
(1999) 10 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3186 and 3281 of 1999

Brij Bhal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Railways Act, 1989 — Section 198

Citation : AIR 2000 MP 265 : (2001) 4 MPLJ 102

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.P. Agrawal, Ravindra Shrivastava and Sanjay Agrawal, for the Appellant; S.K. Mukherjee, Rajendra Tiwari and A.G. Dhande, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In both these writ petitions challenge being to the award of licences in favour of respondent No. 10; one pertaining to tea, coffee, sweets, namkeen and fruit stall and the other for vegetarian and non-vegetarian refreshment room at Manikpur Railway Station, they were heard analogously and are disposed of by this common order. It is worthwhile to note here that the challenge in W.P. No. 3186/99 is on a wide spectrum whereas in W.P. No. 3281/99 the assailment relates to short-listing of the competitors, as a result of which the petitioner therein, has been thrown away at the very threshold.

The litigation has a history. An advertisement was published on 10-11-96 inviting tenders for catering snacks and food respectively. In pursuance of the said advertisement number of applications were made by the desiring persons for grant of licences. The applications were scrutinised by the Screening Committee and after scrutiny the Screening Committee sent the matter to the Selection Committee. The Selection Committee appreciating the factual matrix and the date furnished to it selected the present respondent No. 10. Feeling aggrieved by

such selection the writ petitioner in W.P. No. 3186/99, Brij Bhal Singh, had preferred W.P. No. 4394/97 before this Court. It was averred in the earlier writ petition that the Selection Committee had adopted different standard altogether contrary to the policy in force and the selection being dehors the policy required to be lanced in exercise of jurisdiction of Article 226 of the Constitution of India. This Court noted that the Selection Committee had been swayed away by the concept "Youth and dynamism" in the area of catering, though such consideration was not relevant as per the guidelines envisaged in the policy. Being of this view a learned single Judge of this Court directed the respondents to constitute a fresh Selection Committee and reconsider the manner strictly in accordance with the stipulation in the policy for awarding the two catering contracts. The decision rendered by the learned single Judge was assailed in a Letters Patent Appeal forming the subject-matter of L.P.A. No. 24/99. The Division Bench while affirming the decision of the learned single Judge had modified the directions to the extent that fresh applications should be invited so that, the Committee may have better candidate and choice may become wider. The present respondent No. 10 preferred a SLP before the Apex Court which stood dismissed by order dated 11-5-99.

After the controversy in that regard was put to rest, the Railways published a fresh advertisement dated 14-4-1999 inviting applications for grant of the two licences. Pursuant to the said advertisement the petitioner and many others applied with requisite documents. As per the postulate in the policy governing the field, the Screening Committee scrutinised the applications and rejected the application of the writ petitioner in W.P. No. 3281/99. It is to be noted here that applications of some other applicants were also rejected at the initial scrutiny, but none of them has approached this Court. After the Screening Committee short-listed the said candidates the matter was put forth before the Selection Committee. The Selection Committee considered the case of the candidates who had been short-listed and found the respondent No. 10 more suitable for the purpose of awarding of the licences. The recommendations of the Selection Committee was approved by the Assistant Divisional Railway Manager and after such approval the licences were granted in favour of the respondent No. 10. The said licences have been brought on record as Annexure P-13 and Annexure P-14. The said grant of licences is cause of grievance of the petitioners.

As has been indicated earlier in the two writ petitions that challenge is to the grant of licences but in both the petitions grounds are different. In W.P. No. 3281/99 the grievance is that there was no justification for eliminating the petitioner at the very threshold. It has been averred in the petition that the petitioner had satisfied all the necessary eligibility criteria and, therefore, the Screening Committee has absolutely erred in law by excluding the petitioner.

I may hasten to note here that by order of this Court this writ petition was linked up with W.P. No. 3186/99 where all the pleadings were complete.

Mr. S.K. Mukherjee, learned counsel appearing for the Railways has fairly stated

that no return is necessary in the present case, as the reasonings have been recorded by the Screening Committee why the petitioner was eliminated and this Court may come to its conclusion on perusal of the records.

Mr. V.S. Shroti, learned counsel appearing for the petitioner has raised two fold contentions, namely, that when the petitioner had produced all the necessary documents and had applied with the stipulations envisaged in the advertisement he was not to be eliminated; and secondly, as per the advertisement a candidate having Diploma in Catering is to be given preference and the petitioner having the diploma, should have been given due worth and should not have been kept out from the zone of consideration.

