
(2011) 10 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (Civil) No.4203 of 2011

Poorvanchal Caterers

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2012) 2 GLR 60 : (2012) 1 GLT 327

Hon'ble Judges : B.P.Katakey, J

Bench : Single Bench

Advocate : Mr. Brijesh Kumar, Mr. I.H. Laskar, Mr. P.K. Deka, Mr. S. Alom, Ms. A. Begum, and Ms. N.K. Deka for the appellant., Mr. U.K. Nair and Mr. A.K. Sarkar for the respondents., Advocates appearing for Parties

Judgement

1. The petitioner, who was awarded with the contract of onboard catering service on Train No. 1563940 (GuwahatiPuri Express), by the present petition has challenged the communications dated 19.7.2011 issued by the Deputy Chief Commercial Manager (T&C) terminating the licence granted to it for onboard catering service in the aforesaid train w.e.f. 21.7.2011 and also the subsequent communication dated 22.7.2011 issued by the same authority intimating detachment of the pantry car in the said train w.e.f. 21.7.2011 and discontinuing the licence of the petitioner with effect from the said date on the ground of expressing inability to operate the pantry car service in the said train. By the said communications, the petitioner has been advised to handover the possession of the pantry car as per terms of the contract. The petitioner has also prayed for a direction to the respondent railway to extend the period of licence by 6(six) months w.e.f. 21.7.2011, in consonance with the Railway Board's circular dated 1st(4th) July, 2011.

2. Pursuant to the policy guidelines issued by the Railway Board the process for settlement of the onboard catering service on various trains including the train No. 1563940 (GuwahatiPuri Express) was initiated, in which process the

petitioner, having been found technically qualified and its financial bid being the highest, was allotted the onboard catering service in the said train by issuing the letter of award dated 29.1.2003. The said service, however, could commence from 14.7.2005 and the contract between the partners of the petitioner's firm and the Indian Railway Catering and Tourism Corporation Ltd. (in short IRCTC) was executed on 7.2.2006, giving effect from 14.7.2005. The period of the said contract was for 5(five) years w.e.f. 14.7.2005. The petitioner was also awarded with the contract for onboard catering service in another train being No. 1594142 (DibrugarhJhajha Express).

3. The Government of India in Ministry of Railways in the year 2010 decided to take back all the mobile units in all the Express Trains from IRCTC. However, as the mobile unit for providing catering service on train No.563940 (GuwahatiPuri Express) could not be handed over to the Indian Railways even by the end of the year 2010, the IRCTC vide communication dated 31.12.2010 directed the petitioner to continue to manage the onboard catering service on the said train on temporary basis up to 13.2.2011. The catering service on the said train was taken over by the Indian Railways w.e.f. 01.2.2011 and consequently a tripartite agreement amongst the Chief Commercial Manager (Catering & PM), N.F. Railway; IRCTC and the petitioner was entered into on 1.2.2011. The Deputy Chief Commercial Manager, N.F. Railway, thereafter, vide communication dated 11.2.2011 informed the petitioner about the extension of the period of the licence for onboard catering services, in respect of the said train, for the period up to 20.7.2011, w.e.f. 14.2.2011. During the extended period of the licence certain irregularities were detected by the inspecting staff on conduct of the inspection on 05.06.2011 and the penalty was imposed on the petitioner for such irregularities. One of the partners of the petitioner's firm thereafter issued a communication dated 1.7.2011 to the Chief Commercial Manager, N.F. Railway, protesting imposition of such fine and intimating that it would be difficult for them to continue, subject to reoccurrence of such practices of unilateral imposition of fine. The said partner of the petitioner's firm again on 4.7.2011 issued another communication to the Chief Commercial Manager, N.F. Railway, expressing their inability to continue with the onboard catering service in the aforesaid train No. 1563940 (GuwahatiPuri Express) after the end of the current tenure, i.e., 20.7.2011 and intimating the N.F. Railway to make alternative arrangement in that regard w.e.f. 21.7.2011.

4. The Deputy Chief Commercial Manager, thereafter, issued the aforesaid impugned communication dated 19.7.2011, on behalf of the Chief Commercial Manager (Catering & PM), terminating the licence granted to the petitioner for the management of onboard catering service in the said train w.e.f. 21.7.2011, in view of the inability expressed by it to operate the pantry car service. The petitioner, thereafter, on 20.7.2011 filed a representation before the Chief Commercial Manager (Catering & PM), N.F. Railway requesting withdrawal of the said order dated 19.7.2011, with a further request to extend the period of licence for a further period of 6(six) months w.e.f. 21.7.2011, in view of the Railway

Board's circular dated 01.04.2011. The Deputy Chief Commercial Manager, for Chief Commercial Manager (Catering & PM) by the other impugned communication dated 22.7.2011 informed the petitioner about the detachment of the pantry car in the aforesaid train w.e.f. 21.7.2011 and discontinuance of the licence with effect from the said date, as the petitioner has expressed its inability to operate the pantry car service in the said train. Hence the present petition.

