

(2017) 10 DEL CK 0187

In the Delhi High Court

Case No : Civil Writ Petition No. 6277 Of 2016, Civil Miscellaneous No. 25652, 31138 Of 2016, 11475 Of 2017

Mayar Health Resorts Limited

APPELLANT

Vs

Indian Tourism Development Corporation

RESPONDENT

Date of Decision : 26-10-2017

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226
Arbitration And Conciliation Act, 1996 — Section 8, 9, 34

Citation : (2017) 10 DEL CK 0187

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Anil Sapra, Manjula Gandhi, Aditya Kapoor, Sarthak, Piyusha Singh, Shivanshu Kumar, Jaideep Singh, Kartik Bhardwaj, Ravi Sikri, Shweta Bharti, Neelesh Sinha, Anamika Dubey, Ravi Thakur

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. Mayar Health Resorts Limited (hereafter "Mayar") has filed the present petition, inter alia, praying that the Indian Tourism Development Corporation (hereafter "ITDC") be directed to renew the license granted to Mayar for running a health club at the Ashok Hotel, Chanakyapuri, New Delhi.
2. This petition is, in effect, the fourth round of litigation concerning the license granted by ITDC to Mayar.
3. The relevant facts necessary to address the controversy in the present petition are briefly stated hereafter.
4. ITDC and Mayar entered into a license agreement dated 01.09.2003 (hereafter "the Agreement"), whereby Mayar was granted a license with respect to a space admeasuring 20,000 sq. ft. in the building premises of Ashok Hotel, Chanakyapuri, New Delhi, to set up an "International Standard SPA and Health

Club in Technical Assistance with M/s Serena Spa Pvt. Limited". The said license was granted for a period of 10 years commencing from 01.03.2004. Clause I(2) of the Agreement provided that the license may be renewed at the option of the licensor [ITDC] on the expiry of the license period on such terms and conditions as the licensor may impose in this regard. Mayar states that in terms of the Agreement, it made investments to the tune of ₹ 26 crores in constructing a gym, renovation of swimming pool and juice bar, etc. and established a spa under the name of 'Amatrra'.

5. Certain disputes arose between the parties regarding the area occupied by Mayar under the Agreement and Mayar filed a suit (CS (OS) 1038/2007), inter alia, praying that ITDC be restrained from disturbing Mayar's peaceful use, occupation and enjoyment of the licensed premises. By an ex parte order dated 31.05.2007, an ad interim injunction was granted restraining ITDC from disturbing the occupation and enjoyment or causing any interference in the business run by Mayar in the licensed premises. The Court also appointed a Local Commissioner (LC) to identify the area in use and occupation by Mayar.

6. In its report, the LC stated that the area in exclusive use and occupation of Mayar was 19,569 sq ft as contemplated in the Agreement. In the said suit - CS (OS) 1038/2007 - ITDC filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, praying that the parties be referred to arbitration. The said application was allowed and this Court passed an order dated 24.03.2008 dismissing the suit and relegating the parties to avail the alternative remedy available to them.

7. Before the arbitrator, ITDC raised claims against Mayar for various charges in respect of the area allegedly encroached by Mayar. The claims made by ITDC were rejected and the arbitrator made an award dated 06.04.2009 in favour of Mayar, holding therein that the report of the LC had attained finality as it was not assailed in any proceedings. ITDC challenged the said award by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (being OMP 389/2009). The said application was dismissed for non prosecution by an order dated 16.12.2016. This court is informed that an application has been filed by ITDC for restoration of the said petition, which is pending.

