

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 30.05.2024

+ W.P.(C) 3131/2024 and CM APPL. 12816/2024 (Stay)
(6) RAM KUMAR AGARWAL Petitioner
versus
UNION OF INDIA & ORS. Respondents



- + W.P.(C) 3364/2024 and CM APPL. 13838/2024 (Stay)
 (7) PARVAT SINGH YADAV Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 4450/2024 and CM APPLs.18269/2024, 27189/2024
 (8) M/S R. K. FOOD PRODUCTS Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 5722/2024 and CM APPL.23588/2024 (Stay)
 (9) NEELAM AGARWAL Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 5995/2024 and CM APPLs.24890/2024, 26147/2024
 (10) MADAN PETHA STORE Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 6417/2024, CM APPL. 26643/2024 - STAY
 (11) MAMTA KHDOTIYA Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 7498/2024 and CM APPLs.31231/2024 (Stay), 31232/2024,
 31233/2024 (both for exemption)
 (12) MANOJ KUMAR AGARWAL Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + W.P.(C) 7500/2024 and CM APPL.31246/2024 (Stay), 31247/2024,
 31248/2024
 (13) SMT.DEEPA KUSHWAHA Petitioner
 versus
 UNION OF INDIA & ORS. Respondents

Presence:



Mr. Jitender Mehta, Mr. Lalit Kumar, Mr. Shivam Pahal, Mr. Pankaj Mishra and Mr. Ambuj Singh, Advs. for petitioners in W.P.(C) 6771/2024, 5183/2024, 7411/2024, 7412/2024, 7479/2024, 3131/2024, 3364/2024, 4450/2024, 5722/2024, 5995/2024, 6417/2024, 7498/2024, 7500/2024

Mr. Chetan Sharma, ASG, Mr. Kirtiman Singh, CGSC, Mr. Kavish Aggarwala, SPC, Mr. Kamaldeep, GP and Mr. Amit Gupta, Adv. for UOI in W.P.(C) 5183/2024

Mr. Rishabh Sahu, Sr. Panel Counsel along with Mr. Sameer Sharma, Adv. for UOI (through VC) in W.P.(C) 3364/2024

Mr. Ankit Raj, Sr. Panel Counsel along with Mr. Vedansh Anand, GP and Mr. Akash Chandrayan, Adv. for UOI in W.P.(C) 6771/2024

Mr. Rahul Kumar Sharma, GP in W.P.(C) 7479/2024

Mr. Sanjeev Sabharwal, Sr. Panel Counsel, Ms. Neha Sharma, GP and Ms. Karnika Bahuguna, Advs. for UOI in W.P.(C) 7411/2024

Mr. Nawal Kishore Jha, SPC, Mr. Rahul Pandit, GP and Ms. Kalpana Jha, Adv. for UOI in W.P.(C) 7479/2024

Ms. Shubhra Parashar, SPC along with Mr. Virendra Pratap Singh Charak and Mr. Vivek Nagari, GP for Railways in W.P.(C) 3131/2024

Ms. Anju Gupta and Mr. Roshan Lal Goel, Advs. for UOI in W.P.(C) 4450/2024

Mr. Shoumendru Mukherjee, Sr. Panel Counsel along with Ms. Megha Sharma, Ms. Akanksha Gupta, Advs. and Mr. Akash Pathak, GP for UOI in W.P.(C) 5722/2024

Mr. Kanav Vir Singh, SPC and Mr. Vidur Dwivedi, GP for UOI in W.P.(C) 5995/2024

Mr. Avnish Singh, SPC, Mr. Kapil Dev Yadav, GP and Mr. Devender Singh, Adv. for UOI in W.P.(C) 6417/2024

Ms. Ritu Reniwal, Sr. PC for UOI in W.P.(C) 7498/2024 (through v/c).