5. I have heard Mr. Brijesh Kumar, learned counsel for the petitioner and Mr. U.K. Nair, learned standing counsel N.F. Railway appearing for the respondents.

6. Mr. Kumar, learned counsel for the petitioner submits that it is apparent from the communications dated 1.7.2011 and 4.7.2011 issued by one of the partners of the petitioner's firm that the petitioner never intended to discontinue the onboard catering service in the aforesaid train, as contents of the said communications reveal that the petitioner expressed its dissatisfaction in unilateral imposition of the penalty for alleged irregularity that too in respect of DibrugarhJhajha Express and as such the orders dated 19.7.2011 and 22.7.2011 issued on behalf of the Chief Commercial Manager (Catering & PM), N.F. Railway, discontinuing the licence granted to the petitioner for onboard catering service in the (GuwahatiPuri Express) and detaching the pantry car w.e.f. 21.7.2011, on the ground that the petitioner has expressed its inability to operate the said service, are illegal. The learned counsel further submits that the decision of the authority of the N.F. Railway to terminate the licence w.e.f. 21.7.2011, suffers from nonapplication of mind as the petitioner never in the communication dated 1.7.2011 has expressed its inability to manage the onboard catering service in the said train, which communication was the basis for passing the impugned order dated 19.7.2011 by the Deputy Chief Commercial Manager for the Chief Commercial Manager. The learned counsel further submits that it is apparent from the order dated 19.7.2011 that the decision to terminate the licence issued in favour of the petitioner w.e.f. 21.7.2011 was taken on the basis of the petitioner's communication dated 1.7.2011, wherein the petitioner never expressed its inability to manage the catering service and has only informed the Chief Commercial Manager (Catering & PM), N.F. Railway that if the illegal imposition of fine continues, it may results in difficulty to continue with the catering service. Referring to the Railway Board's circular dated 1st(4th) July, 2011, wherein the decision of the Railway Board to permit further extension to mobile and static contracts for a period of another 6(six) months w.e.f. 21.7.2011 or until finalization of the new contract based on SBD, whichever is earlier, has been reflected, the learned counsel for the petitioner has submitted that the petitioner is entitled to extension of the contract by another 6(six) months w.e.f. 21.7.2011, which has not been done by the railway authorities despite the representation filed by the petitioner on 20.7.2011 as well as on 21.7.2011.

7. Mr. Nair, learned standing counsel, N.F. Railway, on the other hand, supporting the impugned orders passed by the N.F. Railway authority and opposing the

prayer for extension of the period of licence by another term of 6(six) months, in terms of the Railway Board's circular dated 1st(4th) July, 2011, has submitted that though the extension for a further period of 6(six) months, in view of the aforesaid Railway Board's circular, is given to other contractors, the same could not be given to the petitioner in view of discontinuance of the licence granted to it, w.e.f. 21.7.2011, in consonance of the petitioner's communications dated 1.7.2011 and 4.7.2011, expressing its inability to manage the onboard catering service in the aforesaid train. Referring to the records produced before the court, it has also been submitted by Mr. Nair that though in the order dated 19.7.2011 reference was made only to the petitioner's communication dated 1.7.2011, the authority also took into consideration the subsequent communication of the petitioner dated 4.7.2011 expressing its inability to continue with the onboard catering service and asking the Railway authority to make alternative arrangement w.e.f. 21.7.2011 in respect of (GuwahatiPuri Express). The learned counsel, therefore, submits that the order dated 19.7.2011 or the subsequent order dated 22.7.2011 do not suffer from the vice of nonapplication of mind, as contended by the petitioner. It has also been submitted that the petitioner having expressed its inability to manage the onboard catering service in the said train, is not entitled to be considered for extension of the period of licence by another period of 6(six) months w.e.f. 21.7.2011, in terms of the Railway Board's circular dated 1st(4th) July, 2011.

8. I have considered the submissions of the learned counsel for the parties and also perused the pleadings apart from the records produced by the learned standing counsel, N.F. Railway.

9. The facts narrated above are not in dispute. The licence granted to the petitioner though was initially valid for a period of 5(five) years w.e.f. 14.7.2005, i.e., up to 13.7.2010, the said period was extended up to 13.2.2011 and thereafter up to 20.7.2011 vide the communication dated 11.2.2011 issued by the Deputy Chief Commercial Manager for Chief Commercial Manager, N.F. Railway.