Mr. Mukherjee, learned counsel for the Railways has highlighted that the advertisement stipulated that the applicant is required to produce a Character Certificate from the Superintendent of Police but as has been noted by the Screening Committee, the petitioner had produced a character certificate from the Deputy Commissioner (Police), New Delhi which was not worthy of acceptance.

In this context, it is apposite to state that the petitioner was working in Delhi sometime in the year 1980. This fact has been taken note of by the Screening Committee and is not disputed by the petitioner. From 1996 onwards the petitioner has been working at Allahabad in a hotel named "Kanha Shyam". It is also an admitted fact that the petitioner belongs to Kanpur. Submission of Mr. Mukherjee is that the petitioner could have produced the character certificate from the S.P., Kanpur or for that matter from the S.P. Allahabad but by no stretch of imagination the certificate from the Deputy Commissioner (Police), Delhi would meet the requirement. It is also studiously urged by the learned counsel for the Railways that the certificate which has been produced by the petitioner is not in proper format inasmuch as the granting authority has not expressed that no criminal litigation is pending against him or he is not required in connection with any criminal case. To bolster his submission he has also produced the certificate granted by the concerned S.Ps. in favour of the petitioner Brij Bhal Singh and the respondent No. 10 Kamlesh Kumar Mishra. On a perusal of the aforesaid certificates it becomes plain as noon day that the tenor of the certificates therein is quite different than the one obtained by the petitioner. Quite apart from that the submission of Mr. Mukherjee has substantial force inasmuch as a certificate from the Deputy Commissioner (Police), Delhi was not worthy of acceptance by the Railway Administration and the Screening Committee by refusing to accept such certificate and coming to hold that the certificate is not in proper format, has not committed any error warranting interference. Accordingly, I am of the considered opinion that the exclusion/elimination of the petitioner cannot be found fault with. The view expressed by the Screening Committee is impeccable. In view of the aforesaid, the other averments to substantiate the claim of the petitioner in W. P. No. 3281/99 need not be gone into for the simple reason that the Selection Committee had not

considered his case because he was not short-listed and it is held that the writ petition is sans merit.

Now, I shall advert to deal with the writ petition preferred by the petitioner Brij Bhal Singh. Mr. R.P. Agrawal, learned senior counsel appearing for the petitioner while referring to the averments made in the writ petition has contended that though this Court on earlier occasion had directed that the authority should strictly adhere to the conditions prescribed in the policy, the same has been given a complete go-by by the Railway Administration which makes the decision vulnerable. It is put forth by him that as per the mandate of the policy professional experience in Catering business, reputation and track record are the conditions precedent for grant of licence, but in the instant case the respondent No. 10 has been bestowed the grant though he does not have the experience as is understood in law. and his track record is far from being satisfactory which renders the decision violative of the policy thereby making its sensitively susceptible. It is urged by the learned senior counsel that on the earlier occasion the respondent No. 10 had produced certain certificates in support of his experience but this Court had declined to accept such certificate towards experience on the ground that the documents produced by the respondent No. 10 did not show any catering experience. Clarifying the aforesaid contention it is pointed out by Mr. Agrawal that the respondent No. 10 had produced the certificate that he was working as the honorary Manager in a hotel called "U.S.A. Hotel" which has no restaurant but had only a lodge and, therefore, this Court had opined that he was a novice in the field of catering. But unfortunately, submits Mr. Agrawal, the said certificate has also been taken into consideration by the Selection Committee. Carrying on the crusade of criticism Mr. Agrawal has contended that another certificate granted from Hotel Basera has been produced to show that the petitioner has catering experience, but the said certificate was not produced on the previous occasion and that would speak in volumes about the genuineness of such a certificate. Commenting on the reasonings of the Selection Committee Mr. Agrawal has canvassed that the Committee has taken into consideration the experience gathered by the petitioner at the Railway Station Manikpur wherein he was permitted to run tea, coffee and fruit-stall and the refreshment room under the two licences which were eventually declared to be illegal by this Court though such experience being an outcome of an illegal grant, could not have been taken into consideration. Thus, submits the senior counsel, as the grant is based on irrelevant and extraneous considerations, the same is liable to be quashed. It is studiously urged by Mr. Agrawal, learned senior counsel for the petitioner that though the advertisement stipulated that there would be an interview, none of the candidates was called for the interview and that clearly spells out mala fide and such an act of mala fide vitiates the selection. It is also put forth by him that the interview was not held as the recommendation was to be accepted by the Divisional Railway Manager and the said authority was on the order of transfer and to hasten the selection process, the holding of interview was given a burial. It is next proponed by Mr. Agrawal

that the present decision is also in violation of the terms of the policy and. therefore, the decision rendered by this Court on earlier occasion has not been duly followed which makes the grant unsustainable. Lastly it is argued by Mr. Agrawal, that while running the tea, coffee and fruit-stall at Manikpur the respondent No. 10 was imposed with fine of Rs. 1000/- and that would speak eloquently about his track record.

