



GAHC010140062021

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

W.P. (C) no. 4430/2021

Sri Padmaraj R.J., S/o - Late. V.K Raghavan, R/o- House no. 64, Solapara Road, Paltan Bazar, Guwahati – 08.

.....Petitioner

-Versus-

1. The Union of India, represented by the secretary to the Government of India, Ministry of Railways, Rail Bhawan, New Delhi – 110001.
2. The Railway Board, Under The Ministry Of Railway, Rail Bhawan, New Delhi - 110001, represented by the Director [Tourism And Catering].
3. The North East Frontier Railway, Maligaon, Guwahati, represented by its Chief General Manager, Maligaon, Guwahati.
4. The Principal Chief Commercial Manager, N.F Railway, Maligaon, Guwahati-11.
5. The Divisional Commercial Manager [Commercial], N.F Railway, Guwahati.
6. The Senior Station Superintendent [Gazetted], Guwahati Railway Station, Guwahati.
7. Griham Foods and Hotel Pvt. Limited, 108/1A/1 Gopal Tagore Road, Kolkata-700036, also at - Guwahati Railway Station, Guwahati-781001.

.....Respondents



Advocates :

Petitioner : Mr. T.H. Hazarika, Advocate

Respondent nos. 3 - 6 : Mr. B. Sarma, Standing Counsel, NF Railway

Respondent no. 7 : Mr. D. Mozumder, Senior Advocate
Mr. N.M. Sarkar, Advocate

Date of Hearing, Judgment & Order : 12.12.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

By instituting the present writ petition under Article 226 of the Constitution of India, the petitioner has sought to invoke the extra-ordinary and discretionary jurisdiction of the Court to assail – [i] a Termination Notice dated 28.07.2021, issued by the respondent no. 4; [ii] a Notice Inviting Tender [NIT] dated 09.08.2021, published by the respondent Northeast Frontier [NF] Railway; and [iii] a Vacation Notice dated 02.09.2021. By the Termination Notice dated 28.07.2021, the petitioner's services as Commission Vender had been terminated purportedly pursuant to an order of the Chief Commercial Manager, NF Railway, allegedly on the ground of unsatisfactory performance. By the NIT no. C-LMG-00-2021 dated 09.08.2021, the respondent NF Railway invited e-Tenders from bidders for provision of Catering Services at General Minor Unit [GMU] no. GHYTS-3 at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station, for a period of 5 [five] years. By the Vacation Notice dated 02.09.2021, the petitioner had been asked to vacate the stall [South Indian Stall and its extension counter]' located at Platform no. 1 and Platform no. 4/5 of Guwahati Railway Station within a period of 10 [ten] days from the date of receipt of the Vacation Notice.

2. The basis of assailment is an Agreement for Commission Vendor executed on 09.03.2020 between the competent authority in the respondent NF Railway on behalf of the President of India on one part, and the petitioner on the other part.

3. It is the case of the petitioner that the family of the petitioner was running the business as Commission Vendor from the same stall located at Platform no. 1 of the Guwahati Railway Station since about more than five decades, after entering into arrangement with the respondent NF Railway authorities. After the death of his predecessor and especially after inability on the part of the petitioner's mother to run the business due to old age, the petitioner started running the business of Commission Vendor. It was in that connection, the Agreement for Commission Vendor [‘the Agreement’, for short] was entered into on 09.03.2020 which had a validity period of 5 [five] years from the date of execution.

3.1. The petitioner's case is that during the earlier period as well as after execution of the Agreement, the petitioner had put his best efforts to generate substantial account of revenue for the respondent NF Railway authorities and he had left no stone unturned to run the business effectively and efficiently. It is the contention of the petitioner that the business had been running profitably as reflected from the statements mentioning the amount of revenue, appended as an annexure, the petitioner had generated for the respondent NF Railway authorities. To buttress such contention, the petitioner has stated that he as a Commission Vendor of the stall located at the Platform no. 1 of the Guwahati Railway Station which had been named as ‘South Indian Snack Bar’, had generated a revenue of Rs. 59,11,582/- during the period from January, 2019 to December, 2019 for which the petitioner had earned a commission of Rs. 6,56,575/-. The revenue generated during the period from January, 2020 to December, 2020, took a dip at Rs. 16,02,321/- due to advent of Covid-19 and the reason for such lesser revenue generation was obvious as during that period, lockdown was enforced and regular train services were severely affected.

