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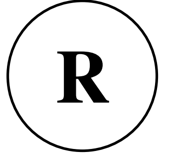
Reserved on : 15.02.2024
Pronounced on :19.02.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.4162 OF 2024 (GM – RES)

C/W

WRIT PETITION No.4296 OF 2024 (GM – TEN)

IN WRIT PETITION No.4162 OF 2024

BETWEEN:

SOUTH WESTERN RAILWAY
CATERING CONTRACTORS
ASSOCIATION (REGD.)
REGISTERED UNDER KARNATAKA
SOCIETIES REGISTRATION ACT, 1960
NO.14 Y, 1ST FLOOR, 16TH MAIN,
3RD BLOCK, RAJAJINAGAR,
BENGALURU – 560 010,
REPRESENTED BY ITS
GENERAL SECRETARY,
V.S. MANOGAR,
S/O. LATE D.S. VITAL.

... PETITIONER

(BY SRI JAYAKUMAR S.PATIL, SR.ADVOCATE A/W

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SRI MAHAMMAD TAHIR A., ADVOCATE)

AND:

1 . THE UNION OF INDIA
THE MINISTRY OF RAILWAYS,
RAISINA ROAD,
NEW DELHI – 110 001,
REPRESENTED BY
ITS SECRETARY.

2 . THE CHAIRMAN
THE RAILWAY BOARD,
THE MINISTRY OF RAILWAYS,
RAIL BHAWAN, RAISINA ROAD,
NEW DELHI – 110 001.

3 . THE DIRECTOR (TOURISM AND CATERING)
THE DEPARTMENT OF TOURISM AND CATERING,
THE MINISTRY OF RAILWAYS,
THE RAILWAY BOARD,
RAIL BHAWAN, RAISINA ROAD,
NEW DELHI – 110 001.

4 . THE GENERAL MANAGERS
ALL INDIAN ZONAL RAILWAYS AND
ALL PUBLIC SECTORS UNDERTAKING
UNDER THE INDIAN RAILWAYS,
RAIL BHAWAN, RAISINA ROAD,
NEW DELHI – 110 001.

... RESPONDENTS

(BY SRI TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA FOR
SRI S.RAJASHEKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE

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IMPUGNED COMMERCIAL CIRCULAR 24 OF 2023 DATED 14.11.23 VIDE NO. 2023/CATERING/600/06 AS ADDENDUM TO PARA 1 AND 3 OF CATERING POLICY 2017 ISSUED BY THE R3 THE DIRECTOR, TOURISM AND CATERING, RAILWAY BOARD, THE MINISTRY OF RAILWAYS VIDE ANNEXURE-E BY TREATING IT AS UNJUST, UNFAIR AND ULTRA VIRES AND ETC.,

IN WRIT PETITION No.4296 OF 2024

BETWEEN:

SOUTH WESTERN RAILWAY
CATERING CONTRACTORS
ASSOCIATION (REGD.)
NO 14 Y, 1ST FLOOR, 16TH MAIN,
3RD BLOCK, RAJAJINAGAR,
BENGALURU – 560 010.
REPRESENTED BY ITS
GENERAL SECRETARY
V.S.MANOGAR S/O LATE D.S. VITAL.

... PETITIONER

(BY SRI JAYAKUMAR S.PATIL, SR.ADVOCATE A/W
SRI MAHAMMAD TAHIR A., ADVOCATE)

AND:

1 . THE UNION OF INDIA
THE MINISTRY OF RAILWAYS,
RAISINA ROAD,
NEW DELHI 110001,
REPRESENTED BY ITS SECRETARY.

2 . THE CHAIRMAN,
THE RAILWAY BOARD
THE MINISTRY OF RAILWAYS,
RAIL BHAWAN, RAISINA ROAD,

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NEW DELHI – 110 001.

3 . THE DIRECTOR (TOURISM AND CATERING)
THE DEPARTMENT OF TOURISM AND CATERING,
THE MINISTRY OF RAILWAYS,
THE RAILWAY BOARD,
RAIL BHAWAN, RAISINA ROAD,
NEW DELHI – 110 001.

4 . INDIAN RAILWAY CATERING TOURISM AND
CORPORATION LTD., (IRCTC)
SITUATED AT 10TH AND 11TH FLOOR,
STATEMENT HOUSE BUILDING,
BARAKHAMBA ROAD,
CONNAUGHT PLACE,
NEW DELHI – 110 001
REPRESENTED BY ITS
GROUP GENERAL MANAGER / PROCUREMENT.

