(2020) 02 DEL CK 0490

In the Delhi High Court

Case No : Civil Writ Petition No. 2218 Of 2020

Indian Railways Onboard Catering Contractors Association APPELLANT

Vs

Indian Railway Catering And Tourism Corporation Limited (IRCTC) RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Citation : (2020) 02 DEL CK 0490

Hon'ble Judges : Hima Kohli, J;Asha Menon, J

Bench : Division Bench

Advocate : Neeraj Malhotra, Jitender Mehta, Ujjaval Kumar, Nikhil Majithia, Ashish Bhatia, Jagdish Goyal

Final Decision : Dismissed

Judgement

Date of pre-bid meeting,11.02.2020 at 11.00 Hrs.

Last date and Time of Submission of

bids",02.03.2020 upto 15.00 Hrs.

Date and time of Opening of Bids,02.03.2020 upto 15.15 Hrs.

Earnest Money Deposit pertrain,Rs.01 Lakhs

2. If any presently SBD train or any new train will be added in non SBD category for 5 years tendering, ceiling limit will be revised",

accordingly.â??,

7. Mr. Neeraj Malhotra, learned Sr. Advocate appearing for the petitioner/ Association submits that earlier hereto, there was no ceiling limit fixed by",

the respondent/IRCTC for granting licences. Clause 9 whereunder trains have been grouped into three categories i.e., M-1, M-2 and M-3, has been",

introduced for the first time and the ceiling limit for each of the three categories of trains has also been fixed for the first time. He states that before,

this, in the year 2010, the Ministry of Railways, Govt. of India had introduced a policy for catering, where Standard Bid Document Contracts (in short",

â??SBD Contractsâ??) had been introduced on new parameters, applicable across the country. Under the said policy that came into effect in the",

year 2013, the tenure of the contract was fixed for five years, to be renewed for an additional five years, subject to the satisfactory performance of",

the contractors. The 2010 Catering Policy was being implemented by the Zonal Railways and the respondent/IRCTC had no role to play in the matter.,

8. It is canvassed on behalf of the petitioner/Association that the respondent/ IRCTC has arbitrarily introduced Clause 9 in the NITâ??s which,

imposes a ceiling limit for issuance of licences for category M1, M2 and M3 trains, as against the 10% ceiling limit under the 2010 Catering Policy that",

was calculated on the basis of the total number of all the trains. Learned Senior Advocate states that by virtue of the said Clause, the",

respondent/IRCTC has placed a ceiling limit of 10 per cent in each category which would mean that a licensee will only get a contract for upto 10%,

of the available trains in each category, thus, curtailing the right of the members of the petitioner/Association to tender for more than 10% trains in",

each category. He contends that while placing such an embargo on the members of the petitioner/Association, the respondent/IRCTC has kept the",

SBD contracts out of the net and specifically declared in Note 1 appended to Clause 9 that temporary contracts for regular trains, special trains or any",

other short duration trains will not be counted for the ceiling limit and nor will SBD contracts or renewed SBD contracts that are still operational, be a",

part of the ceiling limit, which would give undue benefit to big time operators.",

9. It is further submitted on behalf of the petitioner/Association that Clause 9 runs contrary to the conditions stipulated in Clause 19 of the 2010,

Catering Policy, in particular, Clauses 19.3 and 19.3.4 thereof which require all mobile catering units to be managed departmentally and progressively",

and stipulates a ceiling limit in respect of various services including mobile units and base kitchens, permitting a licensee to hold a maximum of 10% of",

a similar category of major units in the Indian Railways.,

10. On his part, Mr. Nikhil Majithia, learned counsel for the respondent/IRCTC clarifies that only in the year 2017 did the Ministry of Railways",

introduce a new policy whereunder, all the catering business of the railways stood transferred to the IRCTC. He alludes to the objectives stated in the",

opening page of the 2017 Catering Policy, wherein the Ministry of Railways has clarified that the respondent/IRCTC had been mandated to carry out",

unbundling of food preparation and food distribution, by drawing a distinction between the two tasks. He submits that it was with the idea of upgrading",

the quality of food preparation that the respondent/IRCTC was required to set up new kitchens and upgrade the existing ones.,

11. The attention of this court is particularly drawn to Clause 3.7 which deals with the â??Method of Operation of Mobile Catering Serviceâ?? and,

stipulates in Clause 3.7.1 that all meals for the mobile units i.e., trains shall be picked up from the nominated kitchens that are",

owned/operated/managed by the respondent/IRCTC, but the same will be subject to the business plan for the mobile catering as well as base kitchens,",

as may be approved by the Railways. Clause 3.7.2 states that the respondent/ IRCTC can engage service providers from the hospitality industry for,

service of food on trains. The 2017 Catering Policy also contemplated that the respondent/IRCTC would be setting-up/developing/refurbishing,

new/existing base kitchens/kitchen units, in terms of the broad parameters laid down therein. Further, the 2017 policy mandates that the",

respondent/IRCTC will not outsource or issue licences for providing catering services to the private licencees. Instead, IRCTC would retain the",

ownership and be accountable on all aspects relating to setting up/operating base kitchens including the quality of the food served.,