3.2. The petitioner has also referred to the Catering Policy 2007, the Catering Policy 2010 and the Catering Policy 2017, formulated by the Railway Board, as well as a decision of the Hon'ble Supreme Court of India in **Senior Divisional Commercial Manager, South Central Railways and others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another**, reported in [2016] 3



SCC 582, to support his contention that the respondent NF Railway authorities could not have resorted to such actions as had been taken by the Termination Notice dated 28.07.2021; the NIT dated 09.08.2021; and the Vacation Notice dated 02.09.2021, impugned herein.

4. I have heard Mr. T.H. Hazarika, learned counsel for the petitioner; Mr. B. Sarma, learned Standing Counsel, NF Railway for the respondent nos. 3 – 6; and Mr. D. Mozumder, learned senior counsel assisted by Mr. N.M. Sarkar, learned counsel for the respondent no. 7.

5. Mr. Hazarika, learned counsel for the petitioner has canvassed that the petitioner has been running the business of Commission Vendor from the location at Platform no. 1 of the Guwahati Railway Station on the strength of the Agreement dated 09.03.2020 and earlier, the business of Commission Vendor was run by the petitioner's family since last about five decades. Prior to 09.03.2020, the petitioner was assisting his family in running the stall from the same location. He has, thus, contended that the petitioner since 2020 on his own and earlier, his family has/had been running the business of Commission Vendor from the same location/stall located at Platform no. 1 of the Guwahati Railway Station. As such, the actions on the part of the respondent Railway authorities in deciding to terminate first by the Termination Notice dated 28.07.2021 and thereafter, directing the petitioner to relocate him from Platform no. 1 to Platform no. 2 are arbitrary *ex-facie* and unjust. He has submitted that the Termination Notice dated 28.07.2021 was, however, shown to be withdrawn on 29.07.2021 by the respondent NF Railway.

5.1. Referring to the Clauses of the Agreement dated 09.03.2020, Mr. Hazarika has submitted that the petitioner had been arbitrarily served with the Vacation Notice dated 02.09.2021 by the respondent NF Railway authorities whereas the decision to initiate the tender process for awarding the contract of catering services from the very same stall, located at Platform no. 1, wherefrom the petitioner had been running the business, was taken at a much earlier point of time. There was no intimation to the petitioner at any point of time prior to 02.09.2021 that a decision had already been taken for awarding the stall located at Platform no. 1 of the Guwahati Railway Station, by way of a tender process. As the basis of the writ petition is the Agreement dated 09.03.2020, Mr. Hazarika, has contended that the writ petition is maintainable as the impugned actions on the part of the respondent NF Railway authorities are clearly arbitrary, unreasonable and unjust affecting the rights of the petitioner protected under Article 14 and



Article 21 of the Constitution of India, in a prejudicial manner. To buttress his such contention, he has referred to the decision of the Hon'ble Supreme Court of India in **Unitech Limited and others vs. Telangana State Industrial Infrastructure Corporation [TSIIC] and others**, reported in [2021] 2 SCALE 653.

6. Mr. Sarma, learned Standing Counsel, NF Railway and Mr. Mazumdar, learned senior counsel representing the respondent no. 7 have submitted in similar lines. It is the contention of the respondents that the petitioner is only a Commission Vendor under the respondent NF Railway and his rights and obligations are circumscribed by the terms and conditions incorporated in the Agreement dated 09.03.2020. Mr. Sarma, learned Standing Counsel, NF Railway has submitted that the Termination Notice dated 28.07.2021 was mistakenly issued and remedial steps for withdrawal of the Termination Notice, mistakenly issued, were taken immediately on 29.07.2021 with the issuance of a letter of even date to the petitioner informing him that the Termination Notice dated 28.07.2021 stood withdrawn and no action would be taken on the basis of the Termination Notice dated 28.07.2021. It has been contended that the writ petition to assail the Termination Notice dated 28.07.2021 is not maintainable.

