

(2022) 03 MP CK 0117

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4484 Of 2022

M/S R.N. Vyas Sons

APPELLANT

Vs

West Central Railway And Others

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2022) 03 MP CK 0117

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Siddharth Sharma, Chandra Mohan Tiwari

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. The petitioner in the instant petition has challenged communication dated 11.01.2022 (Annexure-P-6), made by the Divisional Commercial Manager to Station Manager, West Central Railway, Itarsi and Vidisha (M.P.), wherein, it has been stated that the validity of the contract period of the petitioner with the respondents was expiring on 16.01.2022 and the same has been extended upto 31.03.2022 with certain conditions. The petitioner prayed that the license period should not have been extended only upto 31.03.2022 and status quo should be continued till further orders to be issued by the head office with regard to renewal of the license of the petitioner.

2. The brief facts of the case are that on 10.11.2014, tender notice was issued by the respondents for provision of catering services at Itarsi Railway Station for a period of five years. On 07.06.2016, the bid of the petitioner was accepted and a letter of acceptance for awarding license for the said work was issued in its favour. The petitioner commenced its operation with effect from 08.08.2016. However, a master license agreement was executed later on i.e. 24.06.2019, recognizing the fact that commencement of the operation of the work had

started with effect from 08.08.2016. The original agreed terms for which the license was granted had expired. Hence vide order dated 29.12.2021, an extension was granted which also expired on 16.01.2022. A further extension was granted upto 31.03.2022.

3. Learned counsel appearing for the petitioner submits that in pursuance to some directions given by the Hon'ble Supreme Court directing to maintain status quo with respect to minor catering unit, the Railway Board issued instructions on 21.05.2019, directing all Zonal Railways to maintain status quo in respect of minor catering units as existing on 31.03.2019 for Indian Railways till further orders are issued from the Railway Board. He further submits that on 27.08.2019 again same directions have been reiterated to all Principal Chief Commercial Manager of Zonal Railways. He also places reliance on a clarification letter dated 31.12.2021 to state that necessary action is required to be taken to see that the status quo should continue with respect to renewal of catering license. He, therefore, submitted that the respondents-authorities have erred in limiting period of license only upto 31.03.2022 and have ignored various directions given by the higher authorities.

4. We have considered the submissions and have also perused the record.

5. It is an admitted fact that as per the terms of the contract, the period for license is for five years. The commencement of the period started with effect from 08.08.2016. After expiry of five years, an extension was granted upto 16.01.2022, which was further extended upto 31.03.2022. The intra departmental communication of the railways would not automatically extend the terms of the license. This Court in exercise of powers under Article 226 of the Constitution cannot extend the period of license beyond the period agreed between the parties in a validly executed agreement. The right of the petitioner to operate catering shop flows from the agreement and there is no specific extension granted by the respondents beyond 31.03.2022.

6. So far as the arguments made by the petitioner on the basis of Clause-20 of the agreement is concerned, the same would also not help the petitioner for the reason that the said clause provides that in the event of any interpretation of the provision of the agreement between the parties, the documents shall be read in the order of precedence as mentioned therein i.e. railway latest policies as applicable from time to time; the Articles of the Agreement; the contents of Annexure(s) to the agreement; licensee's response to the Bid; and the Bid. Firstly, there does not arise any question of interpretation of the provision of agreement as the terms of the agreement are unambiguous with respect to the tenure and renewal of license. The tenure of license shall be initially for a period of five years as the provision of further renewal for a period of three years on satisfactory performance and payment of all dues and with other terms and conditions. There is no clause which provides for any automatic extension of tenure or renewal of license. After expiry of five years period, there has to be an order of renewal of license for a further period or its extension.

7. The scope of judicial review, in respect of contracts entered into on behalf of the State, has been considered by the Hon'ble Supreme Court in various decisions. In the matter of Sterling Computers Limited Vs. M/s M. & N Publications Limited and others (1993) 1 SCC 445, the Hon'ble Supreme Court has held that by way of judicial review, the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitation on the scope of any such enquiry. The scope of enquiry is limited to whether "decision making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution. In another decision, in the matter of State of U.P. and others Vs. Bridge & Roof Co. (India) Ltd. (1996) 6 SCC 22, the Hon'ble Supreme Court has held that the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sales of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the Civil Court as the case may be. The aforesaid principles have been reiterated in various other decisions including in the case of Silppi Constructions Contractors Vs. Union of India and another(2020) 16 SCC 489.

8. In the instant case, the license has not been renewed after five years, but the same has been extended finally upto 31.03.2022. Therefore, it cannot be said that the present agreement involves any interpretation of any provision. Secondly, the intra department communication cannot be construed to be the policies so as to get an automatic extension or renewal on the basis of those intra departmental communication.

9. In view of the aforesaid, we do not find any substance in the instant petition. Hence, the petition is, hereby, dismissed.