

(2023) 11 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 24488 Of 2023 (GM ? RES)

M/S. Seema Caterers Situated At 777, 9th Main Road, 3rd
Block, 1st Stage, Hbr Layout, Bengaluru ? 560043
Represented By Its Partnership Concern.

APPELLANT

Vs

Union Of India The Ministry Of Railways, Raisina Road, New
Delhi ? 110001 Represented By Its Secretary & Others

RESPONDENT

Date of Decision : 18-11-2023

Acts Referred:

Citation : (2023) 11 KAR CK 0050

Hon'ble Judges : M. Nagaprasanna, J

Bench : Single Bench

Advocate : Jayakumar S.Patil, Mahammad Tahir A, Gauthamdev C.Ullal

Final Decision : Dismissed

Judgement

M. Nagaprasanna, J

1. The petitioner is before this Court calling in question Commercial Circular No.61 of 2017 dated 05.09.2017 issued by the respondents/ Railways depicting as Multi Purpose Stall (MPS) Policy 2017 ('MPS Policy' for short) and has sought quashment of certain license agreements entered into between the petitioner and the respondents/Railways and further as a consequence there under, seeks a direction by issuance of a mandamus to renew licenses of the stalls of the petitioner in terms of earlier policy.

2. Facts, in brief, adumbrated are as follows:-

The petitioner is a licensee from the hands of the respondents/Railways in Platform No.6 Yeshwanthpur Railway Station; Platform No.2 at Krishnarajapuram Railway Station and at Platform No.2 at Cantonment Railway Station, Bengaluru. The Ministry of Railways to streamline management of miscellaneous stalls/ trolleys at par with other catering and vending units at different category of stations brings out a commercial circular in Commercial Circular No.96 of 2007.

The said commercial circular undergoes a change in Commercial Circular No.35 of 2010 notified on 21-07-2012. The petitioner here comes into the picture when it was awarded a contract of miscellaneous stalls at Platform No.6 of Yeshwanthpur Railway Station and other platforms detailed hereinabove. This Circular permitted renewal of licence on expiry of the term of 5 years to any awardee of the contract. The petitioner on 31-01-2011 was awarded a contract for a period of 5 years which had commenced from 15-02-2011. Therefore, the said contract had come to an end on 14-02-2016. The petitioner accepted the terms of the contract and began to vend in the stalls at the platforms that were allotted to it in terms of the said contract.

3. After expiry of the term of the contract, the contract of the petitioner stood renewed but not under the earlier policy but under a policy that was notified in terms of certain orders passed by the Apex Court. The Policy was MPS Policy notified on 05-09-2017. The petitioner accepted terms of the policy and was awarded the contract afresh on 05-02-2018. The letter of award of contract depicted that the contract is awarded in terms of the policy dated 31-10-2017. This policy did not contain any clause of renewal on expiry of the term. The petitioner on account of onset of COVID-19 was also granted 282 days of extension which would come to an end on 09-11-2023. The petitioner has knocked at the doors of this Court by filing the present petition on 27-10-2023 contending that the petitioner is entitled for renewal of a further three years in terms of the Catering Policy of 2010 under which it was awarded the contract earlier.

4. Heard Sri Jayakumar S.Patil, learned senior counsel appearing for the petitioner and Sri Gauthamdev C.Ullal, learned Central Government Counsel appearing for the respondents.

5. The learned senior counsel Sri Jayakumar S.Patil appearing for the petitioner would vehemently contend that the petitioner is entitled for extension/renewal of license in terms of the earlier policy as under the present policy the petitioner was asked to sign on the dotted line which did not contain the clause for renewal. He would also submit that the High Court of Delhi in identical circumstances, calling in question an identical act of the respondents, has continued the contract in terms of the earlier policy when the present policy came to be challenged before the High Court. He would seek identical relief at the hands of this Court to the petitioner as well.

