benefit of renewal to the 'Major Units' in view of the judgment of the Supreme Court in *South Central Railways (supra)*.

2.6 He fairly states that operation of the said judgment has been stayed by the Supreme Court vide order dated 10th January, 2020 passed in SLP (C) No. 28257/2019.

2.7 Learned counsel for the Appellant during the course of arguments fairly conceded that he is not pressing his argument that Appellant is entitled to renewal in 'perpetuity'.

Analysis and Findings

3. We have heard the learned counsel for the Appellant and perused the record.

4. It is an admitted fact that the Appellant herein was initially awarded



the allotment letter dated 22nd May, 2008 by Respondent, IRCTC for setting up Food Plaza at Dhone Railway Station, South Central Railway ('Station') for an amount of ₹ 2,65,000/- as license fees per annum. The Appellant was handed over a vacant piece of land to raise construction and build a Food Plaza at his own expense. Thereafter, on 04th December, 2010, after the completion of the construction, the Appellant entered into an agreement of license with Respondent, IRCTC for setting up and operating a Food Plaza at the Station. The agreement recorded that it shall come into force from the date of commencement of business, i.e., 04th June, 2010 and subject to provision for early termination shall remain in force for a period of nine years with one extension of three years subject to satisfactory performance. The agreement stipulated that the total tenure shall not exceed twelve years in any case. The relevant recital of the agreement reads as under:

*"This agreement comes into force from the date of commencement of business i.e. **4th June 2010** and shall subject to the provision for earlier termination herein provided remain in force for a period of 09 (Nine) years and **one extension** of 03 (Three) years after 9 Nine years will be permitted subject to satisfactory performance **Total tenure shall not exceed 12 (Twelve) years in any case**"*

(Emphasis supplied)

5. The Respondent, IRCTC thereafter, *vide* letter dated 09th July, 2019 extended the license of the Appellant for the Food Plaza for a period of three years from 04th June, 2019 to 03rd June, 2022. It was directed that the minimum guaranteed license fee for the extended period shall be charged at Rs. 3,97,463/- per annum or 12% sales turnover of the Unit, whichever is higher.

6. Subsequently, in view of the COVID-19 Pandemic, Respondent,



IRCTC vide communication dated 01st August, 2022 extended the license for a further period of 636 days and accordingly, the license stood extended till 28th February, 2024 on the terms and conditions set out in the communication dated 01st August, 2022, including remission of license fee.

7. The Appellant herein filed representations on 30th November, 2023 and 23rd December, 2023 representing to Respondent, IRCTC to extend the tenure of the license in accordance with the ratio of the judgment of the Supreme Court in *South Central Railways (supra)*. The Respondent, IRCTC, however, vide letter dated 01st January, 2024 has rejected the aforesaid representation of the Appellant by relying upon Para 3.1 of the Tender document. The communication dated 01st January, 2024 reads as under:

“In reference to the above cited subject, in terms of clause no: 3.1-Total Tenure of License under Period of License of the Tender Document, the term of License for Food Plaza at Dhone Railway station is for a period of Nine (9) years with a provision of renewal for another Three (3) years. Total tenure of the License shall not exceed 12 years in any case. IRCTC will not be obliged to assign any reason whatsoever for not renewing the License. As per the above clause and guidelines issued by CO from time to time, the Tenure of Food Plaza at Dhone Railway station including FMC is valid up to 28.02.2024.”

(Emphasis supplied)

8. The Appellant feeling aggrieved by the aforesaid refusal to extend tenure, filed the writ petition impugning the communication dated 01st January, 2024 and sought a mandamus to Respondent, IRCTC to permit the Appellant to continue to operate the Food Plaza. The Appellant contended before the learned Single Judge that it has a right to seek extension of license ‘in perpetuity’ as per Para 17 of the Catering Policy, 2010; in view of the ratio of the judgment of Supreme Court in *South Central Railways*



(*supra*) and more specifically at paragraphs 33 and 34 therein.

9. Respondent, IRCTC, in its counter affidavit filed to the writ petition has stated that firstly, neither the Catering Policy, 2010 nor Catering Policy, 2017 governs the license of the Appellant herein as the subject license was awarded by IRCTC and never transferred to the Zonal Railways. Respondent contends that the Catering Policy applies only to the licensee(s) of Zonal Railways. It is stated that the license in question has been awarded by Respondent, IRCTC and, therefore, neither the Judgment nor the Policy applies.

9.1 It is further contended in the alternative, that since the Appellant is not covered by the Catering Policy, 2010 and nevertheless, there is no provision for renewal of Food Plaza under Clause 16.1.4.

