

(2009) 08 DEL CK 0200

In the Delhi High Court

Case No : Writ Petition (Civil) No. 202 of 2009

Satender Kumar Prop. Praye Lal and Sons Vending Contractor
and Others

APPELLANT

Vs

Union of India (UOI), The Railway Board and Indian Railway
Catering and Tourism Corporation Ltd.

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0200

Hon'ble Judges : Siddharth Mridul, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Amarjeet Singh Bedi and Mahipal Singh, for the Appellant; Gaurab Banerji Saurav Agarwal and Dinesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—Although the Petitioners have made three prayers in the writ petition, during the course of submissions learned Counsel for the Petitioners confined the writ petition to only one prayer - for an appropriate writ quashing Tender No. 2008/NR/NWR/02 and the steps initiated pursuant thereto for allotment of stalls occupied by the Petitioners in the North Zone railway stations.

2. Petitioners No. 1 to 10 belong to "reserved" categories such as Scheduled Caste, Other Backward Castes, women, minorities, widows, etc. Petitioners No. 11 to 15 belong to the "general" category. All the Petitioners are licencees of stalls in railway stations in the North Zone.

3. The Respondents issued a tender notice in the national newspapers on 28th November, 2008 inviting bids from reputed organizations engaged in the catering business for management of stalls in several railway stations. In so far as Petitioners No. 1 to 10 are concerned, they are licencees of more than one stall each and are also running trolleys in some railway stations. The tender notice invited bids for all but one stall of each of the Petitioners No. 1 to 10. None of the

trolleys of Petitioners No. 1 to 10 are the subject matter of the tender notice or the writ petition. However, in so far as Petitioners No. 11 to 15 are concerned, all their stalls (1 or 2 each) are the subject matter of the tender notice.

4. According to the Petitioners, they have all been licencees of their respective stalls for the last several decades and there is no reason why their licences should now be terminated and the stalls auctioned.

5. The Respondents have pointed out that Petitioners No. 1 to 10 have been given commercial protection in as much as they have all been allowed to retain one stall each and none of their trolleys are touched. As such, they can have no legitimate grievance if the remaining stalls are auctioned out. These Petitioners cannot claim to hold permanent licences or licences for a multiple number of stalls. However, Petitioners No. 11 to 15 fall in a different or "general" category and that is why their stalls are subject to public auction. These Petitioners are entitled to bid for these and other stalls which are being auctioned. It is submitted on behalf of the Respondents that in this manner, none of the Petitioners are suffering any irreparable loss.

6. Apart from these broad facts, what is more important is that the Respondents have a Catering Policy, the latest being the Catering Policy - 2005. Paragraph 15.2.1 of this Catering Policy specifically states that the tenure of licences for reserved categories will be three years and the licences of these categories will be renewed every three years subject to satisfactory performance. Admittedly, the licences of the Petitioners (except that of Petitioner No. 9) are valid till 31st October, 2005. The licence of Petitioner No. 9 came to an end on 31st October, 2008. However, all the Petitioners have been allowed to retain their respective stalls on an ad hoc basis on payment of the requisite licence fee. Paragraph 15.6.3 of the Catering Policy - 2005 states that there will be no renewal or extension of the licence except in the case of reserved category licencees.

7. The relevant extract of paragraphs 15.2.1 and 15.6.3 of the Catering Policy, 2005 read as follows:

15.2.1 xxx xxx xxx

Tenure of the licences for reserved categories will be three (3) years and licences of these categories will be renewed every 3 years on satisfactory performance. At the time of renewal of the licences of reserved categories at "A", "B" and "C" category stations or fresh bid for the unit license fee should be enhanced based on actual sales turnover of the unit subject to a minimum of 10% increase over the prevailing license fee of the unit. Renewal will be done for the existing licencees only on withdrawal of the court cases by the licensees, if any, against the railways and payment of all railway dues and arrears.

xxx xxx xxx 15.6.3 There would be no renewal or extension after expiry of the contract and fresh tender should be called and finalized well before the expiry of the existing contract. However, licences of reserved category licensees will be

renewed every 3 years on satisfactory performance. Renewal will be done for the existing licencees under the reserved category only on withdrawal of the court cases by the licensees against the railways and payment of all dues and arrears.

The Catering Policy - 2005 was revised on 21st December, 2005 but no material change, in so far as the present case is concerned, was brought about.

8. The question that really arises for our consideration is whether the Respondents could invite applications for allotment of stalls on a licence basis through a public advertisement. Simply put, our answer to this question is in the affirmative but the objection of the Petitioners is that since they have been licencees of these stalls for several years if not decades, they will suffer a tremendous financial loss if they are now ousted there from. A part from this, their submission is that they are rightfully entitled to continue in possession in view of the Catering Policy - 2005.

9. As already mentioned above, Petitioners No. 1 to 10 are not substantially disturbed in as much as each one of them continues to be in possession of one stall (apart from several trolleys). They are not being thrown out of business by the Respondents in any manner whatsoever. It is only the additional stalls of these Petitioners that are being auctioned out pursuant to the tender notice. It is, therefore, not correct on their part to say that they are being thrown out of business. These Petitioners No. 1 to 10 do not have any right, and indeed none has been shown to us, to permanently occupy as many as stalls as they desire, to the exclusion of everybody else. Since these Petitioners No. 1 to 10 belong to certain "reserved" categories, the Respondents have sufficiently protected their interests and, in our opinion, their grievance in this regard is completely unjustified.

10. As far as Petitioners No. 11 to 15 are concerned, they belong to the "general" category and have no special right to continue to retain the stalls for which they have licences. They are merely licencees and on the termination of the licence period, their stalls are being auctioned in terms of the tender notice. These Petitioners No. 11 to 15 are entitled to bid not only for these stalls but for all other "general" category stalls which are the subject matter of the tender notice.

11. As noted above, the licences of the Petitioners have come to an end on 31st October, 2005 (except Petitioner No. 9 whose licence has come to an end on 31st October, 2008). None of the Petitioners can claim, and indeed they have not claimed, an absolute right to continue to be licencees of the stalls that they have in their possession. It is well settled that when the duration of a licence comes to an end and it is not renewed, no special right for continuation inheres in any licencee. In our opinion, since the Petitioners have not been able to establish any right in their favour, there is no valid justification for quashing the tender notice.

12. There is no merit in the writ petition, which is dismissed. No costs.