
(2019) 09 CAL CK 0379

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 25381 (W) Of 2013, Civil Application (CAN)
No. 9842 Of 2019

M/s. R. K. Ghosh & Bros

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0379

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Pallab Banerjee, Amitesh Banerjee, Rudrajit Sarkar, Sanjiv Trivedi,
Naba Kumar Das, Pathik Bandhu Banerjee

Final Decision : Disposed Of

Judgement

Shampa Sarkar, J

W.P. 23957 (W) of 2018 is taken up for consideration today treating it as on day's list. Mr. M. Bose, learned advocate appearing on behalf of the petitioners, submits that his clients does not want to proceed with the W.P. 23957 (W) of 2018 as the same has become infructuous.

W.P. 23957 (W) of 2018 is dismissed as 'not pressed'. All interim orders passed therein stand vacated.

The application being CAN 9842 of 2019 is filed for appropriate orders. The prayer in the said application is for an injunction restraining the Indian Railway Catering & Tourism Corporation Limited (hereafter referred to as 'IRCTC') from giving effect to the notice inviting e-tender dated August 13, 2019. A similar prayer was made before this Court on September 12, 2019 when the petitioners were pressing W.P. 23957 (W) of 2018.

By a detailed order the said prayer for injunction was refused by this Court considering that the notice inviting tender had already been published and the

date and time of opening the bids was September 17, 2019. The relevant portion of the order is set out below:

"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."

By filing this application the petitioner once again agitates the same points and prays for a fresh interim order in the writ petition being W.P. 25381 (W) of 2013.

First and foremost, W.P. 23957 (W) of 2018 was filed challenging the tender process dated October 4, 2018 initiated by the IRCTC, with the purpose to hand over the catering job to private vendors. Subsequently the said refreshment room at the New Coochbehar Railway Station was handed over to a private party through a tender process, namely, Raj Group. The said private party completed its tenure as per the contract awarded by IRCTC. When the tenure of M/s. Raj Group was coming to an end, IRCTC issued another notice inviting e-tender. The petitioner now contends that as W.P. 23957 (W) of 2018 had become infructuous in view of the fact that the tender which was challenged therein has culminated in the issuance of a work order and subsequent completion thereof by the successful bidder, that is, Raj Group. It is submitted that nothing survives in the said writ petition. Thus, the petitioners have sought to withdraw the same.

It is contended by the petitioners today, that as W.P. No. 25381 (W) of 2013 was pending and as there was an interim protection granted by order dated January 8, 2019 passed by another Single Judge while disposing of a connected application being CAN 8256 of 2018, the ongoing tender process should be stayed until W.P. No. 25381 (W) of 2013 is disposed of.

The petitioners submitted that the decision dated October 30, 2018 of the Hon'ble Apex Court in W.P. (C) NO. 373 of 2017 in the matter of Vendors Cooperative Society Ltd & ors. v. Union of India & ors. and the decision dated July 30, 2019 of the Hon'ble Patna High Court in Letters Patent Appeal No. 364 of 2019 in the matter of Vaishali Enterprises and ors. v. The Indian Railway and ors., protect the petitioners from being discontinued as caterers and/or vendors by the e-tender process, initiated by the IRCTC. The petitioners further pray that as per the observations of the Hon'ble Apex Court in the decision of Vendors Cooperative Society Ltd. and ors. (supra), the petitioners' licence was deemed to have continued and the petitioner's right to be put back in possession of the refreshment room was thus protected.

Admittedly the IRCTC is not a party to the writ petition. Till date no application has been filed, nor any prayers have been made before the Court for adding IRCTC as party respondent in this writ petition, although the matter was heard on several days.

The interim order prayed for in this application cannot be granted for the following reasons:-

i) IRCTC is not a respondent in the writ petition W.P. No. 25381 (W) of 2013, and the tender was floated by IRCTC;

ii) The petitioner's licence expired in 2001;

iii) In the writ petition, the petitioner has not prayed for renewal of licence but, has only challenged the enhancement of licence fee with retrospective effect.

iv) No interim order protection was given by the Hon'ble Division Bench in the order dated July 2, 2018 passed in MAT 1156 of 2017 with regard to the possessory rights of the petitioner and the renewal of licence.

v) Although, the petitioners were evicted and/or removed from the said refreshment room at New Cooch Behar Railway Station by a notice dated February 15, 2018, the petitioners were not favoured with any interim order in the appeal which was disposed of on July 2, 2018, that is, after the notice dated February 15, 2018. Even, the learned Single Judge while disposing of CAN 8256 of 2018 had held that the prayer for opening the pad lock placed in the refreshment room by the railways, after removing the petitioners would also be subject to the decision of WP 25381 (W) of 2013.

vi) The decision of the Hon'ble Apex Court in Vendors Cooperative Society Ltd. and ors. (supra), clarified that the existing licences should be renewed in accordance with the existing policy in respect of the units covered by the judgment of the Hon'ble Apex Court in Senior Divisional Commercial Manager, South Central Railways and ors. (supra). This judgment was delivered prior to the decision of the Hon'ble Division Bench yet, no interim protection was granted.

vii) The writ petition out of which this application arises was filed challenging the enhancement of the licence fee with retrospective effect, contrary to the 2010 Policy. The licenses of the petitioners admittedly expired in 2001. The tender is a subsequent event. The tender process has been initiated by the authority (IRCTC), as per the Catering Policy of the Railways. Such policy of the Railways is not under challenge in this writ petition. Third party rights might have been created. Moreover a tender process should not ordinarily be interfered with or stalled unless there was something patently illegal, mala fide, arbitrary or unfair in the process.

Under the aforesaid circumstances, no orders can be passed in this application. CAN 9842 of 2019 is disposed of. Leave is granted to the petitioners to add the IRCTC as the respondent no. 4. Such correction be made here and now. The learned counsel present before this Court on behalf of the IRCTC accepts notice of the same.

Let affidavit-in-opposition to the main writ petition be filed within three weeks after the ensuing Puja Vacation, reply thereto, if any, be filed within two weeks thereafter.

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

The parties will be at liberty to annex all relevant documents disclosing the subsequent events their oppositions. The petitioners will be at liberty to deal with them in the reply.