

(2016) 01 AHC CK 0197

In the Allahabad High Court

Case No : Writ-C. Nos. 63331 and 63333 of 2015

Manish Kumar Dubey

APPELLANT

Vs

Senior Divisional Commercial Manager, North Central
Railways and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 2 ADJ 279 : (2016) 2 AllWC 1110 : (2016) 115 ALR 162

Hon'ble Judges : Rakesh Tiwari and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Anil Tiwari, for the Appellant; Manoj Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—1. Since the facts and controversy involved in these writ petitions are the same, they are being disposed of by a common judgment.

2. Heard Sri Anil Tiwari, learned counsel for the petitioner, Sri M.K. Sharma, learned counsel for the respondents and perused the record.

3. These writ petitions have been preferred by the petitioner for quashing the impugned notices dated 5.10.2015 namely, applications inviting Notification Nos. 45/1-45/06 and 46/1-46/14 issued by the Senior Divisional Commercial Manager, North Central Railways, Allahabad so far as it relates to Unit Nos. NYN/IS/04/01 & MNQ/M-01/01 as mentioned at sl. Nos. 3 & 4 in the aforesaid notifications. It has also been prayed that the respondents may be directed to consider the renewal of the licence of the petitioner as per the term of Catering Policy, 2010.

4. Brief facts giving rise to the instant writ petition are that under the Catering Policy, 2005 the NCR Zone, Allahabad invited applications for general minor unit with regard to Mainpuri and Naini, Allahabad Stations on 23.5.2008 and 4.5.2010 respectively. The petitioner applied for the same and was issued licence vide

orders dated 23.5.2008 and 4.5.2010 for an initial period of five years which was valid for the period from 28.10.2008 to 27.10.2013 and 30.7.2010 to 29.7.2015. An agreement in this regard was also executed between the petitioner and the Railway on 22.3.2011.

5. It appears that the licence of the petitioner was not renewed rather annual licence fee was enhanced to about 600% of the existing rate i.e. the annual fee of Rs. 21900/- was enhanced to Rs. 1,11,490/- and on the basis of this enhanced fee, licence of the petitioner was extended for a period of three months from 30.7.2015 to 31.10.2015 only. Aggrieved, the petitioner preferred Writ Petition Nos. 8977 of 2014 and 41212 of 2015 before this Court.

6. In the aforesaid writ petitions, the High Court vide orders dated 13.2.2014 and 6.8.2015 directed the respondents to accept renewal fee as was being charged earlier along with 10% enhanced fee, which would be subject to final decision of the writ petitions. Pursuant to the orders, the period of licence was extended by the respondents from time to time. The last extension was granted up to 30.4.2016 by letter dated 23.10.2015, on deposit of 10% enhanced fee.

7. Learned counsel for the petitioner submits that the application of the petitioner for renewal of licence under the terms and policy is pending, hence the respondents may be directed to renew his licence.

8. It is contended by learned counsel for the petitioner that the Railway Administration issues licences for the purposes of maintaining catering services of food items and other public amonite"s on its stations and trains so that the public may not suffer; that the Railway Board framed Catering Policy, 1992 providing the criteria and guidelines for issue of licences to the vendors. By this policy the stations were divided into two categories firstly, the stations where the flow of passengers and number of trains are very high and secondly, the stations where the flow of passengers is low. In both the categories further sub-divisions were made on the basis of annual passenger earning of the station i.e. the stations of first category were divided in further sub-category A, B and C and licences were issued for such stations on the basis of tenders keeping in view the consequential benefits of the railway. The stations of Second category were also divided in further sub-category of D, E,F and onwards for which licences were issued on the basis of applications and not on the basis of tenders.

9. It is further contended that Catering Policy of 1992 and revised Catering Policy of 2000 both contain a specific clause of renewal of licences subject to satisfactory performance. Clause 15.3 of Catering Policy 2000 provides the initial tenure of 5 years with further renewal after every five years subject to satisfactory performance. It is stated that Railway Board announced a new Catering Policy, 2004 replacing the earlier Catering Policy, 2000. By this policy the first category of stations i.e. A and B having high flow of passengers were handed over to a government company namely, IRCTC for catering services. However, small stations i.e. stations of categories C, D, E and F were allowed to

move applications as per earlier practice of issuing licences.

