



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06<sup>th</sup> MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 638/2023 & CM APPLs. 54127/2023, 63120/2023**

ZENITH LEISURE HOLIDAYS LTD.

..... Petitioner

Through: Mr. Saurabh Kirpal, Senior Advocate  
with Mr. Kshitiz Karjee, Mr. Mrinal  
Agarwal and Ms. Adya, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Abhishek Saket, SPCG with Mr.  
Dipu, GP and Ms. Sanna Harta,  
Advocate for UoI.  
Mr. Saurav Agrawal, Mr. Ajay  
Sharma, Mr. Rajat Chhabra and Ms.  
Saloni Paliwal, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The challenge in the present Writ Petition is to an Order dated 16.01.2023, passed by the Respondent No.2 herein, keeping the empanelment of the Petitioner in abeyance for providing catering and back end services to the Indian Railways for a period of six months w.e.f. 11.01.2023. By the said Order penalty of Rs.2 lakhs has also been imposed on the Petitioner.

2. At this juncture, it is pertinent to mention that this Court on 19.01.2023 had kept the impugned Order in abeyance subject to the



Petitioner depositing Rs.2 Lakhs with the Registrar General of this Court. The said amount was deposited by the Petitioner. It is also pertinent to mention that the period of six months got over and the Petitioner made a submission before the Court that the Writ Petition has become infructuous and, therefore, the Petitioner sought leave to withdraw the Writ Petition with a direction to the Registrar General of this Court to release the amount of Rs.2 lakhs. Accordingly, *vide* Order dated 25.07.2023, the Writ Petition was disposed of as withdrawn with a direction to the Registrar General to release the sum of Rs.2 lakhs to the Petitioner.

3. CM APPL. 54127/2023 was filed by the Petitioner for recall of the Order dated 25.07.2023 on the ground that the Petitioner has not actually undergone the period of six months in view of the interim directions passed by this Court on 19.01.2023. This Court *vide* Order dated 03.01.2024 recalled the Order dated 25.07.2023 and restored the Writ Petition to its original number and the matter was heard at length.

4. The facts, leading to the present Writ Petition are as under:

- a. It is stated that the Petitioner is engaged in providing back-end services to the Railways such as housekeeping and catering services and is an empanelled service provider with the Indian Railways.
- b. A notification dated 02.06.2022 bearing No. 2017/TG-1/645/02 Pt-I was issued by the Director of the Railway Board by which in order to prevent fire accidents, cooking in pantry cars of the trains was prohibited. A subsequent notification was brought out on 23.08.2023 wherein it was clarified that there is no restriction on flameless cooking in the pantry cars in trains.



- c. It is stated that Respondent No.2 floated a notice inviting tenders on 17.11.2022 calling for applications for providing back-end services in South India divine “Swadesh Darshan” Train from 20.11.2022 to 28.11.2022. It is stated that the said train was to contain 18 coaches and the total number of passengers in the train was 940 (470 seats in the budget class, 470 seats in the standard class and 62 seats in 3 AC). It is stated that the Petitioner participated in the said tender and was found to be the highest bidder and was subsequently awarded the tender as a service provider for providing back-end services in the South India divine “Swadesh Darshan” Train from 20.11.2022 to 28.11.2022.
- d. The tour programme of the South India divine “Swadesh Darshan” Train was issued on 18.11.2022 and the train was handed-over to the Petitioner on 19.11.2022. Material on record indicates that though there was a pantry car in the South India divine “Swadesh Darshan” Train but it has provisions for only LPG Cylinder based cooking and had no provision for flameless cooking. Material on record also indicates that the Petitioner had written to the Respondent No.2 that the Pantry car which has been provided to the Petitioner is a Non-LHV(ICF) and in such a condition it is not possible for the Petitioner to provide unlimited hot food to the passengers. The Petitioner also made a request to the Respondents to provide LHV Rake so that quality service can be provided to the passengers during journey. The train departed on 20.11.2023



with a delay of 15 hours. It is stated that on 24.11.2022, a surprise inspection was conducted by the Railway Protection Force at the Madurai Railway Station and 5 LPG cylinders were seized from the train and the officials of the Petitioner were told not to LPG cylinders in the train. When the Train arrived at Rameshwaram Railway Station, 5 gas stoves were again seized from the pantry car of the train. The train continued on its onward journey without LPG cylinders.

