



2024:DHC:5945-DB



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

+ **LPA 743/2024 & C.M. APPL. 44223-26/2024, CAV 356/2024**

RAM KUMAR AGARWAL

.....Appellant

Through: Mr. Akshat Bajpai, Ms. Ishanee Sharma, Mr. Shobhit Trehan, Ms. Renuka Parmanand and Ms. Vedika Dalmia, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms. Shubhra Parashar (SPC) with Mr. Vivek Nagar (G.P.), Advocate for R-1

LPA 745/2024 & C.M. APPL. 44358-61/2024, CAV 359/2024

MANOJ KUMAR AGARWAL

.....Appellant

Through: Mr. Akshat Bajpai, Ms. Ishanee Sharma, Mr. Shobhit Trehan, Ms. Renuka Parmanand and Ms. Vedika Dalmia, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms Ritu Reniwal with Mahendra Kumawat, Advocates for R-1

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Date of Decision: 5th August, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

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CAV 356/2024 in LPA 743/2024
CAV 359/2024 in LPA 745/2024

1. Since the caveators have entered appearance, the caveats stand discharged.

LPA 743/2024 & C.M. APPL. 44223-26/2024 and LPA 745/2024 & C.M. APPL. 44358-61/2024

2. Present appeals have been preferred under Clause X of the Letters Patent Act, 1866, assailing the judgment dated 30th May, 2024, passed by the learned Single Judge of this Court, dismissing the W.P.(C) 3131/2024 titled "*Ram Kumar Agarwal vs. Union of India & Ors*" and W.P.(C) 7498/2024 titled "*Manoj Kumar Agarwal vs. Union of India & Ors*" filed by the appellants and directing the appellants herein to vacate the catering units within a period of three (3) months.

3. Mr. Akshat Bajpai, learned counsel for the appellants submits that the appellants are running/operating a catering stall at the Railway Station Platforms. He further submits that the underlying writ petitions were filed by the appellants seeking to declare the Clause No. 11 of the Commercial Circular 20 of 2017 dated 27th February, 2017, issued by the respondent no.3 / Railway Board as illegal, arbitrary, unconstitutional, null and void *ab initio* and consequently to set aside the impugned Licence Agreement. The appellants also sought renewal of the licence of the catering units in terms of the judgement passed by the Supreme Court in *South Central Railway vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn., (2016) 3 SCC 582*. The appellants also sought benefit of extension of licence period

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to the appellants proportionate to the reduced license fee during the Covid-19 pandemic period as per the benefit given to other units. He further submits that the learned Single Judge has dismissed the writ petitions finding no merits in these petitions. He submits that the present appeals have been filed challenging the judgement of the learned Single Judge only with respect to the relaxation which should have been given to the appellants pursuant to the Covid-19 pandemic.

4. We have heard the learned counsel for the appellants and perused the documents on record.

5. At the outset, learned counsel for appellants has fairly stated that the contentions urged before this Court have not been subject matter of the dispute raised before the learned Single Judge. This Court sitting in appeal surely cannot consider any such arguments. However, with respect to submissions regarding the duration of the *dies non* period to be calculated by the respondents is concerned, it appears that the said decision was taken in the wake of Covid-19 pandemic and its impact on the catering services and small stalls in the railway stations all over the country depending upon various determinative factors. It also appears that the decision was also taken zone wise keeping in view the varying levels of impact of Covid-19 in different parts of the country.

6. Learned counsel for appellants has drawn attention of this Court to letter dated 21st May, 2020, of the Ministry of Railways whereby the manner of determining the period of non-operation of contracts in respect of individual contract and stations was left to be decided by the zonal / Divisional railways keeping in view the restoration of passenger traffic to



that station following due diligence. This non-operational period was directed to be treated as *dies non* period and the period of contract was to be extended accordingly irrespective of whether the agreements incorporated *force majeure* clause.

7. He has also drawn attention of this Court to the table contained in the impugned judgment indicating the writ petition number and the *dies non* period granted to such appellants. He states that many petitioners therein were granted 71 days as *dies non* period. He also states that the appellants were also granted 71 days only. He states that grievance of the appellants is that though the appellants were closed for a longer time, yet were granted only 71 days. He states that there is no rationale or nexus as to on what basis the said calculation was made. He states that the same is arbitrary, whimsical and unjust. He further submits that in light of the aforesaid directions in the letter dated 20th May, 2020, the respondent no.3/ Railway Board should have calculated the *dies non* period station wise and platform wise rather than zone wise as was the case here.

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 appellants, cannot be the subject matter of a writ proceeding under Article 226 of the Constitution of India.



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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. 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.

10. Moreover, learned counsel for appellants has fairly admitted 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. Even otherwise, learned counsel for appellants 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 learned Single Judge in para 30 of the impugned judgment.

11. In that view of the matter, these appeals are dismissed being devoid of any merits. Pending applications, if any, also stand disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J.

AUGUST 5, 2024/ms/rl

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