Senior Divisional Commercial Manager ... vs S.C.R Caterers,Dry Fruits,F.J.S.W ... on 29 January, 2016

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Bench: Amitava Roy, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVILAPPELLATE JURISDICTION

CIVIL APPEAL NOS.618-620 OF 2016
(Arising Out of SLP (C) Nos.9921-9923 of 2014)

SENIOR DIVISIONAL COMMERCIAL MANAGER & ORS.
.....APPELLANTS

Vs.

S.C.R. CATERERS, DRY FRUITS, FRUIT JUICE STALLS WELFARE ASSOCIATION & ANR. .....RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Applications for intervention are allowed.

Leave granted.

The present appeals arise out of the impugned judgment and order dated 12.09.2013 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in W.A. Nos. 1573-1575 of 2013, whereby the Division Bench of the High Court upheld the order of the learned single Judge, wherein it was held that the respondents are entitled to get their licenses renewed under the Catering Policy, 2010.

The relevant facts which are required for us to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder:

> Respondents before us are the South Central Railway Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association, (hereinafter referred to as "the Welfare Association"). The members of the Welfare Association were granted licenses for running General Minor Units or Special Minor Units in Categories "A", "B" and "C"

Railway Stations. These licenses were granted in favour of the members of the respondents prior to the creation of the Indian Railways Catering and Tourism Corporation Limited (hereinafter referred to as "IRCTC") under the Catering Policy, 2005. In terms of the said Policy, the contracts under Categories "A", "B" and "C" Railway Stations were transferred to the IRCTC while the contracts granted under Categories "D" to "F" Railway Stations were continued under the control of the South Central Railways till the IRCTC was equipped to take over these units. The contracts held by the members of the Welfare Association were renewed during the subsistence of the Catering Policy, 2005. The said policy was replaced by the Catering Policy, 2010. Under the new Policy, the contracts of all the existing major and minor catering units were to be awarded and managed by the Zonal Railways. The IRCTC was left with the running of the Food Plaza, Food Courts and Fast Food Units only. Pursuant to the Catering Policy, 2010, the South Central Railway granted renewal of licenses in favour of the licensees for a period of three years with effect from 21.07.2010, the date on which the Catering Policy, 2010 was made effective in respect of the General Minor Units (GMUs) and Special Minor Units (SMUs) taken over from the IRCTC, subject to the conditions stipulated in paras 16.1.3 and 16.2.1 of the Catering Policy, 2010. The renewed licenses were to expire on 20.07.2013. On 26.04.2013, the Senior Divisional Commercial Manager, Vijayawada, issued a bid notice inviting sealed bids on the Single Stage Two-Packet System from food and catering service providers for provision of catering services at the various GMUs of Categories "A" and "B" Railways Stations in the Vijayawada Division. A similar notification dated 03.05.2013 was issued for establishment of catering stalls/fruits and fruit juice stalls in SMUs in "A1", "A" and "B" Category Railway Stations. Aggrieved, the respondent-Association, the members of which had existing licenses, filed a Writ Petition before the single Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad. The respondent-Association urged that the said action of inviting fresh bids is discriminatory and also contrary to the provisions of the Catering Policy, 2010. The main plea of the respondent-Association was that in terms of the Catering Policy, 2010, the existing licensees were entitled for renewal of their licenses for a period of three years, subject to their satisfactory performance, payment of all dues and arrears and withdrawal of court cases, if any. They prayed that the appellant be directed to renew the licenses of the existing license holders of the canteens and fruits and fruit juice stalls. Vide judgment and order dated 16.08.2013, the learned single Judge came to the conclusion that the Catering Policy, 2010 did not differentiate among the licensees based on the number of years for which they have been carrying on their business. It was further held that under the Catering Policy, 2010, the license fee is liable to be revised based on the potentiality of each Railway Station and the turnover of the licensees during the previous years. Since the license fee is subject to continuous revision and does not remain stagnant, the question of the Railways suffering any loss due to renewals would not arise. The learned single Judge held that the members of the Welfare Association are entitled for renewal of the licenses of the members subject to their satisfying the conditions stipulated in paras 16.1.3 and 16.2.1 of the Catering Policy, 2010. On appeal filed by the appellants, the judgment

> and order of the learned single Judge was upheld by the Division Bench of the High Court in the Writ Appeals vide its judgment and order dated 12.09.2013. Hence, the present appeals are filed by the appellants.

