

(2006) 12 MAD CK 0191

In the Madras High Court

Case No : Writ Petition No's. 42960, 45774, 43785 to 43788, 43821 to 43825, 46521 and 47034 to 47038 of 2006

P.K. Shefi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-12-2006

Acts Referred:

Citation : (2006) 12 MAD CK 0191

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : P.S. Raman for C. Seethapathy, in WP Nos. 42960, 43821 to 43825 and 43785 to 43788 of 2006, A. Jeenasenan, in WP No. 45774/2006 and G. Sankaran, in Wps. 47034 to 47038/2006, for the Appellant; R. Thiagarajan for V.S. Suresh Kumar, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Suguna, J.—These writ petitions have been filed challenging the tender notice dated Nil, so far as the petitioners unit at Villupuram Madurai, Tiruneiveli. Kovilpatti, Virudhunagar, Tuticorin and Trichy are concerned and the letter of the 3rd respondent dated 13.11.2006 issued in reference No. IRCTC/Catg./NDU/MDU/06 and the letter of the 3rd respondent dated 31.10.2006 issued in reference No. IRCTC/SZ/Tender/RR/Stalls/06.

2. The facts leading to these cases are as follows:

In al these writ petitions, the petitioners are running a mobile canteens, refreshment rooms etc, at A and B class stations all over the South Zone, in the year 2000, the respondents have introduced a new catering policy. The policy of the first respondent in awarding Railway catering contracts has been revised in the past, for more than once. According to the learned Senior counsel appearing for the petitioners, the policy of keeping 25% reservation for minority, OBC, women, SC/ST etc., has been followed in respect of the minor units such as

stalls, trolleys at A, B and C stations and refreshment rooms in B and C class stations. But, however, this was discontinued for a period of one year during 2004. Subsequently, basing on the objections raised by various sections of the Society, the same has been revised and by commercial circular No. 8 of 2005 as stated above, has been brought back into force.

3 Further, according to the learned Senior Counsel appearing for the petitioners, as per the revised catering policy dated 21.12.2005. the minor units were divided into two types i.e., General Minor Units and Special Minor Units. As per the allotment, the procedure stipulated under Article 10.1 of the policy, the General Minor Units are 75%, i.e. unreserved refreshment rooms in B and C categories of Stations and unreserved stalls and trolleys at A, B and C categories of stations. The Special Minor Units are 25% i.e. reserved refreshment rooms at B and C category of Stations. According to the learned Senior Counsel for the petitioners as far as the petitioner in W.P No. 42960/2006 is concerned, the petitioner is the current licensee for 10 Special Minor Units at Villupuram and in Madurai and he is the current licensee for 4 Special Minor units and in Tirunelveli, he is the current licensee for one Special Minor Unit. According to the learned Senior Counsel, all these 15 Special Minor Units for which the petitioners are the licensee would fall under the reserved category. As per Article 11 of the revised catering policy of 2005, reservation in A, B & C categories of the stations has been defined to include only Special Minor Units, According to the learned Senior Counsel, the first respondent by communication dated 9.3.2006 addressed to the second respondent has specifically stated that any short falls and back logs of reserved category of Special Minor Units should be made good by allotting the same to the licensees who were originally allotted licenses in the general category but are eligible for allotment in the reserved category. Following this, the 2nd respondent has issued a circular No. 36 (TACG) dated 28.4.2006 to the effect that if in a given situation percentage of reservation is more than 25% prescribed, the existing level of Special Minor Units will continue to be maintained and If the existing percentage is less than 25% prescribed, then, the units proposed to be allotted under general category should be earmarked for allotment as Special Minor Units under the reserved category in order to fill the back logs. Basing on this, according to the learned Senior counsel, the petitioners were called by the third respondent to give an undertaking that the present allotments made to the petitioners are under the referred category as defined under the revised catering policy of 2005. Besides, it would be a fresh allotment and not the continuation or renewal of the initial license granted to them. According to the learned Senior Counsel, the petitioners have also given an undertaking. In spite of this, the impugned tender notice has been issued, inviting tenders for awarding license to manage the refreshment rooms, stalls and trolleys over Tiruchirapalli and Madurai Divisions of Southern Railways including the units presently operated by the petitioners under the temporary extent of licence which is valid till 31.10.2006. According to the learned Senior Counsel, there is no dispute that the petitioners will come under the reserved