8. In the meanwhile, ITDC formulated a new policy - "Procedure for Licensing of Restaurants/ Business Premises in ITDC Hotels/Units" on 04.03.2009 (hereafter "the Licensing Policy, 2009") - which provided for a fixed duration of the first license agreement on the basis of various levels of investment made by the licensee and the duration of the first renewal. It was also stated that the licensor will initiate a fresh process of tendering at least six months in advance after the expiry of the original period or the first renewal, as the case may be. Paragraph 2 of the draft license deed annexed to the Licensing Policy, 2009 expressly stated that "the Licensee shall be entitled to a one time renewal after the expiry of the original license period, unless he has committed a breach of the terms and conditions of the agreement or has been defaulter in the payment of license

fee ... or guilty of proved misconduct...".

9. Thereafter, in its Board meeting held on 27.04.2012, ITDC, inter alia, decided to amend the Licensing Policy, 2009 to provide that first renewal would be made on recommendation of the Unit Licensing Committee (ULC), subject to the compliance of certain conditions including that there are no dues outstanding against the licensee and there is no litigation/dispute pending with ITDC. In addition, such renewal would also require the approval of the Chairman and Managing Director of ITDC.

10. On 01.08.2013, Mayar applied for renewal of the license for a further period of ten years. ITDC replied by a letter dated 12.08.2013 stating that renewal will be made on the recommendation of the Unit Licensing Committee (ULC), subject to compliance of the conditions stated in the Licensing Policy, 2009 (revised). Thereafter, Mayar sent a letter dated 02.09.2013, stating that it fulfilled all the conditions of the Licensing Policy, 2009 and requested for automatic renewal of the Agreement in parity with similarly placed licensees. This was followed by another letter dated 29.10.2013 to similar effect.

11. Thereafter on 26.12.2013, ITDC issued the revised Licensing Rules, 2013 (hereafter "the Licensing Policy, 2013") superseding the Licensing Policy, 2009 as amended. Paragraphs 27(a) and 57 of the said policy dealing with renewal of license are set out below:-

"27. As regards various miscellaneous parameters of the tender document, the following rules shall apply:-

(a) Renewal of License. The tender shall state clearly that the license agreement can be renewed only once as per the conditions prescribed in the agreement. Second renewal shall not be allowed under any circumstances. Even the first renewal shall be permitted at the discretion of the licensor and licensee would have no right to claim renewal on any ground whatsoever.

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57. Renewal. First renewal is to be made on the recommendation of the Unit Licensing committee (ULC), for the maximum period as prescribed at Para 27(b) above, subject to the compliance of the following conditions and approval of Dir (G&M):-

(a) That the licensee has not committed a breach of the terms and conditions of the agreement.

(b) The Licensee has not been a defaulter in the payment of license fee and/or other dues and there are no dues outstanding against the licensee.

(c) The Licensee has not been guilty of proved misconduct which has adversely affected the image and reputation of the Licensor.

(d) There is no litigation/dispute pending in any forum/court or otherwise

between the licensee and ITDC on account of the outlet in question.

(e) The licensor has been, and is, satisfied with the commercial relationship with the licensee.

(f) The proposed licensee fee will be based on an annual escalation percentage of @10% over the license fee for the immediately preceding year and will attract a 10% escalation every subsequent year.

(g) Renewal should be in the name of the existing licensee and no change in constitution of Licensee should be permitted at this stage. "

12. Aggrieved by the inaction on the part of ITDC in considering its request for renewal, Mayar approached this Court by way of a petition (OMP 260/2014) under Section 9 of the Arbitration and Conciliation Act, 1996. The said petition was moved on 28.02.2014. Prior to that, by letter dated 27.02.2014, ITDC informed Mayar that the license has not been renewed as Mayar did not fulfil the criteria laid down for renewal in the Licensing Policy, 2013 besides being in violation of the License Agreement; Mayar was informed that the Agreement had expired by efflux of time.

13. By an order dated 28.02.2014 passed in OMP No. 260/2014, this court directed ITDC not to take any coercive steps to evict Mayar from the licensed premises till the next date of hearing. Thereafter, by an order dated 18.05.2016, this Court modified the order passed on 28.02.2014, granting liberty to ITDC to proceed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Mayar also filed contempt petitions (CCP (O) Nos. 62/2016 and 76/2016) in OMP 260/2014.

