

PART-HEARD

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4897 OF 2002

N.B. KRISHNA KURUP

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With application for permission to submit additional document(s) and directions and with office report)

WITH Civil Appeal NO. 1667 of 2004

(With office report)

Civil Appeal NO. 48 of 2005

Civil Appeal NO. 4898 of 2002

(With office report)

Civil Appeal NO. 4899 of 2002

(With application. for clarification and with office report)

Civil Appeal NO. 4900 of 2002

(With office report)

Civil Appeal NO. 4901 of 2002

(With office report)

Civil Appeal NO. 4902 of 2002

(With office report)

S.L.P.(C) NO. 5353 of 2003

(With prayer for interim relief and office report)

Date: 29/03/2005 These Appeals and Petition were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)	Mr. Yashank Adhyaru, Sr. Adv. Mr. M.P. Vinod, Adv. Mr. Ajay K. Jain, Adv. Mr. Aravind Kumar, Adv.
in CA 4899/02	Mr. Altaf Ahmed, Sr. Adv. Mr. G.Prakash, Adv. Ms. Beena Prakash
In CA 4900/02 & CA 48/05	Mr. Jayanth Bhushan, Sr. Adv. Mr. G.Prakash, Adv. Ms. Beena Prakash, Adv.
In SLP 5353/03	Mr. Vipin Nair, Adv. Mr. P.B. Suresh, Adv. Mr. V.K. Biju for M/S. Temple Law Firm
In CA 4898/02 & CA 1667/04	Mr. Romy Chacko, Adv.
For Respondent(s) (for UOI)	Mr. R. Mohan, ASG Mr. V.G. Pragasam, Adv. Mrs. Kiran Bhardwaj, Adv. Mr. B.K. Prasad, Adv. Mr. Anil Katiyar, Adv. Mr. Shreekant N. Terdal, Adv.
For IRCTC	Mr. Gaurab Banerjee, Sr. Adv. Mr. Akshay Makhija, Adv. Mr. Navin Chawla, Adv.

UPON hearing counsel the Court made the following

O R D E R

Civil Appeal Nos.4898/2002, 1667/2004 and 4902/2002

These appeals are dismissed as withdrawn in terms of
the signed order.

Civil Appeal Nos.4897/2002, 4899/2002, 4900/2002,

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01/2002, 48/2005 and S.

L.P.(

C) No.5353/2003

These appeals and Special Leave Petition are
disposed of in terms of the signed order.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4897 OF 2002

N.B. KRISHNA KURUP

..APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

..RESPONDENT(S)

WITH

CIVIL APPEAL NOS.4898/2002, 4899/2002,
4900/2002, 4901/2002, 4902/2002, 1667/2004, 48/2005 &
S.L.P
. (C) NO.5353/2003

O R D E R

Civil Appeal Nos.4897/2002, 4898/2002, 4899/2002

4900/2002, 4901/2002, 4902/2002, 1667/2004 arise out of a common judgment of the Division Bench of the Kerala High Court dated 3rd December, 2001. Civil Appeal No. 48 of 2005 arises from the subsequent judgment of the Division Bench dated 23rd February, 2004 in Writ Appeal No. 2154 of 2003. Special Leave Petition No. 5353 of 2003 has been filed against the judgment dated 21st January, 2003 in Writ Appeal No. 2918 of 2000 in which earlier judgment of the Division Bench dated 3rd December, 2001 was followed.

The Division Bench by the impugned judgment has repelled the challenge to the Catering Policy of 1999 issued vide Commercial Circular No. 16 dated 24.6.1999 and Catering Policy of 2000 issued vide Commercial Circular No. 58 dated 20.10.2000.

There were in all eight cases before the Division Bench. The Division Bench divided the eight cases into two categories i.e. Group A and Group B cases.

The grievance highlighted in Group A cases (Writ Appeal

No.2913/2001, Writ Appeal No.1229/2000, O.P. No.21467/2000 and O.P.No.29921/2001) in the High Court concerned the alleged retrospective enhancement of licence fee during the period from 1.8.1990/in some cases from 1.8.1995 till July, 2000, in respect of specific units.