Mr. Gopesh Jindal, Adv. for UOI in W.P.(C) 7498/2024

Mr. Sahaj Garg, SPC and Mr. Yash Tyagi, GP for UOI in W.P.(C) 7500/2024

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT



1. The present batch of petitions under Article 226 of the Constitution of India has been filed *inter alia* seeking the following reliefs:

- a. to declare the Clause No. 11 of the Commercial Circular No. 20 of 2017 dated 27.02.2017 (“**Catering Policy 2017**”) issued by Railway Board as illegal, arbitrary, unconstitutional, null and void-ab-initio.
- b. to declare impugned Licence Agreement executed between petitioner and concerned respondent as illegal, arbitrary, unconstitutional, null and void-ab-initio and also set aside the License Agreement as regards its tenure is concern;
- c. a direction to the respondents to renew the license of the petitioners’ catering units in terms of judgment passed by Supreme Court of India *South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn.*¹;
- d. a direction to the respondents to extend the benefit of extension of license period to the petitioners in proportionate to the reduced license fee during the Covid-19 pandemic period and as per the benefit given to other units.

2. Briefly stated, the facts are that the respondents under the Catering Policy 2017 had floated tenders for allotment of Catering Units (Special and General Minor Units) at various railway stations. Clause 11 of the Catering Policy 2017 provides as under:

“11 **TENURE**

11.1 Tenure of all major units being handed over to IRCTC will be governed as per Catering Policy 2010 till the expiry of the contracts. IRCTC shall further manage these units as per the provisions of this policy.

¹ (2016) 3 SCC 582



11.2 Tenure of Food Plaza shall be for a period of 9 years. Tenure of all other catering units (Major Units & Minor Units) will be for a period of 5 years only. There will be no further extension/renewal, except for units specifically referred to in para 3.8.1.”

3. Accordingly, the terms of the floated tenders stipulated that the tenure of license will be for a period of five years and it was specifically stated that there will be no extension/renewal. The petitioners have participated in the said tenders and have been allotted minor Catering Units. Pursuant thereto, License Agreements have also been executed between the parties.

4. In view of a *force majeure* event i.e., Covid 19 lockdown, the respondents have also extended the tenure of the petitioners to the extent of the *dies non* period. The details of the petitioners' licenses are as under:

Case Details	Location of Unit	Date of Issuance/Allo tment of License	Dies- Non- Period	Period of Extension
W.P.(C) 5183/2024	Catering Stall at Platform No.1 Of Chittaurgar Railway Station	11.12.2018	68 Days	Original Date Of Expiry Of License: 09.02.2024 Extended Date Of Expiry: 17.04.2024
	Tea Stall at Platform No.1 At Bandra Terminus Railway Station	14.08.2019	70 Days	Original Date Of Expiry Of License: 06.10.2024 Extended Date Of Expiry: 16.12.2024
	Catering Stall at Satna Railway Station (W.C.R.)	24.05.2019	70 Days	Original Date Of Expiry Of License: 07.07.2024 Extended Date Of



				Expiry: 15.09.2024
W.P.(C) 5722/2024	Fruit Juice Stall at Platform No.2/3 of Agra Cantonment Railway Station	15.02.2019	71 Days	Original Date Of Expiry Of License: 14.02.2024 Extended Date Of Expiry: 25.04.2024
W.P.(C) 7500/2024	Catering Stall at Platform No.2 of Maihar Railway Station.	17.08.2019	70 Days	Original Date Of Expiry Of License: 16.08.2024 Extended Date Of Expiry: 25.10.2024
W.P.(C) 7498/2024	Milk Stall at Platform No.2/3 of Agra Cantonment Railway Station	02.03.2020	71 Days	Original Date Of Expiry Of License: 01.03.2025 Extended Date Of Expiry: 11.05.2025
	Milk Stall at Platform No. 2/3 Mathur Railway Station	13.02.2020	71 Days	Original Date Of Expiry Of License: 12.02.2025 Extended Date Of Expiry: 24.04.2025
W.P.(C) 7411/2024	Catering Stall at Platform 4/5 Agra Cantt Railway Station (Uttar Pradesh)	25.03.2019	71 Days	Original Date Of Expiry Of License: 24.03.2024 Extended Date Of Expiry: 03.06.2024
W.P.(C) 6417/2024	Catering Stall at Platform No.1 Of Chanderiya Railway Station	21.01.2019	68 Days	Original Date Of Expiry Of License: 04.03.2024 Extended Date Of Expiry : 11.05.2024



