

GAHC010010222024



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/317/2024**

M/S RATHOUR SERVICES AND ANOTHER  
A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT KHAGRI TAKJAPAR  
P.O. DIGHA P.S DANAPUR PATNA 800012 BIHAR THROUGH ITS  
AUTHORIZED REPRESENTATIVE SANJEEV DAS

2: SANJEEV DAS  
CHIEF EXECUTIVE OFFICER AND AUTHORIZED REP OF M/S RATHUR  
SERVICES C/O NABIN DAS R/O BARSARKUCHI NALBARI ASSAM 78133

VERSUS

THE UNION OF INDIA AND ORS  
THROUGH THE SECRETARY MINISTRY OF RAILWAY RAIL BHAWAN  
RAISINA ROAD NEW DELHI 110001

2:THE RAILWAY BOARD  
THROUGH THE DIRECTOR TOURISM AND CATERING RAIL BHAWAN  
RAISINA ROAD NEW DELHI 110001

3:THE NORTH EAST FRONTIED RAILWAYS  
THROUGH ITS GENERAL MANAGER MALIGAON GUWAHATI

4:THE DEPUTY CHIEF COMMERCIAL MANAGER NF RAILWAY  
MALIGAON GUWAHATI

5:M/S INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.  
10TH AND 11TH FLOOR  
STATESMAN HOUSE BUILDING  
BARAKHAMBA ROAD  
NEW DELHI-110001  
THROUGH ITS GROUP GENERAL MANAGER/PROCUREMENT

**BEFORE**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Advocates for the petitioners : Mr. A. Chowdhury, Sr. Adv.  
Ms. Barnali Chowdhury, Adv.  
Mr. Abhishek Roy, Adv.

Advocates for the Respondents : Mr. T. Mehta, Sr. Adv.  
Mr. K. Gogoi, CGC.  
Mr. N. Anix Singh,SC, IRCTC.

Date of Hearing : **07.03.2024**

Date of Judgment : **08.04.2024**

**JUDGMENT & ORDER (CAV)**

Heard Mr. A. Chowdhury learned Senior Counsel assisted by Ms. Barnali Chowdhury, learned counsel for the petitioners. Also heard Mr. Tushar Mehta, learned Solicitor General of India assisted by Mr. K. Gogoi, learned CGC and Mr. N. Anix Singh, learned Standing Counsel for the IRCTC.

2. The challenge made in this writ petition is to the Commercial Circular No. 24/2023 dated 14.11.2023, issued by the respondent Railway Board, Ministry of Railway, Government of India, New Delhi whereby paragraph No. 3 of Catering Policy 2017, has been superseded by providing stringent eligibility conditions for

awarding of catering contract.

3. The brief facts of the case are that the petitioner No. 1 has been empanelled since the year 2018, as a catering service provider for railway in IRCTC and as on date the petitioner No. 1 is providing on board services in 20 Mail Express Trains of the Indian Railways including Train No. 19305-06 DADN-KYQ Express (Dehradun-Kamrup Express). Over the years the petitioner no. 1 has emerged as a serious player in the catering business of the Indian railways and due to satisfactory delivery of the petitioner no. 1 services, the petitioner no. 1 has reached 'M-1' category from 'M-3' category and has a turnover of Rs 18 crore in the last financial year and has a net worth of Rs. 1 crore.

4. The respondent No. 2 by issuing the impugned Commercial Circular has directed the Chief Commercial Manager of all zonal railways to form tentative cluster of trains and for setting up of base kitchen to define the cluster with the object of implementing the impugned Circular No. 24/2023. Under the impugned Circular, the respondent no. 2 has *inter-alia* decided that route wise cluster of trains and base kitchen shall be formed in consultation with the zonal railways and award of contract shall be done for a cluster of trains and base kitchen mapped with the cluster instead of an individual train in existing catering policy. The impugned Circular provides that the cluster of trains and Base Kitchen shall be formed in two groups, namely:-

*“A) Cluster A- Includes premium prepaid trains and Mail/ Express trains with pantry cars. In one cluster of Premium Prepaid and Mail Express trains, if the total no. of trains in a cluster is up to 5 pairs, the cluster should contain one premium prepaid train along with Mail/Express trains. If the cluster contains 6 to 10 pairs then it should have a maximum of two premium prepaid trains..*

*B) Cluster B- Includes Mail/ Express trains with Pantry Cars and TSV trains (cluster of upto10 pairs of trains). In one cluster of Mail/Exp train with pantry car and TSV trains, if total no. of trains in a cluster is upto5 pairs, then the cluster should contain maximum 01 pair and maximum "50% of the cluster" Mail/Exp with pantry car train pairs. If a cluster contains 6 to 10 pairs of trains then it should have a minimum 02 pairs and maximum "50% of the cluster" Mail/ Exp with pantry train pairs."*

5. In other words, the bidding shall be for all trains in the cluster unlike previously where the bidder put bid for individual trains. Additionally, *inter-alia*, eligibility criteria has been amended by enhancing the annual turnover requirement of a contractor to Rs.25 Crores for Cluster-A per year, in any of the 3(three) years during the last 6(six) preceding years and to Rs.10 Crores for Cluster-B per year in any of the 3 (three) years during the last 6(six) preceding years and also prohibiting participation by constituting JV/consortium. Aggrieved, by the aforesaid requirements/prohibition, the present writ petition has been filed.

6. Mr. A. Chowdhury, learned Senior Counsel for the petitioner submits that the impugned action of the respondent No. 2 of clustering the trains and consequent requirement of increased eligibility criteria and higher turnover for the bidder seeks to create a monopoly and restrict competition which is a hallmark of a public tender and deny a level playing field and as such the same is in violation of Fundamental Right under article 14 and 19 (1) (g) of the Constitution of India.

7. He further submits that the revised eligibility criteria inserted by the impugned Circular is extremely onerous and significantly hiked and required the

individual caterer to maintain huge turnover. He further submits that it will not be possible for the individual caterer to maintain turn over required under the addendum that too within such a short span of time and as such, would oust genuine caterer from the tender process.

8. He further submits that the clustering of train with consequent increased turnover requirement for the contractor with no option to bid by way of consortium or by joint venture proves beyond doubt that the impugned Circular has been issued to oust small individual caterers like the petitioner and designed to ensure participation of a particular bidder and hence, clause 3.5.7 of the addendum dated 14.11.2023 is totally discriminatory. He further submits that the respondent no. 2 has unilaterally without discussion/consultation with the various stake holders in breach of their past practice has issued the impugned Circular/Addendum.

9. He further submits that the impugned Circular/Addendum is tailor made for a particular bidder and against the interest of small individual caterers. He further submits that the empaneled bidders will not be able to participate in the tenders for catering work as they shall not meet the high turnover and since Joint Ventures (JV)/consortium are prohibited, they shall be completely ousted despite having been empaneled for bidding for catering work in the railway.

10. He further submits that the respondent has allowed participation of joint venture or consortium in another project and in this context, he refers to Circular No. 29/2023 wherein at clause 8 joint venture /consortium has been

allowed to participate.

11. In support of the aforesaid submission, he relies upon the following cases as mentioned hereinbelow:

- i) ***Meerut Development Authority Vs. Association of Management Studies & Another***, reported in **(2009) 6 SCC 171**.
- ii) ***New Horizons Limited & Another Vs. Union of India & Others***, reported in **(1995) 1 SCC 478**.
- iii) ***Commissioner of Income Tax Vs. Thana Electricity Supply Limited***, reported in **1993 SCC Online Bom 591**.

12. Mr. Tushar Mehta, learned Solicitor General of India, on the other hand, submits that the petitioner who is a member of the Mobile Caterer Welfare Association has also challenged the same Circular before the High Court of Karnataka which was dismissed by judgment and order dated 19.02.2024. He further submits that the petitioner No. 3, who has subsequently withdrawn himself from the case and the Association has also challenged the same Circular before the High Court of Jharkhand in another parallel proceeding, which has been dismissed by judgment and order dated 27.02.2024. He accordingly submits that the writ petition is not maintainable and the petitioner has not approached this Hon'ble Court with clean hands. Pertinent to mention herein that though, in paragraph no. 6 of the Affidavit-in-opposition filed on behalf of the Respondent No. 4, i.e, Deputy Chief Commercial Manager, N.F. Railway, it is stated "the petitioner and its purported members are engaged in forum shopping and seeking similar relief across various courts solely in order to

further their own commercial interest at the cost of public interest and welfare of railway passengers”, Mr. Mehta courteously and benignly submits at the time of hearing that the word “forum shopping” is not in good taste and therefore should not be used while referring to a court of law.

13. He further submits that under the Catering Policy 2017 paragraph 3.7.2 and 3.8.4 envisages that IRCTC will set up base kitchen for supply of meals to all trains which would be catered by licensee. However, due to logistical and operational challenges including disruption due to covid-19 pandemic it was experienced in some cases that production of meal has been devolved in one licensee and catering service of food was through another licensee which caused accountable issues.

14. He further submits that in view of the complaints received regarding the quality and hygiene of meal on catering of meal, it necessitated prescription of stringent conditions in order to achieve the object of the Catering Policy 2017. He accordingly submits that a Committee was constituted for suggesting required changes. The Committee after undertaking a comprehensive exercise including studying the best practices of hospitality industry engaged in the catering business and including engaging with various stakeholders made its recommendation vide its report dated 15.9.2023.