- e. A show cause notice dated 05.12.2022 was issued by the Respondent No.2 to the Petitioner asking the Petitioner to show cause as to why proceedings should not be initiated against the Petitioner for violation of the instructions of the Railway not to use LPG cylinders in the pantry car. It was further stated in the said Show Cause Notice that by using LPG cylinders, the Petitioner has put the passengers in risk.
- f. Reply to the said Show Cause Notice was given by the Petitioner on 08.12.2022 stating that the train had been handed-over to the Petitioner only at the last moment and the Petitioner had no other option but to use the LPG cylinders in order to provide hot food to the passengers as per the terms of the tender.
- g. Not satisfied with the reply given by the Petitioner, the Respondents passed the impugned Order keeping the Petitioner's empanelment in abeyance for a period of six months along with a penalty of Rs.2 lakhs.
- h. It is this Order which is under challenge in the present Writ



Petition.

5. Learned Senior Counsel appearing for the Petitioner contends that the Order of debarment is completely unreasoned and it has failed to consider the reply given by the Petitioner to the Show Cause Notice issued by the Respondents. He submits that the Respondent No.2 has mechanically rejected the reply of the Petitioner terming it as unsatisfactory. He states that the train was delayed by 15 hours and there was no provision inside the train to provide pre-cooked hot food to over 600 passengers on board the train. He states that since the train was running with substantial delay, it was impossible for the Petitioner to make alternative arrangements to provide hot cooked food to the passengers on board the train. Learned Senior Counsel appearing for the Petitioner also contends that the Order of debarment is biased and the Petitioner has been targeted inasmuch as certain other contractors who were guilty of the same violation have been let off without any sort of debarment. He, therefore, states that the action of the Respondents in passing the impugned Order is violative of Article 14 of the Constitution of India. Learned Senior Counsel appearing for the Petitioner also contend that the Petitioner was handed over the subject train having the provision for cooking through LPG cylinders only instead of the train fitted with electric induction facility and since, the tender conditions required the Petitioner to serve unlimited hot cooked food to the passengers throughout the journey, the Petitioner had no choice but to cook food in the pantry car of the train using the LPG connection. Further, the LPG fitness certificate issued by the private agency was countersigned by the concerned Railway Supervisor. He further contends that the Respondents failed to provide pantry rakes fitted with induction facility for flameless cooking and due to



such failure, the Petitioner was forced to resort to LPG cooking facility for serving unlimited hot cooked meals to the passengers on board. The Hon'ble Court vide order dated 17.04.2023 asked the officials of the Petitioner to have a meeting with the officials of the IRCTC to clear the confusion as to how the food is to be cooked and served to the passengers in the trains. Subsequently, the Petitioner met the officials of the IRCTC on 02.05.2023 and a letter dated 02.05.2023 was issued by the IRCTC capturing the outcome of the said meeting whereby for the first time it was made absolutely clear by the IRCTC that flame-based cooking is prohibited in the pantry car even if old pantry cars fitted with LPG provision were provided for conducting the tours.

6. *Per contra*, learned Counsel appearing for the Railways contends that the act of the Petitioner in using LPG cylinders to cook food in the subject train is a clear violation of the circular issued by the Railways which prohibited flame based cooking in the pantry cars of the trains. He states that the purpose of the circular was to avoid accidents that can occur in the train due to blasts in the cylinders, stoves, etc. He contends that the circular issued by the Railway Board is binding on every contractor. He also contends that the tour programme dated 18.11.2022 which was given to the Petitioner had also categorically stated that the service provider should ensure that no inflammable material like stoves, petrol, kerosene, gas cylinder etc are carried inside the coach in the subject train. He, therefore, states that the Petitioner is clearly guilty of violating the circular and the instructions given in the tour programme. He further states that the Petitioner is not a novice in the field and is an empanelled service provider since 2019 and it is aware that when trains are provided without facilities of



flameless cooking, it is the duty of the contractor to make arrangements for providing hot cooked food to the passengers. Learned Counsel for the Respondent also states that no permission, at any point of time, has been given to the Petitioner to use LPG cylinders. He also states that the punishment given to the Petitioner is not shockingly disproportionate and is commensurate with the infraction committed by the Petitioner in jeopardizing the lives of the passengers on board the subject train.

