

(2021) 11 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 9559 Of 2021(GM-TEN)

M/S Evershine Caterers

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2021) 11 KAR CK 0001

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : Jayakumar S Patil, Mohammed Salman, Y T Abhinay

Final Decision : Dismissed

Judgement

Krishna S.Dixit, J

1. Shorn of bulkiness of the Paper Book of the petition, the essential grievance of the petitioner is against the stipulation of average Annual Financial Turnover of related services for a period of immediately preceding five years and cumulative audited value for the said period at rupees five crore instead of three; this stipulation is made vide impugned IRCTC Policy dated 25.05.2021 as a prerequisite for the empanelment of the prospective tenderers in the Indian Railways for catering the services to commuters.

2. After service of notice, the respondents have entered appearance through their counsel and oppose the writ petition by filing the Statement of Objections; learned Sr. Panel Counsel appearing for the contesting respondents vehemently opposes the writ petition making submission in justification of impugned Policy stipulation; he submits that the stipulation is made by the competent authority and in matters of this kind, Writ Court should ordinarily keep away, regard being had to commercial and other factors involved in making of the policy in challenge; he also banks upon a Division Bench decision of Hon'ble Delhi High Court in INDIAN RAILWAYS ONBOARD CATERING CONTRACTORS ASSOCIATION

Vs. INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD., W.P.(C) No. 2218/2020 disposed off on 26.02.2020.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

a) The vehement contention of learned Panel Counsel for the Indian Railways that the tender Policy in question is of all India application and that there is a stipulation as to the invoking of exclusive jurisdiction of the Hon'ble Delhi High Court and therefore, petitioner is not justified in knocking at the doors of this Court is bit difficult to countenance; learned Sr. Counsel Mr. Jayakumar S Patil, appearing for the petitioner is more than justified in submitting that the writ jurisdiction is constitutionally vested in all the High Courts as well and therefore, the answering respondents who happen to be an instrumentality of the State under Article 12 of the Constitution of India cannot oust such a jurisdiction by stipulating conditions of the kind; ordinarily, wherever a part of the cause of action arises, an aggrieved citizen can invoke the assistance of jurisdictional Court; conceding to the contention of the respondents runs counter to the constitutional policy; even when an alternate remedy was statutorily available at Delhi, the Apex Court held that it is open to the citizens to invoke writ jurisdiction at the local High Court vide *ROJER MATHEW vs. SOUTH INDIAN BANK*, (2020) 6 SCC 1.

b) Mr. Patil passionately argues that the third respondent could not have altered the usual conditions of eligibility for empanelment of prospective tenderers when the Central Government has promulgated the General Financial Rules, 2017 and its provisions govern the issue; however, learned Sr. Panel Counsel appearing for the Indian Railways points out that these Rules do not mention anything about the periodicity or the quantum of amount which the impugned IRCTC Policy stipulates; it is not shown from the Rules; he also points out that these Rules regardless of the nomenclature, do not have statutory force, they having been issued in the Executive Power; however, Rules of the kind need not have statutory support for holding the respondents to what they profess to do under the Rules vide *B S MINHAS Vs. INDIAN STATISTICAL INSTITUTE*, (1983) 4 SCC 582; apparently, the Rules are silent about stipulation of conditions of the kind; their text & context prima facie show that they need to be followed only as the guidelines and not as strict axioms of law.

c) The learned Panel Counsel for the Railways is right in banking upon the provisions Manual for Procurement of Consultancy and Other Services, 2017, wherein paragraph 1.3.10 which states that the provisions should be "taken as generic guidelines, which have to be necessarily broad in nature..."; it also specifically provides for supplementing the provisions to suit local/specialized needs, by issuing their own detailed manuals including customized formats tailored to unique individual requirements; in view of this, leverage apparently availing to the third respondent, the stipulation of impugned condition cannot be

faltered; even otherwise, in matters having commercial overtones, what condition should be stipulated is a matter left to the wisdom of the Executive and Writ Court cannot run a race of opinions with the same.

d) The second submission of Mr. Patil all through what was stipulated was a period of three years and the audited amount of rupees three crore and therefore, that could not have been unilaterally altered by the Executive defeating the legitimate expectation of the aspiring panelists is bit difficult to countenance; as already mentioned above, the decisions of the kind are made by the Executive in its wisdom gained through years of experience; ordinarily, such decisions partake the character of commercial policy making wherein, a host of factors enter; Courts are ill-suited to substitute their views to that of the policy makers; however, this is not to say that a policy can be made in violation of law; despite lengthy submissions, no case is made out of such violation; it cannot be said that the alteration of the existing conditions for empanelment are unjust or arbitrary; they are not discriminatory too inasmuch as, they apply to all persons similarly circumstanced qua the petitioners; therefore, indulgence of the Writ Court is unwarranted.

e) There is a lot of force in the submission of learned Panel Counsel for the Railways that the General Conditions of contract for services categorically state that the technical criteria laid down in the subject manual is only by way of sample and therefore, is illustrative; the same cannot be construed as Euclid's Theorem so as to deprive the third respondent of its discretion to re-fix the parameters suiting to its requirement; as already mentioned above, what should be the requisite period and what should be the requisite amount of turnover for the empanelment of prospective bidders are not susceptible to judicial review; this apart, the IRCTC is engaged in Earning Contracts and receives the payment; no eligibility criteria has been provided for Earning Contracts, in the guidelines whereas, the same are provided for the services only; the Railway Ministry consciously omitted to prescribe eligibility criteria for Earning Contracts;

f) Learned Panel Counsel is more than justified in banking upon the decision of the Delhi High Court *supra*, wherein para 17 observes as under:

"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 fulfill 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." This decision also answers the contention of the petitioner that the MSME Enterprises should be treated differently & leniently.

In the above circumstances, the writ petition being devoid of merits is liable to be dismissed and accordingly, it is, costs having been made easy.

This Court places on record its appreciation for the able assistance rendered by the Sr. Panel Counsel Mr. Y.T.Abhinay who appeared for the answering respondents.