W.P.(C) 6771/2024	Catering Stall at Platform No.2/3 of Rampur Railway Station Catering Stall at Platform No.01 of Rampur Railway Station	25.01.2019	68 Days	Original Date Of Expiry Of License: 06.03.2024 Extended Date Of Expiry: 13.05.2024
W.P.(C) 7412/2024	Milk Stall Unit at Platform No. 8 of Visakhapatnam Railway Station.	18.12.2018	69 days	Original Date Of Expiry Of License: 27.03.2024 Extended Date Of Expiry: 04.06.2024
	Catering Stall at Platform No.4/5 of Visakhapatnam Railway Station	27.02.2019		Original Date Of Expiry Of License: 01.11.2024
W.P.(C) 7479/2024	Tea Stall at Platform No. 4 of Surat Railway station	01.03.2019	70 days	Original Date Of Expiry Of License: 17.04.2024 Extended Date Of Expiry: 27.06.2024
	Tea stall at Platform No. 4 of Kasara Railway Station	11.09.2019		Original Date Of Expiry Of License: 08.11.2024
W.P.(C) 3131/2024	Catering Stall at Platform No. 2/3 of CNB Railway Station	27.05.2019	71 days	Original Date Of Expiry Of License: 13.06.2024
W.P.(C) 3364/2024	Catering Stall at Platform No. 4/5 of Jhansi Railway Station	20.02.2019	70 days	Original Date Of Expiry Of License: 12.03.2024 Extended Date Of Expiry:



				21.05.2024
W.P.(C) 4450/2024	Catering Stall at Platform No. 1 of Etawah Railway Station	04.12.2018	77 days	Original Date Of Expiry Of License: 04.01.2024 Extended Date Of Expiry 22.03.2024.
W.P.(C) 5995/2024	Catering Stall at Platform No. 4/5 of Haridwar Railway Station	30.11.2018	68 days	Original Date Of Expiry Of License: 21.02.2024 Extended Date Of Expiry: 29.04.2024

5. Learned counsels for the petitioners have broadly contended as under:

- (i) Clause 11 of the Catering Policy 2017 is violative of Articles 14, 19(1)(g) and 21 of the Constitution as the same takes away the right of renewal of license and compels the existing licensees to compete against big companies, partnership firms etc. The said clause is also stated to be violative of Articles 38, 39 and 41 of the Constitution. In support of these submissions reliance has been placed on *Olga Tellis v. Bombay Municipal Corpn.*², *Consumer Education & Research Centre v. Union of India*³, *South Central Railways* (supra) and *Vendors Cooperative Society v. Union Of India*⁴.
- (ii) The petitioners have executed the license agreement under coercion, economic duress and in view of unequal bargaining position between vendors/petitioners and railways. In support of these

²(1985) 3 SCC 545

³(1995) 3 SCC 42

⁴order dated 30.10.2018, passed by the Supreme Court in W.P. (C) 373/2017



submissions reliance has been placed on *Central Inland Water Transport Corpn. v. Brojo Nath Ganguly*⁵, *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*⁶, *Shrilekha Vidyarthi (Kumari) v. State of U.P.*⁷ and *Sadhuram Bansal v. Pulin Behari Sarkar*⁸.

(iii) Different treatment has been given to various vendors/hawkers occupying Catering Units within the same railway station regarding extension of their license periods amid Covid-19 pandemic. The said action of the respondents is stated to be arbitrary and violative of Article 14 of the Constitution.

(iv) The case of the petitioners is covered by the judgement of the Supreme Court in *South Central Railways* (supra). It is submitted that in the said judgment the Supreme Court frowned upon the act of railways to compel small vendors to participate in public competition and directed renewal of the licenses of similarly situated individuals taking into account the right to livelihood and lack of employment opportunity in this country.

(v) Reliance has been placed on decisions in *Jayaswals Neco Ltd. v. Union Of India*⁹, *Malini Mukesh Vora v. Union of India*¹⁰, *New India Assurance Co. Ltd. v. Union of India*¹¹, *Magma Fincorp Ltd. v. Orbit Motors Private Ltd.*¹² and *KLG Systel Ltd. v. Operation*

⁵ (1986) 3 SCC 156

⁶ 1991 Supp (1) SCC 600

⁷ (1991) 1 SCC 212

⁸ (1984) 3 SCC 410

⁹ 2007 SCC OnLine Del 2094

¹⁰ 2009 SCC OnLine Del 1776

¹¹ 2009 SCC OnLine Del 1764

¹² 2010 SCC OnLine Cal 1953



Technology Inc.¹³, to submit that the present petitions are maintainable before this Court.