15. He further submits that after the examination of the aforesaid recommendation it was imperative that experienced professional agencies need to be vested with full accountability of production of meals and services. He further submits that in the light of the aforesaid recommendation, changes were

brought into the Catering Policy of 2017. Accordingly, Circular No. 24/2023 was issued on 14.11.2023 which is in the public interest and welfare of railway passenger. He further submits that the entire object of the impugned Circular is to bring visible improvement in catering services to passenger in train by ensuring quality hygiene in food production and standard services to passenger on board. He further emphasized that the object of the said Circular is to provide quality and hygienic food to the passenger. He further submits that it is with this object in mind that the annual turnover was substantially increased so as to ensure that the participant is financially capable of delivering hygienic and quality food. He further submits that under the impugned Circular base kitchen has to be set up in the route from where food shall be provided in the trains and therefore it is imperative that only bidder with experience, expertise alongwith financial capabilities in the food industry can participate which shall need to enhance hygiene and quality of food to be served to the passenger. He further submits that the rationale behind excluding joint venture to participate is that if a joint venture is created between a small catering entity and a financially big entity not having experience in the food industry, the entire scheme of upgrading the quality and hygiene of food will be frustrated. He further submits that the purpose of addendum is not to oust the small caterers but to have overall improvement in the service of food to the passengers.

16. He further submits that the Circular no. 29/2023 is for a pilot project for a few trains in a southern section of railways and has nothing to do with the present policy. He further submits that the IRCTC under the Catering Policy 2017 has been assigned a dominant role to the extent that the preparation of food is to the domain of IRCTC. Clause 3.7 of the Catering Policy 2017 deals

with method of operation of mobile service and clause 3.8 envisages setting up of operation of kitchen unit. The sub clause of 3.7 and 3.8 extensively deals with the mechanism of preparation of food and the hygienic condition it has to be put in place by way of modern and mechanized kitchen for preparation of food. As per clause 3.7.2 for service of food in train, the responsibility was upon IRCTC to engage service providers from hospitality industries for service of food in train. Clause 3.7.3 deals with supervisory power upon the IRCTC to supervise its own supervisor catering services in its mobile units.

17. He further emphasizes that the focal point of divesting such operation between the professional agency and IRCTC is for ensuring that passenger has good quality and hygienic food not only at the originating stations but also at the enroute stations. The cluster of trains and base kitchens have been accordingly divided into two groups. The service provider has to set up base kitchen at designated location and standard of base kitchen has been enumerated in clause 3.4 onward to clause 3.4 of the addendum. The policy adopted by the railway primarily aims to provide hygienic food to the passenger which entails huge investment and therefore justifies the incorporation of the eligibility criteria i.e. clause 3.5.1 and clause 3.5.2 of the addendum.

18. He further submits that a greater free play in the joint must be accorded to decision of economic policy where the legislature or executive has called upon to make complex choices, which cannot always conform to a straight jacket formula. In support of the above, he relies upon the decision of the Apex Court in the case of ***Loop Telecom & Trading Limited Vs. Union of India & Another*** reported in **(2022) 6 SCC 762**.

19. By relying in the decision of the Apex Court in the case of **Agmatei India Private Limited Vs. Resoursys Telecom & Others**, reported in **(2022) 5 SCC 362**, he submits that the author of the tender document is the best person to understand and appreciate its requirement and hence, the owner should be allowed to carry out the purpose and Court should follow the principle of restraint.

20. By relying on the decision of the Apex Court in **Global Energy Limited & Another Vs. Adani Exports Limited & Others**, reported in **(2005) 4 SCC 435**, he submits that the Court would not interfere with the term of the tender notice unless it is shown to be either arbitrary or discriminatory or actuated by malice.

21. He further by placing reliance in the decision of the Apex Court in the case of **Provash Chandra Dalui & Another Vs. Biswanath Banerjee & Another**, reported in **1989 Supp (1) SCC 487**, submits that every contract is to be construed with reference to its object and the whole of its term and the Court must read the contract as a whole in order to ascertain the true meaning of the several classes.

22. By relying in the case of Division Bench of the Gujarat High Court in **Asia Foundations & Constructions Limited Bombay & Others Vs. State of Gujarat & Another**, reported in **1985 SCCOnline Guj 93**, he submits that in cases of joint venture, accountability of the members are less.

23. By relying in the case of the Apex Court in ***Ratnagiri Gas & Power Private Limited Vs. RDS Projects Limited & Others*** reported in **(2013) 1 SCC 524** and in the case of ***Rajneesh Khajuria Vs. Wockhardt Limited & Another*** reported in **(2020) 3 SCC 86**, he submits that the allegations of malafide are more easier to levy than to prove.

24. By relying in the decision of the Apex Court in the case of ***All India State Bank Officers Federation through It's President &Others Vs. Union of India & Others***, reported in **1990 (Supp) SCC 336**, he submits that simultaneous filing of petition is abuse of process.

25. I have heard the submissions made at the Bar and have perused the materials available on record.

26. The Government of India Ministry of Railways vide Commercial Circular No. 20/2017 dated 20.7.2017 in supersession of the catering policy 2010 issued the Catering Policy 2017. The objective of the Catering Policy 2017 is to provide quality food to the customers on trains by unbundling catering services by creating a distinction primarily between food preparation and food distribution and IRCTC has been mandated to carry out the said unbundling of catering services. It also envisages that the said policy is to upgrade the food quality of food preparation for which IRCTC shall be setting up new kitchens and upgrade the existing ones.

27. Paragraph 3 of the Catering Policy 2017 lays down the procedure of catering services which is reproduced herein for ready reference:

**“3. MANAGEMENT OF CATERING SERVICES IN MOBILE UNITS**

**3.1** *All pantry car service contracts awarded by zonal railways shall be reassigned to IRCTC on the same terms and conditions, as per the plan decided mutually by IRCTC and Railways. Sharing of license fee between IR and IRCTC shall be In the ratio of 40:60 in all cases other than departmentally managed units by IRCTC wherein revenue shall be shared in the ratio of 15:85. Also all such reassigned contracts should be got vetted by Legal Deptt. of Zonal Railways*

**3.2** *IRCTC shall submit its business plan for approval of Railway Board, for managing mobile catering services on the trains after the issuance of this policy. Business plan may be prepared by IRCTC separately for those trains in which cost of meals is included in the ticket and for those where catering is optional. While framing the Business Plan IRCTC may take into consideration the terms and conditions of existing contracts re-assigned to IRCTC and time frame required to put into effect various provisions contained in paras 3.7, 3.8 and other relevant provisions of this policy.*

**3.3** *IRCTC shall manage catering service on all mobile units having pantry car service presently with IRCTC. IRCTC shall also take over management of catering services on trains for which contracts have not been awarded by zonal railways due to various reasons or trains are being run departmentally by zonal railways.*

**3.4** *Management of catering services on all new trains/ trains started on short notice shall also be done by IRCTC.*

**3.5** *Since all trains are not provided with pantry cars, Train Side Vending will be provided from a suitable unit of nominated station/stations enroute. For this purpose, arrangements will be made through static kitchen units under the management of IRCTC by either segmentation of run or on end to end basis, as practicable. IRCTC shall manage Train Side Vending as per instructions entailed in this policy.*

**3.6** *IRCTC should submit the Business Plan within a period of 30 days from the date of issuance of the policy, which shall be approved by Railway Board within 30 days from the date of submission by IRCTC.*

**3.7 Method of Operation of Mobile Catering Service**

**3.7.1** *Preparation of Food: To ensure quality, hygiene and cleanliness, meals for all mobile units will be picked up from the nominated kitchens owned,*

*operated and managed by IRCTC. This is subject to Business Plan for mobile catering as well as Base Kitchens, as approved by Board.*

**3.7.2 Service of Food in Trains:** IRCTC can engage service providers from hospitality industry for service of food in train.

**3.7.3** IRCTC shall supervise catering services on each mobile unit through its own supervisors directly employed by IRCTC.

**3.7.4** IRCTC shall determine the menu of standard meals, in consultation with zonal railways, keeping into consideration the local taste and cuisine. The standard meals served in trains shall be within the fixed tariff approved by Railway Board.

**3.7.5** Sale of a-la-carte items, Ready-to-Eat (RTE) Meals shall be permitted both through e-catering and onboard services by IRCTC.

**3.7.6** The rates of standard, a-la-carte and RTE items shall be prominently displayed in coaches and Railways' websites and shall be made available through mobile apps.

### **3.8 Setting Up and Operation of Kitchen Units**

**3.8.1** All four Base Kitchens under departmental operation of Zonal Railways (Nagpur, Chhtrapati Shivaji Terminus, Mumbai Central and Balharshah) shall be handed over to IRCTC on 'as is where is basis' i.e. the infrastructure including equipmentsshall be transferred to IRCTC. All kitchen units i.e. Refreshment Rooms at A1 and A category stations (i.e. excluding Refreshment Rooms at B and below category stations being minor units that will remain with Railways), Jan Ahaar, Cell Kitchens shall also be handed over to IRCTC on 'as is where is basis' i.e. the infrastructure including equipmentsshall be transferred to IRCTC.

**3.8.2** Contracts awarded by zonal railways for kitchens units viz., Refreshment Rooms at A1 and A category stations, Jan Ahaar, Cell Kitchens shall be reassigned to IRCTC on the same terms and conditions with sharing of license fee between IR and IRCTC in the ratio of 40:60 in all cases other than departmentally managed units by IRCTC wherein revenue shall be shared in the ratio of 15:85. Also all such reassigned contracts should be got vetted by Legal Deptt. of Zonal Railways.

