

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**JUSTICE SUJOY PAUL**

**&**

**JUSTICE VINAY SARAF**

**ON THE 7<sup>th</sup> OF NOVEMBER , 2023**

**ARBITRATION APPEAL NO. 287 OF 2023**

**BETWEEN :-**

**M/S. LAHERE TRADERS THROUGH SOLE  
PROPRIETOR DEEPAK SONKAR, SON OF  
SANTOSH SONKAR, AGED ABOUT 43  
YEARS, R/O WARD NO. 11, DISTRICT  
HOSHANGABAD, M.P., OCCUPATION :-  
CONTRACTOR.**

**.....APPELLANT**

***(BY SHRI ATUL CHAUDHARI - ADVOCATE)***

**AND**

- 1. UNION OF INDIA THROUGH DIVISIONAL  
RAILWAY MANAGER DRM OFFICE, NEAR  
HABIBGANJ RAILWAY STATION, BHOPAL.**
- 2. SENIOR DIVISIONAL COMMERCIAL  
MANAGER, DRM OFFICE, NEAR  
HABIBGANJ RAILWAY STATION, BHOPAL**

**.....RESPONDENTS**

***(BY SHRI PUSHPUNDR YADAV – ADDITIONAL SOLICITOR GENERAL OF  
INDIA )***

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*This writ appeal coming on for hearing this day, JUSTICE SUJOY PAUL passed the following :*

**J U D G M E N T**

With the consent, finally heard.

2. This appeal filed under Section 37 of Arbitration and Conciliation Act 1996 (Arbitration Act) takes exception to the order dated 28.10.2003, whereby the Court below rejected the application filed by the appellant under Section 9 of the Arbitration Act.

3. Draped in brevity, the admitted facts between the parties are that an agreement was entered into between them regarding parking at Itarsi Railways Station on 27.2.2017 and its duration was from 17.8.2018 to 16.8.2023. The grievance of the appellant is that during this period, the Covid Pandemic broke out. Because of that, for certain period, he could not get any business but continued to pay the licence fee. Thus, it was his expectation that the contract period will be suitably extended. Clause 10 of the relevant contract provides that the contract is renewal for a period of three months at a time and maximum upto nine months. By invoking this Clause although the period of contract was extended upto 14.11.2023, the Railway Administration entered into another contract with another agency, which will come into force w.e.f. 15.11.2023.

**Appellant's contention :-**

4. It is urged by appellant that since, the appellant was deprived of the business during Covid Pandemic, in all fairness the Railway Administration should have extended the contract period upto

maximum nine months. By placing reliance on the judgment of Supreme Court reported in **(2016) 3 SCC 582 (Senior Divisional Commercial Manager, South Central Railways and others Vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another)**, Shri Atul Choudhari, learned counsel for the appellant submits that in view of *ratio decidendi* of this judgment, the livelihood of the employees who are dependent on the appellant- Contractor will be on stake and, therefore, in the light of this judgment, the period of contract may be extended. The court below has committed an error in not extending the period upto the extent it was permissible in the teeth of Clause 1 of the contract.

**Stand of Railways :-**

5. Sounding a *contra* note, Shri Pushpendra Yadav, learned Deputy Solicitor General supported the impugned order and drew our attention to another clause 7.1 of the Parking Policy to bolster his submission that this kind of clause was not there before the Apex Court in the case of **Senior Divisional Commercial Manager, South Central Railways and others Vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association** (supra). In the light of this clause, no fault can be found in the action of railways administration in giving contract to a different agency.

6. It is noteworthy that the appellant got contract for an amount of Rs.18,74,250/- whereas from new licensee, the Railway Administration will get Rs.1,21,59,900/-. If power of interim measure is exercised in favour of appellant, it will result into huge loss to the Railway

Administration and to the public. Thus, necessary ingredients for grant of interim measure are not available in favour of the petitioner.

7. The parties confined their arguments to the extent indicated above.

8. We have heard learned counsel for the parties at length and perused the record.

**Findings :-**

9. Before dealing with rival contention, it is apposite to quote the relevant clauses of the contract and parking policy:-

**“Clause 10 of the Contract :-**

(i) All the taxes applicable will be deposited by licensee over and above the license fee to concerned department as applicable. Tax clearance certificate should be produced on demand.

