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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6659/2024 & CM APPL 27702/2024**

M/S KEYA FOODS

.....Petitioner

Through: Mr. Akshat Bajpai, Ms. Ishanee
Sharma and Mr. Shobhit Trehan,
Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Nune Balraj, SPC with Ms. Megha
Rao and Mr. Harshit Goel, Advs for
R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

03.09.2024

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1. The petitioner in the instant writ petition seeks for directions to grant an extension of 210 days beyond the date of expiry of license of the Catering Stall ID No. RBL/PF-01/130 at PF No. 01 of the Raebareli Railway Station by virtue of the stall being closed for the period between 22.03.2020 to 19.10.2020.

2. Learned counsel appearing for the petitioner submits that in terms of the licence agreement entered into between the petitioner and the official respondents, the minor catering stall came to be allotted to the petitioner under the reserved category for women. Learned counsel submits that the commencement of the licence period as per the agreement was from 29.03.2019 and the license was for a period of 5 years, which was set to



expire on 28.03.2024.

3. He submits that during the subsistence of the license period, the country faced the Covid-19 Pandemic and on 21.05.2020, the Ministry of Railways issued a notification directing the implementation of *force majeure* clause in respect of all static catering and vending units. While taking this Court through the said notification, learned counsel points out that the aforesaid Ministry advised all the concerned parties to invoke *force majeure* clause in respect of all catering and vending contracts which were non-operational on account of lockdown, irrespective of whether the agreement incorporated the *force majeure* clause or not. Learned counsel further submits that, as per the notification, the period for which the contracts were non-operational shall be treated as *dies non* and the contract period shall be extended accordingly.

4. He, thereafter, draws the attention of the Court to the decision taken by the respondents in the month of May 2024, wherein, a unilateral extension of 67 days was accorded in purported compliance of the said Ministry's direction for corresponding extension of the *dies non* period of the contract.

5. Learned counsel appearing on behalf of the petitioner further points out that the respondents have admitted that the footfall of the passengers for the months of June, July, and August 2020 was zero and even thereafter, on account of various reasons, the occupancy and passenger footfall was significantly low. He submits that the respondents had acknowledged the aforesaid aspect of reduced footfall and thus, it had extended certain benefits in the nature of a reduced license fee.

6. According to the petitioner, the benefit of a reduced licence fee itself



establishes that the catering units faced unprecedented difficulty and therefore, the notification dated 21.05.2020 should have been implemented in its true sense and thus, the petitioner be granted the extension of entire period during which the catering units remained closed. During the course of arguments, he further submits that even if the respondents do not consider granting the extension for 210 days, he is at least entitled to an extension of a period of 90 days i.e., for the months of June, July, and August of 2020 where the passenger footfall was admittedly zero.

7. The submissions made by learned counsel for the petitioner are vehemently opposed by the learned counsel appearing on behalf of the respondents.

8. Learned counsel appearing for the respondents, while placing reliance on a decision dated 06.08.2024 passed by the Division Bench of this Court in LPA No.748/2024, submits that in an appeal with almost similar set of facts, this Court has declined to interfere with the decision passed by the learned Single Judge of this Court in a batch of writ petitions bearing no. W.P.(C) 3954/2024 dated 30.05.2024. She submits that even otherwise, in view of Clause 19.1 of the Master License Agreement, the petitioner has a remedy for dispute resolution and moreover, the decision by the respondents has been taken only after considering all the pertinent facts and circumstances.

9. Learned counsel appearing on behalf of the respondents further submits that the direction for payment of a reduced licence fee would not automatically entitle the petitioner for a further *dies non* period. She submits that the *dies non* period of 67 days has been granted on the basis of various facts and circumstances and the same is unassailable. She, therefore, submits



that the instant writ petition does not have any merit and the same deserves to be dismissed.

10. Concluding her submissions, learned counsel submits that without any prejudice to her earlier contentions, even if the relief sought by the petitioner for extension of 90 days is considered, the petitioner has already availed the said relief indirectly by way of the stay granted. She points out that even upon granting of an extension of 67 days, the license in question stood expired on 03.06.2024. According to her, solely on the strength of the interim order granting stay passed by this Court, the petitioner continues to occupy and operate the stall in question and as of now, the petitioner has occupied the stall for a period of three months approximately. According to her, the petitioner has continued the operation of the stall for a period of approximately 90 days over and above the *dies non* period already granted by the department. She, therefore, submits that at this stage, no interference is called for.

11. I have considered the submissions made by learned counsel for the parties and perused the record.

12. The notification dated 21.05.2020 issued by the Ministry of Railways explicitly advises all concerned departments to implement the *force majeure* clause without insisting upon the fact as to whether the concerned license agreements incorporate the aforesaid clause. It also stipulated to extend the contract in accordance with the *dies non* period. Admittedly, such a decision was taken in view of the immense difficulty being faced by all concerned during Covid-19 pandemic. The respondents, while considering the said notification has taken a policy decision, whereby, they have granted 67 days' *dies non* period uniformly across all catering units.