**3.8.3** The setting up/ development / refurbishment of new or existing Base Kitchens/Kitchen units (after contract ceases to exist in case of units discussed in Para 3.8.1) shall be undertaken by IRCTC on the following broad parameters:-

*i. IRCTC shall develop different types of kitchens keeping in view supply of food and usage assessed.*

*ii. Kitchen should be on a Business model so that they can expand and enhance the service. Revenue sharing, operational modalities are to be submitted by IRCTC for prior approval of Railway Board. Land license fee for such cases shall be decided as per the plan submitted by IRCTC and terms agreed by Land & Amenities (L&A) Directorate.*

*iii. IRCTC shall prepare a detailed concession agreement of the Business Model proposed for setting up of the kitchens, which shall be approved by Board.*

*The services provided currently through Refreshment Rooms, Jan Ahaars and Cell Kitchens shall be provided by IRCTC.*

**3.8.4** *IRCTC shall not outrightly outsource or issue licenses for provision of catering services to private licensees. IRCTC shall retain the ownership and shall be fully accountable for all the issues pertaining to setting up and operation of the Base Kitchens and quality of food.*

**3.8.5** *The kitchens set up/ developed/ refurbished by IRCTC shall be modern and mechanized. IRCTC shall ensure that the kitchens acquire valid ISO certification within the specified fixed time period including compliance of all statutory guidelines and food safety norms issued from time to time.*

**3.8.6** *Apart from kitchen units handed over by zonal railway, IRCTC may set up its own Kitchens at additional stations identified by it preferably within the railway premises and as per availability of land.*

**3.8.7** *Kitchen structures/ land handed over by Zonal Railways to IRCTC for setting up/ development / refurbishment of Kitchen units shall be done on a token license fee of Re.1/- (Re. one) per sqft. p.a. subject to minimum of Rs. 100/- (Rs. One Hundred) p.a. However, the concessional land license fee will be applicable only for Railway related catering work and not for any other purpose. In case IRCTC use these base kitchens for the purpose other than mandated in the catering policy, land license fee shall be decided as per the plan submitted by IRCTC and terms agreed by Railway Board.*

**3.8.8** *It shall be mandatory for IRCTC to establish the kitchens in a time bound manner as stipulated hereunder. The location and area of the land for construction of Base Kitchens shall be decided mutually by the Divisions and IRCTC to be approved by Zonal Railways. IRCTC and Divisions shall jointly prepare a General Agreement Drawing (GAD) of the proposed kitchen duly showing addition/ alteration. Sr.DCM in the Division and CCM (Catering)/CCM will be the nodal officer for matters relating to handing over of the land and setting up of the kitchens. Following timeframe shall be followed for setting up of the kitchen:-*

<i><b>Activity</b></i>	<i><b>Timeframe</b></i>	<i><b>Responsibility</b></i>
<i>(I) Identification of site</i>	<i>10 working days from 21 days after the issue of the policy</i>	<i>Sr.DCM, Sr.DEN and IRCTC. Any delay will require condonation by DRM along with a speaking order.</i>
<i>(ii) Preparation of GAD plan</i>	<i>21 working days after identification of the site</i>	<i>Sr.DEN, Sr. DCM, Sr. DEE, Sr. DSTE, IRCTC and any other identification of official, if required. Any delay will require condonation by DRM along with a speaking order.</i>
<i>(iii) Approval of GAD</i>	<i>21 working days after preparation of GAD</i>	<i>CEE, PCE, CSTE, CCM and any other official, if required. Any delay will require condonation by GM along with a speaking order. This will be deemed to be the approval of Zonal Headquarters.</i>
<i>(iv) Handing over of the land/site</i>	<i>10 working days after approval of GAD</i>	<i>Sr.DEN, Sr. DCM and IRCTC. Any delay will require condonation by DRM along with a speaking order.</i>
<i>(v) Signing of agreements (Land Licensing Agreement and O&amp;M Agreement)</i>	<i>10 working days after Handing over of the land/site</i>	<i>DRM and IRCTC Commencement/setting up of kitchens will start only after signing of the agreement. GM shall ensure that the agreement is signed within the given timeframe.</i>
<i>(vi) Setting up of the kitchen</i>	<p><i>(a) 3 months where basic structure is provided by Railways; and</i></p> <p><i>(b) 6 months where only vacant land is provided by Railways.</i></p> <p><i>From the date of handing over of land/site</i></p>	<i>CMD/IRCTC shall be responsible for setting up of kitchens in fixed timeframe. Reasons for delay shall be reported by the CMD/IRCTC to Railway Board.</i>

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3.8.9 The existing railway operated Base Kitchens/kitchen units and the land allotted for setting up of new kitchens shall be handed over to IRCTC for a term period of 10 years which shall be extendable for another period of 5 years at a time subject to mutual agreement. There shall be a provision for taking back the Base Kitchens/kitchen units/land handed over to IRCTC in case said premises are required for integrated development of stations. The shifting shall take place only after the alternative site is made functional in all respects for which both parties shall act proactively as per laid down timeframe. This condition should be incorporated in the agreement to be executed between Zonal Railway and IRCTC before handing over the kitchen unit/land to IRCTC.

3.8.10 A separate land licensing agreement will be signed by the Zonal Railways and IRCTC for all the above purposes.

3.8.11 There shall be no lease/ licensing of land to third party for the purpose of setting up of Base Kitchens/Kitchen Units. IRCTC will design its model for operation and maintenance without assigning any right lien to third party over the space allotted.

3.8.12 Electricity and water charges shall be charged based on actual consumption basis and the same shall be payable by IRCTC. Additional capital cost involved in augmenting utilities, if any, shall also be borne by IRCTC.

3.8.13 For the mobile units already licensed out by the Zonal Railways, IRCTC shall take over those contracts and monitor the management of catering services by licensee by deputing IRCTC supervisors in each train who shall be accountable for the performance of the contractor.

3.8.14 The mobile and kitchen units proposed to be handed over to IRCTC in this policy are presently being managed either through a licensee or departmentally or through a temporary arrangement. Zonal Railways and IRCTC, shall finalize and submit to Railway Board an action plan within 30 days of issuance of this policy, wherein the list of units along with the status and the timeframe in which it shall be handed/taken over shall be stated.

3.8.15 Delay in setting up of kitchen by IRCTC, as defined in para 3.8.8 (vi), shall invite a minimum penalty of Rs. One Lakh per month per unit.

3.8.16 IRCTC should submit the Business Plan for Base Kitchens within 30 days of the issuance of this policy and Board shall approve the same within 30 days of submission of the Business Plan by IRCTC.

### 3.9 **Inspection and Supervision by IR.**

3.9.1 Officials of Railway Board, Zonal Railway & Division shall be authorized to inspect the kitchen units/mobile catering units. If any violation of the provision of the policy or deficiencies is noticed in the service, suitable penal action as decided by Zonal Railways will be taken as per the provision of agreement signed between IRCTC and Zonal Railways or IRCTC, Zonal Railway and Licensee for tripartite agreement (In case of licenses which are to be reassigned to IRCTC).

3.9.2 IRCTC and CCMs of the concerned Zonal Railways shall enter into an agreement with respect to each unit to be handed over to IRCTC. Railway Board shall issue a draft model agreement incorporating appropriate penal action against IRCTC for the violation of extant policy guidelines/deficiency. This agreement shall be executed between IRCTC and Zonal

*Railway before handing over of the contract.*

### **3.10 General Instructions**

*3.10.1 IRCTC may involve/empanel Self Help groups for providing catering related services. However, IRCTC shall not outsource or issue licenses for provision of catering services to SHGS.*

*3.10.2 IRCTC shall ensure compliance of all statutory guidelines viz. FSSAI norms of food safety in Base Kitchens/kitchen units and mobile catering units, pollution control, Green Tribunal etc. (the statutory bodies mentioned are indicative in nature, not exhaustive). Further, it shall be entirely responsible for payment of any penalty imposed for non-compliance of these guidelines.*

*3.10.3 IRCTC shall ensure payment of all taxes, as applicable from time to time.*

*3.10.4 Third Party Audit of mobile units and base kitchens shall be done by Zonal Railway periodically by an independent agency as per Board's instructions issued vide letter no, 2013//TG-III/600/17 dated 12/08/2014 and any other instructions issued from time to time. Cost of the audit shall be borne by IRCTC.*

*3.10.5 IRCTC and Zonal Railways shall ensure compliance of extant policy guidelines issued from time to time.*

*3.10.6 In view of change in role of IRCTC in terms of management of catering service, the existing MoU between Ministry of Railways and IRCTC shall be redefined and a revised MoU shall be issued.*

*3.10.7 In case of any issues of interpretation of any clause/expression referred to in this policy the interpretation of MoR shall be final and binding.*

*3.10.8 IRCTC shall be responsible for ensuring that the standards, as laid down for different services, are maintained and policy directives issued by Railway Board from time to time are strictly complied with. Concerned Zonal Railways shall monitor the performance of IRCTC over their jurisdiction.*

*3.10.9 IRCTC shall ensure computerized billing in a phased manner to the extent feasible for all the items sold in mobile and static units under the management of IRCTC. Facility for cashless transaction viz. POS/Swipe machine etc. shall be compulsorily available in all the mobile and static units.*

*3.10.10 Railways' share of revenue shall be realized division/station/unit wise on monthly basis and reflected in monthly station balance sheet of the concerned station. A procedure Order for accountal of the revenue share shall be issued by Railway Board."*

28. Subsequently, it was felt necessary that state of the art based infrastructures, adequate logistic and service infrastructure, deployment of qualified and skill manpower who handled food production and services has to be put in place not only at originating but also at enroute stations to ensure

service of good quality and hygienic food to passengers on train. In order to fulfill the aforesaid objective, it became imperative that an experienced professional agency is vested with full accountability of production of meals and services on board under the IRCTC's direct supervision and monitoring of entire operations.

