
(2008) 09 DEL CK 0210

In the Delhi High Court

Case No : Writ Petition (C) 23241 of 2005

R.K. Enterprises

APPELLANT

Vs

Indian Railway Catering and Tourism Corporation Ltd.

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Citation : (2008) 09 DEL CK 0210

Hon'ble Judges : V.K. Shali, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Jayant Bhushan and G. Prakash, for the Appellant; Saurav Aggarwal and Ashwani Bhardwaj, for the Respondent

Judgement

V.K. Shali, J.—The present writ petition bearing No. 23241/2005 was remanded back by the Supreme Court vide its order dated 20th March, 2007 after setting aside the judgment dated 7th February, 2006 passed by the Division Bench of this Court, for deciding afresh. The matter was accordingly heard and is being disposed of by the present judgment.

2. Briefly, stated the facts of the case are that the petitioner has challenged the advertisement dated 11th October, 2005 (Annexure P-5) issued by the Indian Railway Catering & Tourism Corporation Ltd. (hereinafter referred to as "IRCTC"), by virtue of which IRCTC has invited technical and financial bids from the reputed organizations engaged in catering business to manage on board catering services in train Nos. 24432444 New Delhi- Bhubaneswar Rajdhani Express via Bokaro (hereinafter referred to as train Nos. 2443-2444). It was stated by the learned Counsel for the petitioner that it has been awarded contract in respect of New DelhiBhubaneswar Rajdhani Express bearing train Nos. 2421 and 2422 (hereinafter referred to as train Nos. 2421-2422) vide agreement dated 1st July, 2005 for a period of five years. The petitioner has contended that on 16th March, 2005, the IRCTC had formulated a policy for awarding of contracts for providing catering services in various trains. According to the petitioner, Clause 6.2.(vi) of the said policy specifically provided that where the trains which are having same

point of origination and destination but are following different routes with different numbers which are given for technical reasons, they should be treated as "one unit" and a "composite licence" should be awarded for such trains.

It was on the basis of the aforesaid relevant clause that the petitioner had contended that as the petitioner had an agreement for providing catering services in respect of Train bearing Nos. 2421-2422 it ought to be given the catering licence of the train Nos. 2443-2444 because this latter train was also having the same point of origination and destination namely New Delhi - Bhubaneswar Rajdhani Express though the same was running via Bokaro. It may be pertinent here to mention that the train Nos. 2421-2422 is operating between New Delhi & Bhubaneswar via Gaya. It was contended that by virtue of the aforesaid Clause, the petitioner ought to have given the contract for providing catering services of the said train also on proportionate increase of licence fee because both these trains are to be treated as "one unit".

As against this, the respondent No. 1-IRCTC, respondent No. 2-Railway Board and respondent No. 3-UOI contested the claim of the petitioner and contended that both the train Nos. 2421-2422 on one hand and train Nos. 2443-2444 on the other could not be treated as "one unit" because both of them though plying between New Delhi-Bhubaneswar but they were following different routes as the train in respect of which catering contract was awarded to the petitioner was going through via Gaya while as the new train was to go through via Bokaro. Further to this, the respondent also placed reliance on the letter dated 27th June, 2003 issued by the Director (Tourism & Catering) Railway Board to the General Manager (Catg.), Northern Railway, Baroda House, New Delhi wherein it was specifically stated that train Nos. 2443-2444 was to be treated as a new train. Therefore, no "composite licence" for catering could be issued to the petitioner. It was also contended that different train numbers can be allotted to "one catering licence" only if it is a case of integrated rake or conventional rake given to a train due to the technical reasons and this is evidently clear from the reading of second para, which is added in Clause 6.2 (vi) only to clarify the position that if following two points are satisfied then the "composite licence" can be granted:

(1) if the train/rake has the same originating and destination stations with different numbers of different routes,

(2) different numbers have been given with conventional rake due to technical reasons.