12. Learned counsel for the respondent/IRCTC submits that it is in the light of the aforesaid 2017 Catering Policy that the respondent/IRCTC is taking,

steps to unbundle the catering services and as a step towards that direction, has granted ad-hoc extensions to existing SBD Contractors in the year",

2019, by granting renewal of the licences for a period of five years.",

13. In the meantime, the respondent/IRCTC has been called upon to provide On-board catering services in different categories of trains including",

mail/express/superfast trains, which have been divided into three groups i.e., M-1, M-2 and M-3. Learned counsel explains that to provide a level",

playing field to all the bidders, IRCTC has introduced a ceiling limit for issuing licences for trains in the M-1, M-2 and M-3 categories, which is pegged", at five contracts but with a condition that the said number may be increased or decreased. Further, the revised Note 1 at the foot of Clause 9 of the",

â??Instructions to Tendersâ? makes it clear that the ceiling limit would apply only for one year, with the idea that the unbundling process, being a",

work in progress, will continue in this duration for the respondent/IRCTC to ultimately streamline the entire project of catering food on trains.",

14. We have heard the arguments advanced by learned counsel for the parties and perused the record and are of the opinion that the,

respondent/IRCTC has not discriminated against the members of the petitioner/ Association in any manner by introducing Clause 9 in the subject NITs.,

On the contrary, on inquiring from learned counsel for the petitioner/Association to indicate the number of the members of the petitioner/Association",

who have been issued SBD contracts, we find that at least five members of the petitioner/Association have been granted the SBD contracts/renewed",

SBD contracts. We find merit in the submission of learned counsel for the respondent/IRCTC that the 2017 Catering Policy which is still in vogue, did",

not lay down any such condition and for the said reason, SBD Contracts have been excluded from the said ceiling limit and therefore SBD Contracts",

or renewed SBD Contracts have been excluded. Learned counsel for the respondent/IRCTC has clarified that the subject NITs have been floated,

only with the idea that at the end of the day, IRCTC would be exclusively managing the catering services including preparation and distribution of",

food. In other words, the NITs are purely a stop-gap arrangement and it is for the said reason that the period of the contracts that were initially fixed",

for five years, have been reduced to one year.",

15. The next submission made by learned counsel for the petitioner/Association that the 10% ceiling limit imposed for issuing licences would be,

detrimental to its members is also found to be meritless. In our opinion, incorporation of such a Clause in the NIT would result in wider choices and",

wider participation by bidders more so, when the EMD per train has been slashed by the respondent/IRCTC from Rs. 5 lakhs to Rs. 1 lakh. The",

respondent/IRCTC has broadened the base of the bidders in the larger public interest so that there is greater participation from bidders for various,

categories of trains. Had there been no ceiling limit, bidders with deeper pockets would have managed to corner more bids vis-Ã -vis bidders with", lesser funds in hand, thereby tilting the scale in favour of the former. Even otherwise, just as other SBD contractors have been given the benefit of",

exclusion from the ceiling limit, similarly placed members of the petitioner/ Association would also have the benefit of exemption from the said",

condition imposed by the respondent/IRCTC.,

16. Another submission made on behalf of the petitioner/Association is that most of the members of the Association are registered under the Micro,",

Small and Medium Enterprises Development Act, 2006 (in short, â??MSME Actâ??) and under the Public Procurement Policy for the Micro and",

Small Enterprises Order 2012, Micro and Small Enterprises, they are exempted from depositing earnest money which aspect has not been taken into",

consideration by the respondent/IRCTC. We are of the opinion that the respondent/IRCTC having reduced the EMD from a sum of Rs. 5 lakhs to Rs.,

1 lakhs per train, on its own, there is hardly any illegality and arbitrariness on its part for this court to intervene. A complete waiver of the EMD for",

members of the petitioner/Association, is unwarranted.",

17. Yet another grievance raised by the petitioner/Association is regarding a change in the minimum turnover expected of a bidder which has been,

enhanced by the respondent/IRCTC from Rs. 3 crore in the past 3 years, to Rs. 5 crores in the past 5 financial years. To our mind, this is a purely",

commercial decision which is best left to the wisdom of the respondent/IRCTC. If members of the petitioner/Association do not fulfil the mandatory,

criteria of the minimum average annual turnover then, they cannot qualify for submitting a bid. In exercise of the powers of judicial review, this court",

is not expected to alter/modify/amend the terms and conditions of the NIT or tweak the same merely because they may be inconvenient to some of,

the bidders.,

18. No other point has been raised on behalf of the petitioner/Association to assail the NITs.,

19. In view of the discussion above, we are of the opinion that the NITs issued by the respondent/IRCTC do not deserved to be quashed / set aside,",

as contended by the petitioner/Association. The present petition is accordingly dismissed in limine, as meritless.",