29. With the aforesaid objective, the Commercial Circular No. 24/2023 was issued by the Govt. of India, Ministry of Railways Railway Board on 14.11.2023, whereby addendum to Catering Policy 2017 was issued replacing paragraph 3 of the Catering Policy 2017.

30. Paragraph 1 of Commercial Circular No. 24/2023, which set out the objective for such replacement is reproduced hereunder for ready reference:-

**“1. Objective”**

***From the experience gained during the past few years after implementation of Catering Policy 2017, it has been necessitated that state of the art Base Kitchen infrastructure, adequate logistics and service infrastructure, deployment of qualified and skilled manpower to handle food production and services have to be put in place not only at originating but also at enroute stations to ensure service of good quality and hygienic food to passengers on trains. Hence, it is imperative that an experienced professional agency is vested with full accountability of production of meals and services on board under IRCTC's direct supervision and monitoring of entire operations.”***

31. Paragraph 3 of the said Commercial Circular No. 24/2023 is also reproduced hereunder for ready reference:-

***3. Catering Services in Mobile Units***

***3.1 Management of Catering Services***

**3.1.1** Catering services on trains over Indian Railways shall be managed by IRCTC under the framework of this policy and related instructions issued by Railway Board from time to time. The trains for catering services shall be approved by the Board.

**3.1.2** Sharing of revenue/license fee between IR and IRCTC shall continue to be governed as per Para 3.1 and para 3.8.2 of Catering Policy 2017.

### **3.2 Clustering of Trains :**

**3.2.** All trains shall be mapped with service locations and accordingly Base Kitchen shall be designated for pickup and supply of meals depending upon service requirements. Route-wise cluster of trains and Base Kitchens shall accordingly be formed in consultation with the Zonal Railways before invitation of bid. To consider adequate volume and economies of scale, award of contract shall be done for a cluster of trains and the Base Kitchens mapped with the cluster instead of an individual train.

#### **3.2.2 (i) Clusters of trains and Base Kitchens shall be formed in the following two groups:**

**(a) Cluster A-** Includes premium prepaid trains and Mail/Express trains with pantry cars. In one cluster of Premium Prepaid and Mail Express trains, if the total no. of trains in a cluster is up to 5 pairs, then the cluster should contain one premium prepaid train along with Mail/Express trains. If the cluster contains 6 to 10 pairs of trains then it should have a maximum of two premium prepaid trains.

**(b) Cluster B -** Includes Mail/Express trains with Pantry Cars and TSV trains (cluster of upto 10 pairs of trains). In one cluster of Mail/Exp train with pantry car and TSV trains, if total no. of trains in a cluster is upto 5 pairs, then the cluster should contain minimum 01 pair and maximum "50% of the cluster" Mail/Exp with pantry car train pairs. If a cluster contains 6 to 10 pairs of trains then it should have minimum 02 pairs and maximum "50% of the cluster" Mail/Exp with pantry train pairs.

**(ii)** Trains of only owning Zonal Railways (where primary maintenance is done) shall be taken up for forming a cluster.

**(iii)** Trains in a particular route shall be taken up for clusters and not more than 10 pairs of trains should be taken in one cluster.

**(iv)** It must be ensured that at least two clusters exist on one route/direction.

### **3.3 System of Allotment and Operationalization of Contract**

**3.1** Tenders shall be awarded for a cluster, consisting of locations required for commissioning of Base Kitchens and the trains identified in the cluster for service, through Two Packet Tender Systems (e-tender). The selected Service Provider shall be responsible for commissioning and operation of Base Kitchens at required locations along with service of meals in all trains of

*cluster which shall be pre-notified with the bid.*

**3.3.2** *Contract agreement as well as Letter of Award (LOA) shall have Two Parts:*

**(i) Part A - Commissioning of Base Kitchens at all identified locations of the cluster.**

*Acceptance of LOA, completion of all commercial formalities and signing of agreement for Part A shall be completed within 15 days from the date of LOA. Setup and commissioning of Base Kitchen at designated locations shall be mandatory within the stipulated timelines.*

*Scope of work for Part A shall include identification/leasing/renting land/building/space, completion of civil works, equipment furnishing by the successful bidder as per defined specifications of IRCTC, Staff deployment and procurement system in place by the successful bidder, nomination of IRCTC supervisor for deployment and issue of commissioning certificate jointly by IRCTC, Railway & the Service Provider.*

**(ii) Part B - Commencement of services in the notified trains of the cluster.**

*The services by the successful bidder shall commence with immediate effect on signing of agreement for Part B. Agreement for Part B shall be signed only when Part A is executed and a joint certificate is issued for commissioning of all Base Kitchens. Scope of work for Part B shall include deployment of onboard infrastructure and manpower, putting in place the onboard /offboard logistics and provision of catering services in trains as per standards and norms fixed by Indian Railways.*

**3.3.3** *There shall be provision of increase in the scope of work upto 30% (i.e. amount upto 30% of the quoted license fee of any cluster being held on the route) in case of requirement exigencies.*

**3.3.4** *It shall be ensured that at least two distinct Service Providers are available in a particular route.*

**3.3.5** *In case of more than 50% of trains are terminated due to deficiency in services, the entire contract shall be treated as terminated.*

**3.3.6** *Any request for exit by the vendor for any individual train/trains will not be permitted.*

**3.3.7** *License Fee 'shall be quoted individually for each train in the cluster but successful bidder shall be determined on the basis of total license fee quoted for the entire cluster (aggregate of total quoted license fee of all trains in the cluster).*

**3.3.8** *To handle exigency due to short notice and to ensure uninterrupted catering services in trains, temporary contracts may be awarded for short duration (not exceeding 06 months) by inviting financial bids from the existing licensees eligible under this policy for similar category of trains and clusters. For such trains, meal pick up points shall be pre-approved by IRCTC in case of non availability of any designated Base Kitchen during the period of short termcontract.*

#### **3.4. Model of Operation and setting up of Base Kitchens**

**3.4.1** It shall be ensured that meals of the trains are picked up only from the designated Base Kitchens under direct supervision of IRCTC and no meal is sourced from any other Kitchens.

**3.4.2** Locations and specifications for setting up of Base Kitchens shall be pre-notified in the tender document. Location of Base Kitchen shall be decided keeping in view the transit time and delivery to the station so that there is no impact on food quality.

**3.4.3** To meet the quality and hygiene in production as per laid down standards, the Service Provider shall be responsible for setting up Base Kitchens at all the designated locations (as per route & requirement of trains) before commencement of contract. The Service Provider shall bear the entire investment and make their own arrangements in land/building/space having easy road access.

**3.4.4** Setup and commissioning of Base Kitchen at designated locations (originating & enroute stations) shall be mandatory within 3 months after acceptance of Letter of Award (LOA) of contract. In case of extreme exigency/unavoidable circumstances, an extension of timeline only upto 01 months' for setting up of Base Kitchens and ISO certification can be considered, thereafter the contract shall be discharged with forfeiture of SD and advance license fee.

**3.4.5** Acceptance of Letter of Award (LOA) shall be done within 15 days from the date of issue of LOA during which completion of all commercial formalities i.e. submission of SD (in the form of BG/FDR), which is 10% of the quoted license fee for the entire Cluster for entire duration, and advance annual license fee shall be done.

**3.4.6** Designated Base Kitchens should acquire ISO certification within 6 months of commencement of operations i.c. within 9 months from acceptance of Letter of Award.

**3.4.7** Sourcing of high-quality raw material, packaging material and proper inventory shall be maintained at each Base Kitchens and it shall be ensured that the same are available for audit/inspection and matching with GST returns.

**3.4.8** Use of insulated/air-conditioned food vans for transportation of meals from Base Kitchen to Station by the Service Provider shall be ensured.

**3.4.9** Setting up and Commissioning of Base Kitchens shall be checked and certified jointly by Sr. DCM of concerned Division along with Officers from IRCTC (not below the rank of AGM/GM) prior to commencement of services.

**3.4.10** The base kitchens set up outside the Railway premises (not in the restricted residential area) should be uniform in design with a minimum of 1500 to 2000 sq ft. The kitchen should be well equipped for bulk production of minimum 1000 meals at a time with adequate storage/packing facilities, restroom facilities and pot wash area.

**3.4.11** It shall be ensured that each designated Base Kitchens is equipped with CCTV monitoring (as per enclosed Schedule - 2), QR code stickers, insulated food vans.