9.2 It is stated that the Appellant is not entitled to rely upon Para 16.2 and the sub-clauses therein, which were subject matter of the judgment of the Supreme Court in *South Central Railways (supra)* as the said Para is applicable only to 'Special Minor Units'.

10. We shall deal with the contentions of the Appellant on the assumption that its license is covered by the Catering Policy, 2010. The Appellant herein is admittedly, a 'Major Unit' (being a Food Plaza) and, therefore, the tenure would be governed by sub-clause Para 16.1.4. In the Policy, the tenure of 'Special Minor Unit' ('SMU') is governed by sub-clauses of Para 16.2 and 'General Minor Unit' ('GMU') is governed by Para 16.1.3. The Appellant has relied upon Para 17 of the Policy 2010 for seeking renewal. The relevant Paras 16.1.3, 16.1.4, 16.2.1, 16.2.2 and 17 reads as under:

"16 TENURE

16.1 TENURE OF MAJOR UNITS & GENERAL MINOR UNITS.



16.1.1 Tenure of all major units including food courts, fast food units (except **Food Plazas**, Base Kitchens and AVMs) will be for a period of 5 years. **There will be no renewals.**

16.1.2 Tenure of AVMs will be made for a period of 5 years. **There will be no renewals as per policy as these are major units.**

.....

16.1.3 Allotment of all General Minor Units at A, B & C category stations shall be awarded for a period of 5 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 & 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.

16.1.4 **Tenure of Food Plaza will be for 9 years with an extension of 3 years on satisfactory performance** and payment and payment of all dues and arrears and withdrawal of court cases, if any.

16.2.1 Special Minor Units at A, B, and C category stations shall be awarded for a period of 5 years **with a renewal** after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.

16.2.2 Special Minor Units at D, E, F category stations shall be awarded 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. Efforts must, however, be made at the time of renewal to ensure a minimum increase of 10% over the prevailing license fee.

..

17. **RENEWAL**

Renewal will not be a matter of right. The licensee **must** apply for **renewal** minimum 6 (six) months in advance before the expiry of the contract. Renewal will be based on the following:-

17.1 Satisfactory performance of the licensee during the tenure of the contract. An imposition of fine/warnings on more than 5 occasions will result in rejection of the application for renewal.

17.2 Payment of all dues/ arrears-No Dues Certificate from the concerned authority, must be attached along with the application for renewal.

17.3 **The applicant must submit the documents afresh along with the renewal application** regarding the details mentioned in para 14.2.1.1, 14.2.1.2 and 14.2.1.3 and in case of GMUs relevant documents as



mentioned in the Standard Bid Documents will be required to be submitted afresh along with the above-mentioned documents.

17.4 The Annual Confidential Reports (ACRs) on catering performance will be modified in accordance with this policy. The detailed instructions on ACRs will be issued by the Railway Board. ACRs maintained by the Railways for the Licencee seeking renewal shall be scrutinised by the Competent Authority granting renewal. Based on the ACRs for the period of tenure the marks will be allotted to the licensee. A minimum cut off criteria based on the grading of the ACRs for grant of renewal must be notified by the zonal railways in advance.

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.”

(Emphasis supplied)

10.1 Significantly, the expression ‘renewal’ finds no mention in Para 16.1.4 applicable to ‘Major Units’ in contradistinction with Paras 16.1.3, 16.2.1 and 16.2.2, which specifically stipulate an option of ‘renewal’ to the ‘General Minor Units’ (GMU) and ‘Special Minor Units’ (SMU). Instead, Para 16.1.4 of the Policy uses the expression ‘extension’ with respect to the tenure of the ‘Major Units’.

10.2 Firstly, the expressions ‘renewal’ and ‘extension’ have been judicially interpreted by the Supreme Court in ***Provash Chandra Dalui & Anr. v. Biswanath Banerjee & Anr.***² to hold that the said expressions have distinct legal consequences for the rights of a party. The Supreme Court held that the distinction between ‘extension’ and ‘renewal’ is chiefly that in case of renewal, a new agreement is executed, while in case of extension, the same agreement continues in force during extended period. The relevant paras 13 and 14 of the judgment reads as under:

“13. In clause 9 of the lease it would be seen how and when the rent is to be paid and when the lease would be liable to be cancelled have been stated. Clause 11 stipulates that at the first instance the period of lease was made

² (1989) Suppl. 1 SCC 487 at Paras 13 and 14



10 years and in case the lessee acted in accordance with what was expected of him under clause 9, the period of the lease would be **extended** for a further period of 5 years up to 31-3-1961 at enhanced rent of Rs 250 per month, and if the lessee continued to act in accordance with what was expected of him under clause 9 during this period of 5 years the period of the lease would be extended for a further period of 5 years, that is, up to 31-3-1966 at a monthly rent of Rs 300 and in case the lessee continued to act during this period as expected of him under clause 9 till the end of the period of 20 years he would be entitled by serving a notice to obtain an extension for a further maximum period of one year at enhanced rent of Rs 500 per month.

