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**Northern Railways Out Agency (Noida) vs. divisional Railways Manager Northern Railways & Anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/1221491](http://sooperkanoon.com/1221491)

**Court :** Delhi

**Decided On :** Feb-15-2019

**Appellant :** Northern Railways Out Agency (Noida)

**Respondent :** Divisional Railways Manager Northern Railways & Anr.

**Judgement :**

\$~26 \* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

15. 02.2019 LPA1652018 NORTHERN RAILWAYS OUT AGENCY (NOIDA).....  
Appellant Through: Mr. V.K. Shukla, Ms. Nupur Shukla and Mr. B.R. Pandey,  
Advocates. versus DIVISIONAL RAILWAYS MANAGER NORTHERN RAILWAYS  
& ANR. ....

... RESPONDENTS

Through: Mr. Jagjit Singh, Sr. Standing Counsel for Railways with Mr. Vipin  
Chaudhary and Mr. Preet Singh, Advocates. CORAM: HON'BLE MR. JUSTICE  
VIPIN SANGHI HON'BLE MR. JUSTICE A.K.CHAWLA

JUDGMENT

**VIPIN SANGHI, J.**

(ORAL) 1. The appellant-Northern Railways Out Agency (Noida), assails the judgment of the learned Single Judge dated 29.01.2018 in W.P. (C) No.5746/2016. The said writ petition preferred by the appellant stands dismissed by the learned Single Judge, wherein the appellant had assailed LPA1652018 Page 1 of 9 the order dated 03.06.2016 rejecting the representation of the appellant for renewal/extension of the Railway Parcel Booking Agency, named as Northern Railway Out Agency (Noida). The appellant also sought a direction to the respondents to renew the Parcel Booking Agency of the appellant for a period of five years. The appellant, which is a proprietorship concern, was awarded the 2. Parcel Booking Out Agency by the Railways in the year 1992. The said agency was renewed from time to time till 31.05.2015. Before the expiry of the licence on 31.05.2015, the appellant moved an application for renewal of its agency. However, on this occasion, renewal was not granted and the agency lapsed on 31.05.2015. The appellant then preferred W.P.(C) 6421/2015 on 01.07.2015 against the non-renewal of agency. On 07.07.2015, the respondent appeared and informed the Court that since the Parcel Management System (in short PMS) has not been installed by the appellant to run its agency, the agency was not renewed. The appellant agreed to install the PMS at its own costs, and it was agreed on behalf of the respondent, by its counsel, that on filing of a fresh application for renewal, the appellant would be granted renewal in accordance with the Regulations. It was made clear that in case the PMS is not installed within the stipulated period, it would be open to the respondent to cancel the agency/contract. The appellant then installed the PMS. The same was, however, not made functional due to non-installation of a software/component known as Thin Client developed by CRIS, Chankaya Puri. The appellant procured the said software, and consequently, after installation of the same, the appellant was LPA1652018 Page 2 of 9 allowed to book consignments through PMS for a period of two months. Consequently, the aforesaid writ petition was disposed of by the Court. the appellant was informed that 3. On 26.11.2015, the appellant was show caused by the respondent, highlighting certain irregularities which had allegedly been committed by the appellant. The appellant was called upon to be vigilant in future. On 08.12.2015, it may continue to book consignments till further orders. However, on 29.02.2016, the appellant was issued another show cause notice

with the allegation that the appellant had resorted to irregularity in the matter of booking of the parcels. The long and short of the allegation was that the appellant had booked a parcel at 7:15pm at Noida, and the same was further booked at New Delhi Railway Station at 7:24 pm. The allegation was that the parcel could possibly not have reached at New Delhi Railway Station at 7:24 pm when booked at 7:15 pm on the same date at Noida. The appellant sent its reply to the said show cause notice. The same was followed by the impugned order dated 03.06.2016 issued by the respondent, declining to renew the appellants agency. The respondent terminated the same with immediate effect. Consequently, the appellant preferred the aforesaid writ petition.