Mr. Mukherjee. learned counsel for the Railways defending the action of the Railway Administration has contended that the allegations of mala fide, far from being true, expose figments of imagination of the petitioner inasmuch as the decision has not been taken by the Divisional Railway Manager but by the Additional Divisional Railway Manager. It is also submitted by him though in the advertisement it was stipulated that an interview shall be held, but the same was not carried out inasmuch as it was decided by the Railway Authorities that holding of interview is not provided for in the policy and the direction of this Court being to take a decision strictly in accordance with the policy, holding of interview was not warranted. The said decision being in the terms of the policy and in accord with the directions of this Court, should not be found fault with and in any case, can never be termed as mala fide. It is urged by Mr. Mukherjee that the Selection Committee has considered the case of all the applicants who had been short-listed in a proper manner and the reasonings given by the Selection Committee are germane to the issue and cannot be regarded to be violative of the mandate of the policy. It is also highlighted by Mr. Mukherjee that the Committee had considered the certificates produced by the respondent No. 10 and has taken note of the reprimand by way of fine, has evaluated the experience he had gathered as a caterer at Manikpur, stipulated the certificates of commendation given to him by various persons belonging to different stratas of life and this having been done and this being in public interest this Court should be slow to interfere while exercising jurisdiction under Article 226 of the Constitution. The learned counsel for the Railways while justifying the action of the Railway has referred this Court to the Minutes of the Selection Committee to point out that on a comparative assessment done between the petitioner and the respondent No. 10, no fault can be noticed in the selection of the respondent No. 10 as that would be a proper selection of a prudent man and this Court is not to sit in appeal of such a decision and the decision-making process being correct, the same should be allowed to stand.

Mr. Rajendra Tiwari, learned senior counsel appearing for the respondent No. 10 has contended that on the earlier occasion this Court set aside the selection of the respondent No. 10 on two counts, namely, the Selection Committee had evolved a policy of its own without being governed by the provisions contained in the policy of the Railway Administration and second, there was no material on record showing the experience of the respondent No. 10 but the Court did not declare the respondent No. 10 to be not worthy of consideration but on the contrary, directed that a fresh selection should be made by the Selection Committee for awarding the two catering contracts. It is his further submission

that the Division Bench while affirming the decision of the learned single Judge noticed the fine imposed on the respondent No. 10 and proceeded to state that a fresh selection should be held after inviting fresh applications as the Railway would have the advantage to have better candidates and choice may be wider and therefore, the petitioner's case was not thrown out of zone of consideration by the Division Bench. Elaborating the aforesaid submission it is put forth by Mr. Rajendra Tiwari, that it was open to the respondent No. 10 to substantiate his case in regard to catering experience gathered by him and for that reason he had filed additional documents to show that he had worked in the restaurant of USA. Hotel called "Dawat" and at the Basera Hotel. It is his submission that the said documents cannot be brushed aside from consideration. It is further highlighted by him that the experience gathered by him at Manikpur Railway Station with regard to catering cannot be treated to be no experience on the reasoning that the petitioner continued on the basis of illegal grant. It is also argued by him that experience in catering is a practical experience and on the backdrop that the respondent No. 10, who has gathered experience which was subsequently set aside by order of this Court, cannot be denuded of the said experience.

Mr. Ravindra Shrivastava, learned counsel who had assisted Mr. R.P. Agrawal at the stage of initial argument taking the burden of reply on himself contended that the Minutes of the Selection Committee have proceeded in such a way to reflect appreciation in contradiction in terms and in fact, cannot withstand scrutiny. It is his submission that the respondent No. 10 who has been working as a Manager cannot be conferred the benefit of catering experience as he is no proprietor of the concern in question. It is urged by him that the experience gathered by the respondent No. 10 at the Manikpur Railway Station is void ab-initio as his selection was set aside and that goes to the root of the matter and, therefore, the experience has to be regarded to be one under fortuitous circumstances and is not worthy of being given any credence or weightage.

At this juncture. it becomes obligatory to note that Mr. Mukherjee, learned counsel for the Railways in course of hearing had produced the Minutes of the Selection Committee and the letters of appreciation produced by the respondent No. 10 and handed over the copies thereof to Mr. Sanjay Agrawal. who has appeared along with Mr. R. P. Agrawal, the learned senior counsel for the petitioner and to Mr. A.G. Dhande, learned counsel who has assisted Mr. Rajendra Tiwari, learned senior counsel for the respondent No. 10. Both the parties had filed their affidavits after obtaining these documents.