6.1. The next limb of submission of the learned counsel for the respondents is to the effect that by the Notice Inviting Tender [NIT] dated 09.08.2021, the respondent NF Railway authorities had taken a decision to invite e-Tenders from eligible bidders for provision of catering services from the stall at Platform no. 1, which has been categorized as General Minor Unit [GMU] as per the provisions of the Catering Policy 2017. It has been contended that the petitioner as a Commission Vendor who was running the said stall till then, could not have raised any objection for such decision in view of his limited role as a Commission Vendor. It has been contended that the stall located at Platform no. 1 wherefrom the petitioner was running the business in the name and style of South Indian Snake Bar, belong entirely to the respondent NF Railway authorities and the petitioner had no right in connection with the said stall. The decision to award the stall for catering services is in conformity with the Catering Policy 2017 and such a decision is taken in the interest of earning more revenue for the respondent NF Railway. When the case of the petitioner is limited to commission only, the decision to award the contract of catering services at the stall located at Platform no. 1 cannot be maintained by the petitioner and as such, the challenge to the NIT dated 09.08.2021 is not tenable. The learned counsel for the respondents have further



contended that the Vacation Notice dated 02.09.2021 was issued in purview of Clause 5 of the Agreement dated 09.03.2020 wherein the rights stood reserved to the NF Railway as the owner to relocate a Commission Vendor from one place of work to another place of work and there cannot be any challenge to such relocation of a Commission Vendor.

6.2. The learned Standing Counsel, NF Railway has submitted that the Vacation Notice dated 02.09.2021 was not given effect to immediately as the petitioner was sought to be served with further notices on and from 08.11.2021, subsequent to the litigation in the form of the present writ petition and also in the form of a writ appeal, Writ Appeal no. 195/2021. During the pendency of the writ petition, a decision in terms of Clause 5 of the Agreement was taken by the NF Railway authorities whereby the departmental store located at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station has been relocated to a stall existing at Platform no. 2/3 under NNGE end and Foot Over Bridge's [FOB] foot steps of the Guwahati Railway Station. By serving a notice dated 10.11.2021, the petitioner was requested to use and operate the departmental store located at Platform no. 2/3 with immediate effect and save and except relocation, all other terms and conditions of the Agreement have remained the same. Reference has been made by the respondents to a Letter of Acceptance [LoA] dated 12.10.2021 whereby the License of Tea Stall no. GHYTS-3 at Platform no. 1 at the Guwahati Railway Station between Pillar no. 24 & 25 has been granted by the respondent NF Railway to the respondent no. 7, as per the terms and conditions set forth therein. Subsequent to the LoA dated 12.10.2021, a License Agreement dated 05.08.2022 has been executed between the respondent NF Railway on behalf of the President of India on one part, and the respondent no. 7 on the other part, at a contract value of Rs. 1,15,54,400/- for a period of 5 [five] years.

6.3. The respondents have further contended that it is an admitted position that as on date, the respondent no. 7 has been running the business of catering services as General Minor Unit [GMU] at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station. It is also the contention of the respondents that the business which is being run pursuant to the LoA dated 12.10.2021 and the License Agreement dated 05.08.2022, is earning substantially more revenue than the commissions deposited by the petitioner from time to time while running the same stall at Platform no. 1 during the earlier period. Reliance is placed by the respondents in the decision titled **Kerala State Electricity Board and another vs. Kurien E. Kalathil and others**, reported in [2000] 6



SCC 293.

7. In response, Mr. Hazarika, learned counsel for the petitioner has submitted that the volume of business at Platform no. 1 is significantly higher than the volume of business that could be possibly earned from running a stall from Platform no. 2 where the petitioner has been sought to be relocated by the respondent NF Railway authorities. He has also disputed about service of the letter dated 10.11.2021 and has submitted that it was only on 27.04.2023, the petitioner was intimated about the decision of relocation and in the process, due to non-service of notice, the petitioner had suffered loss in the business. He has advanced his alternative submission that since the petitioner has been running the business as Commission Vendor successfully since about last five decades, any decision to relocate the petitioner should have been commensurate with the volume of business the petitioner was enjoying by running the business from Platform no. 1. He has further submitted that the policies contained in the Catering Policy 2007; the Catering Policy 2010; and the Catering Policy 2017, of the Railway Board as well as the observations made in the decision in *Kurien E. Kalathil* [supra] may not directly applicable to the case of the petitioner, but the respondent authorities ought to have taken into consideration the fundamental right of the petitioner under Article 21 of the Constitution of India keeping in view the earlier arrangement the respondent NF authorities had entered into with the petitioner and more particularly, in consonance with the volume of business.

