



2024:DHC:5938-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 748/2024 & C.M. APPL. 44675-78/2024

HANI KHATOON

.....Appellant

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

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Nirvikar Verma (SPC) with Mr.
O.P. Verma, Mr. Shantanu Verma,
Advocate for R-1.

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Date of Decision: 6th 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)**

1. Present appeal has 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, whereby the writ petition being W.P.(C) 3954/2024 titled "*Hani Khatoon vs. Union of India & Ors.*" filed by the appellant was dismissed in accordance with the order dated 30th May, 2024 passed in W.P.(C) 6771/2024, and the appellant was directed to vacate the catering units within a period of three (3) months.

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2. Mr. Akshat Bajpai, learned counsel for the appellant submits that the appellant is running/operating a catering stall at the Railway Station Platforms. He further submits that the underlying writ petition was filed by the appellant 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 appellant 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 appellant further sought benefit of extension of licence period proportionate to the reduced license fee during the Covid-19 pandemic period and as per the benefit given to other units.

3. Learned counsel for the appellant submits that the learned Single Judge has dismissed the writ petition finding no merits in the petition, and the present appeal has been filed challenging the said judgement of the learned Single Judge, only with respect to the relaxation which should have been given to the appellant pursuant to the Covid-19 pandemic.

4. We have heard the learned counsel for the appellant as well as perused the documents on record.

5. At the outset, learned counsel for the appellant has fairly stated that the contentions urged before this Court have not been subject matter of the dispute raised before the learned Single Judge, thus this Court sitting in appeal surely cannot consider any such arguments. However, with respect to submissions regarding the duration of *dies non* period to be calculated by



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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 pandemic in different parts of the country.

6. He has drawn attention of this Court to the letter dated 21st May, 2020 of the Ministry of Railways whereby the manner of determining the period of non-operation of contract in respect of individual contracts 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 numbers and the *dies non* period granted to such petitioners therein. He states that many petitioners therein were granted 71 days as *dies non* period. He states that grievance of the appellant is that the appellant was only granted a limited *dies non* extension even though the stall was closed for a longer time. He states that there is no rationale or nexus as to on what basis the said calculation was made, and 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

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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 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.

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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.

14. Pending applications, if any, stand disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J.

AUGUST 6, 2024/ms/rl

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