Special Leave Petition(C) No.6431 of 2002 filed against Writ Appeal No. 2913 of 2001 was dismissed as withdrawn by this Court on 9.8.2002. Against O.P. No.29921 of 2001, no appeal has been filed in this Court. Civil Appeal No. 4897 of 2002 and Civil Appeal No. 4898 of 2002 have been filed against Writ Appeal Nos. 1229 of 2000 and O.P. No.21467 of 2000. Mr. Romy Chacko, learned counsel for the appellant in Civil Appeal No. 4898 of 2002 prays that Civil Appeal No. 4898 of 2002 be dismissed as withdrawn. We order accordingly.

Out of these cases, three cases do not survive for adjudication, as afore-mentioned. The only case which survives for consideration before us today in Group A cases is Civil Appeal No. 4897 of 2002 arising from O.P. No.21467 of 2000 filed by N.B.Krishna Kurup.

In the Group B cases (Writ Appeal No.3044/2001, O.P. No.23352/2001, O.P.No.25426/2001 and O.P. No.30979/2001), challenge before the High Court was with regard to certain offending paragraphs of Catering Policy of 1999 and Catering Policy of 2000. Against the judgment and order of the High Court in Group B cases, Civil Appeal Nos.4899/2002, 4900/2002, 4901/2002, 1667 of 2004 have been

filed in this Court. Mr. Romy Chacko, learned counsel for the appellant in Civil Appeal No. 1667 of 2004 prays that this appeal be also dismissed as withdrawn. The same is dismissed as such.

Civil Appeal Nos. 4899/ 2002, 4900/2002 have been filed by Indian Railways Caterers Association whereas Civil Appeal No.4901 of 2002 has been filed by N.B.K.Kurup in its individual capacity. Apart from these cases, Civil Appeal No.48/2005 has been filed against the subsequent judgment of a Division Bench in Writ Appeal No. 2154/2003 dated 23rd February, 2004. Special Leave Petition(C) No.5353/2003 has been filed against the judgment dated 21st January, 2003 in Writ Appeal No. 2918 of 2000 in which judgment of a Division Bench dated 3rd December, 2001 was followed.

We shall take up Group B cases first i.e. Civil Appeal Nos. 4899/2002, 4900/2002, 4901/2002 along with Civil Appeal No.48/2005 and Special Leave Petition(C) No.5353/2003. During the course of arguments challenge to the Catering Policy of 1999 and Catering Policy of 2000 was not seriously pressed. Because of the pendency of the appeals in this Court, the Indian Railways/IRCTC did not grant new licences but renewed the licence of the existing licensees on adhoc basis the term of which has not expired. The only point which has been raised by the counsel for the appellants is that the appellants may not be summarily asked to wind up their business thereby causing a

considerable financial loss to them. Keeping in view the interest of the existing operators as well as the interest of general public so that no disruption is caused to the catering services, we asked the respective counsel appearing for IRCTC and Indian Railways to continue with the existing licensees till alternate arrangements are made under the new policy and to give them sufficient time to wind up their business. In the meantime, the Indian Railways/IRCTC may make alternate arrangements by inviting fresh bids as per the existing policy. As the writ petitions had been filed by the Indian Railways Caterers Association representing the caterers providing catering services in the railways, we are not in a position to ascertain the existing arrangement which has been arrived at by the Indian Railways/IRCTC. Mr. Gourab Banerjee, learned senior counsel appearing for IRCTC has divided the existing licensees into four categories which are as follows:

" CATEGORY I

All cases where licenses granted to erstwhile licensees have expired/not been renewed, after which fresh licenses have been granted by IRCTC through financial bidding process.

Erstwhile licensee do not/shall not have any right of renewal of license.

CATEGORY II

In cases where licenses granted have expired on or before 31.3.2005, but adhoc

extensions have been granted, and process for grant of fresh licenses has been initiated by IRCTC.

Such licenses/licensees shall be permitted to continue in terms of their adhoc extension already granted and in any event till 30.6.2005, whichever is later. (Subject to satisfactory performance)

Note: It is expected that the process of grant of fresh license shall be completed by 30.6.2005(A three month period from today)

CATEGORY III

In cases where licenses granted have expired on or before 31.3.2005, but adhoc extensions have been granted and process for grant of fresh licenses has not been initiated by IRCTC.