8. I have given due consideration to the rival submissions made by the learned counsel for the parties. I have perused the materials brought on record by the parties through their pleadings and have also gone through the decisions cited at the Bar.

9. A large number pleadings have been submitted by the parties but the core issue which has fallen for consideration is the right of the petitioner to assail the decision of the respondent NF Railway to vacate and/or to relocate the petitioner from the stall located at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station and to challenge the tender process initiated simultaneously by the NIT dated 09.08.2021 to award the work of catering services to the successful bidder at the same location. In order to appreciate the assailment, it is appropriate, at first, to find out about the nature of the contract, that is, the Agreement dated 09.03.2020 entered into between the parties.

10. As per Clause 23 of the Agreement, the Agreement is to remain valid for a period of 5 [five] years from the date of execution and it can be extended for further period on mutual consent, subject to satisfactory performance based on the rules/provisions, guidelines, instructions and directives of the Railway prevailing at that point of time. The Agreement for the 1st part has been made on behalf of the President of India acting through the NF Railway, referred to as the Administration, in the Agreement. From the recitals of the Agreement, it is evident that the Administration proposed to engage the petitioner as a Commission Vendor to vend articles described in the Annexure to the Agreement, belonging to the Administration on the Railway Stations as per directions of the Administration on Commission basis and the petitioner had agreed to work as a Commission Vendor on commission basis as per the directions of the Administration. From Clause 1 of the Agreement, it is evident that the petitioner has agreed to work as Commission Vendor on commission basis in consideration of the commission payable by the Administration to the petitioner as such Commission Vendor. The *inter se* arrangement between the parties to the Agreement is discernible from Clause 13 of the Agreement. As per Clause 13 of the Agreement, the Catering Unit Department of the Administration shall supply to the Commission Vendor the articles to be sold by him and the Commission Vendor shall sell the same to the public travelling by trains at the specified place or places and during the specified hours of day and/or night at the rates fixed by the Administration. The Commission Vendor shall not sell any articles or goods to the public travelling by trains save and except the articles supplied to him by the Catering Unit Department of the Administration. The tariff rates of articles are to be prominently exhibited by the Commission Vendor at the place or places from where sales are accepted. By Clause 10, the Administration has undertaken to supply crockery, cutlery and other equipments to the Commission Vendor so as to enable the Commission Vendor to discharge his duties and functions satisfactorily and efficiently and the Commission Vendor is to be held responsible for any damage, breakage of crockery, cutlery, etc. due to his negligence. As per Clause 11, the Commission Vendor is to make all efforts in a reasonable manner so as to ensure the minimum monthly sale of articles as is prescribed by the Administration from time to time. If the Commission Vendor fails to ensure such monthly sale, it shall be open for the Administration to terminate the arrangement without notice and without payment of any compensation, after consideration of the representation, if any, made by him in that regard. As per Clause 12, the entire sale proceeds for the articles sold is to be remitted without any delay by



the Commission Vendor to the concerned officer in the Catering Unit in which he works. The Commission Vendor has to abide by the extant rules and regulations of the Railway, modified from time to time, for the items which are not indicated in the Agreement. As per Clause 9, the commission that is payable to the Commission Vendor, is to be regulated by rules/regulations/areas as may be issued by the Administration from time to time and the Commission Vendor is not entitled to any other remuneration except the commission for the sale of articles by him. The Commission Vendor is to be paid through regular commission bills prepared monthly for the purpose. The parties are at liberty, as per Clause 8 of the Agreement, to determine the agreement unilaterally without assigning any reason and without any compensation whatsoever by giving one month's notice in writing to the other party of its intention to terminate the Agreement.

11. As the petitioner has contended that the respondent NF Railway has breached the terms and conditions of the contract and on the other hand, the respondent NF Railway authorities have contended that they have acted in conformity with the terms and conditions of the Agreement, it is relevant to refer to the provisions contained in Clause 5 of the Agreement in *toto*. For ready reference, Clause 5 of the Agreement is extracted hereinbelow :-

Clause [5] :- the Administration reserves the right to introduce the rotational system of vending and the Commission Vendor shall raise no objection if their duties, place of work is changed by the Administration and he shall perform his duties in the manner stipulated by the Administration. The Administration shall also have absolute right to assign any other additional duty/assignment as the Administration consider necessary in the event of an emergency.