The core questions that arise for consideration is whether the case of the respondent No. 10 who was respondent No. 3 in the earlier writ petition was closed for ever and whether the Selection Committee has proceeded and finally decided in accordance with the policy. Before, I delve into these questions, it is apposite to deal with the ancillary submissions. After the decision of this Court, the advertisement as contained in Annexure P-9 was published and applications were invited and they were scrutinised by the Screening Committee. It is to be

noted here that Mr. Agrawal had raised serious objection with regard to the inclusion of the conditions in the advertisement that preference shall be given to the Scheduled Castes, Scheduled Tribes and Diploma Holders. The said objections have no relevance in the present case inasmuch as there are no Scheduled Castes and Scheduled Tribes before this Court. As far as the stipulation of Diploma Holders is concerned, it has melted into insignificance as I have not entertained the prayer of the writ petitioner in W.P. No. 3186/99. As far as the mala fides are concerned, upon perusal of the records it becomes absolutely clear that the Divisional Railway Manager had not taken any decision and the decision has been taken by Additional Divisional Railway Manager and therefore, whether he was transferred at that juncture or not pales into insignificance. As far as the contention regarding not holding of interview is concerned, in spite of such a condition being incorporated in the advertisement, Mr. Mukherjee has brought to the notice of this Court the policy dated 6-1-99, Annexure P-1 and the additional policy dated 1-11-99 to show that there is no stipulation in the policy for holding of an interview. It is to be borne in mind that this Court had directed that the selection has to be made strictly in accordance with the terms of the policy and as there is no requirement of holding of an interview in the policy it was thought appropriate by the Railway Administration not to hold an interview. In spite of such a stipulation in the advertisement, I do not find fault with the same. Accordingly the aforesaid contention is repelled.

Now to the core questions. To appreciate the rival submissions raised at the Bar, in this regard it is apposite to refer to the decision rendered by the learned single Judge on the earlier occasion. In paragraph 8 the learned single Judge held as under :

"8. The learned counsel for the respondent No. 3 tried hard to convince this Court that he is experienced in catering. Along with the rejoinder of the petitioners, certain documents have been filed to show that respondent No. 3 was only working as a honorary manager for a very brief period in a private hotel called Hotel U.S.A. On a formal inquiry made by the petitioner from the Labour Department respondent No. 3 was not shown on the list of employees. The petitioner has also produced some bills of U.S.A. Hotel to show that there is only facility of stay and not of food. The inmates of the hotel were supplied food from caterers outside. The experience of respondent No. 31 as honorary manager of U.S.A. Hotel which has only lodging facility cannot be taken to be any experience at all in the field of catering. The selection committee itself has not treated it to be an experience and has given a chance to the respondent No. 3 only, as described by it to "induct youth and dynamism in the area of catering". It is apparent from the minutes of the selection committee and its decision contained in the portion quoted above that the committee did not adhere to the laid down policy of the railways. It is apparent that the selection committee has evolved its own policy of encouraging totally young and inexperienced caterers because of the unsatisfactory record of the existing contractors. It is not for this Court to decide whether the policy evolved by the selection committee is fair, sound and

for the best interests of the travelling public. Ordinarily in the matters like present one of selecting best caterer at the railway station for supply of eatables and food to travelling public, the administrative officers constituting the selection committee should be allowed to exercise their discretion and best judgment and this Court should refrain from interfering. The scope of interference by the Court in such matters should be minimal. The Court is not concerned with the correctness or otherwise of the actual decision taken. The Court, if at all, when called upon, is concerned with the selection making process. The administrative law in view of the obligations of the State and its authorities under Articles 12 and 14 of the Constitution of India, has already made sufficient advance to permit this Court to scrutinise whether the decision making process in awarding contracts was just and fair."

After so holding in Paragraph 11 the learned single Judge directed as under :

"11. Consequently this petition succeeds and is allowed, by directing respondents 1 and 2 to constitute a fresh selection committee for awarding the two catering contracts at the Manikpur Railway Station. The selection committee shall be constituted by the respondents 1 and 2 within a period of two months from today and the said selection committee is directed to take its formal decision strictly in terms of the laid down policy from the date of its constitution. In the circumstances the parties shall bear their own costs."