category and the Special Minor Units run by the petitioners fall under the reserved category and as per the policy of the respondent, there is no need to call for fresh tenders, especially, when an undertaking was sought for from the petitioners. According to the learned Senior counsel, the impugned tender notice does not propose to fill up any back log to achieve the reservation target of 25%. Even assuming it has been issued to achieve the reservation target, the reservation of the petitioners cannot be disturbed since as per the catering policy, the units falling under the general category should be identified for tender and not the units where the petitioners are running the catering, since the same falls under the reserved category. According to the learned Senior Counsel though by the impugned tender, bids have been called for under the general category, the effect of the same will be, reducing the percentage of the reservation which is against the catering policy. As such, the learned Counsel for the petitioners have prayed for quashing of the said impugned notice.

4. On the other hand, the learned Senior counsel appearing for the second respondent has submitted that on 20.10.2000, a new catering policy was introduced. However, the existing licensee were also permitted to participate without satisfying the eligibility criteria or turn over in respect of the unit they were holding. But the new policy was challenged before the Kerala High Court in W.A. No. 3044/2001. But, by order dated 30.12.2001, the Kerala High Court has upheld the said policy. As against that, the SLP was filed and the same was also dismissed. However, the Supreme Court has given two months time to the licensees to make the payment and subject to the payment of arrears, temporary extension was given pending finalisation of the fresh award of contract by Indian Railway Catering and Tourism Corporation Ltd., (herein after referred as IRCTC). But this extension has not created any right in favour of the licensees. But in the year 2001, the Railway Board by its order dated 20.10.2001 took a decision not to call for any new tenders by the Railways as the same was left to be done by the IRCTC. This Was also challenged but the same was dismissed. In the year 2002, IRCTC framed its policy based on the letter dated 20.10.2001 of the Railway Board. This policy introduces a concessional fee and the license fee. Since, the IRCTC is functioning as AEGIC of the Railway Ministry, the Board issued a policy on 5.10.2004 with the main features of (a) two packets system (b) no reservation for major units; (c) the exemption given to the exiting licensees was dispensed with. As against this, representations were also given for reservation in major units also. Basing on all these, on 21.12.2005, the Railway Board issued a revised catering policy in Commercial circular No. 56/2005. As per this, 75% of the minor units in A, B and C stations will be given license by open tender system by IRCTC. The remaining 25% of the minor units in A, B and C stations will be allotted by the Divisional Railway Manager directly. In the said circular, it has been categorically mentioned that "for filling up the reservation quota, separate instructions are issued in commercial circular No. 50/2005 dated 21.12.2005 and read with the Commercial Circular No. 57/2005 dated 05.01.2006 and it deals with modalities of allotment of catering units

under the reserved quota." According to the learned senior counsel appearing for the respondent, as per the said circular, the division will make quota wise distribution on various catering units based on the short fall. Basing on the revised catering policy of 2005, the IRCTC had taken over all the major and minor units from the Southern Railways and the licensee contractors on that date could be classified into the following three categories viz.," (a) Contract already expired and temporarily extended by the Railways to a date or the date on which IRCTC takes over. (b) Those who were given 5 years extension without any rider; it would expire by the date on which IRCTC finalizes the tender. (c) Those who were extended for a period with a rider. Relying on this, learned Senior Counsel had contended that the present licencees/contractors have no right to continue at any rate beyond the date on which IRCTC had taken over or finalizing the tender. Apart from this, as per the above said 2005 catering policy, 75% of the General Minor Units in A, B & C stations are to be given by open tender by the IRCTC and the remaining 25% of the Special Minor Units of A, B & C stations are to be allotted by Divisional Railway Manager directly. Besides, before the allotment of 25%, those units should be identified jointly by the IRCTC and also by the Divisional Railway Manager. That apart, as per the circular No. 2005/TG 111/600/5 dated 21.12.2005 under 25% category, the individuals belonging OBC, MBC, BPL minorities, physically handicapped persons are eligible to be considered. As far as the minorities are concerned, as per the said policy only 3% is allotted to them. Even in the 3%, Muslims, Christians, Parsis are eligible to apply.