12. As the Agreement has been entered into by the respondent NF Railway on behalf of the President of India, it is also necessary to find out the nature of such contract. As per Clause [1] of Article 299 of the Constitution of India, all contracts made in exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize. The provisions of Article 299 of the



Constitution of India require that a contract made in the exercise of the executive power of the Union or a State must satisfy three conditions viz. [i] it must be expressed to be made by the President or by the Governor of the State, as the case may be; [ii] it must be executed on behalf of the President or the Governor, as the case may be; and [iii] its execution must by such person and in such manner as the President or the Governor may direct or authorize. It has been interpreted by a three-judges bench of the Hon'ble Supreme Court of India in **Arbitration Petition no. 51 of 2022 [M/s Glock Asia-Pacific Ltd. vs. Union of India]**, decided on 19.05.2023, that Article 299 of the Constitution of India only lays down the formality that is necessary to bind the Government with contractual liability and Article 299 does not lay down the substantial law relating to the contractual liability of the Government of India. In the case in hand, no question has been raised as regards non-compliance of any of such mandatory formalities, as set forth in Article 299[1]. In **State of Haryana and others vs. Lal Chand and others**, reported in [1984] 3 SCC 634, it has been held that Article 299[1] applies to a contract made in exercise of the executive power of the Union or the State, but not to a contract made in exercise of statutory power. Article 299[1] has no application to a case where a particular statutory authority as distinguished from the Union or the States enters into a contract which is statutory in nature. Such a contract, even though it is for securing the interest of the Union or the States, is not a contract which has been entered into by or on behalf of the Union or the State in exercise of its executive power. It has been held to be settled that contracts made in exercise of statutory powers are not covered by Article 299[1]. There are two categories of contracts – statutory contract and non-statutory contract. It is settled that even if a contract is entered into in exercise of an enabling power conferred by a statute then also the contract does not become a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then such a contract to that extent, can be termed as statutory. A contract may contain certain other terms and conditions which are not of statutory character and which have been incorporated as a result of mutual agreement then such terms and conditions in the contract are to be treated of non-statutory character. The Agreement for Commission Vendor, executed on 09.03.2020, between the parties herein admittedly falls in the category of non-statutory contract. It has been observed that a contract would not become statutory simply because it has been awarded by an instrumentality of the State. It is also settled that just because the rights and obligations of the parties to a non-statutory contract come within the purview of the Indian Contract Act, 1872, the same does not make the contract statutory and the contract remains non-statutory in nature.

13. It is settled, as has been observed in *Kurien E. Kalathil* [supra], that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. If a term of non-statutory contract is violated, ordinarily the remedy is not under the writ petition under Article 226 of the Constitution of India. It has been held, in *Kurien E. Kalathil* [supra], to the effect that even if one of the parties to the agreement is a statutory or public body the same does not by itself affect the principles to be applied and the disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law and in the event the contract is not a statutory contract, the contract between the parties falls in the realm of private law. The dispute relating to interpretation of the terms and conditions of such a contract cannot be adjudicated in a petition under Article 226 of the Constitution of India. Such a matter is for adjudication by a civil court or in arbitration, if provided for in the contract. Clause 18 of the Agreement under reference has provided for arbitration in the event of any dispute or difference, arising out of or in connection with the Agreement entered into between the parties herein on 09.03.2020 and the same is made referable to arbitration of a sole arbitrator. The parties have thereby agreed that the decision of the arbitration shall be final and binding on the parties and the provision of the Arbitration and Conciliation Act, 1996, as amended, would be applicable in the arbitration proceedings. Be that as it may.