13. Essentially, the dispute herein pertains to a license granted by the respondents and the parties are bound by those terms. Even otherwise, the petitioner would be entitled to take appropriate recourse in terms of Clause 19.1 of the Master Licence Agreement, if the petitioner is of the opinion that on account of closure of the catering units, it has unjustly suffered any financial loss. Therefore, the fact as to whether the petitioner is entitled for further extension or the decision so taken by the respondents suffers from illegality or arbitrariness, cannot be adjudicated under the facts of the instant case by a writ court.

14. The Court, in exercise of its powers under Article 226 of the Constitution of India, cannot unilaterally extend the *dies non* period or the licence period. Such an exercise amounts to interfering/altering the terms of the contract and the same would tantamount to altering the terms of the agreement itself, which is not permissible while exercising writ jurisdiction, as it has been observed by the Supreme Court in the case of ***Orissa State Financial Corpn. v. Narsingh Ch. Nayak***¹. The relevant portion of the said decision is reproduced hereunder as:-

*“6... No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. **But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.**”*

15. The Division Bench of this Court *vide* order dated 06.08.2024 in the

¹ (2003) 10 SCC 261.



case of *Hani Khatoon v. Union of India & Ors.*² has made the following pertinent observations:-

"8. The decision as to how the calculation of determining dies non period is to be reckoned lies solely with the Zonal/Divisional Railways keeping in view the impact that Covid-19 pandemic had on each area. The said determination appears to have been taken on factual basis, ostensibly, after gathering some empirical data. This is clear as the dies non period has been granted to various caterers and vendors in varying degrees across the Zones/Divisions by the Railways.

9. These facts, even if disputed by the appellant, cannot be the subject matter of a writ proceeding under Article 226 of the Constitution of India. What are the various determinative factors considered by the Zones/Divisions to reckon varying periods even in a particular zone or in other parts of the country are best left to the Zonal/Divisional centres themselves.

10. Besides, the same would be akin to a policy decision, which the Constitutional Courts would ordinarily not interfere. How commercial aspects and its operations are to be run and maintained, is purely within the purview of the Competent Authority of the Railways. Thus, this Court cannot interfere in such matters.

11. Moreover, learned counsel for appellant has fairly admitted to not having challenged the policy of the IRCTC granting extension to the catering vendors. In such circumstances, the decision taken by the respondents on commercial consideration cannot be interdicted by this Court.

12. Even otherwise, learned counsel for appellant also has not been able to show any error or infirmity in the impugned judgement passed by the learned Single Judge. We reiterate the directions passed by the learned Single Judge in para 30 of the impugned judgment dated 30th May, 2024 in W.P.(C) 6771/2024.

13. In that view of the matter and in view of the order dated 5th August, 2024 already passed in similar appeals bearing LPA 743/2024 and LPA 745/2024, the present appeal is dismissed being devoid of any merits with no order as to costs."

16. So far as the decision in *Hani Khatoon (supra)* is concerned, the

² 2024 SCC OnLine Del 5425.



petitioner has taken a stand that the controversy at hand relates to a different agreement and thus, facts in the present case are distinguishable from the controversy adjudicated by the Division Bench of this Court in the said case. However, the underlying principle for extension of the *dies non* period or the established position of non-interference into a policy decision under Article 226 will have full force.

17. The Division Bench in *Hani Khatoon (supra)* has clearly observed in paragraph no.9 that various determinative factors considered by the Zones/Divisions to reckon varying periods even in a particular zone or in other parts of the country are best left to the Zonal/Divisional centres themselves.

18. It was held that the issue as to how commercial aspects and its operation are to be executed and maintained is purely within the purview of the competent authority of the Railways. The Court has also observed that the issue therein was pertaining to a policy decision where the Constitutional Courts would ordinarily not interfere. Accordingly, the Court declined to interfere into the same.

19. The Court, in the instant case as well, does not find any reason to interfere into the decision taken by the respondents and is also unable to accede to the prayer made by the petitioner for granting any extension beyond the 67 days' period as has already been granted by the respondents.

20. Learned counsel for the petitioner, at this juncture, contends that the Division Bench in the aforesaid order has affirmed the benefit granted by the Coordinate Bench of this Court in W.P.(C) 6771/2024 *vide* order dated 30.05.2024 for granting of an extension for a period of 90 days. He, therefore, submits that the said benefit be extended to the petitioner as well.



21. The Court ordinarily would have considered granting the said benefit to the petitioner. However, it has been the consistent stand of the petitioner since the inception of the litigation that the facts of his case are distinguishable from the set of facts adjudicated in the case of ***Hani Khatoon (supra)***.

22. Even otherwise, considering the extension for the *dies non* period, the license of the petitioner has already expired on 03.06.2024. Since the Court had already granted a stay against eviction, therefore, the petitioner continued to operate the stall in question till date. As on today, the petitioner has already occupied the stall for a period of approximately more than 90 days post the expiry of the extension granted under *dies non* period.

23. However, in light of the overall controversy, the Court grants the petitioner 10 days' further time to vacate the stall in question. In case, the petitioner does not vacate the stall in question within 10 days, the respondents shall be at liberty to take appropriate action in accordance with law.

24. With the aforesaid observations, the petition stands dismissed. Pending application is also disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

SEPTEMBER 3, 2024/MJ