

(2001) 01 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 2 of 2000

M/s. Pee Kay Associates

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-01-2001

Acts Referred:

Citation : (2001) 2 AD 773 : AIR 2001 Delhi 248 : (2001) 91 DLT 279 : (2001) 58 DRJ 208

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Ravinder Sethi and Mr. S.K. Taneja and Mr. Naresh Thanai, for the Appellant; Mr. Mukhul Rohtagi, A.S.G., Mr. P.N. Lekhi, Mr. Ashok Bhasin and Mr. Sanjay Gupta Advs., for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner was awarded the contract for providing the pantry car service on Rajdhani Express train Nos.2429/2430 operating on the Hazrat Nizamuddin, New Delhi-Bangalore sector, with effect from 30th of December, 1995 for a period of five years. The said contract dated 16.9.1996, awarded to the petitioner was under the control and management of Southern Railway.

2. Respondent No.4 had been awarded the contract for providing the pantry car service on the Rajdhani Express train Nos.2437/2438 operating on the Hazrat Nizamuddin, New Delhi-Secunderabad sector, with effect from 1.12.1998. The contract of respondent No.4 was under the control and management of Northern Railway.

3. The controversy between the parties arose when the railway authorities sought to increase the frequency of Rajdhani Express to Bangalore from bi-weekly to tri-weekly. Correspondingly, the frequency of Rajdhani Express up to Secunderabad was sought to be reduced from bi-weekly to weekly, with effect from 1.12.1998. The Southern Railway, following the communication from the Railway Board, dated 9th September, 1998, asked the petitioner to provide

pantry car service for the additional train to Bangalore on the same terms and conditions vide their letter dated 24th September, 1998.

4. Respondent No.4 protested and represented to the Railway Board and the Minister of Railways against the allotment of pantry car service to the petitioner for the additional train to Bangalore. As a consequence whereof, respondent No.1, in supersession of the letter issued to the petitioner by the Southern Railways vide its letter dated 3rd of November, 1998, decided to permit respondent No.4 to continue to provide the pantry car service on the additional train also numbered 2429/2430, treating the same as an extension of train Nos.2437/2438, which was up to Secunderabad to Bangalore. Petitioner felt aggrieved by this and made representations through Members of Parliament and otherwise, for being awarded the pantry car service for the additional trip allowed on train Nos.2429/2430. However, petitioner did not challenge the same in a Court of law.

5. Curiously, what had transpired in 1998 gets repeated in the year 1999. The Railway Board vide its communication to the General Manager, Southern Railway and others dated 15th October, 1999, desired that the frequency of Rajdhani Express train up to Bangalore be increased from tri-weekly to four days a week. Pursuant to this the Southern Railway advised the petitioner, vide its communication dated 2.12.1999, to provide pantry car service for the additional trip, noting that with this additional catering service the total number of catering services to be provided by the petitioner would be thrice a week. petitioner duly acknowledged the letters requiring him to provide the additional service and confirmed having made arrangements for the same.

6. Simultaneously, the General manager, Catering, Northern Railways, also addressed a communication to respondent No.4, advising him that, as a consequence of the increase in the frequency of the Rajdhani Express train up to Bangalore from tri-weekly to four days a week, the Rajdhani Express train up to Secunderabad was being cancelled. Respondent No.4 was further advised to discontinue the catering service on train No.2437/2438 with effect from 31.12.1999.

7. By communication bearing No.C-86/2429-2430/Vol.IV dated 30.12.1999, petitioner was notified that Railways have reviewed the allotment of additional catering service and it has been decided to allot the licensee of train Nos.2437/2438, i.e. respondent No.4, to provide catering for additional trips of train Nos.2429/2430 since this was being considered a case of extension of Delhi-Secunderabad Rajdhani Express to Bangalore and not an increase in the frequency of Rajdhani Express to Bangalore. The earlier letter dated 2.12.1999, authorising the petitioner to provide the catering service on the additional trip, was cancelled.

8. Petitioner, in the present writ petition, is assailing the communications dated 30.12.1999 as well as the earlier action of the Railways in not awarding the

additional service to the petitioner in the year 1998.

9. Pleadings were completed in the writ petition. Petitioner as well as respondents have filed their written submissions and counsels were heard. The original record had been called for and has been perused.