**3.4.12** Standard Minimum equipment and specification of Base Kitchens are enclosed as Schedule -1.

**3.4.13** Deployment of catering staff shall be ensured by IRCTC as per the norms defined in Schedule -3.

**3.3.14** Compliance of onboard service protocols shall be ensured as per Schedule 4.

**3.3.15** Deficiency, complaints and corresponding penalties have been defined in Schedule -5.

**3.3.16** It shall be ensured that the condition precedent to commencement of contract is fulfilled as per enclosed Schedule - 7

**3.3.17** IRCTC shall prepare their schedule of inspection and monitoring mechanism for monitoring of onboard services and base kitchens by the Officers and staff, approval of which shall not be below the rank of Director Catering Services, IRCTC

### **3.5. Eligibility Criteria**

**3.5.1 Annual Turnover from Food & Beverages Business:** *Food & beverages means production, safe/service of cooked food which is to be verified through GSTR (9/9C) and duly certified by approved CAs with UDIN number). During the consideration of 3 FYs, there should not be NIL turnover in any of the years under consideration.*

**a) Rs 25 Cr (For Cluster A) average per year in any of the three years (during the last 6 preceding years).**

**b) s 10 Cr (For Cluster B) average per year in any of the three years (during the last 6 preceding years)**

For avoidance of doubt, an example is given below:

(Preceding 6 FYs are 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 & 2022-23. If the applicant is submitting certified turnover for FYS 2018-19, 2021-22 & 2022-23, the total turnover must not be less than 75 Cr for Cluster A and 30 Cr for Cluster B. Besides above, there should not be NIL turnover during any FYS 2018-19, 2021-22 & 2022-23)

**3.5.2 Annual Net Worth** - At the end of preceding FY, net worth of the participating bidder must be (duly certified by approved CA/Statutory Auditor with UDIN number)

**a) Rs 10 Cr (For Cluster A)**

**b) Rs 05 Cr (For Cluster B)**

(Net Worth at the end of the year = Total Asset - Total liability)

### **3.5.3 Ownership of Kitchen**

**a) For Cluster A** - Ownership of at least two operational ISO 22000-2005 certified Kitchen in any two different cities in India with a valid FSSAI license, having the capacity to produce at least

2500 meals per day (each) and proof of supply of at least 45,000 meals each [i.e. average 500 meals per day (meals include Lunch/Dinner /Breakfast)] in any of the 4 preceding quarters.

b) For Cluster B - Ownership of at least one operational ISO 22000-2005 certified Kitchen in any city in India with a valid FSSAI license, having the capacity to produce at least 2500 meals per day and proof of supply of at least 45,000 meals [i.e. average 500 meals per day (meals include Lunch/Dinner /Breakfast)] in any of the 4 preceding quarters.

(Certified and notarized copies of proof of ownership, valid ISO certification, valid FSSAI license and proof of supply/tax invoice to be submitted.).

**3.5.4** Must have a presence in the Catering & Hospitality business which means production and service sale of cooked food in India.

**3.5.5** Minimum Average Workforce on roll including having degree/diploma/certificate In any Catering/hospitality related course during the last completed Financial Year (FY 2022-23):

a) For Cluster A - 150 staff on roll during the last 12 months with at least 10 staff having Three-year Degree/Diploma in Hotel Management/Hospitality and 15 staff having certificates in any catering/hospitality related course from any government recognized organization/institute.

b) For Cluster B - 50 staff on roll during the last 12 months with at least 3 staff having Three-year Degree/Diploma in Hotel Management/Hospitality and 5 staff having certificates in any catering/hospitality related course from any government recognized organization/institute.

(Duly certified by the approved Chartered Accountant (CA) /Statutory Auditor with UDIN number based on monthly EPF and ESI contribution of the employer/PF Trust)

**3.5.6** The bidder must be registered under appropriate authorities i.e. must be registered with GST authorities/Income Tax/EPF/ESI authorities.

### **3.5.7 Joint Ventures (JV)/Consortium shall not be allowed.**

3.5.8 Bidder must not have been debarred by any authority and debarment is continuing as on the date of opening of tender. A declaration on affidavit to this effect should be furnished.

### **3.6 Tenure of Contract**

Tenure of the contract shall be 7 years (5+2 years subject to satisfactory performance on completion of initial 5 years' term). Performance evaluation shall be done by the same level of committee by which the initial contract was awarded. Performance of service shall be based on major parameters as (a) Complaints based (b) Inspections based (c) Supervision based (d) Passenger Feedback based (e) Third party Audit based.

### **3.7 Inspection and Supervision by IR**

**3.7.1** Officials of Railway Board, Zonal Railway & Division shall be authorized to inspect the Base Kitchens/mobile catering units. If any violation of the provision of the policy or deficiencies is noticed in the service, suitable penal action as decided by Zonal Railways will be taken.

3.7.2 IRCTC and CCMs of the concerned Zonal Railways shall enter into an agreement with respect to each unit to be managed by IRCTC.

### **3.8 General Instructions**

3.8.1 IRCTC shall supervise catering services on each mobile unit through its own supervisors employed by IRCTC.

3.8.2 Sale of a-la-carte items, Ready-to-Eat (RTE) Meals shall be permitted both through e-catering and onboard services.

3.8.3 The rates of standard, a-la-carte and RTE items shall be prominently displayed in coaches and websites of Railways and IRCTC, and shall be made available through mobile apps.

3.8.4 IRCTC shall ensure compliance of all statutory guidelines viz. FSSAI norms of food safety in Base Kitchens/kitchen units and mobile catering units, pollution control, Green Tribunal etc. (the statutory bodies mentioned are indicative in nature, not exhaustive). Further, it shall be entirely responsible for payment of any penalty imposed for non-compliance of these guidelines.

3.8.5 Service Provider shall ensure payment of all taxes, as applicable from time to time. Applicable GST collected from the passengers shall be deposited with the concerned Deptt. by the Service Provider as per applicable rates in vogue and details must be submitted to IRCTC.

3.8.6 Third Party Audit of mobile units and Base Kitchens shall be done by IRCTC periodically by an independent agency and corrective measures shall be taken accordingly.

3.8.7 IRCTC and Zonal Railways shall ensure compliance of extant policy guidelines issued from time to time. In case of any issues of interpretation of any clause/expression referred to in this policy the interpretation of MoR shall be final and binding.

3.8.9 IRCTC shall be responsible for ensuring that the standards, as laid down for different services, are maintained and policy directives issued by Railway Board from time to time are strictly complied with. Concerned Zonal Railways shall monitor the performance of IRCTC over their jurisdiction.

3.8.10 IRCTC shall ensure computerized billing for all items sold in mobile units under the management of IRCTC. Facility for cashless transaction viz, POS/Swipe machine etc. shall be compulsorily available in all catering units.

3.8.11 For bringing improvement in services to passengers and/or in the interest of the traveling passengers, any measure/policy decision taken by the Ministry of Railways from time to time shall be binding on all concerned.

3.9 Other mandatory conditions for mobile units are enclosed as Annexure-2.

### **3.10 Termination of Contract**

3.10.1 Termination of Contract by Service Provider

*If it is not feasible for the Licensee/Service Provider, to continue the execution of the contract due to any reason, the licensee /Service Provider may serve a Termination Notice (for the entire cluster and not for an individual train), after completion of 12 (twelve) months from the date of commencement of contract. Agreement shall be terminated after completion of 06 (six) months from the date of Termination Notice. Thereafter, Security Deposit and advance license fee shall be refunded on adjustment of pending dues, if any.*

*(For example: if the date of commencement of any contract is 01.01.2023, the notice for termination can be served by the licensee only after 31.12.2023. Further, if the date of notice for termination for the aforesaid contract is 01.01.2024, the contract would be terminated w.e.f 01.07.2024).*

### *3.10.2 Termination of Contract by IRCTC*

*(a) IRCTC shall have the right to terminate the license for any reason whatsoever after serving 06 (six) months' Termination Notice to the Licensee/Service Provider. In such case, Security Deposit shall be refunded on adjustment of pending dues, if any.*

*(b) IRCTC may terminate the license for an entire cluster of trains on account of breach of terms and conditions of the contract or any serious default of the Service Provider, giving a reasoned order without any notice. In such cases, the entire Security Deposit shall be forfeited."*

32. It is further stipulated in the aforesaid Commercial Circular that this policy shall supersede paragraph 3 of the Catering Policy 2017.

33. Under the aforesaid Commercial Circular, all trains shall be mapped with service locations and accordingly, base kitchen shall be designed for pick up and supply of meals depending upon service requirements. Cluster of trains and base kitchens shall be formed in consultation with the zonal railways before invitation of bid. It appears that award of contract, shall be done for a cluster of trains and the base kitchens mapped with the cluster instead of an individual train. Clause 3.2.2 provides with the formation of the clusters of train and base kitchens into two groups i.e., cluster A and cluster B. In order to be eligible to bid inter-alia, minimum annual turnover from food and beverages business has been prescribed. There is also prohibition of participation by constituting

JV/consortium.

34. The petitioner who had been providing catering services to the trains and also is one of the empanelled caterer service provider of the railways is said to stand ousted to participate in tender for catering services in train in view of the enhanced annual turnover requirement along with the prohibition of participation by JV/consortium as the petitioner does not meet the requisite turnover prescriptions.

35. It is well settled that the author of the tender document is taken to be the best person who understand and appreciate the requirements. This Court in exercise of power under Article 226 of the Constitution of India cannot sit in appeal against the tender conditions set by the authorities. This Court does not have the expertise to scrutinize the tender conditions. However, this Court can examine the decision making process with regard to the setting up of the requisite tender conditions. While examining the aforesaid decision making process, this Court has to see whether the process adopted or decision made by the authority is malafide or intended to favour someone or whether the process adopted or decision made is so arbitrary and irrational that the Court can say "the decision is such as no responsible authority acting reasonably and in accordance with relevant law could have reach" and whether public interest is affected.