3. Since in the instant case, the Railway Board has issued a letter that the train in question in respect of which tender dated 11th October, 2005 was floated was a new train and, therefore, it could not be given to the petitioner. It was also urged that the policy stipulations which is formulated by the Railway Board has to be given a purposive interpretation and in case the trains running in two destinations as the point of origination and the destination are given to the same

contractor under one licence then it will literally result in monopoly of a particular party cornering the substantial catering business in respect of the trains operating between the two points/destinations irrespective of the trains being given different numbers. Substantiating this argument further, it was urged that with the help of an illustration by the learned Counsel for the respondent that an integrated rake is in fact a set of coaches which consists of a pantry car, a generation unit, a guard box etc. which in common parlance is called a train. The purpose of Clause 6.2.(vi) is only to meet certain contingencies to avoid loss of time spent by the authorities in case the same rake namely the same train ply under different train numbers of two different destinations. This was sought to be elaborated by giving an illustration that an integrated rake [set of coaches] goes from destination A to B and is further used as another train from Destination B to C. Then the licensee for Train from A to B is also granted the license for B to C. This also holds true where the rake travels from Destination A to B and returns back to A and then goes from destination A to C or from B to C as a different train number. This is done so that there is no time lost in shunting the coaches or the pantry cars.

4. We have considered the respective submissions of the parties and gone through the record. At the outset, it must be stated that though the point in issue involved in the instant case is very short one but the same has been complicated by the acts of omission and commission of the respondents themselves. There is no dispute about the factum that there is a policy formulated by the Railway Board for the award of contracts of catering. The relevant Sub-clauses (v), (vi) and (viii) of Clause 6.2 reads as under:

6.2 Provision of pantry cars:

i) ...

ii) ...

iii) ...

iv) ...

v) Pantry car of a particular train is considered as one unit, irrespective of the frequency viz. whether it is a weekly/bi-weekly, etc./or a daily train service.

Pantry car licence of a particular train should, therefore, be awarded to one licensee only and should not be split among different licensees for different days.

vi) There may be cases where train services are run with integrated rakes and only one or more trains may be having the pantry cars. In such cases, IRCTC will provide pantry car services on all trains running with integrated rakes to avoid shunting and make optimum use of the rolling stock. IRCTC will however follow the extant instructions for awarding fresh pantry car licence on new train/trains as this will be an additional service.

Trains having the same originating and destination stations (including Rajdhani/

Shatabdi express trains), but following different routes with different numbers and Rajdhani/Shatabdi trains running with advanced coaches (IRY / LHB, etc.), which are given different numbers for conventional rakes (due to technical reasons), should be treated as one unit. Composite licence should be awarded for such trains. In case of existing integrated rakes, composite licence may also be awarded for these trains. For holding purpose from the ceiling point of view, one composite tender for such trains will be treated as one unit.

vii) ...

viii) In case of an increase in the frequency of train services and / or extension of trains the existing licensee should manage services on additional trip(s) and / or on extended portion. Railway will correspondingly increase the licence fee in such cases.

5. In the light of the aforesaid policy, first we must determine as to what is meant by the word "rake". It is not disputed by either of the parties that integrated rake is a technical name given by the Railway authorities to a set of coaches which consists of an engine, coaches, a pantry car and a generating unit and the last coach which is used by the guard for the purpose of facilitating the movement of the train. It is also not in dispute that the purpose of formulating the policy by the Railway Board for award of contracts of catering services was to bring uniformity in the award of contracts for providing catering services in different trains in the country. One of the contingencies which has been visualized by sub Clause (vi) of Clause 6.2 where a composite licence is to be issued are given as under:

Firstly, where the trains (including Rajdhani and Shatabdi) having same originating and destination stations but are following different routes with different numbers and secondly, where the Rajdhani and Shatabdi trains are running with advanced coaches and are given different numbers when running with conventional rakes due to technical reasons. In both the above contingencies, they should be treated as "one unit" and "composite licence" should be awarded for such trains. In the instant case, there is no denial of the fact that New Delhi- Bhubaneswar Rajdhani Express bearing Nos. 24212422 is operating twice a week via Gaya and is therefore, having one number while as New Delhi-Bhubaneswar Rajdhani Express which was newly added train in the year 2003 is operating between the same points via Bokaro but has been given a different number namely 2443-2444 though both these trains are having different numbers but they are having same point of origination and destination point. Therefore, the question which arises for consideration is as to whether both these trains have to be treated as "one unit" or not and accordingly, as to whether a "composite licence" should be awarded for such trains or not.