6. On the other hand, the learned CGC Sri Gauthamdev C.Ullal representing the respondents would vehemently refute the submissions contending that the petitioner has enjoyed the award of contract, in terms of the policy of 2017 and is now wanting to turn around and challenge the subsequent action of entering into license agreement in terms of the new policy. The petitioner is not entitled to renewal under the earlier policy of 2010 and is bound by the terms and condition of policy of the year 2017. He would further contend that the petitioner has approached this Court at the eleventh-hour, as the tender was floated on

16-10-2023, letter of award is already issued to a successful bidder and at this juncture it cannot be said that the petition can be entertained. He would submit that these are matters in the realm of policy of the Railways as no arbitrariness is projected/available in the case at hand. He seeks rejection of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The petitioner is holding stalls in platforms at different Railway Stations. This is a matter, that is not in dispute. How did the petitioner emerge as a license holder of these stalls, is what is required to be noticed. The Railways notified its catering policy or multi-purpose stall policy as it is called from time to time. The Commercial Circular No. 96 of 2007 was replaced by another commercial circular in Commercial Circular No.35 of 2010 notified on 21-07-2010. This was termed to be catering policy of 2010. The tenure specified in the said policy as dealt in Clause-16 reads as follows:

"16 TENURE

16.1 TENURE OF MAJOR UNITS & GENERAL MINOR UNITS

16.1.1 Tenure of all major units including food courts, fast food units (except Food Plazas, Base Kitchens and AVMs) will be for a period of 5 years. There will be no renewals.

16.1.2 Tenure of AVMs will be made for a period of 5 years. There will be no renewals as per policy as these are major units.

16.1.3 Allotment of all General Minor Units at A, B & C category stations shall be awarded for a period of 5 years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Units at D, E & F category stations will be for a period of 5 years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any.

16.1.4 Tenure of Food Plaza will be for 9 years with an extension of 3 years on satisfactory performance and payment and payment of all dues and arrears and withdrawal of court cases, if any.

16.1.5 All efforts must be made to manage the services departmentally at the earliest. The Service contracts for on-board services managed by departmental supervision would have a tenure for 5 years."

(Emphasis added)

The tenure of the awardee of the contract under the said policy was initially for a period of 5 years with a provision for renewal after every three years on satisfactory performance and payment of all dues and arrears. The petitioner in terms of the said policy was awarded a contract in terms of a communication

dated 31-01-2011. The contract was for a period of 5 years commencing from 15-02-2011. The contracts awarded are appended to the petition. During the subsistence of contract several disputes arose between the Railways and the contract awardees insofar as catering units are concerned. All of them reach the Apex Court in a challenge by the Railways in Civil Appeal Nos. 618-620 of 2016. The Apex Court in terms of its order dated 29-01-2016 disposed of the petitions observing as follows:

"27. Therefore, we have to hold that the provisions of the Catering Policy, 2010 are applicable to the concerned respondents. The action of the railways in not granting renewals of the licenses to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law.

28. For the reasons stated supra, this Court cannot interfere with the impugned judgment and order of the High Court. The Civil Appeals are dismissed. The order dated 11.04.2014 granting stay of the impugned order shall stand vacated. We, however, make it clear that only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the railway stations with periodical reasonable increase of license fee. All pending applications are disposed of."

(Emphasis supplied)

The Apex Court observes that the policy of 2010 was applicable to the respondents which had called in question renewals in terms of a Catering Policy of 2010 during the subsistence of Catering Policy of 2005. The challenge to the orders passed by the Andhra Pradesh High Court was turned down while further observing that those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the Railway Stations.

9. Pursuant to the disposal of civil appeals by the Apex Court, a new policy emerges in tune with what the Apex Court had held, by way of Commercial Circular No.22 of 2017 dated 15-03-2017. Nuances of said circular were drawn directing it to be a Multi Purpose Stall (MPS) Policy. Clause 11 of the said policy dealt with applicability of the policy to the existing stalls. Clause 11 thereof reads as follows:

"11. Applicability of this policy on the existing stalls.

11.1 No new allotment, renewal, extension of the Bookstall/table (other than philanthropic), Misc. Stalls/trolley, Chemist Stalls/corner etc. shall be done by the railways as of now. All such existing stalls/trolley etc. shall be allowed for conversion into MPS as per the provisions of this policy. However, in case they do not opt for conversion into MPS, the same may be allowed to continue till expiry of the existing agreement/arrangement in vogue.