6. Mr. Chetan Sharma, learned ASG for the respondents/UOI has contended as under:

(i) The petitioners while participating in the bidding process were well aware of the terms and conditions including tenure and renewal/extension clause. It is emphasised that the petitioners having availed of the benefits of the Catering Policy 2017 (i.e., tenure of five years) cannot now contest the same policy upon expiry of their license. It is submitted that the petitioners have not approached this court with clean hands and *vide* present petitions they seek an extension of their license in perpetuity. It is submitted that the petitioners cannot approbate and reprobate. In support of these submissions reliance has been placed on **Senior Divisional Commercial Manager v. M. Mohamed Akbar**¹⁴ and **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.**¹⁵.

(ii) Mere vague and general pleading of coercion and duress are of no consequence and the petitioners ought to have stated how the respondents might have allegedly used their position or coerced the petitioners into signing of the License Agreement.

(iii) The judgement of the Supreme Court in **South Central Railways** (supra) is stated to be clearly distinguishable as Catering Policy 2017 clearly provides that there shall be no renewal or

¹³ 2012 SCC OnLine Del 786

¹⁴ 2020 SCC OnLine Mad 27308

¹⁵ (2013) 5 SCC 470



extension of license. It is emphasised that the petitioners' licenses are governed by the 2017 Policy.

(iv) The Catering Policy 2017 strikes a balance between the right to livelihood and right to equal opportunity, echoing the Supreme Court's sentiments in *South Central Railways* (supra). It is emphasised that the Catering Policy 2017 prevents monopolisation of the license and provides an opportunity of livelihood to similarly situated persons who also wish to participate and obtain these licenses at the time of re-tendering. It is submitted that the licenses for reserved categories are exclusively re-tendered within that category, while those for the general category undergo a similar process.

(v) There is no fundamental right to trade at particular public space, and the same is subject to reasonable restrictions. In support of these submissions reliance has been placed on *Dharam Singh v. Municipal Corpn. of Delhi*¹⁶.

(vi) The petitioners cannot claim any benefit arising out of the letter dated 21.05.2019. It is submitted that the said letter has been clarified vide letter dated 13.12.2021 and only existing minor catering units, allotted prior to the Catering Policy 2017 are entitled to status quo/renewal in terms of *South Central Railways* (supra).

(vii) The petitions are not maintainable as all license agreements contain an exclusive jurisdiction clause which states that all disputes arising out of the said agreements shall be adjudicated by the courts of that particular zonal railway headquarters. Additionally, license

¹⁶2005 SCC OnLine Del 1073



agreements and Catering Policy 2017 incorporate an arbitration clause. It is emphasised that mere *situs* of the Railway Board based in Delhi, which issued the Catering Policy 2017 does not confer jurisdiction upon this court. It is submitted that even if a small part of clause of action has arisen in Delhi, the same by itself is not a determinative factor compelling this court to decide the matter on merits. Considering the doctrine of *forum conveniens*, it is submitted that, the petitioners should approach the court which has the most proximate connection to the disputes. In support of these submissions reliance has been placed on *Kusum Ingots & Alloys Ltd. v. Union of India*¹⁷, *Shiva Industries v. Union of India*¹⁸ and *Durgapur Freight Terminal (P) Ltd. v. Union of India*¹⁹.

Analysis and Findings

7. I have perused the record and heard learned counsel for the parties.

Maintainability

8. In the present batch of petitions, the petitioners have *inter alia* impugned Clause 11 of the Catering Policy 2017 framed by the Railway Board, seated in Delhi. They are also seeking issuance of writ of mandamus to compel the respondents/ relevant zonal/divisional railways to renew and extend their license. In cases W.P.(C) 6771/2024 and W.P.(C) 5995/2024 the relevant zonal railways is the Northern Railway, headquartered in Delhi. However, the remaining petitions concern zonal railways with their headquarters located outside of Delhi.