10. Learned senior counsel for the petitioner, Mr. Ravinder Sethi, has assailed the action of the Railway Board in not awarding the petitioner with additional catering service as being contrary to its declared policy of having one licensee for the same train and station. Reference is invited to the letter dated 6.1.1992 of the Railway Board which, inter alia, states that, "as far as possible only one licensee should be there for one station/train." It is urged that factually it was a case of increase in frequency of train Nos.2429/2430. This, it is claimed, is borne out by the communications which were initially issued by the Railway Board and following which the Southern Railway had asked the petitioner to provide the additional catering service for the increased trips. It is urged that communications from the Railway Board itself revealed their perception of it being a case of increased frequency of train No.2429/2430, which is sought to be changed to favor respondent No.4 for ulterior motives and extraneous considerations to extension of service from Secunderabad to Bangalore. Counsel argued that in the communications from the Zonal Railway and even otherwise, in the license agreement, the description of service is with respect to train number. The additional services bear the same train number, which is covered by petitioner's license agreement. Learned counsel for the petitioner assails the action of the Railway Board and Ministry in subsequently treating it as a case of extension, as being contrary to the factual position. He submits that the action is malafide due to the friendly relationship of the father of the partner of respondent No.4 with the Member (Traffic), respondent No.5. Mr. Sethi urges that respondent No.5 has not filed any reply affidavit, denying the said allegation and, Therefore, the said allegations should be taken as un rebutted and proved. The action of respondent No.1 railways is also claimed to be hit by the Wednesbury Principle of unreasonableness, in as much as, no prudent man could arrive at the decision of reviewing and cancelling the contract for the increased frequency of the train, which was awarded to the petitioner.

11. Learned senior counsel for the petitioner further urged that petitioner had a vested right to be awarded the additional trip, in consonance with the policy of the Railway Board, which is not in dispute. Moreover, the communications dated 9.9.1998 and the subsequent communication dated 15th October, 1999 of the Railway Board itself show that the additional trip was being treated as an increase in frequency of the Rajdhani Express to Bangalore train No.2429/2430.

12. Learned counsel for the petitioner relied on decisions in Common Cause, A Registered Society Vs. Union of India and Others, ; Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; and New Horizons Limited and Another Vs. Union of India (UOI) and Others, in support of his contention that arbitrary and unreasonable decisions of the government authorities, while dealing with

contracts would be amenable to writ jurisdiction.

13. Learned senior counsel for the petitioner next contended that the writ petition would be maintainable and that he is not obliged to invoke the alternative remedy of arbitration, as provided under the Contract. In support of his contention that existence of alternative remedy would not operate as a bar in cases of enforcement of fundamental rights or of violation of principles of natural justice and that exhaustion of alternate remedies was a rule of convenience and discretion, rather than rule of law, he relied on *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, ; *Ram and Shyam Company Vs. State of Haryana and Others*, ; *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, ; *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, ; and *State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd.*, .

14. Mr. Mukul Rohtagi, Additional Solicitor General appearing for respondents 1 to 3, submitted that the writ petition was not maintainable. He submitted that this was essentially a matter of contract. There was a concluded contract between the parties. This Court would not oversee the working of such contracts. In case petitioner was aggrieved with regard to any action taken under the contract, the remedy for the same would lie elsewhere. Admittedly, there is an arbitration agreement between the parties, viz. Clause 29 and, hence, petitioner was free to raise his grievance in the alternative arbitral forum and the writ petition would not be maintainable. Reliance was placed on the following judicial pronouncements, viz. *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*, and *Escotel Mobile Communications Limited Vs. Union of India*, . Elaborating his submission, the learned Additional Solicitor General submitted that, in fact, in substance petitioner was seeking specific enforcement of contract, which was not permissible under Article 226 of the Constitution of India. Seeking the aid of the policy for interpretation of contractual terms was again a commercial matter in the realm of contract and not permissible under Article 226 of the Constitution of India. There was no element of public law involved, which would justify invocation of the remedy of a writ petition. There was no legal provision or statute involved nor was there any allegation of infraction of any law. It was urged that for the purpose of award of catering contract; the Railway Board was the ultimate authority to decide whether this was a case of increase in frequency of an existing train or an extension of another train.

