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

+ W.P.(C) 5832/2017, CM APPL. 24348/2017, CM APPL. 17670/2018
CM APPL. 38794/2019

CHAI WALA WELFARE
ASSOCIATION (REGD)

.....Petitioner

Through: Mr. Tamim Qadri, Adv.

versus

UNION OF INDIA AND ORS

.....Respondent

Through: Mr. Vivek Kadyan, Ms. Arunima
Kadyan, Mr. Rajnesh Kumar, Advs.
Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra Kumar Mr.
Abhinav Bhardwaj, Advs for
Respondent No. 1 to 3 UOI.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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21.08.2024

1. The petitioner in the instant writ petition seeks to challenge various clauses of Catering Policy, 2017 dated 27.07.2017 on account of them being violative of various provisions of the Constitution of India. During the course of arguments, learned counsel appearing for the petitioner has primarily relied on clause 9.3.1 of the Catering Policy, 2017 to assert that the allotment of all major static units (except units mentioned in Paragraph 3.8.1 of the said policy) and of general minor unit at A1, A, B and C category should not have been prescribed to be allotted through open



competitive two packet tendering system.

2. According to him, clause 9.3.1 is in ignorance of the decision of the Supreme Court in the case of *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*¹. While placing reliance on paragraph nos. 113, 115, 116 and 119 of the said decision, learned counsel submits that the phrase ‘distribution’ has wide amplitude and encompasses all manners and methods of distribution which would include classes, industries, regions, private and public sections etc. He, therefore, emphasizes that having regard to the basic nature of Article 39(b) of the Constitution of India, a narrower concept of equality under Article 14 may frustrate the broader concept of distribution. He, therefore, submits that common good and larger public interest have to be regarded as the constitutional reality deserving actualization.

3. The Court has considered the observation made by the Supreme Court in the case of *Natural Resources (supra)* and has also analysed the terms of the Catering Policy, 2017 dated 27.07.2017. The objective of the said policy appears to provide quality food to the customers unbundling of catering services on trains. It also aims at upgrading the quality of food preparation and IRCTC has been mandated to set up new kitchens and upgrade existing ones. It also remains undisputed that after the policy dated 27.07.2017, the respondents have been able to pass all allotments of the stall by whatever name they are called as and the same has taken place in accordance with various clauses stipulated therein.

4. The Supreme Court in the case of *Natural Resources (supra)* has unequivocally held that the mandate of executive in distribution of natural



resources must be respected and the Court lacks necessary expertise to interfere in economic choices. The relevant paragraph of the said decision reads as under:-

“146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.”

5. In the instant case, looking at the mandate of the Catering Policy, 2017 and the clause which is sought to be assailed, the Court finds that the same aims for the betterment of the services which is eventually in the larger public interest. In absence of there being any illegality or arbitrariness, the Court is not supposed to dictate the terms of the allotment of the stall etc.

6. Learned counsel for the petitioner also seeks to place reliance on the report published by the Comptroller & Auditor General of India (CAG) to

¹ (2012) 10 SCC 1



substantiate his arguments.

7. On this aspect, it is apposite to refer to the decision of the Madras High Court in the case of ***Godrej Properties Limited v. Accountant General (A & E)***², wherein, while placing reliance on the Supreme Court's decision in the case of ***Arun Kumar Agrawal v. Union of India***³, the Madras High Court took a view that the Court cannot as such act on reports of CAG and these are reports which are placed before the Parliament, which may or may not accept the Report of CAG. The relevant paragraph of the said decision read as under:-

“21. The Hon'ble Supreme Court had an occasion to consider the issue as to whether the Court can grant relief by merely placing reliance upon the report of Comptroller and Auditor General (hereinafter called as 'CAG'). The Hon'ble Supreme Court held that the Court cannot as such act on such reports and these are reports which are placed before the Parliament, which may or may not accept the Report of CAG. It would be more relevant to extract the portions of the judgment of the Hon'ble Supreme Court in Arun Kumar Agrawal v. Union of India reported in (2013) 7 SCC 1.....”

8. In view of the aforesaid, no interference is called for. Accordingly, the instant writ petition stands dismissed. Pending applications are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 21, 2024/KG

² 2020 SCC OnLine Mad 5592

³ (2013) 7 SCC 1.