The Division Bench while narrating the facts and taking note of the punishment imposed on the respondent No. 10 observed as under ;

"7. We are of the opinion that the approach of the learned Single Judge appears to be just and it cannot be said that the view taken by the learned single Judge in the facts and circumstances of the case is in any way wrong. The learned single Judge has already directed that fresh selection should be conducted within the time bound programme. The learned counsel for Railway Administration has submitted that it is not clear whether reconsideration by committee should be confined to the candidates who have applied or to invite the fresh applications. It is clarified that fresh applications should be invited so that committee may have better candidates and choice may become more wider. It would be more in consonance with the justice as more persons can compete for purposes of grant of licence. We are of the opinion that the view taken by the learned Single Judge is correct."

The question that arises for consideration is whether the case of the respondent No. 10 who was the respondent No. 3 in the earlier writ petition was closed for ever. True it is, the Court did not find that his working as an Honorary Manager in the U.S.A. Hotel would amount to an experience, but the Court directed that all the candidates should be considered. In the Letters Patent Appeal the Court directed for a fresh advertisement, thereby a fresh selection. Appreciating the earlier decisions in proper perspective and the directions given therein it can safely be concluded that the case of the petitioner was not closed but on the

contrary a fresh selection was directed to be conducted affording fullest opportunity to all candidates.

Now to the real controversy: whether the decision taken by the Selection Committee is to be accepted to be correct in law or not and whether this is in terms of the policy or in violation of the policy. Submission of learned counsel for the petitioner is that irrelevant conditions have been taken into consideration by the Selection Committee and the facts which could not have weighed and such emphasis being contrary to settled principles the same is wholly untenable. Reliance is placed on the decision rendered in the case of *Tata Cellular Vs. Union of India*, . Before I deal with the aforesaid it is to be noted that State while entering into contract or granting largesse for licences is bound by the principles of fair play. The State or any organisation of the State cannot afford to be arbitrary or put it otherwise to do any act which would expose any malice in law. In this context I may profitably refer to the decision rendered in the case of *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, wherein the Apex Court has laid down as under (at page 1036-1037) :

"The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ can be checked under Article 14. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever, be the activity of the public authority, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, falls to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with the citizens. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into, a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. It is well settled that there can be "malice in law." Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action."

In the case of *Tata Cellular* (supra) their Lordships in paragraph 94 held as under :

" Therefore, it is not for the Court to determine whether a particular policy or particular decision is taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

After so laying down their Lordships proceeded to state paragraph 113 as under :

"113. The principles deducible from the above are :

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers, More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. in other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere." However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

In the case of Sterling Computer (supra) their Lordships ruled thus :

"While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process." By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such inquiry. But at the same time, the Court can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available, taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract. But. once the procedure adopted by an authority for

purpose of entering into a contract is held to be against the mandate of Article 14 of the Constitution, the Court cannot ignore such action saying that the authorities concerned must have some latitude or liberty in contractual matters and any interference by Court amounts encroachment on the exclusive right of the executive to take such decision."

In this context. I may usefully refer to the earlier decision of the Apex Court rendered in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, wherein their Lordships expressed thus (at page 1010) :

"Judicial review under Article 226 cannot be converted into an appeal, Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. When the issues raised in judicial review is whether 226.converted into an appeal and the relevance of the factors."

At this stage it is apposite to refer to a recent decision (which has been cited by Mr. Tiwari) rendered in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . In the latest decision the Apex Court while considering the intervention by the Court has observed as under (at page 397) :

"11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost for more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is substantial amount of public interest, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in dispute between the rival tenderers."

From the aforesaid enunciation of law it becomes graphically clear that if a decision has been taken in a reasonable and non-arbitrary manner and the same does not show any collateral purpose and there is no apparent error in the decision-making process, the Court should be slow to lancet the decision in exercise of power under Article 226 of the Constitution of India as that would be beyond the scope of judicial review. That apart the new concept which has been added in the case of Raunak International (supra) there has to be due consideration of public interest.

The present selection has to be tested on the anvil of the aforesaid parameters. To go to the selection straightway it is worthwhile to reproduce the minutes of the Selection Committee as far as the petitioner and respondent No. 10 are

concerned. The minutes of the Selection Committee for tea, coffee, sweet and fruits-stall and refreshment room at Manikpur Railway Station as far as the petitioner and the respondent No. 10 are concerned, read as under :

"Minutes of Selection Committee meeting for tea, coffee, sweet, namkeen and fruit-stall contract at Manikpur :