We have heard the learned senior counsel for both the parties. On the basis of the pleadings and evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, the main question that arises for our consideration is whether the members of the respondents before us are entitled to have their licenses renewed in terms of the Catering Policy, 2010.

Mr. N.K. Kaul, the learned Additional Solicitor General appearing on behalf of the appellants drew our attention to the important provisions of the Catering Policy, 2010. The objective of the Policy reads as under:

> "1.1 To provide hygienic, good quality affordable food to the travelling public by adopting best trade and hospitality practices.
>
> 1.2 The policy will have an inclusive approach where from the least advantaged passenger to the relatively affluent will be provided catering services in a socially responsible manner.
>
> 1.3 It should meet all the social objectives of the Government, including provision of reservations as per Government Directives issued from time to time." The learned ASG contends that the terms of the Catering Policy, 2010 are absolutely clear. The larger issue here is the right to livelihood of the licensees who are members of the respondents. The welfare of the people is the prime concern of any responsible government under the provisions of the Constitution. The learned ASG places reliance on the case of Lala Ram v.

Union of India[1], wherein the concept of a welfare state has been discussed as under:

> "A welfare state denotes a concept of government, in which the State plays a key role in the protection and promotion of the economic and social well- being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to "Greatest good of greatest number and the benefit of all and the happiness of all". It is important that public weal be the commitment of the State, where the state is a welfare state. A welfare state is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a Welfare state is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a Welfare state. A Welfare state provides State sponsored aid for individuals from the cradle to the grave. However, a welfare state faces basic problems as regards what should be the desirable level of provision of such welfare

services by the state, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare state is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives to achieve the same." (emphasis laid by this Court) The learned ASG further places reliance on the case of Ram & Shyam Company v. State of Haryana[2], relevant paragraph of which is quoted hereunder:

"12. Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to anyone else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of

activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State." (emphasis laid by this Court) The interest of the passenger has no correlation with social objectives. The main objective of the Catering Policy, 2010 is to provide food at an affordable price to the railway passengers. The learned ASG further contends that the State is entitled in law to frame a new policy in that respect. The learned ASG contends that the Policy contains detailed mechanisms and makes it very clear for whom it is meant. The learned ASG draws our attention to clause 3.3.1 of the Policy which reads as under:

"3.3.1 All existing major and minor catering units will be awarded and managed by the zonal railways, except Food Plaza, Food Courts, fast food units. All such contracts presently being managed by the IRCTC, on expiry of the contract period, will be awarded by the zonal railways. IRCTC will not renew any contract required to be handed over to zonal railways on expiry of the contract." The learned ASG further draws our attention to clause 16.1.3 of the 2010 Policy which reads as under:

"16.1.3 Allotment of all General Minor Units at A,B & C category stations shall be awarded for a period of five years with a provision for renewal after every 3 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any. Allotment of all General Minor Unis at D,E & F category stations will be for a period of 5 years with a provision for renewal after every 5 years for a further period of 5 years on satisfactory performance and payment of all dues and arrears and withdrawal of court cases, if any." The learned ASG contends that by virtue of clause 16.1.3, the members of the respondents cannot claim renewal of their license as a matter of right. The learned ASG further placed reliance on clause 26.1.1 of the 2010 Policy which reads as under:

"26.1.1 All existing operational catering licenses awarded by IRCTC and transferred to Zonal Railways will be governed by the existing Catering Policy 2005 upto the validity of their contractual period." Further, Clause 26.1.4 of the policy reads as under: "26.1.4 This policy will also apply in case of award of fresh licenses and licenses awarded in the event of termination, non-renewal, vacation etc. of the existing licenses." The learned ASG further contends that a welfare State has to generate more money to take care of the larger public interest. He further contends that the claim of the members of the respondents that they have a vested right to get the renewal of their license in the railway stations referred to supra and that the government cannot expand its competitors is completely unsupported in law.