4. The appellant placed reliance on the decision of the Supreme Court in Senior Divisional Commercial Manager and Ors. vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Ors., (2016) 3 SCC582 wherein the Supreme Court protected the licenses granted to the vendors on the platforms, as per the respondents policy. The Supreme Court in this decision held that if the Railways are permitted to deny renewal of licenses LPA1652018 Page 3 of 9 under the guise of their policy, it would tantamount to deprivation of their right to freedom of occupation guaranteed under Article 19(1)(g) of the Constitution of India, as well as their right to livelihood. The Supreme Court, while upholding the order of the High Court protecting the rights of such licensees, directed that only those licensees may be eligible for renewal of their licenses who declare on affidavit that they do not have the license of more than one shop or kiosk in their name, or benami license at the Railway Stations, with periodical reasonable increase of license fee. The petitioner sought parity for treatment with such of the licensees/kiosk holders.

5. The defence of the respondent was that the appellant had no vested right to seek renewal of the agency for an indefinite period. The respondent also highlighted the irregularities committed by the appellant, disentitling it to seek equitable relief or claim renewal of the license. The learned Single Judge while dismissing the writ petition, inter alia, observed as follows:-

"14. The reply filed does indicate misdemeanor on the part of the petitioner. Otherwise, there was no reason to seek pardon, if there was none. Further Clause 18(b)(1) contemplates a termination of Contract in the eventuality of unsatisfactory work. Even otherwise, it is the case of the respondents that the petitioner has not been singled out. All the out agencies have been similarly treated inasmuch as the agreements with those out agencies have not been renewed or have been terminated w.e.f July 01, 2015. The reason for not renewing the agreements is, in view of the irregularities highlighted by the vigilance department, including recommendation to appoint agencies through tenders. Such a decision cannot be faulted. Moreover, it is noted that the petitioner has been operating the out agency on the strength of renewal of the agreement, which, according to this court appears to be unusual, for the last 24 years, LPA1652018 Page 4 of 9 more so, when one of the parties is a public body, which is expected to be fair/transparent in its dealings. Further para 1706 of the India Railway Code for traffic (Commercial) stipulates, a Contract should not be awarded for an indefinite period but should be limited to 3 to 5 years with a clause for termination in the event of unsatisfactory service subject to renewal clause. The clause limits the contractual period for 3 to 5 years. Such a clause, cannot be read to mean that, the renewal should be for an indefinite period denying the benefit of out Agency to other eligible persons/concerns creating a monopoly in favour of few like the petitioner. The submission of Ms. Anand that the process of tendering has been evolved to make contracts more fair and transparent is appealing. No fault can be found with such a decision. Surely, it is not a case which violates Article 14 of the Constitution of India.... (emphasis supplied) 6. Learned Single Judge has also discussed the decision of the Supreme Court in Senior Divisional Commercial Manager & Ors. (supra) and observed that the appellant had not relied upon any similar policy, which would attract applicability of the said decision. Instead the case was covered by the decision in M/s. Goel & Goel and Ors. Vs. Union of India, W.P(C) 5751/2015 decided on 07.09.2016 by the Division Bench of this Court, and also the decision in M/s. Deepak and Co. vs. Union of India and Ors., W.P (C) 3188/2016 decided on 20.09.2016. The submission of learned counsel for the appellant Mr. Shukla is that 7. there was no irregularity or fraud committed by the appellant and the termination and non-renewal of the licence was most unjustified.

He submits that the appellant had set up the entire infrastructure to run the agency from the year 1992 onwards, and sudden termination or non- LPA1652018 Page 5 of 9 renewal, without any justification, was not called for. He further submits that the ratio of the decision in Senior Divisional Commercial Manager and Ors (supra) is squarely attracted in the facts of the present case. He submits that the appellant satisfies the condition imposed by the Supreme Court, namely, that the appellant has no other agency of similar kind. The further submission of the learned counsel for the appellant is that even if there was some irregularity or breach of the terms of the licence under Clause 13.1 of the Agreement, the respondent was entitled to impose penalty of Rs.1,000/- only, but not to terminate the licence or to refuse renewal thereof.