¹⁷(2004) 6 SCC 254

¹⁸2024 SCC OnLine Del 530

¹⁹2023 SCC OnLine Del 1254



9. In *Jayaswals Neco* (supra), the petitioner therein impugned letter of demands raised by South East Central Railway, Chhattisgarh; they also impugned para 1744 of the Indian Railway Commercial Manual, framed by the Railway Board in Delhi. This Court held that even though no part of cause of action has arisen in Delhi since a writ striking down para 1744 of the Indian Railway Commercial Manual would have to be issued to the Railway Board which is in New Delhi, from the standpoint of Article 226 (1) of the Constitution, this Court would have jurisdiction inasmuch as the authority to whom the writ is to be issued is located within the normal territorial limits of this Court. Relevant extract from the said judgment is as under:

“55. In the light of the discussion above, it has now to be determined as to whether in the present case this Court has territorial jurisdiction to entertain the writ petitions. As noticed above, the question as to whether the Court has territorial jurisdiction to entertain a writ petition has to be arrived at on the basis of the averments made in the petition, the truth or otherwise thereof being immaterial. [see Kusum Ingots (supra) and ONGC v. Utpal Kumar Basu (supra)]. It has been averred in the petitions that paragraph 1744 of the Indian Railways Commercial Manual, which is an executive instruction issued by the Railway Board, is the root cause for the raising of the punitive demands, which are challenged in this petition. Mr Kaul submitted that if paragraph 1744 had not existed then the demands challenged herein would not have been raised. He submits that paragraph 1744 is violative of Section 73 and 79 of the Railways Act, 1989. Without going into the question of truth or otherwise of these averments and without examining the merits of the challenge to paragraph 1744 of the Indian Railways Commercial Manual, it is clear that the challenge exists and that the said paragraph 1744 forms part of the Indian Railways Commercial Manual, which was issued by the Railway Board at New Delhi. A writ striking down the said paragraph would have to be issued to the Railway Board which is in New Delhi. Therefore, from the standpoint of Article 226 (1) of the Constitution, this Court would have jurisdiction inasmuch as the authority to whom the writ is to be issued is located within the normal territorial limits of this Court. It is true that if the case rested only on a challenge to the demands de hors the question of validity of para 1744



then, only Article 226(2) would be applicable and this Court would not have territorial jurisdiction as no part of the cause of action has arisen in Delhi. But, that is not the case.”

12. In the present case, it cannot be said that this Court is devoid of the jurisdiction to entertain the present writ petitions challenging Clause 11 of the Catering Policy 2017. Considering that in some of these petitions the concerned zonal railways is Northern Railway, headquartered in Delhi and also considering that common issues arise for consideration in this batch of matters, this Court deems it apposite to entertain the present petitions and adjudicate the same on merits.

13. Accordingly, the present petitions are held to be maintainable.

Renewal of License

14. I have given anxious consideration to the matter. I am unable to agree with the contention of the petitioners that they are entitled to renewal of license.

15. The petitioners participated in the tender for grant of license, knowing fully well that tenure of the license shall be for 5 years only and there shall be no extension/renewal. The petitioners were successful in the tender. License agreements were also executed between the parties. The petitioners are operating their catering units since then. Now at the fag end of expiry of their tenure, they seek to challenge Clause 11 of the Catering Policy 2017 and seek an extension in derogation of the terms of the license. The same cannot be permitted. The petitioners were under no compulsion to enter into these contracts. It is not open for the petitioners who are the successful bidders to turn around and seek to avoid the terms set out in the license.



16. A Division Bench of this court in **MEP Infrastructure Developers Ltd. v. South Delhi Municipal Corpn.**²⁰, has held as under:

“24. But at the same time, it is also trite law that the award of contract whether by a State or by a private party is essentially commercial transaction having its own terms. The tender is an invitation to offer and if a person is interested in participating in the tender, the person, after scrutinizing all the requirements of the tender, gives his willingness to participate in the tender by bidding in the tender which is a term of an offer and the State accepts the best bidder which results in a contract. The person who bids in the tender and makes an offer with open eyes is aware of the obligations to be performed under the contract. After participating in the tender and after being a successful bidder, it is not open for the person who is the successful bidder to then turn around and state that the clauses were unfair or have become unworkable. If there are clauses in the tender to resolve the disputes then the parties are normally expected to invoke those clauses which in the common parlance are called as dispute resolution clauses. It is not uncommon that in executory contracts, there is an element of uncertainty and there can be events which can make the contract not viable. There may or may not be clauses in the contract which provides for warranty/guarantee in such terms. The person, who bids in the contract, has to take into account the risks that can occur in future and resort to available remedies under the contract itself. The parties can sit on a table for negotiation and may go for a novation of contract. If such discussion fails, then the parties have to invoke such remedies available under the contract and prove their case by leading oral and documentary evidence.