6. It has been the contention of Mr. Jayant Bhushan, learned senior counsel for the petitioner that both these trains though having different numbers have to be treated as "one unit" and, therefore, although the contract of New Delhi-

Bhubaneswar Rajdhani Express bearing train Nos. 2421-2422 was awarded to them for a period of 5 years on 1st July, 2005 yet they are entitled to be given catering contract of the other train also namely New Delhi-Bhubaneswar Rajdhani Express via Bokaro bearing train Nos. 2443-2444 on the ground that the point of origination and destination is the same. It is also contended by the learned Counsel that before formulation of the policy itself the respondents themselves had issued a fax message annexure P-4 at page 56 of the paper book stating that the train Nos. 2443-2444 is being added so as to make the train service between New Delhi-Bhubaneswar Rajdhani Express from bi-weekly to tri-weekly meaning thereby, the train which was to operate via Bokaro was in fact increasing the frequency only of the existing train services between New Delhi-Bhubaneswar although both the trains were to pass through different destinations on the way. Similar was the letter dated 20th February, 2003 issued by the General Manager-Catering indicating that the train bearing Nos. 2443-2444 were added with a view to increase the frequency.

7. Per contra, the learned Counsel for the respondent contended that the communication dated 20th February, 2003 and the fax letter dated 27th June, 2003 relied upon by the learned Counsel for the petitioner with a view to base his arguments that the train Nos. 2443-2444 was only increasing frequency of the existing train is not a valid basis to interpret the policy of 2005 for the simple reason that the policy was formulated in the year 2005 while as these letters are purported to have been written in the year 2003. Therefore, the policy which is formulated latter in point of time cannot be permitted to be governed by the letters which have been issued prior to that. Further the learned Counsel for the respondents also referred to the letter dated 27th June, 2003 issued by the Railway Board in which it was specifically stated that train bearing Nos. 2443-2444 is to be treated as a new train and, therefore, the catering services of the same could not be ipso facto granted to the petitioner. In addition to this, it was urged that at the time when tender in respect of train bearing Nos. 2421-2422 was floated and thereafter awarded the same to the petitioner, it was aware as to what contract was being awarded to him. It did not raise any objection regarding the award of the catering contract only in respect of the said train bearing Nos. 2421-2422. If the petitioner was aggrieved at that point of time it ought to have raised the question of the award of contract in respect of train bearing Nos. 2443-2444 also. Having not done so, the petitioner was deemed to have admitted that both these two trains were separate and therefore, the contract of the latter could not be allotted to him on his plea of proportionate increase of licence fee. It was also contended at the time when the licence for catering of train Nos. 2421-2422 was given to the petitioner the train Nos. 2443-2444 was already in existence and it could not be treated as a new train nor did it increase the frequency of the existing train Nos. 2421-2422 as the routes were different.

8. We have considered the respective submissions and gone through the record. We are of the considered view that the respondents themselves are not sure as

to whether the train bearing Nos. 2443-2444 i.e. the New Delhi-Bhubaneswar Rajdhani Express operating via Bokaro is to be treated as a train increasing the frequency of the train operating between New Delhi-Bhubaneswar Rajdhani Express via Gaya from bi-weekly to tri-weekly or as to whether it is to be treated as a new train. In the year 2003, before formulation of the catering policy of 2005 itself, there are three communications purported to have been issued by the Railway Board, two of which gives an impression that train Nos. 2443-2444 is increasing the frequency of the existing train i.e. New Delhi-Bhubaneswar Rajdhani Express from bi-weekly to tri-weekly while as one communication gives an impression that it is a new train communicated dated 18th February, 2003 and 20th February, 2003 show that train Nos. 2443-2444 is increasing the frequency of the existing train from bi-weekly to tri-weekly while as letter dated 30th June 2006, shows that the Headquarter of Northern Railways latter on formed a view that it is a new train. If it is a new train then the catering services of the new train cannot be granted under "composite licence". Since both these sets of communications, one with regard to the increase in frequency or second with regard to it being allegedly a new train are purported to have been issued before the formulation of the policy on 16th July, 2005, therefore, we do not consider it appropriate to refer to either of the two sets of communications which shows the then vacillating stand of the respondents to decide as to whether the respondents were well within their right to invite the tender on 11th October, 2005 for awarding the catering services of New Delhi- Bhubaneswar Rajdhani Express via Bokaro to a bidder. The said controversy can be settled by simple reference to sub Clause (iv) of Clause 6.2 of the catering policy, the contents of which have been reproduced hereinabove.

9. In terms of the said clause if the point of origination and destination of a train including that of Shatabdi and Rajdhani happens to be the same then it is to be treated as "one unit" a "composite licence" of providing catering services of both these trains have to be given to one party.