7. Heard the learned Counsels for the parties and perused the material on record.

8. Material on record indicates that circulars issued by the Railways are clear in their terms and prohibit flame based cooking in pantry cars. As correctly pointed out by the learned Counsel for the Respondent, the Petitioner is not a novice. He has been providing services to the Railways since 2019. This Court can take judicial notice of the fact that the present incident was not the first incident when the Petitioner was provided with a Rake without flameless cooking facilities and the Petitioner would have made alternative arrangements in such cases in the past as well. The tour programme issued by the Railways clearly stipulates that no inflammable material like stoves, petrol, kerosene, gas cylinder etc. were to be carried inside the subject train. The Petitioner is a seasoned contractor and it ought to have anticipated the delay that occurs in Railways and ought to have made alternative arrangements for providing hot cooked food to the passengers onboard the subject train. The fact that the subject train was running late cannot be an excuse by a seasoned contractor like the Petitioner as it is not uncommon in India that trains get late due to several factors and the contractors who provide catering service to passengers are prepared for



any such eventualities and make proper arrangements beforehand for supply of hot cooked food to the passengers. It is pertinent to note that the journey was from 20.11.2022 to 28.11.2022. When the inspection was carried on in Madurai on 24.11.2022, five gas cylinders were seized by the RPF. From 24.11.2022 to 28.11.2022, the Petitioner provided food to the passengers without using LPG cylinders, i.e. the Petitioner made an arrangement after LPG cylinders were taken off the train. The excuse given by the Petitioner that the Petitioner was handed-over the train only at the last moment and without any provision for flameless cooking and, therefore, the Petitioner was not able to make any alternate arrangements, cannot be accepted. The Petitioner carried LPG cylinders only as a cost cutting measure.

9. In response to the categorical statement of the learned Counsel for the Petitioner that other service providers using LPG cylinders have been let off leniently, the Respondents have filed an action taken report dated 19.02.2024. The said Report indicates that the empanelment of the Petitioner and one more enterprise, called TMI Enterprise, have been kept in abeyance since their license was for a single journey and the licenses of three services providers, namely, M/s Rathour Services, M/s Satyam Caterers Pvt. Ltd. and M/s Araha Hospitality Private Limited (Formerly know as Jayanta Kumar Ghosh), have been terminated. In view of the above, this Court is not inclined to accept the contention of the Petitioner that the Petitioner has been singled out.

10. This Court has also taken into consideration as to whether the punishment imposed on the Petitioner is disproportionate to the infraction or not. It is well settled that a breach of a serious nature cannot go unpunished, ignored or rendered inconsequential and that the gravity of commission and





omission on the part of the service providers which has led to the incident is of a relevant consideration while computing the penalty.

11. The Doctrine of Proportionality has been explained succinctly by the Apex Court in Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669, wherein the Apex Court has held as under:

***"Doctrine of proportionality***

***17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".***

***18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.***

***19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or***



*interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]*

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

*“The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.”*

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle



*axe is precluded”.*

*(emphasis supplied)*

12. It is well settled that Writ Courts while exercising jurisdiction under Article 226 of the Constitution of India do not sit as an Appellate Authority and interfere with the punishments unless the punishment is so perverse that it shocks the conscience of the Court. For a High Court to interfere with the punishment, the punishment must be so disproportionate to the misconduct that the High Court gets compelled to interfere. In the absence of any disproportionality, the High Courts, under Article 226 of the Constitution of India, do not sit on the quantum of punishment and tinker with it just because another view is possible.

13. In view of the above, this Court is not inclined to interfere with the decision taken by the Respondents in keeping the empanelment of the Petitioner in abeyance for providing catering and back end services to the Indian Railways for a period of six months.

14. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**MAY 06, 2024**

*Rahul*