

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1496 of 2002

New Delhi, this the 18th day of February, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. The Northern Railway,
Vendors, Hawkers and Licensed Porters,
Union Registration No.3269, 437),
Patli Gali, Nai Sarak, Delhi 110 006
Through its Assistant General Secretary,
Mr.R.K. Walia.
2. Shri Rajdhari Singh
S/o Shri Pancham Singh
R/o B-32, Unna Enclave,
Mayur Vihar, Phase-I,
Delhi.
3. Shri Lalit Kumar
S/o Shri Charan Lal
R/o E-48A, Mansaram Park,
Uttam Nagar,
Near Mohan Garden,
New Delhi.

-APPLICANTS

(By Advocate: Shri H.P. Charkravorty)

Versus

1. The Union of India
through Chairman Railway Board,
Principal Secretary to Government of India,
Ministry of Railway, Railways Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Commercial Manager,
Northern Railway,
GM's Office,
Baroda House,
New Delhi.

-RESPONDENTS

(By Advocate: Shri V.S.R. Krishna)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

Vide a letter dated 24/25.1.2002 the
Government of India, Ministry of Railways, Railway Board
handed over catering services to Indian Railways Catering
and Tourism Corporation (hereinafter referred to as

Kw

CH

IRCTC). This IRCTC was directed to start vending services immediately and they were directed to complete the same by 31.3.2002.

2. The applicant which is a union of Vendors/Hawkers/Licenced Porters through its members have assailed this letter and have prayed for quashing of the same to the extent that it excludes the commission vendors including the applicants and directing that their services be transferred to IRCTC. They have also prayed for a mandamus to be issued by this Tribunal restraining the respondents from terminating or transferring the services of the applicants working as Commission vendors to any other authority and to permit them to continue to discharge their functioning as has been done by them since the date of their appointment as commission vendors. They have further prayed that these applicants should be absorbed as regular Railway servants treating them at par with the corresponding Group 'B', 'C', and 'D' employees discharging same and similar duties as per the direction of the Hon'ble Supreme Court and in the case of T.I. Madhwan Vs. U.O.I. & Others.

3. The case of the applicant is that the petitioner are representing the case of various Railway vendors, Commission Vendors and Ice-cream vendors of the Northern Railway and various vendors are active members of the petitioner-union. A resolution has been passed in the General Body Meeting of the petitioner No.1 to challenge the letter in question.

Jm

4. It is further submitted that most of ice-cream vendors have reached their age of superannuation. They have, therefore, prayed that they should be identified either as Railway servants or the servants of various concerns like Hindustan Lever Ltd. etc. from whom the ice-cream bricks and other raw material are being procured by the Indian Railways to be sold at different Railway stations on commission basis through their vendors like petitioners in the instant case.

5. It is further stated that the petitioners when approached the Railway Administration in order to get rid of the situation of uncertainty, in turn also approached the various reputed concerns, namely, Hindustan Lever Ltd., Wedilal Enterprises Ltd., Premium Dairy Frozen Ltd. etc., but they have categorically disowned the ice-cream commission vendors as their employees. The Railway Administration has also disowned ice-cream vendors as their employees so that is why this petition has been filed.

6. It is further submitted that though the other vendors who were working there were supplied raw material by the Railway Administration to prepare the finished produce and sell them through various stalls and trolleys at the various stations. But as far the ice-cream is concerned, the Railway administration has no option but to procure the ice-cream from various concerns like Hindustan Lever Ltd. etc. and they had been selling the ice-cream at various stations on commission basis.

km

11

7. It is further submitted that the ice-cream vendors after collecting the amount of sale, have been depositing the same with the officials of the Railway Administration every day and at the end of the month the ice-cream commission vendors are being paid their wages on the basis of 12% of the sale proceeds by each vendors, though the vendors were also subjected to medical examination to be conducted by the Medical Officers of the Indian Railway Administration. Thus all the ice-cream vendors are working under the effective control of the Railway authorities.

4

8. It is also submitted that the causal labourers of the Indian Railway stand on equal footing and since casual workers have been regularised on the basis of a scheme which has been framed to regularise the casual labourers, so the commission vendors are being discriminated. Thus the applicants pray that they should be absorbed in the Railway catering service instead of transferring to IRCTC.

5

9. The respondents are contesting the OA. The department submitted that under the departmental catering and vending over this division new types of units were set up at Delhi and New Delhi stations only in 1955 and 1956 later HNZM catering was started in 1974. The departmental catering units were under supervision of unit Catering Manager now catering Inspector covered static units like Refreshment Room/Tiffin Rooms, Cafeteria and snakes bars etc. from early sixties. In the catering units the services to the passengers/customer being rendered through salaried bearers/waiters on salary

h

17

basis. Later on bearers were also engaged on commission basis. Under the department vending units stall/trolleys were set-up at Delhi and New Delhi Railway Station platforms and sale of Tea/Cold Drink/ Poori/Roti/bhatura was rendered through commission vendors. Thus it is submitted that the commission porters/waiters and commission vendors have separate entity.