10. It is submitted that clause 16.3. of the catering policy, 2005 provides that initial tenure of the licence would be five years, which may be renewed after every five years subject to satisfactory performance; that the licence of the petitioner was valid for a period of five years commencing from 28.10.2008 to 27.10.2013 or till the date of transfer to IRCTC and IRCTC has never taken over the catering services of small stations i.e. stations of category D, E and F.; that the Catering Policy, 2005 was again replaced by Catering Policy, 2010 wherein clause 16.1.3 pertains to tenure of the General Minor Units which provides for issuance of licence initially for a period of five years and for a further period of five years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any; that after enforcement of Catering Policy, 2010 the amendments were made by circular No. 37 of 2010 dated 9.8.2010 and circular No. 3/2012 dated 12.1.2012. Both these circulars provide that where the existing contracts are not renewed due to non-performance etc. the process should be initiated for allotment afresh.

11. He next submits that by the impugned notice the respondents have fixed the licence price in the same terms which was demanded from him by letter dated 13.12.2013 with additional 10% fee and that till date only temporary extensions were given to the petitioner and no order has been passed on the issue of renewal which is to be granted for further five years period. This practice is being adopted by the Railways in different zones also but the petitioner has been penalized in as much as his unit has been advertised in the impugned notice.

12. In support of his aforesaid submissions, learned counsel for the petitioner has relied upon the following case laws.

"1. Joshi Technologies International INC. versus Union of India and others, (paragraph 70) , (2015) 7 SCC-728;

2. Ramana Dayaram Shetty versus International Airport Authority of India and others, (paragraphs 10,11,12 & 21), , (1979) 3 SCC-489;

3. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association versus Senior Divisional Commercial Manager, High Court of Andhra Pradesh (W.P. No. 14577 of 2013 decided on 16.8.2013);

4. Writ-C No. 40997 of 2014, Sunil Kumar Narula versus Union of India and others;

5. Writ-C No. 45217 of 2014 versus Union of India through Secretary and others;

6. Writ-C No. 45670 of 2014, Smt. Prem Dhan Devi and others versus Union of India through Secretary and others."

13. Per contra, learned counsel for the respondents submits that the petitioner has no legal right over the temporary extension of licence which has been extended only to facilitate the implementation of 2010 Catering Policy; that the

licence of the petitioner was granted under Catering Policy, 2005 and paragraph 3.3.1 of this provides that no renewal can be granted with regard to existing contract after the expiry of the contract period and as such the petitioner is not entitled for renewal of the licence under aforesaid Catering Policy, 2010. It is stated that since the Apex Court has not granted interim order in respect of the tender process, therefore, the petitioner may still submit fresh tender in accordance with law and participate in the tender process if he is willing to do so. There is no illegality or infirmity in issuing impugned notice dated 5.10.2015 for inviting fresh tenders, hence no interference is required by this Court.

14. In support of his aforesaid contentions learned counsel for the respondents has relied upon the following case laws.

"1. Writ-C No. 49134 of 2015. Hari Kishan versus Union of India and others (Judgment dated 1.9.2015).

2. Writ-C No. 40089 of 2015, Ayzuddin Siddiqui versus Union of India and others (Judgment dated 28.7.2015)."

15. Before discussing the case of the respective parties we would like to discuss the case laws cited by the learned counsel for parties.

16. In Joshi Technologies International INC. (supra) it was held by the Apex Court in paragraph 70 of the judgment thus:--

"70. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:

(i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

(ii) State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

(iii) Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross- examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

(iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

(v) Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the

conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

(vi) Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

(vii) Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

(viii) If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

(ix) The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

(x) Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

(xi) The scope of judicial review in respect of disputes falling within the domain

of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

17. In *Ramana Dayaram Sheety* (supra) the Apex Court in paragraphs 10, 11, 12 & 21 of the judgment held thus:--

"10. Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years" experience as such and if he did not satisfy this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Seton* where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a definite procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

This Court accepted the rule as valid and applicable in India in *A.S. Ahuwalia v. Punjab* and in subsequent decision given in *Sukhdev v. Bhagatram, Mathew, J.*, quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's *Administrative Law* 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. To-day with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive

Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set-forth by Harry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "democracy Equality and Freedom," "substantial agreement is in justice thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege."