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27. In the opinion of this Court, the learned Single Judge has rightly held that in the case of contracts entered into between the State and an individual/entity pursuant to floating of tenders, the mutual rights and liabilities of the parties are governed by the terms of the contracts and the laws relating to the contracts. There is no compulsion on anyone to enter into these contracts and it is voluntary on both sides. There can be no question of the State power being involved in such contracts. The State does not guarantee profit to the licensees in such contracts and there is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is not concern of the State [Refer to : Excise Commr. v. Issac Peter, (1994) 4 SCC 104].”

²⁰ 2023 SCC OnLine Del 2088



17. In **Rajasthan State Industrial Development & Investment Corpn.** (supra), the Supreme Court has held as under:

“15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approve and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao², CIT v. V. MR. P. Firm Muar³, Ramesh Chandra Sankla v. Vikram Cement⁴, Pradeep Oil Corpn. v. MCD⁵, Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd.⁶ and V. Chandrasekaran v. Administrative Officer⁷.]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approve and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”

18. The submission of the petitioners that they were compelled to accept the tenure condition being in unequal bargaining position is untenable. At no stage in the last few years, have the petitioners protested as to any coercion/undue influence etc. It is only at the fag end of the license tenure that a bald plea has been raised, bereft of any particulars. It is well settled that a party alleging undue influence or coercion must plead the precise nature of the undue influence/coercion exercised. In the present case, the pleadings are bereft of necessary details.

19. The petitioners have heavily relied on the case of **South Central Railways** (supra). In this case, the Supreme Court held that General Minor Unit or Special Minor Unit licensees, who were granted licenses before the implementation of the Catering Policy 2010, were entitled to have their



contracts renewed under that policy, which explicitly allowed for such renewals. In contrast, Clause 11 of the Catering Policy 2017 clearly states that there will be no extension or renewal of Catering units except for units specifically referred to in para 3.8.1 (which is not applicable in present facts). The said action/policy of the railways cannot be said to be violative of Article 14 of the Constitution. There was no clause like Clause 11 of the Catering Policy 2017 before the Supreme Court. The said judgment cannot be mechanically applied in the context of the factual background of these cases. As has been held by the Supreme Court, “One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts”²¹.

20. Accepting the contentions of the petitioners would tantamount to holding that they have a permanent, indefeasible and perpetual right to seek extension/renewal of their licenses for an indefinite period of time. This cannot be permitted. Accepting the plea of the petitioners would also have a deleterious impact on the railways as the same would tantamount to holding that once the railways has granted a license to any particular person, it is denuded of the power to bring the license to an end, despite contractual provision/s to the contrary. This would completely inhibit the railways from introducing fresh financial/public participation models and/or offering opportunities to another deserving set of persons to operate catering units.

21. It is the essence of a license that it is revocable at the will of the grantor. The petitioners cannot claim a vested right entitling them to

²¹ Regional Manager v. Pawan Kumar Dubey, (1976) 3 SCC 334



perpetual renewal of the license granted to them. In *Yazdani International (P) Ltd. v. Auroglobal Comtrade (P) Ltd.*²², it has been held as under:

“43. As rightly pointed out by Shri Nariman, a licence by definition does not create any interest in the property. A licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer (sale, mortgage or lease, etc.). Under Section 60, a licence is revocable at the will of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(a) and (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the abovementioned policy.

44. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out by this Court in Ramana Dayaram Shetty v. International Airport Authority of India. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved.”

22. It is also noticed that in line with the constitutional principles of social welfare emphasized by the Supreme Court in *South Central Railways* (supra), the Catering Policy 2017 ensures that the rights of marginalized minorities and members of weaker sections of society are safeguarded. Clause 10 of the Catering Policy 2017 specifically provides for reservation in allotment of minor units for such sections of society. The clause states as under:

²² (2014) 2 SCC 657



“10. RESERVATION IN ALLOTMENT:

10.1 RESERVATION IN A1, A, B & C CATEGORIES

10.1.1 There shall be no reservation for major units.

10.1.2 There shall be 25% reservation for minor units in A1, A, B & C categories of stations with the following break up.