15. The learned Additional Solicitor General further contended that keeping in mind the limited scope of judicial review, as brought out in the judgments of the Supreme Court in *Tata Cellular Vs. Union of India*, and *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , this was not a case which ought to be entertained by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

16. Learned senior counsel for respondent No.4, Mr. P.N. Lekhi, relying on the provisions of the Railway Board Act and the Railways Act, 1959, submitted that

the Railway Board was the final authority to take decisions as to the management and administration of the Indian government railways. The railways had been divided for efficient administration into different zones, which were managed by the respective zonal railways. In this context, it was submitted that the petitioner was providing the pantry car services for train No.2429/2430, which was being run, controlled and owned by the Southern Railway, while respondent No.4 was providing catering service to the train No.2437/2438, which was under the control, management and owned by the Northern Railway. Learned counsel submitted that the train to which respondent No.4 was providing pantry car service was owned and belonged to the Northern Railway. One of these, had in 1998 been extended to Bangalore and the respondent No.4 continued to provide the catering service. As the decision of the Railway Board to extend the 2437/2438 train to Bangalore yielded fruitful results in the year 1998, the Railway Board decided to extend the remaining trip of the train No.2437/2438 from Secunderabad to Bangalore. The Railway Board, Therefore, rightly and on equity, decided to permit respondent No.4 to continue to provide catering service on the said extended train. The award of contract on the extended train was similar to the contract which was extended in the year 1998. It was submitted that the allegations of malafide were absolutely baseless and without foundation. Learned counsel also relied on the following judgments in support of his contention that the writ petition was not maintainable on account of nature of relief sought, existence of alternative remedy and the limited scope of judicial review:

1. Tata Cellular Vs. Union of India, .
2. Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, .
3. Bhagubhai Virajlal Vs . State of M.P. .
4. Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, .
5. G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, .
6. Produce Exchange Corpn. Ltd. Vs. The Commissioner of Excise, Assam and Others, .
7. Ranjit Thakur Vs. Union of India (UOI) and Others, .

17. Petitioner's case, at best, is that this is a case of increase in frequency of train No.2429/2430 and, Therefore, in terms of the policy the petitioner is entitled to award of catering contract for the additional trips also. The crux of the controversy, Therefore, is whether it is a case of increase in frequency of train No.2429/2430 or a case of extension of train No.2437/2438 from Secunderabad to Bangalore. The Railway Board, which is the final authority in such matters, after considering all the facts and circumstances, firstly in 1998, reached the conclusion that this should be treated as an extension of the Delhi-Secunderabad Rajdhani Express to Bangalore, which was being run by the Northern Railway.

This has been reiterated by the Railway Board in 1999. Besides, the policy as stated in the letter of 6th January, 1992 is not in absolute terms and does not contain an absolute bar or prohibition. It sets out what is a desirable objective.

18. A perusal of the record shows that all the facets and aspects of petitioner's claim of it being a case of increased frequency of train No.2429/2430 to Bangalore and not a case of extension of Rajdhani Express Train No.2437/2438 from Secunderabad to Bangalore have been considered threadbare. As a matter of fact, representations through Members of Parliament on behalf of the petitioner as well as respondent No.4 were made and the matter had been re-examined. As regards quality of service, both petitioner and respondent No.4 claim excellent credentials. Initially, on 28th October, 1998, the discussion with Member Traffic is recorded as under by AM/C&T as under:-

"1. The matter was discussed with MT (Member Traffic). As per the decision taken by the Board, Rajdhani Exp. running between NDLS and SC was extended up to SBC to improve occupation and provide additional services to SBC (Bangalore).

2. It is, Therefore, an extension of the existing services, i.e. NZM-SC Exp. train to Bangalore and the extant policy for allotment of Pantry Car where existing services are extended should be followed in this case. Catering services on the extended run between SC and SBC may Therefore be provided by the existing licensee of NZM-SC Rajdhani Exp.

3. S.C. Railway, NR and Southern Railway will be advised suitably."

19. The Minister of State finally accepted the recommendation that this was a case of extension of Rajdhani Express from Secunderabad to Bangalore. The noting of the Minister reads as under:

"I agree. Since this is a case of extension of Secunderabad Rajdhani Exp. to Bangalore, the present catering license of New Delhi-Secunderabad Rajdhani Exp. M/s. Food World should manage the catering services on this extended trip to Bangalore. Shri Vijay Goel, M.P. has also discussed this matter with me on 17.11.1998. A reply to him as well as to Shri S.P. Jain, M.P. should also be sent."

20. The Railway Board again, in December, 1999, after the Southern Railway was treating it as a case of increase in frequency of train No.2429/2430, reiterated the position and held it to be a case of extension of train from Secunderabad to Bangalore, to which the existing licensee i.e. respondent No.4, was entitled to continue to provide the catering service. The Member (Traffic) ruled as under:

"The case has been dealt with in technical terms only. In reality and spirit the changes made are in the nature of "extension" of the SC Rajdhani to SBC and not "increase in frequency". This was the logic applied at the time when the extension for a third trip was taken. MOS (R) then had accepted the logic. We should, Therefore, treat it only as an "extension".