... RESPONDENTS

(BY SRI TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA FOR
SMT.SADHANA DESAI, CGC FOR R-1 TO R-3;
SRI ABHINAY Y.T., ADVOCATE FOR C/R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) CALL FOR RELEVANT RECORDS PENDING ON THE FILE OF RESPONDENTS - RAILWAYS; b) QUASH THE IMPUGNED E-OPEN TENDER SUBMISSION DATED 15/02/2024 FOR PROVISION OF ONBOARD CATERING SERVICES IN TRAINS E-OPEN TENDER NO. 2024/IRCTC/P AND T/CLUSTER/FEB/EZ/ECR/CLT/A-1 (STANDARD

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BID DOCUMENT FOR CLUSTER OF TRAINS) ISSUED BY IRCTC, DELHI / 4TH RESPONDENT VIDE ANNEXURE-H BY TREATING IT AS UNJUST, UNFIAR AND ULTRA VIRES AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in Writ Petition No.4162 of 2024 calls in question a Commercial Circular notified on 14-11-2023/Catering Policy by which addendum is issued to paragraphs 1 and 3 of the Catering Policy of the year 2017 issued by the 3rd respondent/Director (Tourism and Catering), Railway Board of the Ministry of Railways and has sought for certain consequential reliefs by issuance of a direction in the nature of mandamus.

The companion petition, Writ Petition No.4296 of 2024 is an offshoot of Writ Petition No.4162 of 2024, as subsequent tender

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notified pursuant to the policy in Circular No.24 of 2023 is called in question in the said writ petition. Therefore, the facts obtaining in Writ Petition No.4162 of 2024 are narrated.

2. *Sans* details, facts in brief are as follows:-

The petitioner is a registered Railway Catering Contractors Association, registration of which is said to have been with effect from 30-11-2006. The petitioner is a conglomeration of catering contractors in the Railways. On 25-02-2016 the Union of India through the Railway Minister presented its Railway Budget. In the said Railway Budget certain assurances were projected with regard to catering and stalls at stations. This results in notification of a policy on 27-02-2017. The budget speech was incorporated in the preamble to the notification. The policy was called Catering Policy, 2017 which was notified by Commercial Circular No.20 of 2017. The policy was put in place and catering services were undertaken by several contractors or even the Railways in terms of the policy.

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3. On 12-10-2023 expression of interest was notified for the interested contractors seeking empanelment for provision of on-board catering services in various types of trains of Indian Railways. The members of the petitioner/Association expressed their interest and are said to have been empanelled as eligible persons who could be considered for award of contracts as and when the tender would be notified. The eligibility of members of the Association of the petitioner is valid up to 31-12-2024. Therefore, the empanelment of several catering contractors is valid till the end of current year. When things stood thus, a commercial circular in Commercial Circular No.24 of 2023 is notified by the respondents/ Railways. This was an addendum to paragraphs 1 and 3 of the Catering Policy of 2017. Certain changes were brought into paragraphs 1 and 3 of the subsisting catering policy of 2017. The challenge is to the said addendum brought into the aforesaid paragraphs, of the 2017 policy. The matters are heard by the consent of the parties.

4. Heard Sri Jayakumar S.Patil, learned senior counsel appearing for the petitioner and Sri Tushar Mehta, learned Solicitor General of India appearing for the respondents and Sri Abhinay

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Y.T., learned counsel for the caveator/Respondent No.4 in W.P.No.4296 of 2024.

SUBMISSIONS:

PETITIONER'S:

5. The learned senior counsel Sri Jayakumar S.Patil would contend that earlier Catering Policy of 2017 was pursuant to a decision of the cabinet, as the Union of India through the Minister for Railways while presenting the Budget had projected a particular policy which was brought into effect. It was a cabinet decision. Therefore, any addendum to the said policy should necessarily go before the cabinet. In the case at hand, the impugned addendum is done by the Minister for Railways and the Railway Board. Therefore, it is tinkering or addition done without competence. In effect, the submission is that the addendum should be quashed on the score that it is a product of incompetence. He would contend that paragraphs 1 and 3 of the Catering Policy clearly indicated as to how the kitchens should operate and what kitchens were supposed to be operated by the Indian Railway Catering and

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Tourism Corporation Limited ('IRCTC' for short) of the Railways. It was clearly indicated that IRCTC would begin to manage catering services in a phased manner and would unbundle catering services by creating a distinction between food preparation and food distribution by adding 10 more IRCTC operated, mechanized, sophisticated base kitchens.

5.1. He would contend that the addendum runs completely contrary to what the policy was earlier. It is his submission that no contractor outside IRCTC was to get involved and now it is thrown open. It is for this reason, the submission is, that it is blatantly contrary to the earlier policy. Taking this Court through the Transaction of Business Rules he would seek to buttress his submission that it is the cabinet and the cabinet alone that should tinker with the policy and not the Ministry of Railways.