The learned ASG further contends that the entire policy is not under challenge. It is only the clause which confers the right of renewal of the license which has been challenged. The scope of the judicial review in such cases is limited. For the Court to examine the validity of the same, the policy either needs to be arbitrary, or must suffer from some glaring error and must be perverse, or be contrary to constitutional

provisions. The learned ASG, in support of his contentions, places reliance on the case of Jivan Das v. Life Insurance Corporation of India & Anr.[3] to contend that the right to livelihood of licensees cannot be extended to use public property to the best advantage as a commercial venture. It was held in that case as under:

"An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot discriminately be extended to the area of commercial operation." On the other hand, Mr. Prashanta K. Goswami, the learned senior counsel appearing on behalf of some of the respondents, draws our attention to the Catering Policy, 2010. He contends that revenue collection for the State cannot be a yardstick or consideration for deciding renewals of licenses of licensees. The learned senior counsel further submits that the licenses of these small shop/ kiosk owners have been renewed in some zones of the Railways, while in others not renewed, which action of the appellants is violative of Article 14 of the Constitution of India.

Mr. Raju Ramachandran, the learned senior counsel appearing on behalf of one of the respondent licensees contends that renewal of the licenses of the members is the norm under the Catering Policy, 2010 and that the right to renewal must be read into the contracts of the existing licensees. The learned senior counsel further contends that the social objectives of the Central Government, which is running the railways across the country and which is the major transport industry catering to the need of a large number of commuters, must necessarily include the protection of the right to livelihood of the members of the respondents, apart from the protection of Article 19(1)(g) of the Constitution of India.

Mr. Ramachandran further contends that two views are legitimately possible to construe the renewal clause. One is that renewals of the licenses that can be done only through the tender route and the other is to renew the existing or pre-existing licenses. He contends that the same can be resolved by applying the principle of 'contra proferentem', or interpretation against the draftsman. In this connection, reliance has been placed by the learned senior counsel upon the decision of this Court in Bank of India & Ors. v. K. Mohandas & Ors.[4], wherein it has been held as under:

"31. It is also a well-recognized principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. [(The North Eastern Railway Company v. L. Hastings) 1900 AC 260].

32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation against that party is preferred [Verba Chartarum Fortius Accipiuntur Contra Proferentum]." The learned senior counsel further contends that the social objectives of the Policy are clearly meant to side step the profit making objective. He places reliance on a Constitution Bench decision of this Court in the case of Olga Tellis v. Bombay Municipal Corporation[5], wherein it was held that the right to life includes the right to livelihood. In that case, the Court held as under:

"32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be In accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the villages that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey that the right to work is the most precious liberty because, it sustains and enables a man to

live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. The State of U.P.

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The Principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21." (emphasis laid by this Court) The learned senior counsel further places reliance on a recent decision of this Court in Charu Khurana v. Union of India[6], wherein the above stated principle enunciated in Olga Tellis (supra) has been reiterated.

Before we advert to the contentions in detail, we quote Justice Krishna Iyer from the case of LIC v. D.J. Bahadur[7], wherein the learned Judge has explained what should be the guiding force for judges when faced with matters pertaining to social justice, as under:

"Law is no cold-blooded craft bound by traditional techniques and formal forceps handed down to us from the Indo-Anglian era but a warm-blooded art, with a bleak from the past and a tryst with the present, deriving its soul force from the Constitution enacted by the People of India. Law, as Vice President G.S. Pathak used to emphasize in several lectures, is a tool to engineer a peaceful 'civil revolution' one of the components of which is a fair deal to the weaker human sector like the working class. The striking social justice values of the Constitution impact on the interpretation of Indian laws and to forget this essential postulate while relying on foreign erudition is to weaken the vital flame of the Democratic, Socialist Republic of India." The case of the appellants, in nutshell, is that the railways had the right to enact the Catering Policy, 2010. In terms of the said Policy, only such licensees who were granted license under the 2010 Policy were entitled to get their contracts renewed and the same benefit could not be extended to those licensees who were

granted license prior to the 2010 Policy. According to the Catering Policy 2010, no provision is made for the renewal of the existing catering units on the expiry of the term of the licenses. The renewal of the licenses of the licensee under para 16 of the Policy would apply only to licensees allotted under the Catering Policy 2010. The appellants have further submitted that the renewals of the licenses by the Zonal Railways upto 2013 was only meant to operate as a temporary arrangement till the bidding and allocation process was finally completed.

