

(2014) 11 RAJ CK 0032

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1536 of 2014

Hari Kishan Ojha

APPELLANT

Vs

Prabhu Dayal and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 2 CDR 694

Hon'ble Judges : Sunil Ambwani, Acting C.J.; J.K. Ranka, J

Bench : Division Bench

Advocate : G.S. Bapna, Sr. Counsel assisted by Sameer Jain and Sarvesh Jain, Counsel, Advocates for the Appellant; Bharat Vyas, Shailesh Prakash Sharma and Sonal Singh, Counsel, Advocates for the Respondent

Judgement

1. We have heard learned counsel appearing for the parties. Learned Single Judge, following the judgment of Hon"ble Supreme Court in Special Leave to Appeal (Civil) No. 19135-19138 of 2012 [Union of India & Anr. v. Khurshid Ahmed & Ors., dated 05.09.2012], has granted relief to the petitioner, by setting aside the order of cancellation/withdrawal of allotment of stalls dated 25.03.2011 at Jaipur Railway Station, settled with the respondent under a contract entered into in pursuance to the bidding process, in which he was found to be the highest bidder for the allotment of stalls at Jaipur Railway Station for 5.66 lacs and 5.38 lacs each, per annum as licence fees under the Catering Policy of 2005.

2. The clause 26.1 of Catering Policy of 2010, which replaced the Catering Policy of 2005, provided as follows:

"26.1 The revised catering policy will be applicable with immediate effect i.e. from the date of issue. This policy supersedes all prior policy circulars issued from time to time unless specially referred to in this policy document.

26.1.1 All existing operational catering licences awarded by IRCTC and transferred to Zonal Railways will be governed by the existing Catering Policy 2005 upto the validity of their contractual period.

26.1.2 The tenders for which the letters of allotment have been issued, but the contracts have not operationalised or the service have never commenced upto the date of issue of this policy will have no force in law.

26.1.3 All existing operational licences awarded and managed by IRCTC would henceforth be transferred to Zonal Railways within a period of three (3) months in a phased manner, for their management and monitoring.

26.1.4 This policy will also apply in this case of award of fresh licences and licences awarded in the event of termination, non-renewal, vacation etc. of the existing licences.

26.1.5 Zonal Railways will ensure recovery of all due licence fees from the transferred contracts. In case of contracts under litigation, IRCTC will continue to represent on behalf of Zonal Railways for the Court cases where IRCTC has been named as Respondent in consultation with zonal railways for further disposal.

26.1.6 Zonal Railways will initiate the process of taking over by departmental management or award of fresh licences under this policy for the existing operational contracts for which the tenure has been completed or the performance is unsatisfactory."

3. It is submitted by learned counsel appearing for the appellant that the facts and circumstances in Union of India & Anr. v. Khurshid Ahmed & Ors. (supra) decided by the Hon"ble Supreme Court are not common with the case of the respondent, inasmuch as, clause 26.1 of the Catering Policy of 2010 squarely applies to the case of the appellant, and that since the contract entered into by the respondent was not operationalized, the respondent cannot take any benefit of the contract under the Catering Policy of 2005. It is submitted that in the case of the respondent, the amount deposited by him was refunded on 18.02.2011. The refund was accepted by him, after which the allotment order was also withdrawn on 25.03.2011. The respondents filed the writ petition after one & half year in October, 2002 without explaining the delay. He did not initially challenge the order of withdrawal of the allotment and that it was only by way of amendment application that the order was put to challenge.