10. As far commission/vendors of ice-cream trolleys on various platforms are concerned, they were never appointed by the Railway Administration so there was no question of treating them as Railway appointed commission vendors arises. Ice-cream vendors were also engaged by the manufacturers/suppliers since ice-cream companies were responsible for their working and welfare under the terms of the contract with the companies and railway has nothing to do with their employment.

11. It is further stated that as per the direction of the Apex Court a policy and directions of the Railway Board the engagement of salaried bearers/waiters as well as casual labourers was stopped and it was decided to fill up the vacancies occurred on account of retirement etc. by way of regularising the existing commission vendors/waiters and panel was formed by the Delhi Division and all the commission vendors were absorbed from time to time on occurrence of vacancies. But it is made clear that this regularisation has already been made to the vendors appointed under the scheme of departmental vending. But as far as ice-cream salesman are concerned, they are working under the ice-cream manufacturers and

Km

they were never appointed by the Railway Administration so the Tribunal has no jurisdiction to try the present application.

12. It is further submitted that departmental commission vendors are supplied raw material to prepare the finished product and sell it on railway rate on railway platform and get commission on the sale proceeds.

13. As far as ice-cream is concerned, the supplies are made by the company and stored in trolleys manned by their stakes man. The position of receipt and sale of stock is maintained so as to get Railways the share of agreed discount. Thus the respondents submitted that the ice-cream vendors were not engaged by the respondents.

14. Rejoinder to this counter-affidavit was filed. Applicants maintained that they are the commissioned vendors and have to seek regularisation as Group 'D' employees.

15. I have heard the learned counsel for the parties and gone through the records of the case.

16. The learned counsel for the applicant has also referred to a judgment in the case of T.I. Madhavan VS. U.O.I. and Others where directions were issued that all those persons who are working as commission bearers and vendors on various Railway platforms belonging to the Central Railway and the South Central Railways would be

1/2

absorbed progressively as members of the permanent Railway Catering Service as per the term of the memo dated 31.12.1976 (emphasis supplied).

17. The counsel for the applicant further submitted that the case of the applicant is also similar to those vendors and they are also entitled to be absorbed. The counsel for the applicant also submitted that this order have been complied with by various Zonal and Divisional Railways and have also been followed by various higher courts.

18. In reply to this Shri V.S.R. Krishna appearing for the respondents submitted that recently the case of ice-cream vendors had also come up before the Hon'ble High Court of Delhi in CW No.5002/2001 and CM 8608/2001 entitled as Tilak Raj and Others VS. U.O.I. & Others. There also the applicants had prayed for a mandamus directing the respondents to regularise and confirm the applicants as regular and permanent commission vendors and to provide facilities as applicable to other employees and they had also sought for a direction to lay down the guide-lines and for regularising and confirming them in their posts on the basis of length of service rendered by them.

19. The Hon'ble High Court on going through in detail as to how the ice-cream vendors were working with the Railways, observed as under:

"[T]he petitioners I find is that they are receiving commission under a contract established by contract from the Railway Authorities for selling ice-cream at the stations. Further their status at best be that of a licensee. In these circumstances, to my

ki

mind there is no enforceable legal right, which can be entertained in the exercise of writ jurisdiction where they can be granted relief as sought, which would tend to perpetuate the said licence arrangement. Further in the prayer clause of the petition, petitioner seeks the regularisation as regular and permanent commission vendors on the parity of benefits to regular railway employees. It is not petitioners case they their status is of temporary ad hoc employees who are demanding absorption.

In these circumstances, I find that the relief can be granted to the petitioners and the writ petition would not be maintainable. However, nothing said hereinabove, should come in the way of the respondents authorities".

20. I have considered the rival contentions put forward by the respective counsel.

21. From the counter-affidavit filed by the respondents, I find that the department is running departmental catering unit as well as departmental vending units. The vendors who are being supplied raw material by the Railways are preparing the finished goods and selling it and thereafter hand over the proceeds to the Railway authorities and get commission on the sale proceeds so they are stated to be the employees of the ice-cream supplier or manufacturers. Though the ice-cream companies had denied that the employees were there person but the fact remains that in the judgment referred to by the learned counsel for the respondents given by the Hon'ble High Court wherein the counsel for the respondents had referred to terms and conditions of the tender or contract for the supply of ice-cream. The contract provides for training for their vendors/salesman and also the provisions of uniform. However, the court had not gone into this question. So on the basis of this submission this Tribunal is also unable to say that these persons are the employees of the ice-cream

km

suppliers/manufacturers. But at the same time as putup before the Hon'ble High Court and similarly before this court also, none of the vendors have been able to produce any document that if they had been engaged by the Railway department. So as observed by the Hon'ble High Court that a contract has been established by the conduct of Railway Authorities for selling ice-cream, I am of the view that the vendors who were selling ice-cream on the Railway Platform are selling ice-cream by virtue of a contract formed by conduct and not as employees of respondents as held by Hon'ble Delhi High Court. Thus this court has to follow the same.

22. In view of the above, I find that the applicants have no enforceable legal right to seek absorption since they are not the departmental vendors. No relief, as prayed for, can be granted. Accordingly, the OA is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

Rakesh