

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19135-19138/2012

(From the judgement and order dated 22/03/2012 in DBSA(W) Nos.1510/2011, 1519/2011, 1603/2011 and 2615/2011 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

KHURSHID AHMAD & ORS.

Respondent(s)

(With appln(s) for permission to file lengthy list of dates and with prayer for interim relief and office report)

WITH SLP(C) NO. 22415 of 2012

(With prayer for interim relief and office report)

Date: 05/09/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioners Mr. R.Venkataramani, Sr.Adv.
in SLP Nos.19135- Mr. Aljo K.Joseph, Adv.
19138/2012 Mr. B. Krishna Prasad,Adv.

For Petitioners Mr. Amit Pawan, Adv.
in SLP No.22415/12 Mr. Saurav Agrawal, Adv.
Mr. Ashish Tiwari, Adv.
Mr. Rajiv Dubey, Adv.

For Respondent No.1 Mr. Aftab Ali Khan,Adv.
Mr. Azad Ahmad, Adv.
Mr. Mohd.Zahid Hussain, Adv.

UPON hearing counsel the Court made the following
O R D E R

These petitions are directed against judgment dated 22.03.2012 of the Division Bench of the Rajasthan High Court whereby the special appeals filed against the order of the learned Single Judge were dismissed and the direction given by him to the petitioners herein to handover possession of stalls to the writ petitioner (respondent No.1 herein) was upheld.

We have heard Shri R.Venkataramani, learned senior counsel for the petitioners in SLP(C)Nos.19135-19138 of 2012 and Shri Amit Pawan, learned counsel appearing for the petitioners in SLP(C)No.22415 of 2012 and carefully perused the record.

In response to the notice issued by the Chief Regional Manager, Indian Railway Catering and Tourism Corporation, respondent No.1 gave bids for allotment of stalls at Jaipur Railway Station under the Catering Policy 2005. He was declared as the highest bidder in respect of 6 stalls. He accordingly deposited Rs.30 lacs. However, possession of the stalls could not be given because the erstwhile allottees filed Writ Petition No.4522/2007 and succeeded in persuading the High Court to pass an interim order dated 7.9.2007. The interim order was vacated because in similar matters, this Court had modified the injunction granted earlier on the allotment of stalls etc. in terms of the 2005 Policy. However, despite the fact that the High Court vacated the interim order, possession of the stalls was not given to respondent No.1. He then filed Writ Petition No.131/2010. The learned Single

Judge adverted to the pleadings of the parties and the documents produced by them and held that the failure of the petitioners herein to handover possession of the stalls to respondent No.1 was not only contrary to the 2005 Policy, but was wholly arbitrary. The learned Single Judge further held that Catering Policy 2010 cannot be invoked for refusing to give possession of the stalls to respondent No.1. He accordingly allowed the writ petition in the following terms:

"Respondents are directed to hand over possession of stalls, so allotted, to the petitioner forthwith. Petitioner would, however, be liable to pay amount on the agreed rate of the contract which is higher than the licence fee now paid by the erstwhile licence holders. Thus, petitioner would not plead or take advantage of all the licence fee paid by the erstwhile licence holder."

The Division Bench of the High Court independently examined the entitlement of respondent No.1 to operate the stalls and observed:

"After vacation of the interim order, the appellants - Railway and IRCTC were expected to hand over the possession of the stalls to the petitioner-respondent no.1, but the same was not given to him. It has been submitted by the petitioner respondent no.1 that after vacation of interim order by the Apex Court, possession of the stalls was handed over by the Railway to the highest bidders, however, Jaipur junction remained only exception where possession of the stalls was not handed over to the highest bidder and the possession remained with the incumbents, who filed writ petition no.4522/2007 and in spite of vacation of the interim order earlier passed in that writ petition, they were enjoying the possession of the stalls and they continued with the possession under the extensions granted from time to time by the appellants-Railway & IRCTC. When the Apex Court has vacated the interim order and the High Court has also vacated the interim order passed in Writ Petition No.4522/2007 and that Writ Petition was ultimately dismissed, it was expected of the appellants-Railway and IRCTC to hand over the possession of the stalls to the petitioner respondent no.1, but they have not given the possession of the stalls to him, in spite of the fact that in the return filed by IRCTC, stand was taken that earlier license holders are in occupation of the stalls as trespassers or encroachers. It is surprising that in spite of vacation of interim order, possession of the stalls was not handed over to the petitioner-respondent No.1 and trespassers were allowed to enjoy the stalls under the guise of extension granted from time to time by the appellants-Railway and IRCTC."

Apart from that, we find that when letter of intents had been issued; bid had been accepted; amount of Rs.30 lacs had been received; interim order had been vacated by the Apex Court; High Court has also vacated the interim order; even Railway Board has issued communication to hand over the possession to successful bidders so as to avoid legal complications, Clause 26.1.2 of the Catering Policy, 2010 cannot come in the way to hand over the possession of the stalls to the petitioner-respondent no.1, highest bidder as there was no fault on his part in completing the contract and in-fact, initially he was deprived of possession of stalls due to the Court's order and once it has been vacated, possession of stalls ought to have been given to him. It is shocking that some incumbents whose licenses stood expired before the bids were invited, are still enjoying possession of stalls at Jaipur Junction, whereas the person, who has made the highest bid, has been kept out and deprived of

possession in spite of the fact that his offer has been accepted and letter of intents has been issued. We find no rational behind Catering Policy, 2010, which has been pressed into service by the appellants so as to get rid of the contract entered between the parties under the Catering Policy of 2005. When Clause 26.1.1 saves those contracts which have been operationalized, there was no rhyme or reason so as to differentiate the contracts entered between the parties, which have not been operationlized because of no fault on the part of the incumbent, whose bid has been accepted. The classification, which has been made in the Catering Policy, 2010, cannot be said to be reasonable one and in fact, it is intended to defeat the rights which had accrued in favour of the petitioner-respondent no.1, highest bidder to operate contracts, which could not have been dealt with arbitrarily and as a result of operation of new Catering Policy, 2010,it is surprising that without any fresh bid having been invited, incumbents whose licenses stood expired before bids were invited, are continuing to operate uninterruptedly. This is nothing but arbitrary action on the part of the appellants- Railway and IRCTC."

What has surprised us is that even though the learned Single Judge had vacated the interim order as early as in 2009, the concerned officers did not take steps to take possession of the stalls from the erstwhile vendors.

Although, it is not possible to record a firm finding that their actions and omissions were actuated by malice, we are convinced that the concerned authorities had acted arbitrarily and deprived respondent No.1 of his legitimate right to do catering business at Jaipur Railway Station and the High Court did not commit any error by issuing a mandamus for handing over possession of the stalls.

With the above observations, the special leave petitions are dismissed.

The petitioners and all the concerned officers are directed to implement the order/judgment of the High Court within a period of 30 days from today. This would necessarily mean that they shall take possession of the stalls being operated by the erstwhile contractor and handover the same to respondent No.1 within 30 days. It is also made clear that tenure of the licence of respondent No.1 will commence from the date of actual handing over possession of the stalls.

A report showing compliance of this order shall be filed in the Registry of Rajasthan High Court, Jaipur Bench, Jaipur within six weeks from today. The Registry shall list the matter before the Bench which had passed the impugned judgment. If it is found that the concerned officers have failed to implement the direction given by the High Court, then proceedings under the Contempt of Courts Act, 1971 shall be initiated against the defaulting officers.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master