S. No.	Category	%age of reservation
1.	Scheduled Caste	6%
2.	Scheduled Tribes	4%
3.	Other Backward Classes	3%
4.	Minorities*	3%
5.	Divyang	2%
6.	Freedom Fighters/war widows and widows of railway employees, persons who have been dislocated/displaced due to their land having been taken over by the railways for its own use	4%
7.	People below Poverty Line	3%
Total		25%
* the term minorities will include the communities namely (i) Muslims, (ii) Christians, (iii) Sikhs, (iv) Buddhists, (v) Zoroastrians (parsis) (vi) Jain		

10.2 Reservation in D, E & F Category

There shall be 49.5% reservation for allotment in D, E & F categories of stations with following break up

S. No.	Category	%age of reservation
1.	Scheduled Caste	12%
2.	Scheduled Tribes	8%
3.	Other Backward Classes	20%
4.	Minorities*	9.5%
Total		49.5%**
* the term minorities will include the communities namely (i) Muslims, (ii) Christians, (iii) Sikhs, (iv) Buddhists, (v) Zoroastrians (parsis) (vi) Jain		
** Out of this 49.5% there will be sub quota of 10% for freedom fighters & war widows & widows of Railway employees and another sub quota of 2% will be for physically challenged people. Within 49.5% of total reservation 2% sub quota will be provided to the persons who have been dislocated/displaced due to their land having been taken over by the railways for its own use.		
The sub quota of 10% for freedom fighters & war widows & widows of		



Railway employees; sub quota of 2% for physically & mentally challenged people will also apply in the general category of 50.5%

The issue of reservations is a present sub-judice in the Hon'ble Supreme Court. Any allotment/extension in the case of reservations will be subject to the final order of this Hon'ble Supreme Court in Civil Appeal No. 7513 of 2005 and analogous case referred to the Constitutional bench.

10.3. There shall be a provision of 33% sub quota for women in allotment of each of the reserved category of minor catering units at all category of stations. The sub quota of 33% for women will also apply in general category.

10.4 For the purpose of reservation, one division will be considered as one entity for which a one time station-wise exercise will be done for the whole division and reservation percentage will be progressively achieved as and when either new units are provided or old units get vacated due to any reason."

22. The minor catering units reserved for specific categories are exclusively allocated to eligible individuals from those reserved categories. Individuals from reserved categories are not competing against those from the general category (or corporations) for the allocation of catering units. Further, as highlighted by learned counsel for the respondents, re-tendering of minor catering units serves to rectify disparities in opportunities within the same group of individuals. This ensures a larger portion of the public (within their respective categories) has access to adequate livelihood opportunities. In facts of the present case, this court is unable to comprehend how the policy decision of the railway to re-tender catering units after expiry of the tenure would deprive right to livelihood to the petitioners. The petitioners are at liberty to participate in fresh tender that may be floated by the railways. They will be pitted against the individuals from the same category. For example, a person who is below the poverty line will be



competing for a catering unit against a person who is below the poverty line, and not against any corporations. Granting a license in perpetuity, as is sought by the petitioners, would be antithetical to equality of opportunity guaranteed under the Constitution. In the factual context of these cases, that the contention that the Clause 11 of the Catering Policy 2017 is violative of Articles 14, 19 and 21 of the Constitution of India, is completely unfounded. The said contention is consequently rejected.

23. In the present case, the licenses held by the petitioners are subject to the terms and conditions outlined in their respective licenses and Catering Policy 2017. The terms of license and said policy explicitly render the licenses non-renewable. Consequently, it is beyond the purview of this Court to mandate the renewal of a license in derogation of the Catering Policy 2017 and in derogation of the express terms of license.

Extension of License

24. As noticed above, the licenses of the petitioners have been extended on account of a *force majeure* event i.e., government imposed lock-down due to Covid-19. The letter dated 21.05.2020 issued by the respondent no.3/Railway Board outlines the implementation of *force majeure*, as under:

“GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No. 2020/Catering/600/03

*The Principal Chief Commercial Managers,
All Zonal Railways.*

*New Delhi,
Dated 21.05.2020*

*The Chairman & Managing Director,
IRCTC, Statesman Building,*



Barakhambha Road, New Delhi.