SOLICITOR GENERAL OF INDIA:

6. Per-contra, the learned Solicitor General of India Sri.Tushar Mehta representing the Union of India would vehemently refute the submissions to contend that the speech of the Railway

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Minister undoubtedly projected certain traits to be the contents of the policy. He would submit that up to 2017 there were two distinct budgets presented in the Parliament – one general budget by the Finance Minister and the other Railway budget by the Railway Minister. This distinction was taken away subsequently. Therefore, it is a common budget now presented through the general budget. It is, therefore, the speech is different. This would not mean that the policy has to remain stagnant throughout. Insofar as Railways is concerned, the Ministry of Railways is where initiation of policies would end. Commercial Circular No.20 of 2017 also made the same journey and addendum through Commercial Circular No.24 of 2023 has travelled the same way up to the Railway Minister. Even under the Transaction of Business Rules, if the cabinet has to put its seal, it can always be ratified by the cabinet. On the merit of the matter, he would explain the need as to why this addendum came about.

6.1. Explaining succinctly, the learned Solicitor General would contend that IRCTC had entered into contracts with other contractors. Those contractors had only certain kitchens. Hygiene became a big problem in the catering of Railways, as the

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contractors to whom IRCTC had entrusted food distribution would blame the person who had prepared the food. Therefore, to bring in accountability, there is certain tweaking made to the policy as to who should have the base kitchen and from where the food should come. He would submit that the present food packets have a QR code on it and the moment the QR code is scanned the kitchen from where the food comes can be seen in real time. The hygiene maintained in the kitchen can also be viewed. For maintenance of hygiene, responsibility and accountability for the food served in the trains, the present addendum has come about. He would submit, that he has in the statement of objections averred that none of the present contractors would suffer any prejudice due to addendum. He would therefore, contend that Commercial Circular No.24 of 2023 will not take away any of the rights of the petitioner or the Members of the Association. He would seek dismissal of the petition, on the score that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not enter into this arena of catering policy.

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7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. In the light of the submissions and contra submissions, I deem it appropriate to narrate the facts in little more detail. On 25-02-2016, the Indian Railway budget speech, was made by the then Railway Minister. Certain contents of the speech are considered to be germane, they are therefore noticed. Clause-69 of the speech dealt with '**Catering and Stalls at Stations**'. It reads as follows:

"Catering and stalls at stations:

69. Catering has been an important parameter for customer satisfaction. In pursuit of our objective to provide quality food to our customers, the following measures related to catering services are proposed.

i. IRCTC would begin to manage catering services in a phased manner. IRCTC would unbundle catering services by creating a distinction primarily between food preparation and food distribution.

ii. Extending e-catering services from existing 45 large stations to all 408 'A-1' and 'A' class stations.

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> iii. *Explore the possibility of making mandatory catering services optional in trains. Local cuisine of choice will be made available to passengers.*
>
> iv. *Adding 10 more IRCTC operated, mechanized, sophisticated base kitchens to ensure fresh and hygienic supply of food on trains.*
>
> v. *Mandating third party audit in order to ensure desired level of quality in catering services.*
>
> vi. *Introducing a new policy of multi-purpose as against existing single purpose stalls at stations where each stall can provide multiple services required by passengers including milk products and OTC medicines.*
>
> vii. *Enforcing reservation in catering units to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Women, Divyang, etc. We will also introduce a sub-quota of 33% for women in each of the reserved categories. Further, to build local ownership and empowerment, a process of giving weightage to district domicile holders for commercial licenses at stations would be initiated.*
>
> viii. *Exploring the feasibility of providing an option to our customers for drinking tea in kulhad."*
>
> *(Emphasis added)*

Certain social initiatives also form the budget speech.

9. The budget speech was then translated into a decision by the Railway Board and after its approval by the Railway Minister, a

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commercial circular in **Commercial Circular No.20 of 2017** is notified. The approval for such notification reads as follows:

"No.2016/TG-III/600/1/Pt. New Delhi, dated 27-02-2017

The General Managers,
All Indian Railways.

The Chairman & Managing Director,
Indian Railway Catering & Tourism Corporation Ltd.,
New Delhi.

*(**Commercial Circular No.20/2017)***

Sub: Catering Policy 2017.

Hon'ble MR during Rail Budget 2016-17 has announced as under:

> ***"69(i) IRCTC would begin to manage catering services in a phased manner. IRCTC would unbundle catering services by creating a distinction primarily between food preparation and food distribution.***
>
> ***69(iv) Adding 10 more IRCTC operated, mechanized, sophisticated base kitchens to ensure fresh and hygienic supply of food on trains."***

In the light of the above, a new catering policy, in supersession of Catering Policy 2010 and related guidelines, has been formulated and is enclosed for implementation. The revised policy guidelines will be implemented with immediate effect.

