

(2013) 06 MP CK 0025

Madhya Pradesh High Court

Case No: Writ Petition No. 9899 of 2013

M/s. Satkar Caterers
and Others

APPELLANT

Vs

Union of India and
Another

RESPONDENT

Date of Decision: June 10, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) ILR (MP) 2123

Hon'ble Judges: U.C. Maheshwari, J; N.K. Modi, J

Bench: Division Bench

Advocate: Vaibhav Joglokar and Mr. S.A. Dharmadhikari, for the Appellant; Atul Choudhary, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

U.C. Maheshwari, J.

The petitioners have filed this writ petition under Article 226 of the Constitution of India to issue appropriate writs for the following reliefs:-

(a) To hold and declare that the impugned Tender Notice No. NIT C/BPL/Catg./157/RRM/Allotment/2013, dated 8.5.2013 and the Tender Document issued thereunder (Annexure P-6) are per se illegal, arbitrary, unconstitutional, null and void-ab-initio and liable to be quashed and set aside.

(b) To issue a Writ of Mandamus or any other appropriate Writ, Order or direction thereby commanding the respondents nos. 1 and 2 to withdraw, rescind and cancel the impugned Tender Notice No. NIT: C/BPL/Catg./157/RRM/Allotment/2013 dated 8.5.2013 and the Tender Document issued thereunder (Annexure P-6).

(c) To issue a Writ of Certiorari or any other appropriate Writ, Order or direction thereby calling for the records and proceedings of the impugned Tender Notice NIT: C/BPL/Catg./157/RRM/Allotment/2013 dated 8.5.2013 and the Tender Documents issued thereunder (Annexure P-6) and after examining the legality, validity and propriety thereof be pleased to quash and set aside the same.

Inter alia the petitioners have filed this petition challenging the illegal, arbitrary and unconstitutional action on the part of the respondents stipulating certain onerous, unjust, arbitrary, discriminatory and unreasonable evaluation criteria in Section B, Chapter 3 in the impugned Tender Document, NIT, dated 8.5.2013, (Ann. P-6) for four Vegetarian / non Vegetarian Refreshment Rooms at Itarsi, Bina and Bhopal Railway Stations, which have the effect of virtually ensuring rejection of the bids of the petitioners, at present who are working as Caterers on the aforesaid Units as they are technically qualified to bid for the same. Alongwith other grounds, the aforesaid NIT is also challenged stating that the alleged tender conditions are not having any nexus with the object sought to be achieved by the Catering Policy 2010 and in such premises, the tender conditions are clearly unjust, arbitrary and discriminatory and the same is made in a manner which would have adverse effect on the petitioners technical evaluation.

2. After filing this petition, in response of advance copy by filing the reply of interim relief on behalf of respondent nos. 1 and 2, various preliminary objections were taken and prayer for dismissal of the petition in the light of Apex Court decision in the matter of [Tata Cellular Vs. Union of India](#), holding that scope of judicial review in the matter of NIT is not readily available to the petitioner is made. Besides this, the prayer for dismissal of this petition is also made on account of suppression of material facts by the petitioners in their petition as they have not disclosed that their period of licence as well as its extended period have already expired and despite that, they are continuing their business in the premises of respondents without any authority or law, so also without payment of licence fee. Under the law after expiry of licence period, the petitioners were duty bound to leave the premises but they have not done so. In such premises, it is apparent that the petitioners have not come to this court with clean hands and on account of this, they do not have any right to be heard on merits. Apart this, it is also stated that the tender conditions are framed by the Railway Board under its statutory authority by virtue of the provisions of Indian Railways Board Act 1955. According to Sections 3 and 4 of such Act any policy or circular framed by the Railway Board has binding effect of law. So the policy framed by the Railways Board is within its domain of powers. The petitioners in the garb of challenging the tender conditions in fact challenged the policy of Railway Board notified as Catering Policy 2010 and Standard bid document, which is beyond the scope of judicial review. The motive and purpose of the Railway Board and respondents in framing the mentioned technical criteria for eligibility in the tender document is to get best standard and experience in providing good quality of food and hygiene to the travelling passengers, thus, the action of the respondents

can not be said to be unjust, arbitrary or discriminatory because the very purpose of improving technical qualification clause in the tender is to increase hygienic and good quality of food. Alongwith the reply a copy of the licence agreement of petitioners and its extension letter are also annexed as Annexure R-1 to R-3.