(ii) **Validity of License:**

Subject to the terms and conditions contained in this Indenture, the License shall be for a period up to 5 years commencing from 17.8.2018 and terminating on 16.8.2023 renewable further for the period up to 3 months at a time (maximum up to 9 months).”

**Parking Policy :-**

“7.1:- Normally, extension of existing contract period **should be avoided by proper advance planning**. However, in case of expiry of contract period and non finalization of new contract due to unavoidable and exceptional circumstances, for ensuring uninterrupted service of parking to the passengers at a station, subject to willingness

of the contractor, extension of the existing contract period may be considered for a period of three months at a time (maximum 6 months) with the concurrence of associate finance and approval of tender accepting authority.

**(Emphasis supplied)**

**10.** A plain reading of Clause 7.1 shows that ordinarily the Railway Administration is required to avoid extension of existing contract and must make endeavor so that before expiry of contract of existing licensee, another licensee is engaged and contract is entered into with him. In the instant case, the clause 10 (ii) of the Contract shows that it is only an enabling provision. The language employed in clause (ii) shows that it is not a provision which can be enforced by an agency for the purpose of extension of period of contract. It is the prerogative of the Railway Administration to extend the period initially for a period of three months and maximum for a period of nine months.

11. The Apex Court in the case of **Sr. Divisional Commercial Manager** (supra) dealt with a different factual scenario and the clauses of the contract. In the documents/policy before the Apex Court, it appears that there was no clause similar to clause 7.1 of parking policy mentioned herein above. Thus, there was an obligation on the part of Railway Administration to make endeavor to enter into contract before expiry of the previous contract period. Clause 7.1 makes it obligatory for the Railway Administration to avoid any such extension of contract and enter into a new contract to the extent possible before completion of the contract period. Since, Railways Administration could not complete the same within the said period, one extension was granted to the appellant which will come to an end on 14.11.2023.

12. In the judgment of **Sr. Divisional Commercial Manager** (supra), the Apex Court considered a commercial circular No.37 dated 9.8.2010 in para 23 of the judgment. The circular itself makes it obligatory for the zonal Railways to renew all agreements, which were expired or were due for expiry in next six months by giving an extension, subject to a maximum extension of six months from the date of issue of the catering policy 2010. By taking into account this governing provision and other relevant factors, the Apex court passed the judgment in the said case.

13. As noticed above, there was no such clause like clause 7.1 of the parking policy in the said case before the Supreme Court. The said matter relating to a catering policy and there was a different commercial circular which mandated extension of the contract.

14. The said judgment cannot be mechanically applied in a case of this nature. This is trite that a singular different fact may change the precedential value of a judgment. (See: **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. And Ors. reported in (2003) 2 SCC 111**).

15. The Apex Court in its recent judgment in **(2022)1 SCC 712 (Arcelormittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.)**, opined that for the purpose of grant of interim relief/measure under Section 9 of the Arbitration Act, the relevant factors are availability of (i) a good prima facie case (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury/loss to the applicant for interim relief.

16. A right, in our considered opinion, is already created in favour of a different contractor/licensee. The said body is not impleaded and represented before us. Any interim order passed by us will have an adverse impact on the said body. If appellant succeeds in the arbitration proceedings which is in the pipeline as per Shri Atul Choudhari, he may perhaps be compensated in terms of money. The 'public interest' is also a relevant factor for the purpose of considering a prayer for interim relief. (See :-**2012 SCC OnLine MP 792 (State of M.P. and another Vs. Shri Govind Gaushala Datia and another and (1993) 3 SCC 161 (Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others)**). If interim relief is granted to the appellant it will have a huge adverse financial repercussion on Railways because the next contract w.e.f. 15.11.2023 is for a much higher value. Thus, necessary ingredients for grant of interim relief are not available in favour of the

appellant. The Court below, in our considered opinion, has taken a plausible view which does not warrant any interference in this appeal. Hence, order dated 28/10/2023 passed in MJC AV/94/2023 is affirmed.

17. Appeal fails and is hereby **dismissed**.

**(SUJOY PAUL)**  
**JUDGE**

**(VINAY SARAF)**  
**JUDGE**

bks/irfan/naveen