14. Thereafter, on 16.03.2017, Mayar withdrew its petition under Section 9 of the Arbitration and Conciliation Act, 1996 [OMP 260/2014] along with the contempt petitions.

15. On 17.06.2016, Mayar sent another letter to ITDC requesting for renewal of the license. In its reply dated 15.07.2016, ITDC communicated its refusal for renewal of the license on the same grounds as mentioned in the letter dated 27.02.2014. Further it referred to paragraph 13 of the Licensing Policy, 2013 which stated that the relationship with licensees with whom license agreements had been executed prior to adoption of the rules would continue to be governed by the terms of the Agreement. In terms of paragraph I(2) of the Agreement, the same was renewable at the option of the licensor. Further, it was stated that during the pendency of the Court proceedings, Mayar had opened a new restaurant named "Devang" in the premises, which was in violation of the Agreement.

16. It is the case of Mayar that ITDC has renewed the licenses of various licensees despite litigations and outstanding dues against them, without issuing any tender and therefore, the sole motive of framing the Licensing Policy, 2013 was to deny the legitimate right of Mayar of one time renewal. It is also

submitted that the Licensing Policy, 2013 cannot be applied retrospectively and Mayar's request for renewal has to be considered under the earlier policy (the Licensing Policy, 2009) as it had submitted its request for renewal prior to the adoption of the Licensing Policy, 2013.

Submissions

17. Mr Anil Sapra, Learned Senior Counsel appearing for the petitioners contended that licenses of several licensees, which were similarly placed as the petitioner had been renewed by ITDC. He pointed out that the petitioner had given specific instances of such renewal and the only response of ITDC was that such licensees were not similarly placed. ITDC had provided no reasons to indicate any material difference between Mayar and other licensees and, therefore, it must be taken that ITDC had admitted that licenses of similarly placed licensees had, in fact, been renewed.

18. He referred to the decision of the Division Bench of this Court in *Bharat Catering Corporation and Anr. and Vardan Restaurant & Caterers and Anr. v. UOI & Ors.*: 100 (2002) DLT 640 and the decision of the Supreme Court in *State of Kerala and Ors. v. Kandath Distilleries*: (2013) 6 SCC 573 in support of his contention that Mayar had the right to renewal of its license. Mr Sapra also contended that the Licensing Policy, 2013 had been antedated and fabricated with the sole object to defeat the rights of the petitioner and such policy could not have any retrospective effect. He submitted that the petitioner had made a specific allegation to this effect in the pleadings, which had not been denied. He further submitted that licensing policy of 2013 was inapplicable as Mayar had applied for renewal of the license on 01.08.2013, which was prior to the framing of the 2013 policy. He further pointed out that in response to the petitioner's application, ITDC had by its letter dated 12.08.2013 accepted that the license would be renewed on the recommendations of the Unit License Committee as per Licensing Policy, 2009 as amended in the year 2012.

19. Lastly, he submitted that in the notice of termination dated 27.02.2014, ITDC had alleged that Mayar did not fulfil and conform to the criteria/condition laid down under the Licensing Policy, 2013 and was in violation of certain conditions of the said policy as well as the Agreement but no specific reason for supporting the said allegation was indicated and, therefore, the said notice was illegal.

20. Mr Sikri, Learned Senior Counsel appearing for the ITDC countered the submissions made by Mr Sapra. He submitted that Mayar was merely a licensee and, therefore, had no right or interest in the premises in question. He relied upon the decisions of this Court in *B.K. Bhagat v. New Delhi Municipal Council*: W.P.(C) 3417/2015, decided on 19.05.2015, *M/s Gesture Hotels and Food Pvt. Limited v. The New Delhi Municipal Council*: 210 (2014) DLT 359 and *M/s Aresko Restaurant Pvt. Ltd. v. New Delhi Municipal Corporation and Ors*: (2015) 219 DLT 350 in support of his submissions. He further submitted that admittedly there were litigation /disputes pending between Mayar and ITDC and, therefore, even if

the Licensing Policy, 2009 as amended in 2012 was applied in Mayar's case, the Agreement could not be renewed.