14. It is pertinent to note that the word used is “extension” and not “renewal”. To extend means to enlarge, expand, lengthen, prolong to carry out further than its original limit. Extension, according to Black’s Law Dictionary, means enlargement of the main body addition of something smaller than that to which it is attached; to lengthen or prolong. Thus, extension ordinarily implies the continued existence of something to be extended. The distinction between “extension” and “renewal” is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulate act. In other words, the word “extension” when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr A.K. Sen rightly pointed out the schedule specifically mentioned the lease as “for a stipulated period of 20 years”. As these words are very clear, there is very little for the court to do about it.”

(Emphasis supplied)

10.3 In the facts of this case, the original agreement of license dated 04th December, 2010 executed between the parties already stands expired by efflux of time. The Appellant in order to continue the operation of the Food Plaza beyond 28th February, 2024 requires a renewal of the license in its favour, which in turn necessarily requires execution of the fresh license deed in its favour from the Respondent, IRCTC.

10.4 The omission of the expression ‘renewal’ in Para 16.1.4, which expressly governs the Food Plaza is a premeditated omission in the Policy



and evidences that no right of ‘renewal’ has been reserved for the ‘Major Units’ (being Food Plaza) referred to in Para 16.1.4 in the Catering Policy, 2010. In contrast, the right of ‘renewal’ has been reserved for the ‘Minor Units’ (GMU/SMU) referred to in Para 16.1.3, 16.2.1 and 16.2.2. We are, therefore, *prima facie* of the opinion that the Appellant, being a ‘Major Unit’ (Food Plaza) is not entitled to apply for ‘renewal’ under the Catering Policy, 2010.

11. The Appellant has operated the ‘Major Unit’ from 04th June, 2010 until 28th February, 2024, which period is infact in excess of the maximum period of twelve years contemplated in agreement dated 04th December, 2010 and Para 16.1.4 of the Catering Policy, 2010.

12. The judgment of Supreme Court in *South Central Railways (supra)* was exclusively dealing with the right of General Minor Units (‘GMU’) and Special Minor Units (‘SMU’) to seek ‘renewal’ as per Paras 16 and 17 of the Catering Policy, 2010. This becomes plainly evident from the order of the Court from paragraphs 22 to 24 which read as under:

“22. The case of the appellants, in a nutshell, is that the Railways had the right to enact the Catering Policy, 2010. In terms of the said Policy, only such licensees who were granted licence 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 licence prior to the 2010 Policy. 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 licences. The renewal of the licences of the licensee under Para 16 of the Policy would apply only to licensees who were allotted licences under the Catering Policy, 2010. The appellants have further submitted that the renewals of the licences 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.”

23. We are unable to agree with the contention advanced on behalf of the appellants. The Railway Board issued Commercial Circular No. 37 dated 9-8-2010, which contained the following instructions:



“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.”

This 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 also becomes clear that the existing licensees need not be included in the tender process.

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.”
(Emphasis supplied)

13. Therefore, Para 16.1.4 of the Catering Policy, 2010, which is applicable to the Appellant herein (Food Plaza) was not deliberated upon by the Supreme Court in the aforesaid judgment.

14. Further, as pointed out by the Appellant itself, the Supreme Court in SLP (C) No. 28257/2019 vide order dated 10th January, 2020 has stayed the operation of the judgment dated 30th July, 2019 passed by High Court of Judicature at Patna, which applied *South Central Railways (supra)* to a claim of ‘renewal’ made by licensees of ‘Major Units’.

15. We, therefore, find no error in the impugned judgment of the learned Single Judge dismissing the interim application for stay. The appeal is accordingly dismissed along with pending applications.

16. It is clarified that we have not opined upon the submission of Respondent, IRCTC that the Catering Policy, 2010 and Catering Policy, 2017 is not applicable to Units licensed by IRCTC as the said issue was not adjudicated upon by the learned Single Judge. The said issue is left open for determination in the writ proceedings, which are pending consideration.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J



2024:DHC:1899-DE



MARCH 5, 2024/hp/sk