This has the concurrence of Finance & Legal Directorates of Ministry of Railways.

Kindly acknowledge receipt of this letter.

... ...

Sd/-
(Shelly Srivastava)
Director/Tourism & Catering

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Railway Board."

(Emphasis added)

In Commercial Circular No.20 of 2017 the subject was Catering Policy 2017. It would read that the Railway Minster during the Rail Budget 2016-17 had announced that IRCTC would unbundle catering services by creating a distinction primarily between food preparation and food distribution and this was in supersession of the Catering Policy of 2010 and related guidelines. It was further observed that the subject revised policy would be implemented with immediate effect. It has the concurrence of the Ministry of Railways. Pursuant to this, the policy of 2017 comes about. The objectives are as follows:

"***OBJECTIVES***

With the objective to provide quality food to our customers unbundling of catering services on trains has been envisaged in Catering Policy 2017. This policy supersedes Catering Policy 2010 and related instructions, unless specifically referred to in this policy document.

IRCTC has been mandated to carry out the unbundling by creating a distinction primarily between food preparation and food distribution. In order to upgrade quality of food preparation IRCTC shall be setting up new kitchens and upgrade existing ones.

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> *Modifications have been necessitated in the management of catering service on mobile and static units to implement social objectives of the Government besides encouraging fair competition in allotment of catering units over stations.*
>
> *IRCTC shall be responsible for catering services through mobile catering units, Base Kitchens, Cell Kitchens, Refreshment Rooms at A1 and A category of stations, Food Plazas, Food Courts, Train Side Vending, Jan Ahaars. All other catering units like Refreshment Rooms at B and below category of stations, AVMs, Milk Stalls, trolleys shall be managed by the Zonal Railways."*

(Emphasis added)

Certain other clauses of the policy are germane to be noticed and they read as follows:

> *"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.*
>
> *... ... ...*
>
> *3.8* ***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 equipments shall be transferred to IRCTC. All kitchen units i.e.,***

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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 equipments shall be transferred to IRCTC

... ...

3.8.4 IRCTC shall not out rightly outsource or issue licenses for providing 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.

... ...

3.8.8 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 time frame shall be followed for setting up of the kitchen.

... .

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."

(Emphasis added)

These are the clauses of the policy, that are projected by the learned senior counsel for the petitioner, to be germane. The objectives of the policy, as was found in the preamble to the policy,

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were distinction between food preparation and food distribution. Clause 3.7.1 deals with preparation of food to ensure quality, hygiene, cleanliness and meals for mobile units. Clause 3.8 deals with setting up and operation of kitchen units and four base kitchen units were to be under the departmental operation. Clause 3.8.4 depicted that IRCTC should not out rightly outsource any license to private licensees and it was mandatory for the IRCTC to establish kitchen in a time bound manner. It further depicted that there would be no lease/licenses to the third party for the purpose of setting up of base kitchens and kitchen units.

10. During the subsistence of the policy, the Railway notified Expression of Interest-2024 calling for expression of interest from the bidders who want to participate in any ensuing tender. It would be allotted to those who are empanelled pursuant to the assessment of documents of their respective expression of interest. The members of the Association or the Association itself claim that they have been empanelled and the empanelment is in force up to 31-12-2024 and have produced documents of such empanelment dated 20-10-2023.

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11. After the said empanelment comes the addendum to the Catering Policy insofar as paragraphs 1 and 3 of Commercial Circular No.20 of 2017, through its Commercial Circular No.24 of 2023. The addendum insofar as it is relevant reads as follows:

*"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.

*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.

… … …

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

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3.3.1 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.

... ...

3.4 ***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.

... ...

3.5. ***Eligibility Criteria***

3.5.1 Annual Turnover from Food & Beverages Business: (Food & beverages means production, sale/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.

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

b) Rs 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).

... ...

Applicability of this Policy

This policy supersedes Para 3 of Catering Policy 2017 and related instructions except the provision for sharing of license fee/revenue between IR and IRCTC as referred in Para 3.1.2 of this policy. This policy shall be applicable with immediate effect i.e., from the date of issue.

This issues with concurrence of Finance Commercial Directorate of the Ministry of Railways and approval of the Board."

