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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 10.10.2019*
Judgment pronounced on: 04.11.2019

+ **W.P.(C) 10134/2017 & CM APPL. 41359/2017**

KHAN PAAN VENDORS WELFARE
ASSOCIATION (REGD) & ORS Petitioners
Through Mr.Tamim Qadri, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through Mr.Jagjit Singh, Sr.Standing Counsel
with Mr.Preet Singh, Adv. for
Railways.
Mr.Nikhil Majithia, Standing Counsel
for IRCTC.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. This writ petition is filed seeking a writ/direction to the respondents to issue free Railway Passes to the vendors of the petitioner licensee for the purpose of Train Side Vending. Other connected reliefs are also sought for.
2. It is the case of the petitioners that petitioners No.2 to 6 are running their vending business at railway stations for more than 40 years. The petitioners have been given license by the Railway Administration to run refreshment rooms, stalls, trolleys etc for serving food, snacks, fruits etc on the railway platform. It is stated that to regulate train side vending the respondents issued a commercial circular laying down policy guidelines

regarding train side vending. As per the circular catering licenses of refreshment rooms enroute may be requested to provide train side vending and passes were to be issued to the staff between two pairs of stations. It is stated that in view of the aforesaid circular agreements were entered into between the licensee and the President of India through the Senior Divisional Commercial Manager. Separate license fees were charged for train side vending before issuing the passes. These passes were issued for limited period. Expired passes were to be returned to the Railways for issuance of fresh passes. It is stated that in some cases the license fee were directed to be deposited upto 2015 and in some cases upto 2016.

3. The situation changed after a circular was issued on 16.9.2015 regarding “station based E-catering”. Even after depositing of train side vending fees the vendor card/passes were not issued by the respondents. Despite service of a legal notice the respondents did not take action. Hence, the petitioners filed the Writ Petition before this court being W.P.(C)7110/2016 for directions for issue of free railway passes to the petitioners for train side vending. This petition was disposed of on 11.8.2016 with a direction that the Writ Petition be treated as a representation by the respondent to be disposed of by the Chief Commercial Manager(Catering) Northern Railways, New Delhi by a reasoned order.

4. The said functionary disposed of the representation on 20.9.2016 noting that earlier train side vending was allowed by the Railway administration under specific scheme to the static catering licensees for serving passengers. However, now E-catering scheme has been introduced which gives an option to the passengers of ordering food of their choice at the station enroute their destination. Since the need of passengers is met

through E-catering system, train side vending scheme and the issuance of passes for the same were not considered necessary.

5. Petitioners plead that the stand of the respondents is illegal and arbitrary. It is stated that in the absence of train side vending there is a lot of unauthorized vending in operation which is unhygienic and harmful to the passengers. It is further sought to be urged that large number of passengers are not equipped to place the orders through the e-catering system and hence grave inconvenience is caused to such passengers.

6. Hence, the present petition seeking a direction for issue of railway passes to the vendor for Train Side Vending.

7. The respondents have filed their counter-affidavit. As a preliminary objection it is stated that petitioners No.2 to 6 have filed a similar petition under the garb of one Association or the other raising similar issues. It is stated that petitioner Nos.1 and 4 have filed *W.P.(C) 809/2017 titled Indian Railway Dalit Catering Co-operative Society Ltd. vs. UOI* which is pending in the Supreme Court; *R.P.3392/2016 titled UOI (Railways) vs. Ayub Wali Khan* pending in the Supreme Court. Similarly other petitioners have also filed such writ petitions.

8. It is further stated that pursuant to judgment delivered by the Supreme Court dated 29.1.2016 in *Civil appeal No.9921-23/2014 Sr.DCM and Others vs. SCR Caterers Dryfruit, Fruit Juices Stalls Welfare Association & Anr.*, a direction was issued that only those minor catering static unit licensees would be eligible for renewal of their licenses who declare on affidavit that they do not have the licenses of more than one refreshment room at B and below category stations or one catering stall or one trolley or one Khomcha/Dallah/Chhabba/Wheel/Barrow/Hand Barrow/Tray/Table/Tea

Balta at any Railway Station. It is on account of the aforesaid orders petitioners No.2 to 6 are working at various catering units. It is reiterated that in view of the new policy the petitioners have no claim whatsoever for extension of the passes, as is being sought.

9. I have heard learned counsel for the parties.

10. As per commercial circular No.20/2000 dated 29.5.2000 it was provided in clause 4 that in case it is not feasible to provide train side vending through departmentally managed static units, catering licensees of the refreshment rooms enroute may be asked to provide train side vending and passes may be issued to their staff between two pair of stations. It is pursuant to this policy guidelines that the petitioners have been providing train side vending through refreshment rooms and were provided passes between two pair of stations. However, as is manifest, the policy of respondent has changed. On 16.9.2015 a commercial circular was issued giving instruction for implementation of station based E-catering. Clause 2.1 of the circular provides that expression of interest is to be floated by IRCTC to ensure participation of experienced professionals reputed chains /brands like KFC, Mc Donalds, Haldiram, Bikanerwala etc. Based on this policy the respondents have stopped providing passes for train side vending. It is in this background that pursuant to the order of this court passed in W.P.(C)7110/2016 dated 11.8.2016 that the concerned functionary passed the following order:-

“..... It is noted that Train Side Vending (TSV) was allowed by the Railway Administration under specific scheme to the static catering licensees for serving passengers as per need/requirement of passengers. Now, to take care of requirement of passengers, E-catering scheme has been introduced which gives option to the passengers for

ordering food/meal of their choice at enroute stations. Since need/requirement of passengers is met through system of E-catering, therefore, extension of Train Side Vending (TSV) and issuance of passes for Train Side Vending (TSV) is not considered necessary.

The representation of the KHAN PAAN VENDORS WELFARE ASSOCIATION is disposed off accordingly.”

11. In my opinion, the petitioners have not been able to show any illegality or arbitrariness in the aforesaid order passed on 20.9.2016. The original policy itself which is relied upon by the petitioners, namely, commercial circular No.20/2000 dated 29.5.2000 provides that where it is not possible to provide train side vending through departmentally managed static unit it is only then that catering licenses would provide for train side vending and passes may be issued to their staff. As noted, an alternate arrangement has been decided and attempts are being made to introduce professionally experienced caterers for the benefit of the passengers. It would be within the rights of the respondents to change its policy and to disallow the petitioners to carry out train side vending. It is settled law that policy matters of the State are not to be disturbed unless they are found to be grossly arbitrary or irrational.

12. In this context reference may be had to the judgment of the Supreme Court in the case of *Federation of Railway Officers Association & Ors. v. Union of India*, (2003) 4 SCC 289, where the court held as follows:

“12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters

affecting policy and requiring technical expertise the Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the Court will not interfere with such matters.”

13. Reference may also be had to the judgment of the Supreme Court in the case of *Directorate of Film Festivals & Ors. v. Gaurav Ashwin Jain & Ors.*, (2007) 4 SCC 737, where the court held as follows:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.”

14. The petitioners have failed to show that the policy is arbitrary or illegal. There is no merit in the present petition. Same is dismissed.

JAYANT NATH, J.

NOVEMBER 04, 2019

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