(2011) 01 CAL CK 0071

Calcutta High Court

Case No: M.A.T. No. 64 of 2011 and C.A.N. No. 395 of 2011

New Ghausia Enterprise		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Jan. 25, 2011

Citation: (2011) 2 CHN 534

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Asim Kumar Roy, J

Bench: Division Bench

Advocate: A.K. Gayen, Anirban Gope and Shuvanil Chakrabarty, for the Appellant;Rajendra Chaturvedi and Bidyut Roy, for the Respondent

Judgement

1. We fail to understand as to why Mr. Bidyut Roy, learned Lawyer appeared on last occasion on behalf of Union of India has been sought to be disengaged by the railway authority. Any way, we welcome the appearance of Rajendra Chaturvedi, the learned Lawyer, who has filed vakalatnama. However, he will continue to appear as senior. The railway authority shall make all arrangements for his appearance and payment fees of Mr. Roy for today and also the appearance for the previous day.

2. Having heard both the learned Lawyers we could dispose of the appeal and the application dispensing with all the formalities today.

3. The writ Petitioner/Appellant approached the learned Trial Judge with a grievance that in spite of the valid agreement for renewal of the period of lease and having performed well during the contractual period its application for renewal was not considered. It was the defence of the Respondents that since the railway has taken a policy decision not to renew any subsisting contract for lease, the Petitioner has not been considered at all.

4. Therefore, the issue before the learned Trial Judge was precisely whether the policy decision taken subsequently can take away the right of the Petitioner for consideration of renewal.

5. The learned Trial Judge held that the policy decision can take care of the right and it appears that the learned Trial Judge was of the view that the right accrued prior to policy decision being taken, cannot be enforced in the Writ Court.

6. Learned Counsel for the Appellant Mr. A.K. Gayen submits that his client''s right cannot be taken away. We are in agreement with the submission for the simple reason that the policy decision was taken subsequent to the agreement for granting renewal in fit case and this right cannot be taken away and the railway authorities are hit by the principles of promissory estoppel. Unlike legislative action, the executive action must be bound to their own promise held out earlier. Therefore, we are of the view that the railway authority cannot back out from the obligation as mentioned in the clause that in a fit case renewal may be considered. We, therefore, reproduce the relevant clause with regard to the renewal of the lease in the following manner:

1. Extension of lease is permissible only in case of long term lease of 3 years.

2. In case of long term lease, on expiry of the contract period, the same can be extended only once by 2 more years at a lease rate of 25% more than the lumpsum leased freight rate.

3. Such extension will be subject to satisfactory performance by the lease holder, without any penalty for overloading or violation of any provision of the contract.

4. In case of expiry of contract period and non-finalization of new contract due to administrative delays, temporary extension can be permitted by the CCM only once, for a period of 3 months.

7. We are also in agreement with the findings of the learned Trial Judge that renewal was not automatic and the same has to be considered and be granted based on performance.

8. We have been informed that railway authority has, after dismissal of this writ petition, issued a fresh tender and everything has been processed and finalised but No. order has been passed allotting the same space to any third party. In view of the subsequent fact we think that following order may be useful to decide the matter.

9. We, therefore, set aside the impugned judgment and order, and direct the chief commercial manager, South Eastern Railway to consider the Petitioner''s case examining its performance during the initial period whether it is entitled to get any renewal or not. For this purpose, Appellant shall be given a personal hearing to enable them to place its case showing its performances. In the event, their prayer is not accepted, obviously reasons must be given. If it is found that their performance is satisfactory as per standard and norms considering all materials objectively, then renewal obviously has to be granted and in that case the process which has already been taken, will not be given any effect. In the event, the Petitioner does not succeed then process already taken shall be finalised in accordance with law. This shall be considered within a period of four weeks from the date

of communication of this order. Till decision is taken in this matter, No. step shall be taken in connection with tender.

10. Vakalatnama filed is kept on record.

11. The server copy of the impugned judgment and order is accepted provisionally, however, certified copy already applied, shall be furnished and be kept with record, the moment it is made available.

A.K. Roy, J.

I agree.