11.2 After expiry of the current agreement period, space shall be standardized, identified and allotted by Zonal Railways for new MPS as per the extant procedure.

11.3 The existing Bookstall/table (other than philanthropic), Misc. Stalls/trolley, Chemist Stalls/corner etc shall be given an option to convert to MPS subject to payment of Licence Fee as quoted by the prospective bidder for similarly placed MPS unit at the station/platform. The tenure of 5 years shall commence from the date of conversion of existing stall into MPS.

11.4 The one-time division-wise exercise of providing option of conversion to existing licensees and conversion of existing stalls into MPS shall be completed by the Divisions within 90 days from the date of issue of this policy.

11.5 This Multi Purpose stall policy will be applicable with immediate effect i.e., from the date of issue. This policy supersedes Misc. Article Policy 2012, Chemist Stall Policy 2000 & 2008 and Bookstall Policies of 2004 and their related instructions, unless specifically referred to in this policy document.”

(Emphasis added)

Clause 11 directed that existing stalls shall be allowed for conversion into MPS as per the provisions of the extant policy and in case they do not opt for conversion into MPS, the same shall be allowed to continue till the expiry of the existing agreement and after expiry of the existing agreement, there is no term of renewal, which was a term that was available in the earlier policy. Clause 11.3 depicted tenure to be 5 years from the date of commencement of conversion of the existing stalls into MPS.

10. The petitioner was offered conversion of existing miscellaneous stall into MPS, a multi-purpose stall on all the platforms that it was having its stalls. In the interregnum, since the license of the petitioner was more than 5 years old, a renewal had been granted to the petitioner for three years from 15-02-2016 to 14-02-2019 in terms of a communication dated 13-02-2016 which was on dot of expiry of 5 years of the earlier license. The letter of award regarding conversion of existing stall into MPS was issued on 05-02-2018 and the same was accepted by the petitioner. The commencement was from 01-02-2018 for a period of 5 years which would come to an end on 31-01-2023. The petitioner accepts all the conditions stipulated in the letter of award which was in tune with the policy of 2017.

11. The petitioner is an individual licensee holding licenses of multi-purpose stalls in 3 platforms of different Railway Stations in terms of 2017 policy. The petitioner then continues with the contract which was to expiry on 31-01-2023. Due to the onset of COVID-19 and the Railways not functioning for a long period, due to intermittent lockdown, the contract of the petitioner stood extended by 282 days. The contract which was to expire on 31-01-2023 was extended till 09-11-2023. The communication of such extension was made on 24-05-2022 itself. Therefore,

the petitioner from 01-02-2018 up to 09-11-2023, close to 5 years and 10 months, continues to run the business in terms of the letter of award dated 05-02-2018 which was in tune with the policy of the year 2017. At the time when the climax arrived i.e., the end of the contract, the petitioner has rushed to this Court. The matter was moved for its preliminary hearing on 07-11-2023 for a contract that was supposed to end on 09-11-2023. Nonetheless, notice was issued and the parties were heard.

12. It is ununderstandable as to how the petitioner can put the clock back to the Catering Policy of 2010 after the petitioner accepted the award of contract on 05-02-2018 in terms of a policy of the year 2017, which clearly had no clause for renewal of the contract after the expiry of 5 years. If the petitioner has signed on the dotted lines of the contract without demur, the petitioner cannot now turn around and contend that he was asked to sign on the dotted lines and out of coercion, has signed it, as it was left with no choice, but to take it or leave it. These submissions cannot be accepted at this juncture, that too, when the cup of woe has come to the brim.