We are unable to agree with the contention advanced on behalf of the Appellants. The Railway Board issued Commercial Circular No. 37 dated 09.08.2010, which contained the following instructions:

"1. Transfer of License Units:

d. Zonal railways should renew all agreements which have expired or are due for expiry in the next 6 months by giving an extension, subject to a maximum extension of six months from the date of issue of Catering Policy, 2010." This circular clarifies that the renewal of the license is required to be granted to all the existing licensees of the Minor Units as per clauses 16 and 17 of the Catering Policy, 2010. It also becomes clear that the existing licensees need not be included in the tender process. Circular dated 23.08.2011 issued by the Chief Commercial Manager of South Central Railway directed all the Divisional Commercial Managers and other subordinate officers of the South Central Railway to confirm that the tenure of all GMUs and SMUs at "A1", "A" and "B" category stations shall be renewed after every 3 years on their satisfactory performance and payment of all dues and arrears as per the 2010 Policy. In view of the said circular, catering licenses of all the members of the respondent Association were renewed till July 2013. On this aspect of the case, the learned single Judge of the High Court has held as under: "While the 2010 Policy proper has not envisaged renewal of the existing licenses for a period not exceeding six months, the Immediate Operative Instructions issued in commercial circular no. 37/2010 dated 09.08.2010 has directed the Zonal Railways to renew the licenses for a maximum period of six months from the date of issue of the 2010 Policy. If the 2010 Policy is understood as providing renewals only in respect of the licenses issued under the said Policy, there was no reason why the respondent No. 3 has not called for tenders on the expiry of six months period from the date of coming into force of the 2010 Policy. Instead of calling for tenders, the respondent No.3 has renewed all the GMU and SMU licenses for a period of three years in terms of paras 16.1.3 and 16.2.1 of the 2010 Policy. This was done even before Para 16.3 was amended. Having understood the 2010 Policy in its true spirit even before the amendment of Para 16.3, it is incomprehensible that respondent no.3 projects the said policy in a different light by seeking to give it an interpretation which runs contrary to its plain language. Nowhere in the 2010 Policy, the licensees are classified into two categories, namely, those who were granted licenses prior to the commencement of the 2010 Policy and those who were granted licenses after the said Policy. On the contrary, all the GMUs

and SMUs were treated under one category. Irrespective of whether the licenses were granted by the Railways prior to 2005 or by the IRCTC from 2005 and by the Indian Railways after 2010, renewal of licenses is envisaged for all these categories of licensees subject to their fulfillment of the three requirements as referred to hereinbefore." (emphasis laid by this Court) The findings of the learned single Judge have been upheld by the Division Bench and we do find any reason to interfere with the same. Article 14 of the Constitution of India mandates that state action must not be arbitrary and discriminatory. It must also not be guided by any extraneous considerations which are antithetical to equality. A three Judge Bench of this Court in the case of R.D. Shetty v. International Airport Authority[8] held as under:

"21 .....It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground." (emphasis laid by this Court) India is a welfare State. Article 38 of the Constitution of India, which is a Directive Principle of State Policy, reads as under:

"38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." It is the duty of every welfare state to generate employment. Presently, millions of youth of the country are unemployed. The right to livelihood is a part of right to life, as has been held in the case of Olga Tellis (supra). A vast majority of the unemployed population of the country then, is susceptible to being exploited by the rich and the capitalists. It is the duty of the state, acting through its instrumentalities to ensure that no person in a vulnerable position is exploited. In the case of People's Union for Democratic Rights & Ors. v. Union of India[9], Bhagwati,J.

lamenting on the exploitation of the weak and the powerless held as under:

".....The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of

enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil? .....civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty: utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?" This Court, being entrusted with the task of being the countermajoritarian institution, is duty bound to ensure that the rights of the downtrodden minorities and the members of the weaker sections of the society are not trampled upon.