10. The Executive Director (T&C), Railway Board, Ministry of Railway on 1st (4th) July, 2011 issued a communication to the Chief Commercial Managers of all the Indian Railways as well as the Managing Director of IRCTC intimating its decision for further extension to mobile and static contracts for a period of another 6(six) months w.e.f. 21.7.2011 or until finalization of the new contract based on SBD, whichever is earlier. The said decision was taken as the process for finalization of the new contract based on SBD could not be completed in time. Such extension, however, is subject to satisfactory performance of the contract by the contractor and payment of dues.

11. During the extended period of licence up to 20.7.2011 and in course of the routine inspection conducted by the staff of N.F. Railway, to ensure the supply of quality and hygienic food to the traveling public at the prices fixed by the railways, certain irregularities were detected during inspection on 5.6.2011 and

on the basis of the inspection report submitted by the inspecting staff, the penalty of Rs.5,000 was imposed on the petitioner in respect of the aforesaid train (GuwahatiPuri Express), which was communicated to the petitioner vide communication dated 23.6.2011. The petitioner vide communication dated 1.7.2011 objected to imposition of such penalty on the ground that the same has been imposed without giving any opportunity to explain its position. By the said communication the petitioner has also informed the Chief Commercial Manager, N.F. Railway that in the event of reoccurrence of the said practice of imposition of penalty, it would be difficult for the petitioner to continue with the onboard catering service in the aforesaid train No. 1563940 (GuwahatiPuri Express). The petitioner after 3(three) days, i.e., on 4.7.2011 issued another communication objecting to the imposition of the penalty in respect of the other train bearing No. 1594142 (DibrugarhJhajha Express). In the said communication the petitioner has also informed the Chief Commercial Manager that in view of such action on the part of the N.F. Railway they are unable to continue with the onboard catering service in (GuwahatiPuri Express) after the end of the current tenure on 20.7.2011 and requested the N.F. Railway to make alternative arrangement w.e.f. 21.7.2011. Though the learned counsel for the petitioner has submitted that in the communication dated 4.7.2011, which relates to the imposition of penalty in respect of (DibrugarhJhajha Express), it has been inadvertently mentioned its inability to continue with the onboard catering service in the (GuwahatiPuri Express), instead of (DibrugarhJhajha Express), such contention, however, cannot be accepted as neither in the representations dated 20.7.2011 and 21.7.2011 nor in the writ petition any such contention has been raised. The authority of N.F. Railway taking into account the aforesaid communications dated 1.7.2011 and 4.7.2011 decided to discontinue with the licence granted to the petitioner which was valid up to 20.7.2011 and detach the pantry car in the said train. It also appears from the records produced by the N.F. Railway that both the aforesaid communications dated 1.7.2011 and 4.7.2011 were taken into consideration by the Railway authority before passing the impugned orders dated 19.7.2011 and 22.7.2011. The contention of the learned counsel for the petitioner that the aforesaid order dated 19.7.2011 suffers from vice of nonapplication of mind, therefore, cannot be accepted and hence rejected.

12. The petitioner though has a right to be considered for extension of the period of licence for further period of 6(six) months w.e.f. 21.7.2011, in view of Railway Board's decision as reflected in the communication dated 1st(4th) July, 2011, it has waived its right to be considered for such extension by issuing the communication dated 4.7.2011 expressing its inability to manage the onboard catering service in the (GuwahatiPuri Express) w.e.f. 21.7.2011 and asking the Railway authority to make alternative arrangement, which the Railway authority did. The right to be considered for further extension, in view of the aforesaid decision of the Railway Board, always subject to the contractors' willingness. Further the petitioner though was imposed with the penalty for unsatisfactory services, it has not challenged the decision of the Railway authority to impose

such penalty and in fact has accepted the order imposing penalty. As noticed above, the Railway Board vide communication dated 1st(4th) July, 2011 in clear terms has informed the Chief Commercial Managers of all Indian Railways that the decision to extend the period of licence would be subject to the satisfactory performance. The petitioner's service having not been found satisfactory coupled with their unwillingness to continue with the onboard catering service in the (GuwahatiPuri Express), the petitioner is not entitled to be considered for extension of the period of licence by another 6(six) months, in terms of the Railway Board's communication dated 1st(4th) July, 2011.

13. In View of the aforesaid discussion, I do not find any merit in the present writ petition and, hence, the same is dismissed. The respondents are, however, directed to initiate and complete the tender process for awarding the onboard catering services to the deserving contractor, in (GuwahatiPuri Express) within a period of 2(two) months from today. Till such time the respondents are, however, directed to make arrangement for providing quality and hygienic food to the traveling public at the prices fixed by the Railways, so that no inconvenience is caused to the commuters.

14. No costs.