5. According to the learned senior counsel what is under challenge is the tender which is related to the General Minor Units in respect of the Madurai and Trichy Divisions. According to him, as far as this General Minor Units are concerned, the question of reservation does not arise at all. That apart, even the present licensees of special units are concerned, they can also apply under this category. Besides, as far as the petitioners' claim is concerned, they come under the reserved category of 25% but the tender called for is relating to 75% of the General Minor Units. As such, according to the learned Senior counsel, the ground on which the tender notice is challenged is prima facie unsustainable. According to the learned Senior Counsel, it is an admitted case of the petitioners that they are eligible for license under the reserved category i.e., Special Minor Units for which a separate notification will be issued by the Divisional Railway Manager. According to the learned Senior Counsel as far as the petitioners are concerned, they were given only a temporary extension with a specific notice that their right will exist till the IRCTC takes over or finalise the tender. As such, according to the learned Senior counsel, the petitioners do not have any right to claim any preference and basing on the current license since it is temporarily granted, they cannot claim any preferential right or any right to continue. That apart, according to the learned Senior counsel, the question of claiming reservation in respect of the tender which has been issued with regard to the General Minor Units are concerned, does not arise. As such, the writ petitions have to be dismissed.

6. I have considered the above submissions of the learned senior counsel for the petitioners as well as the respondents.

7. Admittedly, what is under challenge is the tender notification issued by the IRCTC and as per the said tender notice also the same has been issued in respect of the General Minor Units, As far as the catering policy of 2005 is concerned, there is no reservation at all. As far as the petitioners are concerned, for General Minor Units, their claim is that they are coming under the reserved category and eligible to continue under the Special Minor Units namely 25%. As such, they cannot challenge the tender notice which has been issued for General Minor Units, especially, when the claim of the petitioners is in respect of Special Minor Units of 25%. That apart, as rightly pointed by the learned Senior counsel for the respondents subsequent to the orders of the Supreme Court, they were given temporary extension, as such, basing on the temporary extension, now the petitioners" cannot claim that they should be allowed to continue basing on their investments. In fact, the relief sought for by the petitioners is that even in respect of 75% of the General Minor Units are concerned, they should be allowed to continue, which is totally contrary to the Catering Policy of 2005. The arguments advanced by the learned Senior counsel appearing for the petitioners is that under the guise of issue of tender notice for 75% General Minor Units, in fact, the respondents are trying to throw away, the petitioners who are the current licensee for certain A, B and C stations of Trichy and Madurai Division, But, as already referred to, subsequent to the dismissal of the S.L.P, the petitioners were given only temporary extension. As such, their right to claim under the guise of reservation, even for 75% of General Minor Units, is not sustainable. That apart, by letter dated 30.8.2006, the Special Minor units were identified. Neither this identification order was challenged nor it is the case of the petitioners that the identification of Special Minor Units done by the above said order, is not in confirmity with 25% of reservation. The relief sought for by the petitioners is that even under 75% of General Minor Units, their claim has not been considered and they should be allowed to continue, since they are the current licensee and had invested huge amounts. It is an admitted fact that even for this 75% of the General Minor Units are concerned, the petitioners are eligible to apply and as such, they can compete with others, especially, under 2005 Policy of IRCTC, 75% was allotted to the General Minor Units and only 25% for Special Minor Units.

8. As per the averment of the petitioners is concerned, he is running totally 17 units. But, as per the revised policy, the minorities were given only 3% and even this 3% has to be shared by the Muslims, Christians and Parsis. That apart, it is the specific case of the respondents that if the current licensee was given license under the general quota and if he is eligible for reserved category now, he can apply under reserved category by producing relevant document. To ascertain this status alone, some particulars are called for by the Divisional Manager. As such, basing on calling for these particulars, the petitioners cannot claim any relief.

9. As far as the letters of the third respondent dated 13.11.2006 and 31.10.2006 revising the license fee are concerned, the same had been enhanced only for a period of two months. In the event the petitioners having any grievance with regard to the raise in the license fee, they can very well submit their reply with the reasons and apart from this, as far as these letters are concerned, they do not have any nexus with regard to the tender notice issued by the third respondent which is under challenge in all these writ petitions. As such, I am not inclined to interfere with the letters issued by the third respondent dated 13.11.2006 and 31.10.2006.

10. As such, I find no merit in these writ petitions. Hence, the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.