21. He further submitted that ITDC had decided to invite fresh bids as it was expected that ITDC would receive much higher fee and, therefore, the decision not to renew Mayar's license was in commercial interest of ITDC as well as public at large. He submitted that the State was obliged to ensure that it recovers the best value for assets belonging to the state.

22. Mr Sikri also countered the submission that licenses of other similarly placed persons had been renewed. He pointed out that the licenses of the Central Bank of India were also not renewed as per the Licensing Policy, 2009 and Central Bank of India had agreed to pay an escalated license fee. He also submitted that both ITDC and Central Bank of India were state owned corporations and the Committee on Disputes (COD) had also expressed their view that the inter se disputes be resolved amicably. He also pointed out that there were several other licensees whose licenses had not been renewed.

Reasoning and Conclusion

23. At the outset, it is necessary to state that the petitioner has no vested right for renewal of the Agreement. Mayar was granted a license in respect of the premises and that too for a limited period. It is settled law that a licensee does not acquire any interest in the property by virtue of grant of a license. All that is granted to the licensee is permission to use the premises for a particular purpose. In *C.M. Beena and Anr. v. P.N. Ramachandra Rao*: (2004) 3 SCC 595, the Supreme Court held as under:-

"Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (See *Associated Hotels of India Ltd. v. R.N. Kapoor* [AIR 1959 SC 1262])"

24. A Coordinate Bench of this Court in *Thomas Cook (India) Limited v. Hotel Imperial and Ors.*: 127 (2006) DLT 431, inter alia, observed as under:-

"26. The nature of occupancy is clearly permissive. In fact it does not amount to possession at all. The relationship between the plaintiff and the defendant in terms of the compromise decree was that of Licensor and Licensee and not Lessor and Lessee. The plaintiff had use of the two rooms under a licence. A licence does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as the legal possession continues with the owner (licensor)."

25. It is also necessary to bear in mind that irrespective of whether Mayar has any right for renewal or not, Mayar cannot retain the possession of the premises

after its license is terminated. The license granted to Mayar is a determinable one, even if it is accepted that Mayar had any right for renewal (which this Court does not), Mayar would not be entitled to specific performance of the Agreement and at best could institute proceedings for damages. In the circumstances, the question of directing ITDC to renew the Agreement and thereby in effect, grant specific performance of a contract, which otherwise not permissible, would not be warranted. (See: *Saptagiri Restaurant v. Airports Authority of India*: 2015 VI AD (Delhi) 285 & 2015 (151) DRJ 116.

26. It is well settled that a petition under Article 226 of the Constitution of India can be maintained only to enforce a legal right. In *The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Ors.*: AIR 1962 SC 1044. Justice K. Subba Rao, speaking for the Constitution Bench of the Supreme Court had observed as under:

"The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa v. Madan Gopal Rungta*: [1952] 1 SCR 28, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution."

27. In the present case, Mayar derives its rights from the Agreement executed between Mayar and ITDC, which expressly provides that the terms of the license were for a period of 10 years commencing from 01.03.2004. In terms of paragraph 2 of Article I, the license was renewable at the option of the licensor and at its discretion. Paragraph I of the Agreement is set out below:-

"I. PERIOD OF LICENSE & RENEWAL

1. This license is granted for a period of 10 years commencing from 1st March, 2004 and shall expire on 28th February, 2014 (September 03- February 04 being moratorium period) subject to the provisions for earlier termination hereinafter contained, for a space measuring approx. 20000 ft. area on as is where is basis.