(Emphasis added)

A slight deviation is made in the earlier existing policy with regard to base kitchen infrastructure and service infrastructure. Why is it made forms part of the statement of objections. Paragraphs 8 to

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15 of the statement of objections are necessary to be noticed in this regard and they read as follows:

> ***"8. Under the Catering Policy 2017, para 3.7.1, 3.7.2 and 3.8.4 envisaged that IRCTC was to set up a grid of Kitchens for supply of meals to all trains, which would be catered by licensees. However, due to logistical and operational challenges including disruption due to COVID-19 pandemic, it was experienced in some cases that production of meals had been devolved to one licensee (either from Railway-owned kitchen or from licensee-owned kitchen) and catering/service of food was through another licensee, which caused accountability issues. In the meantime, passenger complaints regarding the quality and hygiene of meals and catering of trains kept increasing. It was felt that the expected objectives of the Catering Policy 2017 were not getting achieved in letter and spirit.***
>
> *9. Accordingly, the Ministry of Railways (Railway Board) by order dated* ***18-07-2023 decided to constitute a Committee comprising five Joint Secretary, Government of India level officers of the Railway Board, Zonal Railways and IRCTC to review the modalities for operation of mobile units and to suggest required changes.*** *The copy of the Order dated 18-07-2023 is herewith produced as Annexure-R1.*
>
> *10.* ***The Committee undertook a comprehensive exercise, including studying the best practices of the hospitality industry engaged in the catering business and, including engaging with various stakeholders such as caterers.*** *Basis this, it issued the Committee Report dated 15-09-2023 where it made several recommendations, including (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*

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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) Development of Base Kitchen and logistic infrastructure to be made mandatory 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; (f) 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; (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.

11. The Railway Board deliberated on the committee Report in various meetings, where some further suggestions were made and incorporated. Thereafter, the matter was approved by the Members of the Railway Board and finally by the Hon'ble Railway Minister on 10-11-2023.

12. Pursuant thereto, the Commercial Circular 24/2023 dated 14-11-2023 was issued by the Railway Board as an Addendum to Para 1 and 3 of the Catering Policy 2017. IRCTC issued the subject Tenders thereafter on the basis of the Commercial Circular 24/2023.

13. It is notable that the changes mooted under the Commercial Circular 24/2023 are in public interest and for the welfare of railway passengers as well as beneficial for licensees, illustratively in the following ways:

a. Improvement in the quality and hygiene of meals and catering;

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b. ***Enabling continuous supervision of the kitchen;***
c. ***Ensuring timely service since Kitchens are to be located at more locations along the route;***
d. ***Ridding the dependence on third party suppliers;***
e. ***Assurance of cleanliness, hygiene and raw material in preparation of food;***
f. ***Specifications of the equipment and other items to be used in Kitchens;***
g. ***CCTV access through QR code will enable live streaming of Kitchen where food was prepared and build confidence in the eyes of the passengers;***
h. ***Maintaining the pricing by eliminating an intermediary and thus ensure that the licensees are able to have reasonable margin even in the rising inflation era;***
i. ***Strict compliant management system incorporated in the new contracts as a part of the tender document;***
j. ***Classified item wise complaint to enable passengers to pinpoint deficiencies;***
k. ***New conditions for timely commencement of license contracts.***

14. It is also notably that the fruits of the Commercial Circular 24/2023 will also result in long term benefits to the nation as well as the catering sector, as:

a. ***encourages and enables establishment of long-term infrastructure in catering;***
b. ***encourages competition and innovation by the entrance of new players in the business of mobile catering on trains;***
c. ***pins responsibility and accountability on one service provider/licensee for food preparation and catering on trains;***
d. ***unlocks greater commercial value for licensees by enabling achieving economies of scale;***
e. *Licensees would not be limited to supplying meals only to trains, and the same Kitchen infrastructure could be utilized for other markets as well.*

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> ***15. No subsisting catering contracts have been disturbed on account of implementation of the Commercial Circular 24/2023."***
>
> *(Emphasis added)*

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

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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

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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.

14. A three Judge Bench of the Apex Court in the case of ***TATA CELLULAR v. UNION OF INDIA***[1] has held as follows:

> ***"94.*** *The principles deducible from the above are:*
>
> *(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.*

[1] *(1994) 6 SCC 651*

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(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 mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

(Emphasis supplied)

In a subsequent judgment, the Apex court in the case of ***MICHIGAN RUBBER v. STATE OF KARNATAKA***[2] has held as follows:

"23. *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;

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[2] *(2012) 8 SCC 216*

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(b) *Fixation of a value of the tender is entirely within the purview of the executive and the 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 the 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 a fundamental right to carry on business with the Government.***

24. *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"? and*

(ii) *Whether the public interest is affected?*

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If the answers to the above questions are in the negative, then there should be no interference under Article 226."