11. To-day the Government, is a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationship to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of pubic Land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of

them are in the nature of privileges But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." "The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religions faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual

12. We agree with the observations of Mathew, J., in *V. Punnath Thomas v. State of Kerala* that:

"The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal".

The same point was made by this court in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? Ray, C. J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing on a person not only affects his reputation which is in Poundian terms an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it

or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in *E.P. Rayappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India* that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals v. State of West Bengal* (*supra*) where the learned Chief Justice pointed out that

"the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to

observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting.... A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling....It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods."

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

18. In the case of S.C.R. Caterers, Dry, Fruits, Fruit Juice Welfare Association (supra) two writ petitions were preferred before the Andhra Pradesh High Court i.e. Writ Petition No. 14577 of 2014 on behalf of the members of the petitioner-association for running canteens in 25 railway Stations of the Vijayawada Division and another Writ Petition No. 14888 of 2014 by the members of the petitioner-association for running catering stalls and fruit juice stalls in 29 Railway Stations of the Vijayawada Division. The members of the petitioner-Association were granted licences for running General Minor Units (GMUs) or Special Minor Units (SMUs), as the case may be, in Categories A, B and C Railway Stations. The said licences were granted prior to the creation of the Indian Railways Catering and Tourism Corporation Limited (IRCTC) under the Catering Policy 2005. Under the 2005 Policy, the contracts under Categories A, B and C Railway Stations were transferred to the IRCTC while continuing the contracts granted under Categories D to F Railway Stations under the control of the South Central Railways (SCR) till the IRCTC was equipped to take over these Units. After considering the facts and the case laws, the High Court of Andhra Pradesh allowed the writ petitions with a direction that the petitioner-association shall make applications for renewal of their licences within a period of one month which shall be considered on their own merits and they were entitled for renewal of their licences subject to their satisfying the conditions stipulated in paras 16.1.3 and 16.2.1 of the 2010 policy.

19. In the case of Sunil Kumar Narula (supra) this Court passed an ad-interim direction on 28.8.2014 in terms of the order dated 11th April, 2014 passed by the Apex Court in a petition for Special Leave to Appeal (Civil) No. 9921-9923 of 2014 against the judgment of the Andhra Pradesh High Court dated 12th

September, 2013 (Senior Divisional Commercial Manager & others versus S.C.R. Caterers, Dry Fruits, F.J.S.W. Association). The order dated 11th April, 2014 passed by the Apex Court reads thus:--

"There shall be stay of the order and the judgment of the High Court. Petitioners are permitted to continue with the tender process and, however, we make it clear that the respondents shall not be displaced for the present, so also the intervenors. Further, their continuance will be subject to further orders after finalizing the tender process. The respondents are also permitted to seek further orders after finalization of the tender process."

20. In the cases of Dharendra Dutta Mishra (supra) and Smt. Prem Dhan Devi (supra) similar ad-interim direction was passed by this Court as in the case of Sunil Kumar Narula aforesaid.

21. There is no quarrel with the proposition as enunciated in the case laws cited by the learned counsel for the petitioner but they are not applicable to the facts and circumstances of the present case.

22. In the case of Hari Kishan (supra) relied upon by the learned counsel for the respondents while dismissing the writ petition it was held by the Court that-

"It is the case of petitioner that without considering the renewal of his term in accordance to the policy decision of Railways known as "Catering Policy, 2010", the respondents are proceeding to settle the catering rights for running of refreshment rooms by inviting fresh tenders. It is contended that identical matters are engaging the attention of Hon"ble Supreme Court in the case of Senior Divisional Commercial Manager v. S.C.R. Caterers Dry Fruits and others being Special Leave to Appeal (Civil) No(s). 9921 - 9923 of 2014, wherein interim order has been passed permitting the Railways to continue with the process of tendering, but finalization of tenders has been stayed till further orders.

Reference has also been made to the interim order dated 28.08.2014, passed by this Court in Writ Petition No. 45383 of 2014 - M/s. Dharmendra Kumar Catering Licencee v. Union of India Thru" Secy. Rly. Board and 3 Others.