2. The license may be renewable at the option of the Licensor on the expiry of the period stipulated under clause I, and on such terms and conditions as the Licensor may impose in his own discretion. The duration of the extended period shall be determined by the Licensor but will not be for more than 3 years for each such extension. The Licensee will apply for the renewal of his license 6 (six) calendar months before expiry of the license and on failure to do so, the Licensor will be free to negotiate with any other party to allot the space. It is also clearly understood by and between the parties that the licensor will exercise the sole discretion with regard to the renewal of the license and also the terms and conditions of the renewed license and the Licensor's decision in this regard shall be final and binding on the licensee.

3. At the time of each such renewal, the licensee shall execute a fresh License

Deed in respect of the premises given on license to it. In case the Licensee fails to get the license renewed for the period coming into effect from the expiry of this Licensee Deed, the Licensee shall be considered to be in unauthorised occupation of the Licensed Space and the Licensor shall be within its right to initiate proceedings under the due process of law.

4. If any fresh license agreement/deed is not executed for any reason, whatsoever, thirty (30) days prior to the expiry of the initial period of 10 years granted hereunder, it will be presumed that the License has not been renewed and the use of the premises by the licensee after such date shall be considered as unauthorised. The licensor shall be at liberty to enter into such arrangements as it may deem fit, with any other party permitting the use of the premises by such other party after the expiry of the initial period of license with the licensee and the licensee shall not interfere with the same directly or indirectly nor shall cause any damage, loss or expenses to the Licensor in this regard."

28. It is apparent from the above that in terms of the Agreement, Mayar had no legal right to insist on renewal of the license.

29. Having stated above, this court also considers it apposite to examine the case set up by Mayar.

30. Mayar's case rests on the obligation of ITDC - being a State - to act fairly and in a non-arbitrary manner. Plainly, there is much merit in the contention that ITDC being a State within the meaning of Article 12 of the Constitution of India, cannot act in violation of the provisions of Article 14 of the Constitution of India. Thus the limited scope of examination in the present case is whether the action of ITDC in not renewing the license granted to Mayar is discriminatory or arbitrary and unreasonable so as to offend Article 14 of the Constitution of India.

31. Mayar claims that it has a right for renewal of its license for a further period of five years in conformity with the Licensing Policy, 2009 and cannot be arbitrarily excluded from the benefits thereof.

32. At this stage, it is relevant to refer to the relevant extract of the Licensing Policy, 2009, which is set out below:-

"Shops/offices/business premises

a) First Agreement -3 yrs

b) One time renewal - 3 years

c) Escalation - first year: quoted licence fee second year: no escalation third year: 10% escalation

d) 1 year post dated cheque during the first agreement and every year thereafter.

e) The reserve/upset price shall be comparable with the going rates in the locality/region/vicinity and the area and location of the shop in the hotel. For

offices additionally the projected ARR of the rooms under consideration shall be taken into account.

F & B outlets / Art Gallery

- a) First Agreement -5 yrs
- b) One time renewal - 5 years
- c) Escalation - first year: quoted licence fee second year: no escalation third year: 5% escalation fourth year: 15% escalation fifth year: 10% escalation d) 1 year post dated cheques.
- e) The reserve / upset price shall be fixed keeping in view the premises allotted to the Licensee, area and the cuisine.

Spa / Destination Spa

- a) First Agreement -10 years
- b) One time renewal - 5 years
- c) Escalation - first year: quoted licence fee second year: no escalation third year: onwards escalation 10% for every year
- d) 1 year post dated cheques.
- e) The reserve / upset price chargeable shall depend on the premises allotted to the Licensee & the projected ARR from the rooms under consideration and facilities permitted to the licensee."