(Emphasis supplied)

Both the aforesaid judgments of the Apex Court lay down the parameters of interference in contractual and commercial activities of the State. The Apex Court, in ***TATA CELLULAR*** holds that it is only in the circumstances, as obtaining in the aforesaid paragraphs, remains the domain of judicial review on administrative action *qua* contract or commercial wisdom. The Apex Court holds that the Court does not have the expertise to correct any administrative decision, unless it is suffering from the vice of arbitrariness, bias or action that is *mala fide*. The Apex Court in the case of ***MICHIGAN RUBBER*** reiterated those principles in the afore-quoted paragraphs of the said judgment. The Apex Court holds that fixation value, commercial decisions pre-conditions or qualification for tenderers should not be interfered with unless it is palpably or demonstrably arbitrary. The principles laid down in the aforesaid judgments are again reiterated by the Apex Court, in two of its later judgments. The Apex Court in ***TATA MOTORS LIMITED v. BRIHAN MUMBAI***

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ELECTRIC SUPPLY AND TRANSPORT UNDERTAKING[3] has held as follows:

> ***"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See : Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489)***
>
> ***49.*** *It is not in dispute that the first and the foremost requirement of the Tender was the prescribed operating range*

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[3] *2023 SCC OnLine SC 671*

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of the single decker buses which would operate for around and average of 200 Kms in a single charge in "actual conditions" with 80% SoC without any interruption. Then materials on record would indicate that the TATA Motors in its bid deviated from this requirement and had informed BEST that it could carry the operating range in the "standard test conditions" which was not in accordance with the Tender conditions. The High Court has rightly observed in its impugned judgment that the bid of the TATA Motors failed to comply with the said clause. TATA Motors deviated from the material and the essential term of the Tender. It may not be out of place to state at this stage that it is only TATA Motors who deviated from the condition referred to above. However, we are of the view that the High Court having once declared TATA Motors as "non-responsive" and having stood disqualified from the Tender process should not have entered into the fray of investigating into the decision of BEST to declare EVEY as the eligible bidder. We are saying so because the High Court was not exercising its writ jurisdiction in public interest. The High Court looked into a petition filed by a party trying to assert its own rights. As held by this Court in Raunaq International Ltd. (supra), that grant of judicial relief at the instance of a party which does not fulfil the requisite criteria is something which could be termed as misplaced. In Raunaq International Ltd. (supra), this Court observed as under:

> *"**27.** In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s. Raunaq International Ltd. is on valid principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. **What is more relevant, M/s. I.V.R. Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced**. Even if the criteria can be relaxed both for M/s. Raunaq International Ltd. and M/s. I.V.R. Construction Ltd., it is clear that the offer of M/s. Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s. Raunaq International Ltd. We fail to see*

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> *how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MW, is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s. Raunaq International Ltd."*
>
> *(Emphasis supplied)*

50. *We take notice of the fact that Annexure Y was originally required to be submitted by the "Successful Bidder" after the evaluation of the bid and the same did not figure in the list of documents and annexures to be included in the technical submissions, as provided under Clause 5.1.1 of Schedule II of the Tender. Further the format provided for Annexure Y in the Tender documents in its heading states that the "Successful Bidders shall upload a Letter of Undertaking on their letter head as below". Therefore, we are of the view that the restriction on revision of documents under Clause 16 of Schedule I, which states, "No addition/correction, submission of documents will be allowed after opening of technical bid," is only limited to the documents necessary to be included in the technical bid and would not be applicable to any such document which does not form a part of the technical bid.*

51. *We are of the view that the High Court should have been a bit slow and circumspect in reversing the action of BEST permitting EVEY to submit a revised Annexure Y. We are of the view that the BEST committed no error or cannot be held guilty of favoritism, etc. in allowing EVEY to submit a revised Annexure Y as the earlier one was incorrect on account of a clerical error. This exercise itself was not sufficient to declare the entire bid offered by EVEY as unlawful or illegal.*

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***52.** Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India, reported in (2005) 1 SCC 679.*

***53.** The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that 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 powers 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 interfere.*

***54.** As observed by this Court in Jagdish Mandal v. State of Orissa, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features*

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> ***should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."***
>
> *(Emphasis supplied)*

Subsequent to the said judgment, the Apex Court in ***JAIPUR VIDYUT VITRAN NIGAM LIMITED v. M.B.POWER (MADHYA PRADESH) LIMITED***[4] has held as follows:

> *"**144.** In any case, we find that the High Court was not justified in issuing the mandamus in the nature which it has issued. This Court in the case of Air India Ltd. v. Cochin International Airport Ltd. has observed thus:*
>
> > *"**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 [(1979) 3 SCC 489], Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568], CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75], Tata Cellular v. Union of India [(1994) 6 SCC 651], Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134] and Raunaq International Ltd. v. I.V.R. Construction Ltd. [(1999) 1 SCC 492]* ***The award of a contract, whether it is by a private party or by a public body or the State, is***

[4] *2024 SCC OnLine SC 26*

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> ***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."***