We may record that the interim order passed by the Apex Court and that passed by this Court referred to above, are clearly distinguishable in the facts of the case. From the catering policy, which has been brought on record before us as Annexure No. 4 to the writ petition, we find that right of renewal under Clause 17, is not as a matter of right. The licensee must apply for renewal minimum six months in advance before the expiry of the contract. If the conditions for renewal are satisfied the application shall be considered. It is therefore, clear that in respect of right of renewal to be exercised by existing licensee, he has to submit renewal application, six months prior to the expiry of the term.

From the record of present writ petition, we find that license originally granted to the petitioner on 21st June, 1997, it was for a period of five years, which period

would admittedly expire in 2002. There is nothing on record to establish that petitioner was ever granted any renewal in respect of said contract. On the contrary, we find that in the year 2005, according to own case of petitioner, catering and vending on the Railway Station was handed over to IRCTC. In paragraph No. 6 of the writ petition it is admitted by the petitioner that his contract was also handed over to IRCTC in the year 2005.

The Catering Policy, 2010, which has been so heavily relied upon by the petitioner, shall have no application in the case in hand. Even otherwise, we find that petitioner has tried to mislead the Court by suggesting that he was licensee and entitled to exercise the right of renewal in terms of the Catering Policy, 2010, when, from the record we find that under letter dated 7th May, 2014, the petitioner was only granted permission to run the allotted stall for a period of five months from 19th May, 2015 to 20th October, 2015, with specific stipulation that this allotment would be continued till fresh allotments are made or till expiry of the term or till any other decision is taken by the Railways.

We may at the outset record that it not the case of petitioner that this temporary arrangement under letter dated 07.05.2014, was made by the Railways after any advertisement or after affording opportunity to the public at large to exercise their claim for running of the catering at the Railway Stations.

As already noticed above, license of the petitioner expired in 2002 and it is only with the help of letter of Senior Divisional Manager Commercial, dated 07.05.2015, he has tried to set up a claim as if he is continuing under the same license during all this period. Catering Policy, 2010 has no application in the case of the petitioner and therefore, reference to the orders of the Hon'ble Apex Court as well as to the order of Division Bench of this Court is uncalled for.

Writ petition is dismissed."

23. While dismissing the writ petition in the case of Ayazuddin Siddiqui (supra) the High Court observed thus:--

"Instruction has been sought from the respondents vide this Court's order dated 22.07.2015 and by the same order the respondent No. 3 - Senior Divisional Commercial Manager (NCR), Allahabad has also been directed to take a decision on the application of the petitioner for renewal of his licence.

Sri M.K. Sharma, learned counsel for respondents, submits that petitioner's licence has been extended for a period of six months. He has produced a photocopy of the order Dt. 24.07.2015 extending the licence of petitioner which reads as under:--

In this view of the matter, the petition has become infructuous by efflux of time. It is dismissed accordingly."

24. After hearing learned counsel for the parties and on perusal of the record it appears that the issue raised in this writ petition is as to whether without

deciding the issue of renewal of earlier licences as mandated in the Catering Policy, the respondents can proceed with fresh tender and that the policy also provides a clear guidelines as to how the renewal can be granted and can be refused.

25. Admittedly, the licence of the petitioner was extended from time to time and he was granted licence under Catering Policy, 2005. Paragraph 14 of Catering Policy, 2010 speaks about the allotment procedure and contract management through open competitive tender system, paragraph 16 of the Policy, 2010 provides the tenure of allotment and paragraph 17 provides that no renewal will be granted as a matter of right. The licensee must apply for renewal minimum six months in advance before the expiry of the contract. Petitioner's contract was granted for the period 30.7.2010 to 29.7.2015 and there is no record which indicates that the petitioner had applied prior to six months after expiry of contract period. Paragraph 26.1.1 of Catering Policy, 2010 clearly states that "all existing operational catering licences awarded by IRCTC and transferred to Zonal Railways will be governed by the existing Catering Policy, 2005 up to the validity of their contractual period" and as such the petitioner is not entitled to be governed by 2010 Policy. The licence of the petitioner has already been extended up to 30.4.2016. The Apex Court has not stayed the process of tender in SLP Nos. 9921-9923 of 2014, hence, the petitioner may still submit fresh tender in accordance with law and may participate in tender process. His licence can not be renewed as a matter of right. There is no illegality or infirmity in issuing impugned notice for inviting fresh tender. In the circumstances, both the writ petitions are liable to be dismissed.

26. For the reasons stated above, both the writ petitions are accordingly, dismissed.