

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

WRIT PETITION No.34055 OF 2024

Mr. Aadesh Varma, learned counsel for the petitioner.

Ms. N.V.R.Rajya Lakshmi, learned counsel representing Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India, for the respondents.

ORDER:

The petitioner is aggrieved by the termination of the license pertaining to the petitioner's Catering Stall at the Secunderabad Railway Station as communicated by a letter from the Office of the South Central Railway (Railway) on 07.11.2024.

2. By the impugned letter dated 07.11.2024, the petitioner's contract for operation of a Tea Stall in the Secunderabad Railway Station was terminated with immediate effect and the security deposit paid by the petitioner was forfeited. The petitioner was also debarred from participating in future similar contracts/licenses of the Indian Railway for a period of one year.

3. Learned counsel appearing for the petitioner relies on the Annexure-III of the Special Conditions of Contract (SCC) which is a part of the Bid Document, and the "Penalties" section thereof to

urge that the licensee should first be counselled for any deficiency of service and thereafter given a written warning by the Railway if the deficiencies persist. Counsel submits that the petitioner was served with the impugned notice of termination without adhering to the “Penalties” section and further that the respondent Railway acted on a complaint against the petitioner on social media, more specifically, on Twitter. Counsel relies on Clause 5 of Annexure-IV of the SCC in the Bid Document to submit that orders for temporary closure of catering units can be issued in writing to the concerned Officer only after giving 72 hours notice specifying the details of deficiencies and the period of closure.

4. Learned Standing Counsel appearing for the respondent Railway places a series of complaints received against the petitioner with regard to the quality of food served by the petitioner and several warnings issued by the respondents to the petitioner in this regard. Counsel submits that the petitioner not only sold poor quality of food but also charged customers more than the prescribed rates. Counsel places the warnings issued by the Railway to substantiate these allegations. Counsel further places images of the petitioner’s service providers being involved in a

physical scuffle and other acts of aggression. Counsel seeks to sustain the impugned termination on the ground that the petitioner was given the required number of warnings but that the petitioner failed to take corrective action for removing the deficiency of service which forms the subject matter of complaints against the petitioner.

5. I have heard learned counsel appearing for the parties and considered the numerous documents shown by them in support of their respective contentions.

6. The Railway and the petitioner entered into a License Agreement on 05.01.2016 for providing Catering Services in the Secunderabad Railway Station. The license was to commence from 05.12.2015 and continue for a period of 5 years. The license was extended thereafter and was subsisting on 07.11.2024 when the license was terminated.

7. In the impugned notice, the respondent – Railway clarified that the petitioner was given multiple opportunities to rectify the lapses but failed to comply with its contractual obligations which negatively impacted passengers' interest. The impugned letter also

mentions the petitioner's involvement in acts of violence and lists five penalties imposed on the petitioner from 05.02.2024 till 09.10.2024 together with a warning letter on the complaints made by the customers on Twitter. The impugned letter makes it clear, on the face of it, that the Railway gave several opportunities to the petitioner to mend its ways before issuing the notice of termination on 07.11.2024.

8. The counter filed by the respondent Railway contains the complaints made by the customers against the petitioner including for sub-standard quality of food and the action taken by the Indian Railway Catering and Tourism Corporation (IRCTC) pursuant to such complaints. The "action taken" dates are listed as 05.02.2024, 13.07.2024, 17.07.2024, 20.08.2024, 09.10.2024 and 10.10.2024. The documents contain the remarks of the respondents in reply to the complaints. The counter also discloses the warnings issued by the respondents to the petitioner on several occasions including on 09.02.2024, 29.08.2024, 17.10.2024 and 29.10.2024.

9. Other documents enclosed to the Railway's counter show that the complaints were forwarded by the Chief Commercial Inspector, South Central Railway, to a Senior Official of the said Railway. The Railway also issued an internal letter on 08.11.2024 (after the impugned termination) detailing the five penalties and the warning letter issued to the petitioner referring to the complaint on 31.10.2024 showing a video of a vendor beating up a person inside the train wearing the uniform of the petitioner. The letter further states that a preliminary report was obtained by the Railway which showed that the petitioner's vendors were involved in a physical altercation on 22.10.2024 which escalated to a serious confrontation. The petitioner's reply dated 12.11.2024 stating that one of the persons in the video is an ex-employee of the petitioner and was wearing a T-Shirt of the petitioner, is on record.

10. The videos/images of the petitioner's vendors fighting inside a Railway coach adds to the gravity of the allegations. Even if the petitioner's reply to the violent incidents is to be accepted, the petitioner does not have any explanation for permitting an ex-

employee to wear the petitioner's T-Shirt/uniform while being involved in a physical altercation in the train.

11. The complaints made on social media are on record. It is not necessary to refer to these complaints in further detail. What falls for adjudication is whether the respondent Railway acted in violation of the Special Conditions of Contract of the Bid Document in failing to give the petitioner an opportunity to rectify its defects before terminating the license.

12. Annexure-III of the Special Conditions of Contract provides for "Penalties" and contains sequential stages of actions to be taken by the Railway in case of deficiency of service. The first stage provides for counselling of the licensee followed by a written warning if the deficiencies persist. The second stage provides for imposition of penalty if the licensee fails to pay heed to the repeated warnings. Stages 3,4,5 and 6 provide for the quantum of penalty to be imposed by the Railway. Stage 7 provides for termination of license agreement in case of continued deficiency. Stage 8 provides for imposition of fine/warnings and rejection of the application for renewal in case of more than five warnings.

Similarly, the “Penalties” section in Annexure IV of the SCC in the Bid Document provides for closure of the unit under Clause 5 in the event of serious deficiencies or irregularities on the part of the licensee and a temporary closure of catering units in the event of continued serious deficiencies. Clause 5 (c) of Annexure-IV of the SCC in the Bid Document provides for temporary closure of catering units with a reasonable notice period of 72 hours.

13. It is evident from the above that the respondent Railway complied with the sequential stages in the form of giving multiple warnings to the petitioner. The impugned action of termination was taken only after the petitioner failed to stop the continued deficiency in service. More important, it is evident that the petitioner was given five opportunities to rectify the deficiencies in accordance with the “Penalties” section of Annexure-IV of the SCC. Clause 7 of the “Penalties” section of Annexure-III of the SCC in the Bid Document clearly provides that the Railway may serve a notice of termination of the License Agreement in case of continued or further occurrence of deficiency even after giving five opportunities/ imposing penalties.

14. The documents on record show an undisputed deficiency of service on the part of the petitioner/licensee. The complaints on social media cannot be seen as lacking in gravity as opposed to formal written complaints. Complaints/customer feedback on social media is an accepted mode of registering complaints against a service provider and the petitioner cannot adopt an ostrich policy in today's time on the pretext that social media complaints do not deserve to be treated with seriousness. The complaints are indeed serious in nature since they not only relate to poor quality of food but also food below the recommended weight and in excess of the prescribed rate.

15. In any event, the petitioner was debarred from participating in future contracts/licenses for one year i.e., till 06.11.2025 which is certainly different from the petitioner being debarred for all times to come.

16. The Court hence does not find any reason to interfere with the impugned letter of termination. The opportunities given to the petitioner to rectify the situation also took care of the requirement

of following the principles of natural justice in terms of giving notice of the impugned action.

17. W.P.No.34055 of 2024 is accordingly dismissed. All connected applications are disposed of. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

Date: 30.12.2024
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