33. The aforesaid policy was further amended at a board meeting held on 27.04.2012 and in terms of the decision of the Board of Directors, the Licensing Policy, 2009 was subject to additional terms, which are set out below:-

"First renewal will be made on the recommendation of the Unit Licensing Committee (ULC), subject to the compliance of the following and approval of C&MD:-

- i. There are no dues outstanding against the Licensee.
- ii. There is no litigation/dispute pending in any forum/court or otherwise between the licensee and the ITDC on account of the outlet in question.
- iii. The proposed license fee will not be less than the previous rate.
- iv. The proposed annual escalation percentage in the license fee will be 10% per annum of the immediately preceding year.
- v. There will not be any change in the major terms and conditions of the License Agreement, including the nature of business."

34. It is seen from the above that even if the said policy (Licensing Policy, 2009) was applied in the case of Mayar, Mayar would not be entitled to renewal of its

license since admittedly there are disputes pending between the parties.

35. Thereafter, the ITDC has framed the Licensing Policy, 2013 that was circulated on 26.12.2013. Paragraph 13 of the said policy expressly provides that the policy would not alter the terms and conditions of the commercial relationships of ITDC with the licensee. Paragraph 13 of the Licensing Policy, 2013 reads as under:-

"13. Nothing contained in these rules shall alter the terms and conditions of commercial relationships of ITDC, or any of its Units with the Licensees, with whom agreements have been signed prior to the promulgation of these rules. The relationship with the existing licensees shall continue to be governed by the terms of agreement with them."

36. In terms of the Licensing Policy, 2013, the ITDC's premises would be licensed by e-tendering process. The said paragraph provides for a detailed manner in which such tender would be called and evaluated. This court does not find any reason to fault the said policy.

37. In this context, the observations made by the Division Bench of this Court in *K.T. Corporation & Ors v. India Tourism Development Corpn. and Anr.*: (2009) 165 DLT 65 are relevant and are extracted below:-

"6. The next question is whether ITDC being a State under Article 12 of the Constitution can be compelled and mandated by issue of a Writ direction to extend or renew the license on terms which the court feels are just, fair and reasonable. Another contention of the appellants is that the ITDC has acted in an arbitrary, discriminatory and highhanded manner.

7. ITDC, respondent herein is a Government Corporation and therefore State under Article 12 of the Constitution of India. However, ITDC as a Corporation is not performing any public functions or duties. It is operating and maintaining hotels as a commercial venture. The object and purpose of ITDC is to earn profit and as such ITDC performs limited social obligations or purpose, keeping in view the nature of its activities. ITDC is a business venture in which commercial considerations and profit motive are primary/main concern and guiding factor. With this objective, ITDC is competent and entitled to frame its own policies in respect of grant of licenses and their renewal. However, the policy so framed cannot be discriminatory and one which is arbitrary, so as to offend Article 14 of the Constitution of India. Action should not be actuated by bias or malafides. Quantum or the increase as demanded by ITDC cannot be set aside in exercise of power of judicial review unless the same is arbitrary and takes into consideration irrelevant facts. The scope of judicial interference by this Court under Article 226 of the Constitution of India is therefore limited and narrow. Keeping these aspects and principles in mind, we have examined the contentions raised by the appellants with reference to alleged arbitrary exercise of power and discretion by ITDC.

8. Learned Single Judge while examining the aspect of quantum of enhanced license fee has noticed that ITDC had given offers fixing the rent or license fee. The rent/license fee as mentioned by ITDC was based on license fee being paid by the occupants in other five star hotels. ITDC while fixing the rates was also influenced by the offers received by them in new tenders for the vacant shops and office spaces. In some cases said rates were accepted by some of the existing occupants. We do not think that the policy decision of ITDC taken in July, 2006 to insist and ask for market rent/market license fee can be faulted and interfered with on the ground of violation of Article 14. Learned Counsel for the petitioner submitted that the ITDC has not taken into consideration certain aspects like location disadvantages, mandatory low profit services in five star hotels etc. We are not concerned with the individual cases or a particular problem. On the other hand, the Court has to examine whether the price or the rate fixed was determined with due consideration and regard to relevant material and whether extraneous matters have been excluded from determination. (Refer, Sita Ram Sugar Company Ltd v. Union of India: (1990) 3 SCC 223). Right and desire to get market license fee for shops and offices in a five star hotel is valid and not extraneous consideration. In the present cases, market rates can be a valid criteria for fixing license fee. Further, the appellants always have the right to participate in the tenders which will be floated by ITDC and make their offers. This will take care of individual aspects like location disadvantage or low profit services.