Another ground which has connotation of natural justice and equity is the fact that in any normal increase in frequency the existing contractor gets additional day/days for operating the service without depriving any other contractor operating some other service. In this case, the contractor operating the SC service will be denied one trip that he is presently operating and would be inequitable.

In the light of the above, the SRly may be advised to withdraw their allotment and the existing contractor operating the SC service should be allowed to continue over the extended run."

21. I find considerable merit in the proposition that extending a train or renumbering the same is the sole prerogative of the Railway Board, which is the final authority in such matters. Decision on such matters of policy or running of trains and management of catering contracts are not to be determined and scrutinised by the Courts under the limited scope of judicial review. In the instant case, admittedly, in September 1998, the Railway Board decided that the additional train service to Bangalore was to be regarded as an extension of train No.2437/38, i.e. Rajdhani Express from Hazrat Nizamuddin-Secunderabad to Bangalore. This, it is claimed, was done for the purposes of better occupation and utilisation of train capacity as well as to provide additional services to Bangalore. Pursuant to this, the Board also decided that the pantry service on the extended train was to be entrusted to the existing caterer, i.e. respondent No.4 of train No.2437/2438. As the said train had been extended to Bangalore, its train number was also changed to train No.2437/2438 so as to avoid confusion in the minds of the public. The train, however, continued to be managed and run by the Northern Railway, which was running the train from Hazrat Nizamuddin to Secunderabad earlier. The situation, thus was that after November 1998, out of the four trains of which the catering services were being provided by the petitioner and respondent No.4, three were running up to Bangalore while the fourth one was terminating at Secunderabad. Respondent No.4 had the catering of one train running up to Bangalore and the one terminating at Secunderabad. The Railway Board, after about one year, decided to extend the fourth train, which was terminating at Secunderabad, also up to Bangalore. The Railway Board, as noticed earlier, also decided that it was again a case of extension of train to Bangalore and not of increased frequency to be catered by the existing contract, viz. respondent No.4 and not the petitioner. Hence, the benefit under the policy of one contractor for one train and station could not be applicable in the instant case. Besides, the policy, as noted earlier, does not contain any absolute bar or prohibition.

22. The train number being the same or being changed would not be of any material consequence. Incidentally, it may be noted that as per the respondents, the petitioner, who was providing catering service to Delhi-Ahmedabad Rajdhani Express on train No.2427/2428, which was changed to 2957/2958, continued to provide the service to the said train with the changed number when the

administrative control was shifted.

23. From a perusal of the decision making process, as recorded in paras 18, 19 and 20 hereinbefore, it would be seen that the decision has been arrived at after consideration of all relevant factors. The view points of the petitioner and that of respondent No.4 have been considered and the reasons for arriving at the decision are indicated. I find that the decision making process cannot be said to have been vitiated by any unfairness, arbitrariness, irrationality or illegality. Simply because the authorities have not taken a particular view and accepted another plausible view, the decision is not liable to be questioned on merits and set aside. From the record it is seen that the authorities have indicated one of the factors which they have considered is equitable distribution, without deprivation of another contractor.

24. As regards the 1998 decision, to treat the additional service as an extension of the train from Secunderabad to Bangalore, the same was not challenged or assailed by the petitioner after the initial protest. Respondent No.4 had, Therefore, continued to provide the said service. Petitioner's challenge to the said decision, apart from not being admissible on merits, is liable to fail on the ground of delay and laches.

25. As regards petitioner's plea of malafides, it may be noted that petitioner did not, in any of his several representations made, raise the said plea against the Railways. The said plea has been raised belatedly and is an after-thought. Moreover, the allegations made are lacking in specifics and the inference sought to be drawn are far-fetched. The plea is held to be without any foundation or basis.

26. Petitioner also claims that upon initially being advised by the Southern Railway to take up the catering of additional trips, it had incurred expenses in making arrangements for provision of crockery, hiring of staff, etc. and, consequently, suffered losses. If petitioner has any grievances in this regard, it may take re-course to claiming compensation in terms of the arbitration agreement.

27. It may be noted that the learned Additional Solicitor General had also urged that the writ petition was not maintainable in view of the alternate efficacious remedy of arbitration being available to the petitioner. However, in view of the fact that the writ petition is being decided on merits, it is not necessary to decide this objection.

28. It is not necessary to advert to the numerous authorities that have been cited by the petitioner and the respondents with regard to the grounds on which the administrative decision can be assailed and also with regard to the challenge to the decision making process, as the principles in this regard are well-settled.

29. In view of the foregoing discussion, the writ petition is held to be without merit and is dismissed. The interim order stands vacated. Parties to bear their

own costs.

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