13. It is an admitted fact that the contract of the petitioner was to expire on 09-11-2023. The Railways are not expected to wait till the moment the contract expires and then call for tender. The Railways did call for tender on 16-10-2023. The petitioner chose not to participate. The tender process was over and the learned counsel for the respondents submits that the letter of award is issued or contract agreement is already signed with the successful bidder one Shree Enterprises and Lavanya Caterers and several other tenderers. The petitioner, as observed hereinabove, is not a participant in the said tender. After the contract agreement is signed by the Railways with other caterers, the petitioner wakes and files the subject petition on 27-10-2023 and moves the matter only on 07-11-2023. In the light of the petitioner having accepted all the terms and conditions of the policy of the year 2017, enjoyed the fruits of the policy for close to 6 years without any demur, cannot now turn around and contend that his licence has to be renewed pursuant to a policy of 2010 under which he was initially granted. If the petitioner was not willing for conversion to multi-purpose stall in terms of the policy of 2017, it was well within his discretion to work out steps to remain in the policy of 2010. He has chosen not to do so. He cannot now chose to do so, as much water has flown, on the right of the petitioner, having exercised it in terms of the policy of 2017.

14. Insofar as the contention that the Delhi High Court has granted an interim order of stay in identical matters where policy of 2017 came to be challenged on the plea that the petitioner was asked to sign on the dotted lines and the Delhi High Court granting an interim order of stay on the said plea, is also demolished by the learned counsel appearing for the respondents. The learned counsel taking the Court through the writ petition averments before the Delhi High Court would seek to contend that it was an individual who was holding one platform stall in the Railway Station and it is in these circumstances, the Delhi High Court

had entertained the petition and granted an interim order of stay. The petitioner in the case at hand has three or five platform stalls and further has chosen not to participate in the tender process. Sitting on the fence the petitioner cannot now contend that it should get the benefit of policy of 2010 which no longer applies to the petitioner. Even otherwise, what is granted by the Delhi High Court is an interim order which would not be an impediment for this Court to decide the matter on merits.

15. Yet another circumstance which would belie the plea of the petitioner is that an identically placed contract awardee, had knocked at the doors of this Court in Writ Petition No.21128 of 2023. The grievance therein was the apprehension that the Railways would compel the petitioner therein to sign a licence agreement which does not contain a clause for renewal. The co-ordinate Bench dismissed the writ petition on 21-09-2023 by the following order:

"The long & short of the Petitioner's grievance is as to the alleged compulsion of the Respondent - Railways to enter into a contract in terms of the document at Annexure-N. learned Sr. Advocate Mr. Jayakumar S Patil appearing for the Petitioner submits that the tenure of the arrangement now in obtainment would continue till 09.11.2023 subject to certain payments to be made by his client which he is ready & willing that first of the installments is already paid and other two remain to be paid. He argues that any standard book on the law of contract would shun such a compulsion, free consent being one of the essential ingredients of any valid agreement; that being the position, in the absence of statutory enablement provision, no citizen can be compelled to enter into any contractual arrangement.

2. Learned Panel Counsel Sri. Gautamdev C Ullal appearing for the Respondent - Railways on instructions submits that never the Petitioner was compelled to put his signature to the agreement in question; he was only asked to make the payment in terms of the Letter dated 14.08.2023 and therefore, Petition is liable to be dismissed.

3. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is of the considered opinion that in view of the fair stand taken by the Respondent-Railways the apprehension of compulsion as projected by the Petitioner is not justified; Petitioner is free to sign or not to the subject arrangement now proposed.

In view of the above, this Writ Petition is accordingly disposed off. It hardly needs to be sated that the subject shop premises shall be unlocked and be give to the Petitioner immediately and without brooking any delay.

Petitioner is warned to quit the subject property on or before 09.11.2023 and that if he squats, that would be contempt of this Court."

(Emphasis supplied)

The petitioner therein challenged the said order before the Division Bench and

withdrew the same on 08-11-2023 seeking liberty to challenge the policy of the contract awarded thereafter. The aforesaid is quoted only to demonstrate that these contract awardees cannot feign ignorance of what they have signed. It was a case where the contract of the petitioner therein had also to come to an end on 09-11-2023. Therefore, this is only an added feather in aid to reject the subject petition.

16. In view of the preceding analysis, finding no merit in the petition, the petition stands rejected. Any interim protection subsisting, stands dissolved.