145. *It could thus be seen that this Court has held that 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. It has been held that 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***

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***scrutiny**. It has further been held that the State can enter into negotiations before finally deciding to accept one of the offers made to it. It has further been held that, price need not always be the sole criterion for awarding a contract. It has been held that the State may not accept the offer even though it happens to be the highest or the lowest. However, 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. It has further been held that even when some defect has been 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.*

***146.** As has been held by this Court in the case of Tata Cellular (supra), the Court is not only concerned with the merits of the decision but also with the decision-making process. Unless the Court finds that the decision-making process is vitiated by arbitrariness, mala fides, irrationality, it will not be permissible for the Court to interfere with the same.*

***147.** In the present case, the decision-making process, as adopted by the BEC was totally in conformity with the principles laid down by this Court from time to time. The BEC after considering the competitive rates offered in the bidding process in various States came to a conclusion that the rates quoted by SKS Power (L-5 bidder) were not market aligned. The said decision has been approved by the State Commission. Since the decision-making process adopted by the BEC, which has been approved by the State Commission, was in accordance with the law laid down by this Court, the same ought not to have been interfered with by the learned APTEL.*

***148.** In any case, the High Court, by the impugned judgment and order, could not have issued a mandamus to the*

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> *instrumentalities of the State to enter into a contract, which was totally harmful to the public interest. Inasmuch as, if the power/electricity is to be procured by the procurers at the rates quoted by the respondent No. 1-MB Power, which is even higher than the rates quoted by the SKS Power (L-5 bidder), then the State would have been required to bear financial burden in thousands of crore rupees, which would have, in turn, passed on to the consumers.* ***As such, we are of the considered view that the mandamus issued by the Court is issued by failing to take into consideration the larger consumers' interest and the consequential public interest. We are, therefore, of the view that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be quashed and set aside."***

(Emphasis supplied)

What would unmistakably emerge from the judgments rendered by the Apex Court (*supra*) is that this Court would not sit in the arm chair of experts to scrutinize or monitor commercial decisions of the State, in the case at hand, the Railways. Preparation of food, distribution of food, quality of such preparation and efficiency of such distribution are in the realm of commercial decisions in public interest by the Railways. Therefore, I find no ground to interfere on the submissions *qua* the distinction and differentiation between food preparation and food distribution. It is for the respondents/Railways to manage its house in the aforesaid circumstances.

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15. The other two submissions of the learned senior counsel for the petitioner are to be considered. The first is, that the budget speech is a decision of the cabinet and Circular No.20 of 2017 was notified in tune with the budget speech and therefore, it is a decision of the cabinet. I decline to accept the submission, as in the considered view of the Court, the submission is fundamentally flawed. The budget speech, either by the Finance Minister or the Railway Minister, as the case would be, is a vision document, projected for the subsequent year. Vision document cannot be a decision of the cabinet. The decision of the cabinet on the vision document would come after the budget and those would be in the respective departments. The submission is that the Railway budget speech itself is a decision of the cabinet. This, on the face of it, is untenable. Pursuant to the speech, the parts of speech form part of the policy. This is a decision by the Minister for Railways. Therefore, the decision *qua* the Catering Policy 20 of 2017 was a decision by the Minister for Railways. Likewise, the addendum through Commercial Circular No.24 of 2023, is again a decision by the Minister for Railways. The Railways through, the Minister for Railways, and the Railway Board, are the decision makers in the

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respondents and no error can be found *qua* competence, in the notification of Commercial Circular No. 24 of 2023.

16. The other submission of the learned senior counsel for the petitioner is that, Circular No.24 of 2023 is vitiated on account of it not being placed before the cabinet, for its approval prior to its notification. This is again a submission that would not merit any acceptance. As submitted by the learned Solicitor General of India, the action of notification, can always be ratified by the cabinet, at a subsequent date, as the decision makers in the Railways insofar as notification of policies to run the Railways is, the Railway Minister or the Railway Board, as the case would be. Mere non-placing the circular before the cabinet prior to its notification would not render the circular illegal, as it would be protected by the principle of *post facto* ratification. The said submission of the learned Solicitor General is in tune with the law laid down by the Apex Court in plethora of judgments, where the Apex Court considers and approves the principle of ratification, which would render an order, even if it is illegal at the outset, to become valid in the eye of law on such ratification. The Apex Court in the case of

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NATIONAL INSTITUTE OF TECHNOLOGY v. PANNALAL CHOUDHURY[5] holds that a subsequent ratification of an act is equivalent to a appropriate authority performing such act. The Apex court considering the entire spectrum of law has held as follows:

> ***"28.*** *That apart, the issue in question could be examined from yet another angle by applying the law relating to "ratification" which was not taken note of by the High Court.*
>
> ***29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.***
>
> ***30. The expression "ratification" was succinctly defined by the English Court in one old case, Hartman v. Hornsby [Hartman v. Hornsby, 142 Mo 368 : 44 SW 242 at p. 244 (1897)] as under:***
>
> > ***"'Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."***
>
> ***31. The law of ratification was applied by this Court in Parmeshwari Prasad Gupta v. Union of India [Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543]. In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the***

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[5] *(2015) 11 SCC 669*

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services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held: (SCC pp. 546-47, para 14)

> ***"14. … Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."***

This view was approved by this Court in High Court of Judicature of Rajasthan v. P.P. Singh [High Court of Judicature of Rajasthan v. P.P. Singh, (2003) 4 SCC 239: 2003 SCC (L&S) 424].

32. *The aforesaid principle of law of ratification was again applied by this Court in Maharashtra State Mining Corpn. v. Sunil [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] . In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in*

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respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs 1900 p.m. The respondent at the relevant time was drawing more than Rs 1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held [Sunil v. Maharashtra State Mining Corpn., 2005 SCC OnLine Bom 758: (2006) 1 Mah LJ 495] the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (Sunil case [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] , SCC pp. 96g-h & 97a-b)

> *"The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim ratihabitio mandato aequiparatur, namely, 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore, ratification assumes an invalid act which is retrospectively validated.*
>
> ***
>
> *In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it."*
>
> *(Emphasis supplied)*

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The Apex Court was following a three Judge Bench decision in the case of ***MAHARASHTRA STATE MINING CORPORATION v. SUNIL***[6] wherein it is held as follows:

> *"**5.** The High Court allowed the writ petition holding that the Managing Director was not competent to terminate the respondent's services as on the date of the passing of the order of termination and therefore the order of dismissal was invalid. The High Court was also of the view that this defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court accordingly set aside the order of termination. Since the respondent had already retired from service, the appellant was directed to reinstate the respondent notionally with effect from the date of termination in the same post and pay salaries up to the date of superannuation and to pay all retiral benefits after the date of superannuation.*
>
> ***6. Before us learned counsel appearing on behalf of the appellant has submitted that the High Court's decision was contrary to the decisions of this Court in Parmeshwari Prasad Gupta v. Union of India [(1973) 2 SCC 543] and High Court of Judicature for Rajasthan v. P.P. Singh [(2003) 4 SCC 239 : 2003 SCC (L&S) 424] . The respondent on the other hand submitted that the resolution of the Board was subsequent to the order of dismissal and, therefore, could not operate retrospectively. The respondent relied upon the decision in Krishna Kumar v. Divisional Asstt. Electrical Engineer [(1979) 4 SCC 289 : 1980 SCC (L&S) 1] in support of this contention.***
>
> ***7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently "rectified" by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim ratihabitio mandato***

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[6] *(2006)5 SCC 96*

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aequiparatur, namely, "a subsequent ratification of an act is equivalent to a prior authority to perform such act". Therefore ratification assumes an invalid act which is retrospectively validated. [See P. Ramanatha Aiyar's Advanced Law Lexicon, (2005) Vol. 4, p. 3939 et seq.]

8. In Parmeshwari Prasad Gupta [(1973) 2 SCC 543] the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened. The Court held: (SCC pp. 546-47, para 14)

> *"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."*

The view expressed has been recently approved in High Court of Judicature for Rajasthan v. P.P. Singh [(2003) 4 SCC 239: 2003 SCC (L&S) 424], [See also Claude-Lila Parulekar v. Sakal Papers (P) Ltd., (2005) 11 SCC 73.].

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> ***9.*** *The same view has been expressed in several cases in other jurisdictions. Thus in Hartman v. Hornsby [142 Mo 368, 44 SW 242, 244] it was said:*
>
> > *" 'Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."*
>
> *(Emphasis supplied)*

In the light of the law laid down by the Apex Court in the afore-quoted judgments, the submission of the learned Solicitor General would merit acceptance, as the cabinet can always ratify the act of the Minister for Railways/Railway Board in notifying the circular, if it becomes necessary. None of the submissions of the learned senior counsel for the petitioner would merit acceptance for this Court to interfere with the policy making of the Railways, through the impugned Commercial Circular.

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

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policy is upheld in the course of the order *supra*. Thus, the companion petition in Writ Petition No.4296 of 2024 would also fail.

18. For the aforesaid reasons, the following:

ORDER

(i) Writ Petitions stand rejected.

(ii) The respondents/Railways are at liberty to take the tender so notified to its logical conclusion.

Pending applications, if any, also stand disposed.

Sd/-
JUDGE

bkp
CT:MJ