14. It is not in dispute that the stall located at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station was a property and remains a property of the respondent NF Railway. From the recitals of the Agreement, it has clearly emerged that the petitioner was allowed to run the stall at Platform no. 1 pursuant to the Agreement dated 09.03.2020. By the said Agreement, the petitioner was allowed to run the stall at Platform no. 1 only and only on commission basis without any other rights on the railway property, that is, the stall at Platform no. 1. The *inter se* arrangement between the parties herein which is on commission basis, makes the respondent NF Railway the principal and the petitioner on the other hand, an agent, that is, commission agent who is entrusted with the specific task to run the stall and to earn commission. As per Section 182 of the Indian Contract Act, 1872, an agent is a person employed to do any act for another, or



to represent another in dealings with third person and the person for whom such act is done or who is so represented, is called the principal. Section 201 of the Indian Contract Act, 1872 has provided for termination of agency and as per Section 201 : Termination of Agency, an agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. The provisions contained in Section 202 have prescribed that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The principal in terms of the Section 203, can, save as is otherwise provided in Section 202, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. As per Section 205 where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause. Section 206 has provided that reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

15. The provisions of Section 201, Section 202 and Section 205 of the Indian Contract Act, 1872 came up for consideration by the Hon'ble Supreme Court of India in **Southern Roadways Ltd. Madurai vs. S.M. Krishnan**, reported in [1989] 4 SCC 603 where the appellant as the principal, engaged the respondent as a commission agent for the purpose of carrying out the business of the appellant. The commission agent was provided with a godown to act as a commission agent of the appellant. It has been held in **S.M. Krishnan** [supra] to the effect that the principal has right to carry on business as usual after the removal of his agent. The courts would rarely be willing to imply a term fettering such freedom of the principal unless there is some agreement to the contrary. The agreement therein between the parties found to have not conferred any right on the commission agent - respondent to continue in possession of the suit premises even after termination of agency nor does it found to have preserved any right for him to interfere with the business of the appellant. On the contrary, it had been found that the commission agent – respondent could be removed at any time without notice and after removal, the appellant could



carry on its business as usual. It has been held that revocation of agency by the principal immediately terminates the agent's actual authority to act for the principal unless the agent's authority is coupled with an interest as envisaged under Section 202 of the Indian Contract Act. When agency is revoked, the agent could claim compensation if his case falls under Section 205 or could exercise a lien on the principal's property under Section 221 of the Indian Contract Act. The agent's lien on principal's property recognized under Section 221 could be exercised only when there is no agreement inconsistent with the lien. It has been held that under the terms of the contract of agency, the agent holds the principal's property only on behalf of the principal and he acquires no interest for himself in such property. The agent cannot be held to be holding possession to deny principal's title to property nor he can convert it into any other kind or use as agent's possession is the possession of the principal for all purposes and the agent has no possession of his own as his possession is called a caretaker's possession is the possession of the principal.

16. Reverting back to be facts of the case in hand, as have emerged from the Agreement dated 09.03.2020, the petitioner herein is only a commission agent simpliciter without any kind of interest in the property in question, that is, the stall located at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station. The documents referred herein above and from the case papers, it has clearly emerged that the respondent NF Railway authorities had sought to relocate and had relocated the petitioner who is a commission agent, from the earlier place located at Platform no. 1 to another location at Platform no. 2/3. There is nothing to indicate that the Agreement which has a validity period of 5 [five] years, has been terminated. The source of the power to relocate a commission agent like the petitioner herein is traceable to Clause 5 of the Agreement. By Clause 5 of the Agreement, the NF Railway as the Administration has reserved the right to introduce rotational system of vending and the Administration can change the place of work of a commission vendor and in case of such relocation, the commission agent has to perform his duties in the manner stipulated by the Administration.

17. In the year 2017, the Railway Board, Ministry of Railway, Government of India, with the objective to provide quality food to the passengers of trains and to extend better catering services on trains, had envisaged the Catering Policy 2017 in supersession of earlier catering policies. It is pursuant to the Catering Policy 2017, the stall located Platform no. 1 between Pillar no. 24 & 25



of Guwahati Railway Station has been categorized as a General Minor Unit [GMU] as in the meantime, the Guwahati Railway Station has also been categorized as A-1 Class Railway Station. The stall is undoubtedly a property of the respondent NF Railway. The stance of the respondent NF Railway authorities for initiating the tender process for awarding the General Minor Unit [GMU] for provision of catering services is primarily for greater interest of the prevailing public and also to maximize revenue.