Such licenses/licensees shall be permitted to continue in terms of their adhoc extension already granted and in any event till 30.6.2005, whichever is later. (Subject to satisfactory performance).

Note: This will give a 3 month window for finalization of fresh licenses.

CATEGORY IV

In cases where licenses granted are to expire after 31.3.2005.

Such licenses/licensees shall be granted adhoc extension at least upto 30.6.2005 and until such time that the process of grant of license of fresh

license is completed by IRCTC. (Subject to satisfactory performance)."

Learned counsel appearing for the appellants are satisfied with the categorisation made and pray that their cases be dealt with in accordance with the categorisation made.

Civil Appeal Nos.4899/2002, 4900/2002, 4901/2002 48/2005 and Special Leave Petition(C) No.5353/2003 are disposed of sustaining the judgment of the High Court with a direction to the Indian Railways/IRCTC to identify the caterers falling in either of the four categories and deal with them as per the above-mentioned categories.

Nothing stated herein shall preclude the Indian Railways/IRCTC from granting adhoc extensions in the interest of general public travelling in the trains. Such extension, however, shall not create any legal right in the licensee's favour. The appellant(s) shall deposit arrears of licence fee, if any, within a period of two months from today. In case the appellant(s) fail to deposit the arrears, as directed, the Indian Railways/IRCTC would be at liberty to terminate the licenses forthwith and to make recovery of the arrears in accordance with law.

These appeals and Special Leave Petition are disposed of in the above terms.

Group A cases

In Group A cases the only appeal which survives for consideration is Civil Appeal No. 4897 of 2002. In this case, the

appellant-N.B.Krishna Kurup filed the writ petition in the High Court challenging the fixation of license fee of refreshment rooms(VRR) being run by the appellant at Palghat. The fixation of license fee for the period 1.8.1995 to 31.7.2000 had been challenged on the ground that the increase had been made retrospectively which was against the terms of the agreement. The Division Bench, by the impugned judgment, dismissed the writ petition by observing that there has been no retrospective enhancement of licence fee. The license of the appellant was renewed for a period of five years w.e.f. 1.8.1995 to 31.7.2000 and the license fee was fixed at Rs. 47,000/- per annum provisionally with the stipulation that the license fee fixed provisionally would be subject to revision during the tenure of the contract and the revised license fee will be operative with retrospective effect from the commencement of the financial year in which the revision takes place. The contention raised by the appellant is that since the rates were revised on 4.2.2000, the retrospective enhancement could be for the financial year starting from 1.4.1999 to 31.3.2000 only and not from 1.8.1995 till 31.3.2000 as has been done by the Indian Railways.

We do not find any substance in this submission. Appellant was the existing licensee as on 31.07.1995 and his license was renewed with effect from 01.08.1995 for a period of five years i.e. 31.07.2000. The license fee was fixed at Rs. 47,000/- per annum with the stipulation that the license fee fixed was provisional and would be subject to revision

during the pendency of the contract and the revised license fee shall come into operation with retrospective effect from the commencement of the financial year in which the revision takes place. License fee was fixed provisionally at the time of the renewal of the license because assessment of the actual sales had not been made.

After assessing the quantum of sales made, the Indian Railways proposed the enhancement. Against this enhancement appellant filed representations/appeals before the Railway Board. The Railway Board ordered status quo to be maintained during the pendency of the representations/appeals. The revised fee could not be charged because of the order of status quo passed by the Railway Board. Soon after the dismissal of the representations/appeal the enhanced license fee came into operation with effect from the date of the renewal of the license i.e. w.e.f. 01.08.1995. Enhancement has not been made with retrospective effect as has been argued before us. We agree with the view taken by the High Court.

For the reasons stated above, we find no merit in this appeal and dismiss the same. Parties shall bear their own costs.

Civil Appeal No.4902/2002

Mr. Gourab Banerjee, learned senior counsel appearing for IRCTC also prays that this appeal be dismissed as withdrawn. Accordingly, it is dismissed as withdrawn.

The appeals stand disposed of in the above terms.

.....J.

[ASHOK BHAN]

NEW DELHI;J.

MARCH 29, 2005. [A.K. MATHUR]