One more important aspect to be taken note of by this Court is the non governance of railway property in the past 67 years since independence. Though, it is a recognized principle of law that the property of the railways is public property, yet in reality, it is the private players and industries that are allowed to carry on their business for transport of raw materials from one place to another. After the enactment of the Railways Act, 1989, the Rail Land Development Authority has been established under Chapter IIA of the Act to manage the railway property by framing policy or rules for allotment of the same in favour of the licensees, including fixing license fee or occupation charges in respect of the vast extent of vacant property from which huge revenue can be collected, which is a laudable object to cater to the need of the public at large. The periodical revision of license fee in respect of such big operators has not been done by the railways. Also, the Policy of not renewing the licenses of those persons who are members of the respondents are completely dependent on self-earning from these small units and making them participate in a public competition is absolutely unfair, unreasonable and arbitrary. The chances of such persons being deprived of their right to livelihood is also an important factor which has to be taken into consideration by this Court to interpret the policy framed by the appellants. The callous attitude as far as the inaction on the part of the State in tackling the problem of rising unemployment is appalling. The situation is made worse by the handing over of public functions to private entrepreneurs, which then exploit the policies of the government against the poor and downtrodden people of the country. If the appellants under the guise of the policy are permitted to deny renewal of licenses in favour of the licensees, it would amount to deprivation of their right to freedom of occupation guaranteed under Article 19(1)(g) of the Constitution as well as the right to livelihood, which action of the appellants would be diametrically opposed to their constitutional duty towards social justice as well as uplifting the weaker sections of the society and the unemployed youth of the country.

In the case of Consumer Education & Research Center v. Union of India[10] a three Judge Bench of this Court observed as under:

"Social justice, equality and dignity of person are cornerstones of social democracy. The concept 'social justice' which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen.....Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress, and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to the capacity, social and cultural heritage." Further, in the case of Sadhuram Bansal v. Pulin Sarkar[11] this Court held as under:

"There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society, Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party." Keeping in view the evolving concept of social justice, we allow the members of respondents who are the licensees to continue their petty business, especially in the absence of employment potentiality in the country on account of non-governance and non- implementation of the constitutional philosophy of an egalitarian society, which provides the opportunity to all individuals to lead a life of dignity. The right to life with dignity has been interpreted to be a part of right to life by this Court in the case of Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors.[12] , as under:

"We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but

it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self." Therefore, we have to hold that the provisions of the Catering Policy, 2010 are applicable to the concerned respondents. The action of the railways in not granting renewals of the licenses to the members of the respondents is arbitrary, unreasonable, unfair and discriminatory, and the same cannot be allowed to sustain in law.

For the reasons stated supra, this Court cannot interfere with the impugned judgment and order of the High Court. The Civil Appeals are dismissed. The order dated 11.04.2014 granting stay of the impugned order shall stands vacated. We, however, make it clear that only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the railway stations with periodical reasonable increase of license fee. All pending applications are disposed of.

... ... J. [V. GOPALA GOWDA]
.....J. [AMITAVA ROY] New Delhi, January 29, 2016
ITEM NO.1A-For Judgment COURT NO.10 SECTION XIIA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s). 618-620/2016 @ SLP(C) Nos.9921-9923/2014 SENIOR DIVISIONAL COMMERCIAL MANAGER & ORS Appellant(s) VERSUS S.C.R CATERERS,DRY FRUITS,F.J.S.W ASSOCI AND ANR. Respondent(s) Date : 29/01/2016 These appeals were called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Shreekant N. Terdal,Adv.

For Respondent(s) Ms. Ranjeeta Rohtagi,Adv.

Ms. Diksha Rai,Adv.

Mr. Venkateswara Rao Anumolu,Adv.

Mr. Goli Rama Krishna, Adv.

Mr. Prabhakar Parnam, Adv.

Mr. Shashwat Goel, Adv.

Dr. Rajeev Sharma,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Amitava Roy.

Applications for intervention are allowed.

Leave granted.

The appeals are dismissed in terms of the signed Reportable Judgment. All pending applications are disposed of.

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|(VINOD KUMAR)                          | |(MALA KUMARI SHARMA)                 |
|COURT MASTER                           | |COURT MASTER                         |

      (Signed Reportable Judgment is placed on the file)

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      [2] (2015) 5 SCC 813
[3]   [4] (1985) 3 SCC 267
[5]   [6] 1994 Supp (3) SCC 694
[7]   [8] (2009) 5 SCC 313
[9]   [10] (1985) 3 SCC 545
[11]  [12] (2015) 1 SCC 192
[13]  [14] (1981) 1 SCC 315
[15]  [16] (1979) 3 SCC 489

      [18] (1982) 3 SCC 235
[19]  [20] (1995) 3 SCC 42
[21]  [22] (1984) 3 SCC 410
[23]  [24] (1981) 1 SCC 608
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