12. Shri Kamlesh Kumar Mishra : The candidate has worked on Civil Engineering contracts of stations between Satna-Manikpur for Dy. CE (Construction)/Railways/Jabalpur between 1989 to 1993. He is a graduate from A.P.S. University, Rewa. He has worked as a Manager in Hotel USA, Satna from 1990 to 1993 and as a Manager in Hotel Basera from 1993 to 1996. He is the existing licensee of RRM and Tea stall at Manikpur Railway Station since 13-9-1997. Performance of the candidate as existing licensee has been found above average. There has been no public complaint for unsatisfactory catering services at Manikpur during the period of operation of his contract. An inspection by Divisional Railway Manager along with Divisional Railway Users' Consultive Committee member on 30-9-1997 found the quality of meals satisfactory. Irregularities were, however, detected in Sr. DCM's inspection on 12-2-1998 in the maintenance of records, the quality and quantity of ingredients used, the cooking systems used and in the sale of unauthorised items for which the licensee was fined Rupees 1000/-. The Committee notes that there has been widespread appreciation of the catering services rendered by the licensee. During the period of operation of the contract, there were 74 commendations, including 25 by prominent members of the public.

Shri Brij Bhal Singh Gautam : The candidate is the existing licensee of tea stall at Shankargar station since 1976. He was awarded the license of Gadarwara station in 1976 which has run for 3 years up to 1979. He was awarded temporary license of running Tea Stall and RRM at Manikpur under instructions from headquarters vide letter dated 25-10-1996, and he operated the license from 1-11-1996 to May, 1997.

He had earlier worked as Manager of Tea stall and RRM of Manikpur under licensee M/s. S.D. Tiwari and Sons. The candidate has long years of experience in the proprietorship of catering establishments. His performance over the year has been average. During the brief holding of licenseeship of RRM and Tea Stall at Manikpur, there were two public complaints one by Dr. A. V. Vaishan on 13-1-1997 regarding overcharging on coffee for which he was fined Rs. 50 and one on use of the wood as fuel by Smt. Vimla Sondhlya, Member of Railway Passenger Amenities Committee for which licensee was fined Rs. 100/-. The performance of licensee at Shankargarh is similarly average. There was one public complaint in 1995 regarding sub-standard quality of Tea for which licensee was warned. Inspection in 1998 and 1999 conducted by officers and inspectors have detected rate list is not properly displayed, tea not available, improper cooking systems in use and other systematic irregularities. The Committee feels that his attention is likely to get divided between Shankargarh and Manikpur should he be awarded the licence, and this is likely to result in compromise in the

level of supervision and quality service. Minutes of Selection Committee meeting for Refreshment Room contract at Manikpur.

Shri Kamlesh Kumar Mishra : The candidate has worked on Civil Engineering contracts of stations between Satna-Manikpur for Dy. CE (Construction)/Railways/Jabalpur between 1989 to 1993. He is a graduate from A.P.S. University, Rewa. He has worked as a Manager in Hotel USA, Satna from 1990 to 1993 and as a Manager in Hotel Basera from 1993 to 1996. He is the existing licensee of RRM and Tea stall at Manikpur Railway Station since 13-9-1997. Performance of the candidate as existing licensee has been found above average. There has been no public complaint for unsatisfactory catering services at Manikpur during the period of operation of his contract. An inspection by Divisional Railway Manager, along with Divisional Railway Users' Consultative Committee member on 30-9-1997 found the quality of meals satisfactory. Irregularities were, however, detected in Sr. DCM's inspection on 12-2-1998 in the maintenance of records, the quality and quantity of ingredients used, the cooking systems used and in the sale of unauthorised items for which the licensee was fined Rupees 1000/-. The Committee notes that there has been widespread appreciation of the catering services rendered by the licensee. During the period of operation of the contract, there were 74 commendations, including 25 by prominent members of the public.

Shri Brij Bhal Singh Gautam :

The candidate is the existing licensee in tea shall be Shankargarh station since 1976. He was awarded the license of Gadawara station in 1976 which has run for 3 years up to 1979. He was awarded temporary licence of running Tea Stall and RRM at Manikpur under instructions from headquarters vide letter dated 25-10-1996, and he operated the license from 1-11-1996 to May. 1997.

He had earlier worked as Manager of Tea stall and RRM of Manikpur under licensee M/s. S.D. Tiwari & Sons. The candidate has long years of experience in the proprietorship of catering establishments. His performance over the year has been average. During the brief holding of licenseeship of RRM and Tea Stall at Manikpur, there were two public complaints one by Dr. A.V. Vaishan on 13-1-1997 regarding overcharging on coffee for which he was fined Rs. 50 and one on use of the wood as fuel by Smt. Vimla Sondhiya, Member of Railway Passenger Amenities Committee for which licensee was fined Rs. 100/-. The performance of licensee at Shankargarh is similarly average. There was one public complaint in 1995 regarding sub-standard quality of tea for which licensee was warned. Inspection in 1998 and 1999 conducted by officers and inspectors have detected rate list is not properly displayed, tea not available, improper cooking systems in use and other systematic irregularities. The Committee feels that his attention is likely to get divided between Shankargarh and Manikpur should he be awarded the licence, and this is likely to result in compromise in the level of supervision and quality service."