8. On the other hand, Mr. Singh, learned counsel for the respondents supports the impugned judgment. He submits that the order dated 03.06.2016 has clearly set out the instances of irregularity in the matter of booking parcels indulged in by the appellant. In the first instance, a lenient view was taken and the appellant was let off with a warning. The second instance was a more serious one, which is taken note of hereinabove. Mr.Singh submits that the respondent has not re-awarded the agency, which was earlier being run by the appellant, to any other person, ever since the termination of his agency in the year 2015, and that the Railways are themselves carrying out the booking of parcels through its internal system. On a query, Mr. Singh states that no booking is taking place at Noida since the termination of the appellants agency.

9. We have heard learned counsels and perused the impugned order and the record. First and foremost, there is no vested right in any contractor to demand, as a matter of right, renewal of a contract or agency for an LPA1652018 Page 6 of 9 indefinite period. The appellants contract was awarded in the year 1992. Thus, till the year 2015 he had enjoyed the benefits of the agency, which was renewed from time to time, for a period of 23 years. It is on record that as per the Railways Manual Code, the contracts are to be awarded for periods ranging between 3 to 5 years. The issue whether there was a serious irregularity on the part of the appellant, is disputed by the appellant. The respondents communication dated 03.06.2016 sets out two serious instances of fraud which are alleged against the

appellant. The relevant extract from the letter dated 03.06.2016 reads as follows: It is observed that two serious incidents of fraud by NODA 1. were again deducted: i) ii) For first fraud, a show-cause notice was issued vide letter No.SCD-134-93-Pt-II on 26 Nov 2015 regarding fraud committed by your Out Agency in maintenance of priority. The reply of which is still not submitted by you. It clearly suggests that you have no explanation regarding the charges against you as mentioned in show cause notice and it amounts to your admission regarding the perpetration of fraud. For second fraud, a Show-Cause notice dated 29/02/2016 was issued to your out agency. Reminder for the same was issued on 05/04/2016. In response to this show cause notice, vide your reply dated 11/04/2016 you have admitted the charges of fraud against you and asked for pardon. This clearly shows that the fraud was committed by your Out Agency against the Railway. As per the clause No.18 (b) (1), which clearly states that In the event of unsatisfactory service or any breach or failure at the any time on the part of contractor the administration or any of its official on account of such termination of the contract. the contractor, shall have no claim whatsoever against LPA1652018 Page 7 of 9 10. Firstly, the aforesaid aspects could not have been agitated in writ proceedings since it involves determination of disputed questions of fact. The learned Single Judge was, therefore, justified in proceeding on the basis of the version of the respondents, while evaluating the merits of the case. Secondly, the reliance placed on the decision in Senior Divisional Commercial Manager and Ors.(supra), in our view is not attracted in the facts of the present case.

11. The said decision was rendered in the context of the poorest of the poor licensees, who are eking out their living on daily basis by running kiosks and stalls at railway platforms. Since the Railways had sought to terminate their licences on the pretext of introducing their Catering Policy 2010, their rights were protected by the High Court, and the Supreme Court upheld the decision of the High Court with the limitation that the licensees should file their respective affidavits that they do not hold licence of more than one shop or kiosk in their name, or benami, at the Railway Stations. The appellant does not fall in the same class. That apart, it appears that the respondents have taken a decision not to appoint any other agent for carrying out the agency work that the appellant was earlier carrying out at Noida. This is evident from the fact that despite the termination of the respondents

licence/contract in the year 2015, the said contract/licence has not been awarded to any other person, even though, there was no impediment in doing so. In our view, the respondents cannot be compelled to award the agency to a private person or body, if a policy decision has been taken by the respondent not to have a parcel booking office/facility at Noida. It is entirely the commercial decision of the respondents, with which LPA1652018 Page 8 of 9 the Court cannot interfere. For the aforesaid reason as well, the decision in Senior Divisional Commercial Manager and Ors. (supra) is not attracted in the present case. All that can be said is, that in case the respondents again undertake the process of calling for tenders for appointment of another agent for running the Parcel Booking Out Agency at Noida, the appellant should also be permitted to participate, since it is not the case of the respondents that the appellant has been black listed. We, therefore, do not find any reason to interfere with the impugned judgment.

12. The appeal is disposed of in the aforesaid terms. VIPIN SANGHI, J.

**A. K. CHAWLA, J.**

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