36. Reference is made to the case of ***Michigan Rubber (India) Limited Vs. State of Karnataka & Others***, reported in **2012 8 SCC 216**, wherein the

Apex Court has held that the basic requirements of Article 14 of the constitution of India is fairness in action by the State and non-arbitrariness in essence and substance is the heartbeat of fair play and these actions are amenable to judicial review only to the extent that State must act validly for a discernable reason, and not whimsically for any ulterior purpose. Paragraphs 19 and 31 of the aforesaid judgment are reproduced hereunder:-

*“19. From the above decisions, the following principles emerge:*

- (a) *The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
- (b) *Fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;*
- (c) *In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;*
- (d) *Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*
- (e) *If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.*

*31. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and*

*beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."*

37. In the present case, it appears that under the Catering Policy 2017 at paragraphs 3.7 and 3.8.4 envisages that IRCTC was to set up a grid of kitchens for supply of meals on trains, which will be catered by licensee. However, it was experienced that in some cases, production of meal had been devolved to one licensee (either from railway own kitchen or from licensee own kitchen) and catering service of food was through another licensee which caused accountability issues. It appears that various complaints have also been received from passengers regarding the quality and hygiene of meal on trains and the same has been increased from passengers in the past few years. In this background, the authorities felt that objective of Catering Policy 2017 is not serving its requisite purpose. It further appears that the Ministry of Railway (Railway Board) by order dated 18.07.2023 decided to constitute a Committee comprising of Joint Secretary, Government of India Level Officers to ensure serving quality and hygienic food in the trains. The said Committee after

undertaking a comprehensive exercise including studying the best practices of hospitality industries engaged in the catering business and including in the various stakeholders such as caterer submitted several recommendation vide its Report dated 15.09.2022 which are hereunder for ready reference:-

- “a. Review of eligibility criteria with more emphasis on technical parameters so that only capable and experienced professionals (minimum qualification of staff provided) in the catering field are engaged in mobile catering of Railways;*
- b. Licensees should be mandated with setting up standardized, organized, state-of-art kitchens (Modem, Mechanized & ISO certified with minimum approved specifications) and meals would be picked up only from such designated Kitchens;*
- c. Each identified Kitchens should be equipped with CCTV monitoring (as per enclosed Schedule - 2), QR code stickers, insulated food vans;*
- d. End to end accountability of one licensee whereby a single service provider/licensee was vested with responsibility and accountability of both production of meals in designated Kitchens and service onboard trains;*
- e. Due to substantial investment involved in setting up such kitchens and for achieving economies of scale, licensees were to be incentivized by awarding licenses for train clusters where trains may be mapped with service locations and Base Kitchens for preparing route-wise clusters of trains;*
- f. Development of Base Kitchen and logisticinfrastructure to be mademandatory before commencement of contract so that bidders are committed and inclined to make investment in required infrastructure and their stakes are high in case of poor service;*
- g. Financial eligibility to be fixed in accordance with Sound financial, infrastructural and manpower capabilities to successfully manage the services to passengers in such clusters;*
- h. Licensees would also be responsible for statutory compliances such as FSSAI, tax laws and various labour laws.”*

38. The impugned Commercial Circular No. 24/2023 dated 14.11.2023 was issued by the Railway Board in the backdrop of the aforesaid suggestions.

39. What transpires from the above, is that in the light of increasing passenger complaints relating to quality of food, hygiene and services in trains, after comprehensive studies and deliberations thereon, railway board decided to adopt corrective measures which led to issuance of the impugned addendum to the Catering Policy of 2017.

40. Paragraph 1 of the impugned Commercial Circular sets out the objectives which is already reproduced above, which shows that it became imperative that an experience professional agency is vested with full accountability of production of meals and services on board under IRCTC's direct supervision and monitoring of entire operations.

41. Relevant paragraph from the affidavit-in-opposition filed on behalf of the respondent No. 4 (the Deputy Chief Commercial Manager, NF Railway, Maligaon Guwahati) are reproduced herein for ready reference:-

**"BRIEF FACTS OF THE CASE"**

*The deponent would like to give a brief summary of facts of the case as follows.*

1. *That in the light of increasing passenger complaints, that the respondent Railway has received more than 5923 complaints, especially on account of quality of food, hygiene and services in trains, the Ministry of Railways has decided to take corrective measures. Accordingly a committee, comprising of officers of Joint Secretary level was constituted to examine all related aspects and recommended measures so as to bring quantifiable improvements in quality of food being served to passenger in trains. The committee held detained discussions on all related aspects and identified major shortcomings in the system which inter-alia included non availability of Base kitchens, lack of infrastructures, lack of accountability in unbundling model, short term contracts large number of small contracts, quality of man power, hygiene and delivery system including packing, lack of control over cooked food as well as procuring of raw materials by the licensee etc.*

2. That furthermore, to study the best practice in food and hospitality industry, the committee undertook field visits of flight kitchens of TejSats at New Delhi Airport, IRCTC Base kitchen at New Delhi and Haldiram's Kitchen at Noida and Base Kitchen of M/s Ambuja Hotels at Noida etc. Based on the finding, the committee concluded that a mechanized state of the art Base kitchen is a basic and essential for the Railways from where meals can be supplied in trains. Standard protocol for procurement of raw materials maintaining of hygiene and quality, transportation of meals from Base Kitchens to stations etc can accordingly be specified and pre-defined as part of mandatory tender conditions.

3. That it is submitted that besides the field visits the committee also held stakeholders meeting on 26/07/2023 in Railway Board to know their views and also invited their suggestions for improvement in the system. The broad suggestions from the stakeholders included:

- a) Longer contract period to enable establishment of kitchen infrastructure and recovery of costs.
- b) exploring the options of route wise clustering of trains to make the Base kitchen commercially viable
- c) No unbundling, i.e., the Base kitchen should be build, operated and managed by the service providers themselves to fix the entire accountability
- d) empanelment criteria should be redefined with more emphasis on quality, technical parameters
- e) strict verification of eligibility conditions
- f) Tender should have a pre requisite of building adequate for the base kitchen with modern and fully mechanized Base kitchen
- g) certain factors such as availability of base kitchen experience in catering /restaurant /hotel and hospitality industry, permanent deployed manpower, turn over, employee qualification etc

The above suggestions were rightly considered by the Railways and decided to make changes in catering policy 217 and hence the Railway Board introduced the circular No 24/2023 dated 14/11/2023.

4. The committee has submitted its detailed report along with recommendations on 15/09/2023 entailing corrective measures required to be taken. After the examination of the recommendations it was felt imperative that an experienced professional agency needs to be vested with full accountability of production of meals and services on board under IRCTC's direct supervision and monitoring of entire operations. In the light of broad recommendation of the committee constituted for the above purpose, the Railway board has decided to bring drastic changes to the catering policy keeping in mind that the Rail users are deserving a well organized and modern facilities and hence the circular No 24/2023 dated 14/11/2023 were introduced. It is submitted that the due process has been followed and approved by the Railway Board and Hon'ble Railway Minister for issuance of the Commercial Circular No. 24/2023 and it is public interest and for welfare of railway passengers. Accordingly, with the only objective to bring visible improvements in catering services to passengers in trains by ensuring quality,

*hygiene in food productions and standard services to passengers onboard, the commercial circular NO 24/2023 has been notified by Ministry of Railways with the approval of the competent Authority, exercising the powers conferred under Government of India (Allocation of Business) Rules 1961 and Railways Act, 1989.*

*5. That the broad concept of the circular dated 14/11/2023 is to modernize the catering business in the Indian Railways and thereby provide hygienic and clean food to the Rail users. The existing system of catering in the Indian Railways resulted in the non satisfaction of the Rail users and considering the volume of the complaints received from the Rail users of the catering facilities in the Indian Railways has constrained the Indian Railways to re write the policies on catering filed and hence the Respondent Railway, after deliberation and consideration of the all pros and cons of the existing system, has introduced the circular as an addendum to the catering policy 2017. The ultimate beneficiaries of these changes will be Rail users and it is expected that the Rail users will get a state of art of catering services and thereby the complaints can be reduced. It is submitted that the due process has been followed and approved by the Railway Board and Hon'ble Railway Minister for issuance of the Commercial Circular No. 24/2023 and it is public interest and for welfare of railway passengers. As such the circular, issued by the Railway Board is within its competency and stand in the constitutional capacities.*

42. The submission of the petitioners to the effect that the said circular is causing monopoly and restricts competition in so much as that the turnover is fixed so high, that empaneled bidders of the railways who does not have such high turnovers shall not be able to participate and to ensure the same, JV Consortium is also prohibited, is fallacious.

43. The ground reality is that whenever there is a change in the eligibility or qualification conditions, the same is always challenged. It is imperative that certain eligibility conditions /qualifications of tenders have to be laid to ensure that the contractor has the capacity and the resources to successfully execute the works. This Court has its own limitation while exercising power in the context of judicial review of administrative action. It is only to the extent, whether the choice of decision is made lawfully. In other words, the judicial review which this Court has is to prevent arbitrariness, irrationality,

unreasonableness, bias and malafide.

44. Reference is made in the decision of the Apex Court in **Tata Cellular Vs. Union of India**, reported in **(1994) 6 SCC 651**, wherein the Apex Court has laid down the following principles:-

- (1) “The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by malafides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

45. In **Jagdish Mandal Vs. State of Orissa & Others** reported in **(2007) 14 SCC 517**, the Apex Court has laid down the following test before interfering in tender matters in exercise of powers of judicial review:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power

*is judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interference, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

*i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.*

*OR*

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'*

*ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*

46. In ***M/S Master Marine Services Private Limited Vs. Metcalfe & Hodgkinson Private Limited & Another*** reported in ***(2005) 6 SCC 138***, the Apex Court has held that by undertaking judicial review of an administrative action relating to tender/contract, larger public interest should always be kept in mind in order to decide whether its intervention is called for or not.