Sub:- Implementation of Force Majeure in Catering and Vending (MPS, Bookstalls, Chemist/Misc. Stalls etc.) contracts on account of Covid-19 pandemic. Ref:-

- (i) Board's Letter No. 2020/Catering/600/01/Pt.2 dated 20.05.2020*
- (ii) Ministry of Finance Memorandum dated 19.2.2020*
- (iii) WCR's letter no. WCR/HQ/C-930/Catering dated 14.05.2020*
- (iv) WR's Letter No. 45/15/1/Vol.II dated 13.05.2020*

In view of the Ministry of Finance Memorandum dated 19.2.2020, it has been decided to invoke Force Majeure clause for the lockdown period due to Covid-19 in respect of static catering and vending units on all railway stations.

Zonal Railways have sought clarification regarding the applicability and period of Force Majeure. In this regard reference is also made to the instruction dated 20 May 2020 vide which all stalls have been permitted to be opened. However it is understood that there may be variations across stations regarding the actual date of opening of the stalls depending upon passenger traffic restoration in respect of individual stations. Hence determination regarding the period of non-operation of contract in respect of individual contracts and stations may be made by the respective Zonal/Divisional Railways keeping in view the restoration of passenger traffic pertaining to that particular station following due diligence.

It is advised that Force Majeure clause may be implemented in respect of all catering and vending contracts which were non-operational on account of lockdown, irrespective of whether their agreements incorporate the Force Majeure clause. The period for which the contracts were non-operational shall be treated as dies non and the contract period shall be extended accordingly.

Necessary action may be taken accordingly.

This issues with concurrence of the Finance Commercial Directorate of Ministry of Railways."

25. It is evident from the perusal of the aforesaid letter dated 21.05.2020 that it takes into consideration the ground reality that there were variations



across the stations regarding the impact of Covid-19. The actual date on which the catering units could be made operational, and the timeline for restoration of passenger traffic, varied from station to station. It was directed that the period during which license was non-operational shall be treated as *dies non* period and the contract period shall be extended accordingly. As noticed above, the determination in this regard was left to be made by the respective zonal/divisional railways.

26. Taking into account the above, the concerned zonal/divisional railways had worked out the *dies non* period based on the ground realities prevalent at the concerned railway stations and have accordingly extended the license period. It cannot be said that the extent of extension to which the petitioners are entitled, has been worked out on a completely arbitrary basis. The contentions in this regard are devoid of merit.

27. The petitioners' reliance on a larger extension of tenure granted to certain licensees, is misplaced. The facts and circumstances which necessitate such action by the concerned zonal/divisional railways have to be tested independently. Notably, the petitioners have not impugned the aforesaid letter dated 21.05.2020 issued by the Railway Board. Instead, the petitioners have sought a writ of mandamus to be issued to the respondents to frame policy in a particular manner. Such a direction cannot be issued under Article 226 of the Constitution. In ***Rachna v. Union of India***²³, it has been held as under:

“48. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies

²³ (2021) 5 SCC 638



but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right.”

28. In ***Vivek Krishna v. Union of India***²⁴, it has been held as under:

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

29. Once the respondents have disclosed the basis for working out the *dies non* period, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot get into intricacies of the factual situation subsisting at each railway station to virtually exercise appellate jurisdiction in respect of the extent of extension granted to individual licensees. It is noticed that individual license agreement executed between petitioner and the concerned railway authorities as well as the Catering Policy 2017, contain an arbitration clause if the petitioners are aggrieved on account of

²⁴ 2022 SCC OnLine SC 1040



insufficiency of extension on account of the Covid-19 situation or if they wish to claim damages on any account, they are at liberty to invoke the arbitration clause and initiate appropriate proceedings. The rights and remedies of the petitioners in this regard are expressly kept open.

30. In the circumstances, this Court finds no merit in the present petitions and the same are accordingly dismissed. However, since the petitioners have been operating these minor catering units for a significant period of time, to enable the petitioners to make a transition and make alternative vending arrangement/s, this Court considers it apposite to grant a period of 3 months to the petitioners (from the date of the extended license period after taking into account the *dies non* period; OR from the date of this judgment, whichever is later) to vacate the catering units in question. The same shall be subject to payment of usual license fee. It is directed accordingly.

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

32. All pending application/s also stands disposed of.

SACHIN DATTA, J

MAY 30, 2024/hg