4. We do not find that the distinction, pointed out by the appellant, would, in any way, make the case of the respondent different than the case of Khurshid Ahmed (supra), who was also awarded contracts under the Catering Policy of 2005 at the Jaipur Railway Station. The observations of the Hon"ble Supreme Court in Khurshid Ahmed's case (supra) are applicable to the case of the respondent as well. These observations are quoted as below:

"Apart from that, we find that when letter of intents had been issued; bid had been accepted; amount of Rs. 30 lacs had been received; interim order had been vacated by the Apex Court; High Court has also vacated the interim order; even Railway Board has issued communication to hand over the possession to successful bidders so as to avoid legal complications, Clause 26.1.2 of the

Catering Policy, 2010 cannot come in the way to hand over the possession of the stalls to the petitioner-respondent No. 1, highest bidder as there was no fault on his part in completing the contract and in-fact, initially he was deprived of possession of stalls due to the Court's order and once it has been vacated, possession of stalls ought to have been given to him. It is shocking that some incumbents whose licenses stood expired before the bids were invited, are still enjoying possession of stalls at Jaipur Junction, whereas the person, who has made the highest bid, has been kept out and deprived of possession inspite of the fact that his offer has been accepted and letter of intents has been issued. We find no rational behind Catering Policy, 2010, which has been pressed into service by the appellants so as to get rid of the contract entered between the parties under the Catering Policy of 2005. When Clause 26.1.1 saves those contracts which have been operationalized, there was no rhyme or reason so as to differentiate the contracts entered between the parties, which have not been operationlised because of no fault on the part of the incumbent, whose bid has been accepted. The classification, which has been made in the Catering Policy, 2010, cannot be said to be reasonable one and in fact, it is intended to defeat the rights which had accrued in favour of the petitioner-respondent No. 1, highest bidder to operate contracts, which could not have been dealt with arbitrarily and as a result of operation of new Catering Policy, 2010, it is surprising that without any fresh bid having been invited, incumbents whose licenses stood expired before bids were invited, are continuing to operate uninterruptedly. This is nothing but arbitrary action on the part of the appellants-Railway and IRCTC.

What has surprised us is that even though the learned Single Judge had vacated the interim order as early as in 2009, the concerned officers did not take steps to take possession of the stalls from the erstwhile vendors.

Although, it is not possible to record a firm finding that their actions and omissions were actuated by malice, we are convinced that the concerned authorities had acted arbitrarily and deprived respondent No. 1 of his legitimate right to do catering business at Jaipur Railway Station and the" High Court did not commit any error by issuing a mandamus for handing over possession of the stalls.

With the above observations, the special leave petitions are dismissed.

The petitioners and all the concerned officers are directed to implement the order/judgment of the High Court within a period of 30 days from today. This would necessarily mean that they shall take possession of the stalls being operated by the erstwhile contractor and handover the same to respondent No. 1 within 30 days. It is also made clear that tenure of the licence of respondent No. 1 will commence from the date of actual handing over possession of the stalls."

5. It is submitted by learned counsel appearing for the respondent that he was the highest bidder for two stalls, including the one, which was under a licence

with the appellant. He had deposited licence fees of Rs. 5.66 lacs, which was much higher than Rs. 1 lacs, which was being paid by the appellant. He was illegally deprived of allotment of the stalls by the Railways, despite the concluded contract between the respondent and the Railways. His acceptance of the return of amount at the time, when the matter was pending in the High Court, could not be taken to his disadvantage, inasmuch as, he is always willing to deposit the amount, and in any case the acceptance of return of the amount, which has been subsequently deposited will not give any advantage to the person, who is paying only Rupees one lac for the same business.

6. We are informed that after the judgment, the amount has been re-deposited by respondent Shri Prabhu Dayal on 24.09.2014 and the possession of the stall had been given to him on 24.11.2014. Learned counsel appearing for the Railways has also informed the Court that the appellant is defaulter in payment of licence fees for last five months, and had also not paid electricity and water charges. The observations of Hon''ble Supreme Court in Khurshid Ahmed''s case (supra), on the arbitrariness of clause 26.1 of the Catering Policy of 2010, as well as the discrimination, which will be caused between the licensee, who were running stalls at the same Railway Station, on account of negligence of the Railways, will not disentitle the respondent; are applicable with full force in the present case. We do not find any error of law in the order passed by learned Single Judge to interfere in the matter.

The Special Appeal is dismissed.