Criticising the aforesaid deliberation by the Selection Committee, Mr. R.P.

Agrawal, learned senior counsel and Mr. Ravindra Shrivastava, learned counsel appearing for the petitioner have contended that the Committee should not have taken the certificates of the U.S.A. Hotel and the Basera Hotel into consideration inasmuch as the certificate granted by U.S.A. Hotel has been put to naught by this Court and the experience of Basera Hotel was not produced on the earlier occasion. Combating the aforesaid Mr. Mukherjee, learned counsel for the Railways has submitted that he had worked at U.S.A. Hotel but the Committee has also taken note of his experience at Basera Hotel. The question that arises for consideration is whether the experience of these two hotels would have been taken into consideration. As far as the experience of U.S.A. Hotel is concerned, this Court had already held that the experience was of no consequence, in fact, no experience, Mr. Tiwari has put forth that the respondent No. 10 had worked in the Dawat Restaurant. Mr. Mukherjee, learned counsel for the Railways fairly states that his experience at Dawat Restaurant is not on record and in view of this the experience of U.S.A. Hotel possibly cannot be taken into consideration. As far as the experience at Basera Hotel is concerned, the criticism by Mr. Agrawal and Mr. Shrivastava is that such a certificate was not produced on the earlier occasion. Mr. Tiwari, learned counsel for the respondent and Mr. Mukherjee, learned counsel for the Railways have resisted the aforesaid submission that there was no prohibition to produce such a certificate and it was to the authorities to adjudge the validity or genuineness of such certificate. It is put forth by him that because of non-production of such certificate in the, previous litigation it cannot be said that the same could not have been taken into consideration. Mr. Shrivastava has contended that the petitioner is not a caterer as he is not a proprietor. At the first flush the aforesaid submission looks attractive but on a deeper probe and proper scrutiny it does not hold water. The dictionary meaning of the word "catering" is that catering is the activity of providing food and drink for a place such as an office or for special occasions such as wedding and parties. (Collins and Cobuild). in the Cambridge International Dictionary of English the word "cater" means to provide and sometimes serve, food. In the New Oxford Dictionary the word "cater" means provide with food and drink, typically at social events and in a professional capacity.

Appreciating the aforesaid meaning of the term in its proper connotative expression, a caterer has to be a person who has catering experience in the field by his managerial expertise and not the person who owns the property or for that matter who serves at the table. It is well known, catering order is placed with the Manager of a hotel who manages the entire catering and, therefore, it is playing possum that a Manager cannot be conferred the benefit of experience of catering. Hence, I am not able to persuade myself to accept the submission of the learned counsel for the petitioner that the experience with regard to catering by the respondent No. 10 as a caterer at Basera Hotel is of no consequence. As far as non-production of such certificate, on the earlier occasion, cannot be said to be against the said respondent as the Railway Authorities are the best judge

to decide whether such an experience was there with the respondent No. 10 or not. It may be repeated at the cost of repetition that interference has to be within the parameters of judicial review relating to passing of an order in a proper decision-making process and not to substitute the decision, as an appellate forum.

As far as the last compartment is concerned, which is a complex one, whether the experience gathered by the respondent No. 10 at Manikpur Railway Station would be considered. At this juncture it is apposite to address to the issue whether the Committee has addressed itself to proper and relevant issue or has swayed by irrelevant and inadmissible. Mr. Shrivastava has vehemently urged that he has considered the fact that the respondent No. 10 is a Civil Engineer which is irrelevant criteria. On a proper scrutiny of the minutes of the Selection Committee, I am not able to agree with the submission of Mr. Shrivastava. as in the opinion of this Court the same is in the sphere narration of the facts in the meeting and not the reasons which have weighed with the Committee, it is submitted by Mr. Shrivastava that the Committee has not kept itself alive to the track-record of the respondent No. 10 and, therefore, the decision is vitiated. On a scrutiny of the minutes of the Committee it is graphically clear that the Committee has noted down the fine imposed on the petitioner on number of occasions from 1975 onwards till the date of selection and the fine imposed on the respondent No. 10 in the year 1998. It is to be noted that the Committee has apprised itself with regard to the fact situation,