3. The petitioners' counsel after taking us through the averments of the petition as well as annexed papers including the object and provisions of the Catering Policy 2010, (Ann. P-2) and the alleged NIT (Ann. P-6) argued that the conditions and the norms prescribed under the NIT being contrary to the object and provisions of the Catering Policy 2010 and thereby the petitioners who are running the alleged Units since long have been deprived as according the proposed norms, they could not submit their respective tender for giving the licence of the above mentioned Units. In this regard he also referred some of the mentioned terms and conditions, enumerated in NIT, Annexure P-6 and prayed for quashment of such Annexure P-6, NIT by admitting and allowing this petition.

4. Having heard the counsel for the petitioners on admission, we have carefully gone through the documents and averments of the petition as well as annexed documents. It is apparent fact on record that the impugned NIT with respect of Tender Notice No. NIT C/BPL/Catg./157/RRM/Allotment/2013, dated 8.5.2013 at Itarsi, Bina and Bhopal has been published under the Catering Policy 2010 and such policy has been made and promulgated under the provision of aforesaid Act by the Railway Board and it is also apparent that such policy has not been challenged by the petitioners either in the present petition or otherwise through other petition or the proceeding. Keeping in view such aspect on going through such Catering Policy 2010 and the terms and conditions of the NIT, it is apparent that the earlier Catering Policy of 2005 was modified by the Railway Board under the authority and powers vested under the Indian Railway Board Act 1955. In such premises, the same is having binding effect of law unless such policy of 2010 is challenged and on consideration, the same is declared to be ultra vires, this petition could neither be entertained nor admitted for final hearing. Mere perusal of the Policy of 2010, it is apparent that Catering Policy of 2005 has been modified by the Railway Board under its authority with the motive and object of getting best standard and experienced services in providing good quality of food with hygienic atmosphere to the travelling passengers at the aforementioned Railway Stations.

5. So firstly we are of the considered view that unless the policy made and promulgated by the Railway Board is challenged by the petitioners to hold it ultra vires, this petition could neither be entertained nor admitted for the relief, as prayed.

6. Apart the aforesaid, it is settled proposition of law that the remedy of judicial review against contractual powers of the Government Bodies is neither permissible nor available to the petitioners unless the case of arbitrariness or favoritism by the authority is established in the process of NIT. Such view is fully fortified by the

decision of the Apex Court in the matter of [Tata Cellular Vs. Union of India](#), . So in the available factual scenario of the matter, the impugned NIT in the light of Apex Court decision could not be a subject matter of the judicial review. Consequently on such count also this petition deserves to be dismissed at the admission stage.

7. Apart the aforesaid, it is apparent from the documents, Annexure R-1 to R-3 that the licence of the petitioners to run the aforesaid Catering Units had already been expired in the year 2010 and such material fact was not pleaded on behalf of any of the petitioners in any manner anywhere in entire petition. In such premises, it is apparent that after expiry of the period of licence without authority of law or the agreement, the petitioners are running the alleged Catering Units at the above mentioned Railway Stations. Accordingly, the petitioners by suppressing such material facts have not come to this Court with this petition under Article 226 of the Constitution of India with clean hands. On the contrary, they have come to this court by stating that they are still running the above said Units as licencees of the respondents. So on account of suppression of such material facts also in view of the law laid down by the Apex Court in the matter of [Bhaskar Laxman Jadhav and Others Vs. Karamveer Kakasaheb Wagh Education Society and Others](#), this petition deserves to be dismissed. In view of the aforesaid, we have not found any merits in this petition even for admission to consider the question for quashment of NIT, Annexure P-6 or any of its terms and conditions. Consequently, the same is hereby dismissed at the stage of motion hearing.