47. In ***Loop Telecom and Trading Limited Vs. training vs. Union of India & Another*** reported in ***(2022) 6 SCC 762***, the Apex Court has held that a greater free play in the joint is essential where the legislature or executive is called upon to make complex choices. Paragraph 79 of the said

judgment is reproduced herein below for ready reference:

“79. The appellant did not challenge the policy per se at that stage, nor did it attempt to enter into the fray at that stage when a fresh auction was held. In these circumstances, the policy decision adopted by the Union government cannot be allowed to be questioned at the behest of the appellant who sought a refund simpliciter in proceedings before the TDSAT. As held by a Constitution Bench in *R K Garg v. Union of India*, a greater free play in the joints must be accorded to decisions of economic policy where the legislature or the executive is called upon to make complex choices which cannot always conform to a straitjacket or doctrinaire solution.”

48. In ***M/s Agmatei India Private Limited Vs. M/s Resoursys Telecom & Others*** reported in **(2022) 5 SCC 362**, the Apex Court has held that author of the tender documents is taken with the best person to understand and appreciate its requirements and interpret its documents. Paragraphs 24, 25 and 26 of the said judgments is reproduced hereunder for ready reference:-

“24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the 3-Judge Bench decision of this Court in *Galaxy Transport Agency (supra)* wherein, among others, the said decision in Afcons Infrastructure Limited (*supra*) has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

25. This Court referred to various decisions on the subject and stated the legal principles as follows : (*Galaxy Transport Agencies case [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035]* , SCC paras 14-20)

“14. **In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings.** In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]*, this Court held : (SCC p. 825, para 15)

‘15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. **It is possible that the owner or**

***employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.'***

15. In the judgment in *Bharat Coking Coal Ltd. v. AMR Dev Prabha* [Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) 16 SCC 759], under the heading "Deference to authority's interpretation", this Court stated : (SCC p. 776, paras 50-52)

'50. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.

51. In the present facts, it is clear that BCCL and C1-India have laid recourse to clauses of NIT, whether it be to justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]

52. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.'

16. Further, in the recent judgment in *Silppi Constructions Contractors v. Union of India* [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489], this Court held as follows : (SCC pp. 501-02, para 20)

'20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.'

17. In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word "both" appearing in Condition No. 31 of the NIT For this reason, the Division Bench's conclusion [*New JK Roadways v. State* (UT of J&K), 2020 SCC OnLine J&K 733] that JK Roadways was wrongly declared to be ineligible, is set aside.

18. Insofar as Condition No. 27 of the NIT prescribing work experience of at least 5 years of not less than the value of Rs 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the appellant before us. **Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled**

**that unless arbitrariness or mala fide on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court.** Thus, in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , this Court noted : (SCC pp. 531-32, para 22)

'22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say:"the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.'

19. Similarly, in Montecarlo Ltd. v. NTPC Ltd. [Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272] , this Court stated as follows : (SCC p. 288, para 26)

'26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This

*ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. **But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the Court should follow the principle of restraint. Technical evaluation or comparison by the Court would be impermissible.** The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.'*

*20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own."*

*26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."*

49. In ***Air India Ltd. Vs. Cochin International Airport Ltd. and Others***, reported in **(2000) 2 SCC 617**, the Apex Court has held that even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. Paragraph 7 of the aforesaid judgment is reproduced hereunder for ready reference:-

*“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India<sup>1</sup>, Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, CCE v. Dunlop India Ltd., Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra and Raunaq International Ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”*

50. In **Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. and Another**, reported in **(2016) 16 SCC 818**, the Apex Court has held that a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere and the author of the tender documents is the best person to understand and appreciate its requirements. Paragraph 13 and 15 of the aforesaid judgment is

reproduced hereunder for ready reference:-

*“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.*

*14. ....*

*15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”*

51. The affidavit-in-opposition filed by the respondent No. 4 testifies that a detail and a sound mechanism was carried out whereby it was imperative that in order to achieve the object of the Catering Policy 2017 i.e. quality and hygiene of food, amongst others, the annual turnover of the past years has to be enhanced and in order to have full accountability of the bidders, JV Consortium has to be prohibited.

52. It is with this very object, the impugned eligibility conditions which are put to challenge in this writ petition, were added in the subject Catering Policy. The aforesaid reasoning appears to have nexus to the very object to achieve. The changes brought in by the impugned Commercial Circular, appears to be in

public interest and for the welfare of railway passengers as well as beneficial for licensees. There is bound to be improvement in the quality, hygiene of meals and catering services in the trains. Further, with kitchens to be located at more locations, along the route, it will ensure timely service and hygienic and fresh food. As such, the incorporation of the subject two clauses appears to be sound and reasonable. Be that as it may, it is for the tendering authorities to set out the terms and condition which they think is most essential in terms of the requirements and the object to achieve. This court lacks the expertise to judicially scrutinize such incorporations of conditions in the tender documents. It is only when such conditions have been incorporated, arbitrarily, unreasonably and in order to favour a particular bidder, this court shall judicially intervene in the matter. In the present case, it is manifestly clear that the issuance of the impugned commercial circular is reasonable, fair and bona fide.

53. In the present case, upon careful scrutiny of the allegations made in the writ petition, it appears that no specific allegations of malafide/tailor made/favouring particular bidder is made. In fact, bold allegations that no individual bidder can participate and that the impugned Circular has been designed with ulterior motive of benefitting a particular bidder/tenderer were made. In the absence of any such pleadings, no case of malafide is made out. In fact, on the contrary, it appears that the impugned Commercial Circular is bona fide and for the larger interest of public. As regards the submission of the learned Sr. Counsel appearing on behalf of the petitioner, to the effect that the respondent authorities has allowed participation of joint venture or consortium in another project, i.e., Circular No. 29/2023, the same being related to a pilot project of Yatri Seva Anubandh (YSA), which encompasses several facilities to

be provided by the contractor, the same is not applicable in the context of the present case.

54. Reference is made to the case of **Ratnagiri Gas & Power Private Limited Vs. RDS Projects Limited & Others** reported in **2013 1 SCC 524** at paragraphs 25, 26, 27 and 28 which is reproduced herein below:-

*“25. Even otherwise the findings recorded by the High Court on the question of mala fides do not appear to us to be factually or legally sustainable. While we do not consider it necessary to delve deep into this aspect of the controversy, we may point out that allegations of mala fides are more easily made than proved. The law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove mala fides on the part of the decision-maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to conduct an inquiry into their veracity.*

**26.** *The legal position in this regard is fairly well settled by a long line of decisions of this Court. We may briefly refer to only some of them:*

**26.1.** *In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] this Court summed up the law on the subject in the following words: (SCC p. 260, paras 50-51)*

*“50. ‘Mala fides’ means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely, (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.*

*51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”*

**26.2.** *We may also refer to the decision of this Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Ors. (2005) 7 SCC 764 where the Court declared that allegations of mala fides need proof of high degree and that an administrative action is presumed to be bona fide unless the contrary is satisfactorily established. The Court observed:*

56. .... It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide E.P. Royappa v. State of T.N. ([1974](#)) 4 SCC 3) There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra* ([1976](#)) 1 SCC 800 (SCC p. 802, para 2): "It (mala fide) is the last refuge of a losing litigant."

26. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding. Decisions of this Court have repeatedly emphasised this aspect, which is of considerable importance. In *State of M.P. and Ors. v. Nandlal Jaiswal and Ors.* ([1986](#)) 4 SCC 566, speaking for the Court, P.N. Bhagwati, J., as His Lordship then was, disapproved the observations made by the High Court attributing mala fides and corruption to the State Government without there being any foundation in the pleadings for such observations. The Court declared that wherever allegations of mala fides are made, it is necessary to give full particulars of such allegations and to set out material facts specifying the particular person against whom such allegations are made so that he may have an opportunity to controvert such allegations. The following observations of the Court are apposite:

"39. Before we part with this case we must express our strong disapproval of the observations made by B.M. Lal, J. in para 1, 9, 17, 18, 19 and 34 of his concurring opinion. The learned Judge made sweeping observations attributing mala fides, corruption and underhand dealing to the State Government. These observations are in our opinion not at all justified by the record. In the first place it is difficult to appreciate how any such observation could be made by the learned Judge without any foundation for the same being laid in the pleadings. It is true that in the writ petitions the petitioners used words such as "mala fide", "corruption" and "corrupt practice" but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied insofar as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual mala fides, corruption and underhand dealing."

27. To the same effect is the decision of this Court in *Smt. Swaran Lata v. Union of India & Ors.* ([1979](#)) 3 SCC 165, where the Court emphasized the need for particulars supporting the allegations of mala fides, in order that the Court may hold an inquiry with the same. Absence of

such particulars was held to be sufficient for the Court to refuse to go into the allegations. The Court said:

“57. .... The Court would be justified in refusing to carry on investigation into allegations of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition. The burden of establishing mala fides lies very heavily on the person who alleges.”

28. The above was reiterated in a recent decision of this Court in *Nirmal Jeet Singh Hoon v. Irtiza Hussain &Ors.* ([\(2010\) 14 SCC 564](#)) and *All India State Bank Officers' Federation v. Union of India* ([\(1997\) 9 SCC 151](#)). In the latter case this Court observed:

“22. There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour Respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit.”