10. So far as the second contingency where user of advanced coaches or conventional coaches and the different number of the train is concerned, that contingency does not arise in our case. Therefore, we refrain to refer to the same as the present case is covered by the first contingency itself. That being the position, a "composite licence" ought to have been issued to one party in respect of both these trains namely New Delhi Bhubaneswar via Gaya bearing train Nos. 2421-2422 and New Delhi- Bhubaneswar Rajdhani Express via Bokaro Nos. 2443-2444. But on account of certain background, the respondent themselves did not act timely and wisely so as to float one tender for the reason that one of the parties namely M/s P.R. Catering is purported to have gone to Calcutta High Court and obtained some restraint order with regard to the award of catering contract of train bearing Nos. 2443-2444 which is stated to be continuing as on date also. We have been informed that M/s P.R. Catering was providing the catering services under a licence of train Nos. 2421-2422 which came to an end on 18th May, 2005 whereupon a tender was floated and licence was awarded to

M/s R.K. Enterprises, the present petitioner being the highest bidder in respect of train bearing Nos. 2421-2422. So far as the licence for providing catering services of train Nos. 2443-2444 is concerned, this being a new train, (as train Nos. 2421-2422 was inexistence at a given point of time) which was floated in the year 2003, the licence was awarded on ad hoc basis to M/s P.R. Catering which was then existing contractor/licencee in respect of train Nos. 2421-2422 on ad hoc basis. On 11th July, 2003, bid for giving the licence to provide catering services of train Nos. 2443-2444 as a new train were floated and since the floating of new tender would have displaced the ad hoc licencee M/s P.R. Catering, therefore, they are purported to have obtained an ex parte injunction order on 23rd July, 2003 from the Calcutta High Court and it was by virtue of such interim order that the licence for the new train i.e. 2443-2444 which was started in June 2003 could not be finalized.

11. We have been informed that after passing of the aforesaid interim order, a new catering policy was formulated and it is by virtue of new catering policy that the bids for train Nos. 2443-2444 were floated on 11th October, 2005. Although in October, 2005 itself, M/s P.R. Catering is purported to have gone to Calcutta High Court and filed a Contempt Petition against the respondents on account of being threatened to be de-licensed from providing catering services in New Delhi- Bhubaneswar Rajdhani Express via Bokaro, therefore, as on date even though we hold that the tender for new train i.e. New Delhi- Bhubaneswar Rajdhani Express via Bokaro ought to be treated as "one unit" and be given on "composite licence" basis to M/s R.K. Enterprises namely, the petitioner in the instant case, yet the said direction cannot be implemented by the respondents with impunity as it will tantamount to violation of the ex parte interim order of High Court of Calcutta. Therefore, under these circumstances, though we are of the considered view that the tender dated 11th October, 2005 is liable to be quashed on account of the fact that it is in violation of the catering policy of the respondents themselves as being violating of Clause 6.2.(iv) inasmuch as the licence of train bearing Nos. 2443-2444 New Delhi- Bhubaneswar Rajdhani Express via Bokaro is to be treated as "one composite" unit with the already operating train between New Delhi- Bhubaneswar Rajdhani Express via Gaya bearing Nos. 2421-2422 and both are ought to be given to the petitioner but as there is a restraint order from Calcutta High Court, therefore, the respondents will be at liberty to either get the said stay order vacated and grant the ad hoc licence of train Nos. 2443-2444 to the petitioner on proportionate increase in the existing licence fee or alternatively it will be open to the respondents to invite fresh tenders in respect of both these trains after getting the stay vacated from Calcutta High Court and also after getting the licence dated 1st July, 2005 in favour of the petitioner pertaining to train Nos. 2421-2422 determined. We do not agree with the submission of the learned Counsel for the respondents that grant of licence to one person for catering in respect of different trains on the basis of same point of origination and destination would result in monopoly of catering service. Assuming that it will do so then the defect lies in the

formulation of the policy or its language which the respondents are free to rectify. We have not gone into the question of integrated rake, or the trains having different number on account of user of new or conventional coaches as that is not the issue involved in the present case.

12. In the light of the aforesaid observations, we allow the writ petition of the petitioner and direct the respondents to either allot/grant the licence in respect of train Nos. 2443-2444 New Delhi- Bhubaneswar Rajdhani Express via Bokaro to the petitioner so as to terminate with its existing licence of train Nos. 2421-2422 on proportionate increase of licence fee or alternative if it deem fit to invite fresh bid for a composite licence of both these trains after getting the stay vacated from the Calcutta High Court and also after taking steps to shorten the licence of the existing train Nos. 2421 -2422 if it is permissible under the Contract dated 1st July, 2005.

13. In terms of the above directions, the writ petition stands disposed of. No order as to costs.