18. From the Tender Document of the NIT dated 09.08.2021, it has emerged that the respondent NF authorities had fixed the reserved price of the General Minor Unit [GMU] @ Rs. 12 lakh per annum and the successful bidder would be allotted license to operate the General Minor Unit [GMU] for a period of 5 [five] years. On being awarded, the successful bidder as a licensee would be required to set up modular catering stall at the location. In the bidding process initiated by the NIT, the respondent no. 7 emerged as the successful bidder. By the LoA dated 12.10.2021, the respondent no. 7 was informed that his offer for awarding license at the stall had been accepted by the competent authority for and on behalf of the President of India. The respondent no. 7 as the licensee was asked to deposit 1st year license fee of Rs. 22,22,000/- along with GST @ 18% and a security deposit of Rs. 3,46,632/-. On acceptance of the LoA and on fulfillment of the conditions stipulated in the LoA by the respondent no. 7, a License Agreement has been executed between the respondent NF Railway on behalf of the President of India on one part, and the respondent no. 7 on the other part, on 05.08.2022. As per the License Agreement, appended to the pleadings of this case, the period of contract is for 5 [five] years w.e.f. 16.11.2021 to 15.11.2026 and the contract value for the said period of 5 [five] years is Rs. 1,15,54,400/-. It has been the stand of the respondent no. 7 that it has been successfully running the stall since the date of award and has already deposited the license fees for the first 3 [three] years @ Rs. 22,22,000/- plus GST @ 18%. When the revenue earned by the respondent NF Railway authorities @ Rs. 22,22,000/- after awarding the license to run the stall to the respondent no. 7 at Platform no. 1 between Pillar no. 24 & 25 of Guwahati Railway Station is compared with the commissions earned from the arrangement entered earlier with the petitioner, it is evident that the respondent NF Railway has been earning more revenue with the present license arrangement than the arrangement of commission agent from the same property. The decision of the respondent NF Railway authorities to initiate the tender process and to award the stall by entering into a license arrangement for a period of 5 [five] years in pursuance of the extant policy, that is,



the Catering Police 2017 and to maximize the revenue, cannot be said to be a decision taken against public interest. Even otherwise the courts exercising the power of judicial review under Article 226 of the Constitution of India does not exercise any appellate power over the decision of an executive authority.

19. As has already been held, it is not a case where the petitioner has a legal right to act as a commission agent of the respondent NF Railway authorities from a particular stall. The respondents have referred to the order dated 13.09.2021, delivered by the Division Bench in a writ appeal, Writ Appeal no. 195/2021 which arose at the instance of the petitioner herein, as no interim relief was extended when the writ petition was moved on 06.09.2021. During the proceedings of the said writ appeal, it was submitted by the learned counsel appearing for the respondent NF Railway that the Railway authorities were at an advanced stage of finalizing the tender process and the petitioner as the writ appellant therein was running the stall/catering service at the location and at that point of time, he would not be disturbed till bids were finalized pursuant to the NIT dated 09.08.2021. Taking note of such submissions advanced on behalf of the respondent NF Railway authorities, the Division Bench was of the view that no further interference was required as in the event of finalization of the bids, the petitioner would be given a notice. Even if it is assumed that the petitioner was not served with the notice dated 11.10.2021, the petitioner as per his own version, admitted that he was served with a notice dated 27.04.2023. The respondent NF Railway authorities have, however, controverted such assertion by submitting that the petitioner had been duly informed at a much prior point of time. The court is not interested to go into such disputed questions of fact in view of the legal issues on which the writ petition can be decided. The legal issue as regards the right of the petitioner to continue his business as a Commission Vendor from the stall located at Platform no. 1 between Pillar no. 24 & 25 of Guwahati Railway Station has been found to be in the negative as the petitioner as commission vendor, has no legal right to assert that he as such commission agent, can demand to run the business from the particular stall.

