(2019) 09 CAL CK 0202

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 25381 (W) Of 2013, 23957, (W) Of 2018

M/S. R. K. Ghosh & Bros. & Anr — APPELLANT

Vs

Union Of India & Ors — RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:
Constitution Of India, 1950 — Article 19(1)(g)

Citation : (2019) 09 CAL CK 0202

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Pallab Banerjee, Amitesh Banerjee, S. K. Trivedi, Pathik Bandhu Banerjee, Naba Kumar Das

Judgement

Shampa Sarkar, J

The writ petitioner, which is a partnership firm was running a refreshment room in New Coochbehar Railway Station. The petitioner claiming as a licensee has challenged the tender process dated October 4, 2018, initiated by Indian Railway Catering & Tourism Corporation Limited (hereafter referred to as 'IRCTC'), a 100% subsidiary of the Ministry of Railways. The Railways handed over all existing refreshment rooms to IRCTC, thereby authorizing IRCTC to run the business through private vendors selected by a tender process. It was a policy decision. The tender process which is under challenge before this Court was one such instance when private vendors were allowed to participate and the successful tenderer was awarded the contract of running the refreshment room at the New Coochbehar Railway Station.

It is the contention of the petitioners that as they were existing licensees running their business of food and supply in the New Coochbehar Railway Station, by virtue of the decision of the Hon'ble Apex Court in Senior Divisional Commercial Manager, South Central Railways and others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and other, reported in (2016) 3 SCC 582, they should be allowed to continue and their could not be any tender process in relation to that particular railway station. Mr. Banerjee, learned advocate appearing for the petitioner has drawn the attention to paragraph 29 of the said judgment which is quoted below:

"29. One more important aspect to be taken note of by this Court is the non-governance of railway property in the past 67 years since Independence. Though, it is a recognised principle of law that the property of the Railways is public property, yet in reality, it is the private players and industries that are allowed to carry on their business for transport of raw materials from one place to another. After the enactment of the Railways Act, 1989, the Rail Land Development Authority has been established under Chapter II-A of the Act t manage the railway property by framing policy or rules for allotment of the same in favour of the licensees, including fixing licence fee or occupation charges in respect in respect of the vast extent of vacant property from which huge revenue can be collected, which is a laudable object to cater to the need of the public at large. The periodical revision of licence fee in respect of such big operators has not been done by the Railways. Also, the policy of not renewing the licences of those persons who are members of the respondents and completely dependent on self earning from these small units and making them participate in a public competition is absolutely unfair, unreasonable and arbitrary. The chances of such persons being deprived of their right to livelihood is also an important factor which has to be taken into consideration by this Court to interpret the policy framed by the appellants. The callous attitude as far as the inaction on the part of the State in tackling the problem of rising unemployment is appalling. The situation is made worse by the handing over of public functions to private entrepreneurs, which then exploit the policies of the Government against the poor and downtrodden people of the country. If the appellants under the guise of the Policy are permitted to deny renewal of licences in favour of the licenssees, it would amount to deprivation of their right to freedom of occupation guaranteed under Article 19(1)(g) of the Constitution as well as the right to livelihood, which action of the appellants would be diametrically opposed to their constitutional duty towards social justice as well as uplifting the weaker sections of the society and the unemployed youth of the country."

Mr. Banerjee further submits that if the order of the Hon'ble Apex Court is considered in its letter and spirit, it would mean that the petitioner would be protected by the said order and should be allowed to continue with his business upon renewal of his existing licence. According to Mr. Banerjee, the said tender notice was issued in violation of the order of the Hon'ble Apex Court.

Mr. Banerjee further submits that the Hon'ble Apex Court, by an order dated October 30, 2018, in Vendors Cooperative Society Ltd. & ors. v. Union of India & ors, has further clarified the position by holding that all units covered by the judgment of the Hon'ble Apex Court in the matter of Senior Divisional Commercial Manager, South Central Railways (supra) would be entitled to renewal of licences held as on the date of the expiry of their licences.

Mr. Naba Kumar Das, learned advocate appearing on behalf of the Union of India, submits that as a part of the catering policy of 2010 and 2017, the Ministry of Railways as a matter of policy had decided to hand over the entire matter relating to running and regulation of catering businesses through refreshment rooms to IRCTC and IRCTC in turn was authorised to allow private vendors to run the refreshment rooms by initiating tendering processes. According to him the petitioners were free to participate in the auction process as the petitioners were not entitled to the benefit of the judgments of the Hon'ble Apex Court relied upon.

Mr. Amitesh Banerjee, learned senior advocate who appears for the IRCTC, submits that the order of the Hon'ble Apex Court in Senior Divisional Commercial Manager (supra) applied to those units who were petty vendors or ran petty businesses at the railway stations. As the petitioners ran a refreshment room, the petitioners would not get the benefit of the said judgment but the petitioner was free to participate in the tender processes initiated by IRCTC if they wish to run their catering business from the station. Mr. Banerjee further submitted that there was no scope for any further interim protection to be granted to the petitioners. In this case, the petitioner's licence had expired long back and the petitioner had filed another writ petition challenging the enhancement of licence fees. Secondly, the tender process which is in dispute in the writ petition had been completed. A private vendor was awarded the contract and he had fulfilled the terms of the contract. The contract is going to expire very shortly and a fresh tender process has already been initiated by issuance of a tender notice dated August 27, 2019. The date and time of opening the bids is September 17, 2019.

Having heard the rival contentions of the parties, it appears that the petitioners have been removed from the refreshment room at New Coochbehar Railway Station by a notice dated February 15, 2018 which has not been challenged. No prayer has been made for restoration of possession and/or renewal of the licence. In this writ petition, the tender process under challenge was already completed and the successful tenderer has worked for almost a year. The next tendering process has been initiated. Intending tenderers might have sent their bids indicating their desire to participate in the tender process.

Under such circumstances, the balance of convenience and inconvenience is in favour of not granting any interim protection to the petitioners at this stage. The petitioners are still entitled to participate in the tender process without prejudice to their rights and contentions.

The IRCTC as also the Railway authorities will file their respective affidavits within 3 (three) weeks, reply thereto, if any, be filed within a week thereafter.

Let the matter appear in the monthly list of November, 2019.