Mr. Srivastava while contending that the Committee should not have taken into consideration the experience of the respondent No. 10 at Manikpur Railway Station, has placed reliance on the decision rendered in the case of *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 1 All ER 208, wherein their Lordships dealt with lack of jurisdiction, which makes the act void from the inception. Mr. Shrivastava has also brought to the notice of this Court the decision rendered in the case of *Kishorilal Pandey v. Municipal Corporation, Katni* (M.P. No. 3472/88) wherein it has been held in paragraph 17 as under :

"17. The contention of the learned counsel for the respondents that his experience for the period between 22-2-1977 to 11-4-1979 when he worked as a Property Tax Officer and the period between 11-4-1979 to 22-11-1983 when he worked as a Property Tax Officer on regular basis deserves to be counted, is not properly placed. Once the High Court observed in M.P. 1141/81 that the promotion of the petitioner from the post of Revenue Sub-Inspector was illegal, then it cannot be held that the petitioner was entitled to hold the post on day one, the parties immediately after the judgment of the High Court, was relegated back or reverted back to the original post held by him prior to the promotion orders. Once the promotion order is quashed, it would be deemed to be written off as if nothing came into existence, as if there was no promotion order, and the petitioner in fact, was a Revenue Sub-Inspector. If the petitioner could not be promoted or his promotion order was held to be invalid and was quashed by the

High Court, then the period on which he worked as a Property Tax Officer cannot be counted for the purpose of experience. He did not acquire the experience on the said post under a valid promotion order. Undisputedly if this period is excluded then on the date when he was promoted as a Revenue Officer, he did not have six years experience to his credit. If the petitioner did not have six years experience to his credit, then contrary to the requirement of law, he could not be promoted from the post of Revenue Inspector to the post of Revenue Officer."

Mr. Shrivastava has submitted that the aforesaid order has been approved in L.P.A. No. 379/98, The question that falls for consideration is whether the experience gathered by the respondent No. 10 at Manikpur Railway Station could have been considered by the Selection Committee. This issue is also related with regard to the commendations given by many persons in favour of the respondent No. 10. It is to be noted that the learned single Judge had directed for fresh selection by the Selection Committee keeping in view the policy in question. In appeal the Division Bench while expanding sphere directed for invitation of applications by fresh advertisement. By the time the fresh advertisement was published, the respondent No. 10 had gathered some experience. The Railway Administration was satisfied with regard to his performance. There was no public complaint against him. He was holding the licences in his favour as the licence was not set aside or cancelled by this Court forthwith he was allowed to run the tea and coffee stall and the refreshment room till the fresh selection. While so functioning the respondent No. 10 proved his metal and by dint of his labour impressed the authorities as well as the public at large. It is to be borne in mind an experience in a post under illegal promotion order would stand on a different footing than an experience gathered for catering. It is not to be forgotten that catering at railway station is done to meet the requirements of the public at large and for the collective good. If the Committee was satisfied on the material produced before it that the respondent No. 10 though was imposed a fine on a single occasion had improved himself and had met the need of the public and had been able to get commendations from the public which includes number of important persons, it cannot be said that the Committee has not considered the fact situation on a proper perspective and has taken irrelevant facts into consideration. It is also to be kept in mind that catering relates to the field/practical experience. One learns every day, grows day by day, The respondent No. 10 might not have experience from the U.S.A. Hotel. Indubitably, as observed, he was working as a Manager at Basera Hotel and had gathered experience. It is appropriate to state that the Committee had not transgressed the mandate of the policy. The policy commands that a person of a repute in the field of catering has to be chosen. As the respondent No. 10 had already been in the functioning and his working had been seen by the Railways and he had gained reputation by commendations of important persons, it would not be apposite to hold that the Committee has faulted in making the selection.

The entire factual scenario can be viewed from a different angle altogether. The

Committee has done comparative assessment. The Committee noted that the petitioner was fined on number of occasions and, in fact, the Member, Railway Passenger Amenity Committee had made complaint against him. The Committee has also taken note of the fact that the petitioner is functioning at Shankargarh and his attention is likely to get divided within Shankargarh and Manikpur Railway Stations. Once a power to choose is given to the authorities and they have to take various factors into consideration and on the conspectus of whole scenario, it appears that the decision is that of a prudent man, I am of the considered view, this Court while not sitting in appeal and scrutinising within the parameters of judicial review would be slow to interfere and accordingly, I refrain from interfering.

In view of my preceding analysis, both the writ petitions are devoid of substance and they are accordingly dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs. Needless to emphasise, by dismissal of the writ petitions, interim order passed by this Court stands automatically vacated.