20. A plea has also been raised in terms of Article 21 of the Constitution of India whereby the right to life has been protected. From the case papers, more particularly, from a Communication bearing no. C/56/Misc.Corr dated 02.07.2021, it has emerged that the petitioner, at that point of time, was running 5 [five] nos. of vending stalls at Guwahati Railway Station and an amount of



Rs. 1,21,74,077.56 had fallen due and remained in arrears from the petitioner towards license fees to the respondent NF Railway Administration. From the said Communication, it has further emerged that in addition to those 5 [five] nos. of catering/vending stalls at the Guwahati Railway Station, the petitioner was running another 4 [four] nos. of Nestle India Ltd. AVM stalls as authorized dealer at the Guwahati Railway Station. The decision in **Senior Divisional Commercial Manager** [supra] was rendered in connection with allotment of State largesse to provide entrepreneurs, particularly small-scale subsistence entrepreneurs. In the said decision, the Hon'ble Supreme Court has taken into consideration the right to livelihood of weaker section of the society and it is in that context, it has been held that the approach of the State should be fair and reasonable so as to protect the right to means of livelihood and freedom of occupation of small business units which completely depend upon earnings from their petty business. The ratio of decision of **Senior Divisional Commercial Manager** [supra] is found to be of no assistance to the case of the petitioner. Consequently, this Court is of the considered view that it is not a case where infringement of the rights to be protected under Article 14 and Article 21 of the constitution of India would be attracted. In any view of the matter, it is a case where private interest of the petitioner is to give way to better administration of the Railway properties which include the interest of maximization of the revenue. The Hon'ble Supreme Court in **Vasantkumar Radhakisan Vora [Dead] by his Legal Heirs vs. Board of Trustees of the Port of Bombay and another**, reported in [1991] 1 SCC 761, taking note of the legal proposition, has observed in para 20 to the effect that "it is well settled legal proposition that the private interest would always yield place to the public interest". The decision in **Unitech Limited** [supra], to which the learned counsel for the petitioner has referred to, is rendered on the points of maintainability of a writ petition under Article 226 of the Constitution of India and objection to the maintainability of the writ petition. The appellant therein instituted the writ petition under Article 226 of the Constitution of India seeking refund of an amount deposited towards principal amount and interest on the principal amount on the premise that it had deposited the principal amount to the respondent Talengana State Industrial Infrastructure Corporation [TSIIC] towards cost of license, earnest money deposit and project development expenses pursuant to a Letter of Award [LoA] whereby it was awarded a project to 'develop, design and construct' an integrated township project/multi-services aerospace park. As disputes arose between the parties and the amount deposited by the appellant therein remained blocked, the appellant instituted the writ petition. In **Unitech Limited** [supra], the Hon'ble Supreme Court has observed that recourse to the jurisdiction under Article 226 of the



constitution of India is not excluded altogether in a contractual matter. It has also been observed that a public law remedy is available for enforcing legal rights subject to well-settled parameters. It has also been held that plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. The presence of an arbitration clause within a contract between a State instrumentality and a private party cannot act as an absolute bar to avail remedy under Article 226. It has been further observed that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition unless the action of the State or its instrumentality is found to be arbitrary or unreasonable so as to violate the constitutional mandate. As a legal proposition, it has been held that while exercising its jurisdiction under Article 226 of the Constitution of India, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. It has been set forth that all cases need to be decided on a case to case basis as to whether recourse to a public law remedy can justifiably be invoked. The fact situation obtaining in the case in hand have already been discussed above and from the observations made and the reasons assigned, it is already found that the petitioner has no legal right to assert that he can continue to act as a commission agent from the stall located at Platform no. 1 between Pillar no. 24 & 25 of the Guwahati Railway Station and to assail the decision of the respondent NF Railway authorities to allot the said stall on license basis pursuant to a tender process in the interest of better administration and for the purpose of earning higher revenue. Thus, the decision in *Unitech Limited* [supra] is of no assistance to the case of the petitioner.

21. In view of the observations made, the findings recorded and the reasons assigned above, this Court is of the unhesitant view that the writ petition is bereft of any merits and is liable to be set aside. It is accordingly dismissed. There shall, however, be no order as to cost.

22. In so far as the alternative argument advanced by the petitioner to the effect that the relocation of the petitioner from Platform no. 1 to Platform no. 2/3, is likely to bring serious affect in so far as the volume of business and consequent earning of commissions is concerned, this Court is of the considered view that liberty is available to the petitioner to represent such causes before the respondent NF Railway authorities. This Court can only observe that in the event of preferring any such representation by the petitioner before the respondent NF Railway authorities, the respondent NF Railway authorities would give a fair and just consideration to such



representation by taking into purview the inter se arrangement existed between the petitioner as a Commission Vendor for a substantial period of time.

JUDGE

Comparing Assistant