9. The appellants herein are commercial establishments who have set up shops or commercial offices in the premises located in the said three Hotels. The prime aim and objective of these commercial establishments managed and run by the appellant allottees is to earn profit for their personal gain. There is no public function or duty being performed by the appellants or for that matter even by the ITDC. A lower license fee will obviously result in higher profit earning by the appellants. In a way by charging lower license fee, ITDC is subsidizing business costs of the appellants and providing and benefiting the appellants with State largesse. There is no justification and reason for ITDC to do so and in fact ITDC will be guilty of violation of Article 14 by conferring State largesse and giving benefits to the appellants to the exclusion of others. In case, ITDC renews licenses and enters into contracts or renews the licenses at less than the market fee, it will be guilty of administering largesse to selected individuals at the expense of public. There must be adequate and justifiable reasons why State largesse should be granted to a particular person to the exclusion of others. We agree with the findings given by the learned Single Judge that the license fee charged by ITDC can be market driven and they are entitled to charge license fee as per the rates prevailing in the five star hotels. ITDC is not expected and cannot be compelled to continue and renew license agreements so as to subsidize private vendors, whose purpose and motive is to enhance private profits by occupying low cost accommodation."

38. The contention that the said Licensing Policy, 2013 is fabricated, unfair or

arbitrary is wholly bereft of any merit. The decision of ITDC to license premises on an open tender basis is in conformity with the decision of the Division Bench of this Court in *K.T. Corporation & Anr v. India Tourism Development Corpn. and Anr.* (supra).

39. It is also settled law that Courts will not in exercise of jurisdiction under Article 226 of the Constitution of India interfere in policy matters except in cases where policy offends any of the constitutional guarantees or falls foul of any statute. In the present case, none of the aforesaid conditions are established and no interference with the said policy would be warranted.

40. The contention that the petitioner has been discriminated inasmuch as other licenses have been granted renewal is also unpersuasive. First of all, it is *ex facie* clear that other licensees are not similarly placed. The terms of Mayar's license are not comparable with the license granted to any of the other licenses as mentioned by the petitioner. The Licensing Policy, 2009 also clearly indicates that other agencies were not classified in the same manner as Mayar. Under policy, 2009 the licenses for a spa is considered in a completely separate category and it envisages a license term for 10 years with one time renewal of five years. This is completely in variance with premises licensed for shops, offices, and business where the term of the first agreement was specified as three years with one time renewal of a term of two years. F&B outlets and art gallery are classified separately where the first agreement was for a period of five years with one time renewal for a further period of five years. In all these cases, the term of the license including renewal is less than the initial term granted to Mayar.

41. It was also pointed out that the licenses of several other entities have not been renewed.

42. Merely because ITDC has renewed licenses of some commercial establishments, does not necessarily vest Mayar with a right for renewal of its license.

43. More importantly, the decision whether to renew the license or not is a commercial decision and if ITDC is of the view that it would be commercially beneficial not to renew the license, it cannot be compelled to do so.

44. The contention that the Licensing Policy, 2013 cannot be applied retrospectively is also misconceived. ITDC would have the power to determine its policy for renewal from time to time. Such policy would obviously be applied only when the question of renewal is considered. As stated hereinbefore, Mayar has no vested right of renewal of its license. Thus, Mayar cannot insist that the policy as existing when it applied for renewal, be applied.

45. In view of the above, the petition is dismissed with costs quantified at ₹ 25,000/-, which will be paid within a period of four weeks from date.