55. Reference is also made in the case of **Rajneesh Khajuria Vs. M/s Wockhardt Limited & Another** reported in (**(2020) 3 SCC 86**), at paragraphs 16 to 23 is reproduced herein below:-

**16.** *The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fides have two facets — one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment in State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fides. Therefore, to sustain a plea of mala fides, there has to be an element of personal bias or an oblique motive. This Court held as under: (SCC pp. 260 & 264-65, paras 50-51 & 59)*

“50. *Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and*

conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made *mala fide* for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken *mala fide* for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

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59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the *mala fides* and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly, I hold that the findings of the High Court [Prem Prakash Sharma v. State of Bihar, 1990 SCC OnLine Pat 105 : (1990) 2 PLJR 404 (2)] that FIR gets vitiated by the *mala fides* of the Administrator and the charge-sheets are the results of the *mala fides* of the informant or investigator, to say the least, is fantastic and obvious gross error of law."

**17.** In another judgment in *Prabodh Sagar v. Punjab SEB* [*Prabodh Sagar v. Punjab SEB*, (2000) 5 SCC 630 : 2000 SCC (L&S) 731], it was held by this Court that the mere use of the expression "mala fide" would not by itself make the petition entertainable. The Court held as under: (SCC p. 640, para 13)

"13. ... Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or *mala fides* can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of *mala fides*. *Mala fides*, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (*sic compulsory*) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for voluntary retirement. There must be factual support pertaining to the allegations of *mala fides*, unfortunately there is none. Mere user of the words "mala fide" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. ...."

**18.** In a judgment in *HMT Ltd. v. Mudappa* [*HMT Ltd. v. Mudappa*, (2007) 9 SCC 768], quoting from earlier judgment of this Court in *State of A.P. v. Goverdhanlal Pitti* [*State of A.P. v. Goverdhanlal Pitti*, (2003) 4 SCC 739], it was held that "legal malice" or "malice in law" means "something done without lawful excuse". It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. The Court held as under:

"24. The Court also explained the concept of legal *mala fides*. By referring to Words and

*Phrases Legally Defined, 3rd Edn., London Butterworths, 1989 the Court stated: (Goverdhanlal case [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739] , SCC p. 744, para 12)*

*'12. The legal meaning of malice is "ill will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others."*

*It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill will or spite on the part of the State. It could only be malice in law i.e. legal mala fides. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide."*

**19.** *In a judgment in Union of India v. Ashok Kumar [Union of India v. Ashok Kumar, (2005) 8 SCC 760 : 2006 SCC (L&S) 47] , it has been held that allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court held as under: (SCC p. 770, para 21)*

*"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733 : AIR 1964 SC 72].) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar [Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579 : 2003 SCC (L&S) 528].)"*

**20.** *In another judgment in Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd. [Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd., (2013) 1 SCC 524] , this Court held that when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. A judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. The Court held as under: (SCC p. 538, para 27)*

“27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding.”

**21.** *The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in the Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fides are easier to levy than to prove.”*

**22.** *Therefore, the allegation that the transfer of the appellant was an act of unfair labour practice without impleading the person who is said to have acted in a mala fide manner is not sustainable.*

**23.** *We do not find that the appellant has laid any foundation to allege a malice in law. As mentioned in the judgments referred to above, malice in law would be something which is done without lawful excuse or an act done wrongfully and willfully without reasonable or probable cause. There is power of transfer in the letter of appointment. The appellant has stayed at Sagar for almost 20 years. If an employee is transferred after 20 years and that to the place of headquarters of a company, it cannot be said that the act of transfer was done without lawful excuse. No inference can be drawn that an act was done from ill feeling or spite.”*

56. It is thus abundantly clear that there are sufficient reasons on the basis of which the respondent authorities issued the impugned Commercial Circular for the interest of the larger public. There is no infirmity or defect in the said decision-making process. It is for the respondent authorities to device means and ways to ensure that hygienic and quality food are being served in the trains. This Court is in agreement with the decision of the respondent authorities in

relation to the prescription of the eligibility conditions in the impugned commercial circular.

57. Pertinent to mention that the impugned Commercial Circular No. 24/2023 was also under challenged as noted above before the Karnataka High Court in WP(C) 4162/2024 which was dismissed on 19.2.2024 wherein the Karnataka High Court held at paragraph 12, 13 and 17 as under:-

*“12. The learned Solicitor General places emphasis upon what is quoted hereinabove, a part of the statement of objections. It is clearly indicated that new policy is brought in, as it would ensure end to end accountability, quality and hygiene and all other aspects of food that is served in the Indian trains. Therefore, there is clear justification as to why the Railways had to bring in this addendum to the Circular. If hygiene, quality of food and accountability is to be brought in, it cannot be said that such policy is illegal and contrary to public interest. Catering contractors are seeking to project their interest over and above what is aforesaid, which is in the realm of public interest. Therefore, the submission of the learned senior counsel Sri Jayakumar S.Patil, that Commercial Circular 24 of 2023 does not serve the purpose, as was necessary in Catering Policy of 20 of 2017, is unacceptable.*

*13. The petitioners want this Court, to enter into the arena of food preparation and monitoring as to where the base kitchen 26 should be; who should distribute food and who should be accountable for such distribution. If all these submissions are accepted, it would amount to this Court monitoring preparation of food and distribution of food in the trains, which is purely the dominion of Railways. The petition seeks this Court to enter into such area, which this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India would be ‘loathe to even peep into’. It is for the Railways to bring in such policy which would advance the cause of public interest, travelers in trains qua hygiene and quality of food, and what is now sought to be done by the Railways is exactly what the learned Solicitor General has projected. The projection by the learned Solicitor General is threadbare, as to why this had to come about, with which this Court is in complete agreement. No right of the petitioner is taken away, as it is the averment in the statement of objections that the existing tenderers or contractors will not suffer any prejudice qua the new policy, as at paragraph 15 of the statement of objections, the statement made is that the catering contracts which have already been granted will not be disturbed. Therefore, if any interference would be made by this Court, on the contentions advanced by the 27 petitioner, it would run foul of the settled principle of law. It, therefore, becomes appropriate to refer to certain judgments of the Apex Court qua interference in contractual and commercial matters, in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.*

*17. Insofar as the companion petition in W.P.No.4296 of 2024 is concerned, which calls in question a tender notified subsequent to initiation of the policy, an offshoot of the policy in Commercial Circular No.24 of 2023, the petition also deserves rejection, as the 47 policy is upheld in the course of the order supra. Thus, the companion petition in Writ Petition No.4296 of 2024 would also fail.”*

58. Further, the Commercial Circular No. 24/2023 was also under challenged as noted above before the Jharkand High Court in WP(C) 766 of 2024 which was dismissed on 27.02.2024 wherein Jharkand High Court has held at paragraph 21 as under:-

*“21. What can be culled out from the afore-quoted judgments is the limited scope the writ court has of judicial review of the tender process or the decision-making process. The rationale behind issuance of Commercial Circular No. 24/2023 has been suitably explained in the objectives as well as in the counter affidavit and the impugned Circular is based on sound reasoning and such administrative action does not espouse any arbitrariness. The policy is aimed at benefiting a large section of passengers by providing them with good quality hygienic food. In these modern times upgrading the facilities in the trains and making endeavour to provide good quality food prepared at standard kitchens supervised by IRCTC are laudable exercise initiated by the respondents which will ultimately benefit the travellers in the trains. The act of the respondents in issuance of Commercial Circular No. 24/2023 does not suffer from any arbitrariness or unreasonableness and was not designed to exclude the petitioners and bestow favour on someone. The exclusion of Joint Venture /Consortium in the addendum is also as per the policy decision of the respondents and though learned Senior Counsel for the petitioner has referred to Commercial Circular No. 29/2023 but the same relates to a pilot project of Yatri Seva Anubandh (YSA) and it encompasses several facilities which has to be ensured by the service provider. The pilot project operating in a separate domain cannot be taken to be a benchmark to question the action of the respondents and term it as arbitrary. The questions which were formulated in the case of "Michigan Rubber (India) Limited versus State of Karnataka and Others" (supra) and which has been quoted above is answered in the negative. This Court in exercise of the powers of writ jurisdiction as repeatedly stated above has a limited jurisdiction of exercising its powers of judicial review and since the Commercial Circular No. 24/2023 does not indicate any arbitrariness in the action of the respondents, we refrain from entertaining this writ application and consequently the same is hereby dismissed.”*

59. It is well settled that the decision of one High Court is not a binding precedent on another High Court. Reference is made to the decision of the Apex Court in **Vallaiama Champaka Pillai Vs. Sivathanu Pillai**, reported in **(1979) 4 SCC 429** and to the decision of the Division Bench of the Bombay High Court in **Commissioner of Income Tax Vs. Thana Electricity Supply Ltd.**, reported in **(1994) 206 ITR 727**. The High Courts are the Courts of coordinate jurisdiction. Therefore, the decision of one High Court has only a persuasive value in another High Court. In view of the same, the aforesaid

Coordinate Bench decisions of the Karnataka High Court and Jharkhand High Court in WP(C) 4162/2024 and WP(C) 766/2024 respectively are only of persuasive value for this Court. Be that as it may, this Court finds no reason to differ from the aforesaid two decisions.

60. In the present case, the reasons for issuance of the impugned addendum by Commercial Circular No. 24/2023 is properly explained which is reasonable and fair and was not designed to exclude the petitioner by favouring someone. The same is for the benefit of the larger section of passengers. As such, the writ petitioner has failed to make out any case, whatsoever warranting interference from this Hon'ble Court under Article 226 of the Constitution of India.

61. In view of the above, the writ petition stands dismissed.

62. Resultantly, the respondent authorities are at liberty to proceed and finalize the subject tenders.

63. No order as to costs.

64. All Pending I.A's, stands closed.

65. Interim orders, if any, stands vacated.

**JUDGE**

**Comparing Assistant**