

AD-09
Ct No.09
30.11.2023
TN

WPA No. 3309 of 2023

Sri Kalidas Roy
Vs.
Union of India and others

Mr. Achintya Kumar Banerjee,
Mr. Anand Farmania,
Mrs. Indulouli Banerjee

.... for the petitioner

Ms. Sanjukta Gupta

.... for the UOI

- 1.** Learned counsel for the petitioner contends that the petitioner is aged about 68 years and has been running from pillar to post. The petitioner's brother was initially the holder of a statutory agreement for license in respect of a book stall in the premises of the railways since the year 1970, which agreement was renewed from time to time. Learned counsel submits that the said agreement had a statutory flavour since it was entered into in the name of the President of India.
- 2.** It is contended that the brother of the petitioner met his demise in the year 2005, after which the petitioner has been running the stall *de facto*. Subsequently in 2017 a policy was adopted by the railway authorities to grant such stalls as

MPS (Multi Purpose Stalls) to the nominees of the licensees.

- 3.** The petitioner duly applied for coming under such scheme which was refused by the railway authorities. The matter ultimately went up to the Supreme Court where leave was granted to the petitioner to apply for any other scheme, if the petitioner is so eligible. Learned counsel submits that the petitioner is fully eligible to get the benefit of the 2017 scheme which was floated on September 05, 2017 but the railway authorities have unlawfully refused to extend such benefit to the petitioner.
- 4.** Learned counsel for the railway authorities submits that there was a previous direction of a coordinate Bench on the railway authorities to consider the representation of the petitioner, which was duly considered in accordance therewith and has been rejected on cogent grounds.
- 5.** Insofar as the petitioner's prayer is concerned, the said brother who was the original licensee had died in the year 2005. Thereafter, the petitioner had applied for grant of licence to him which was rejected, upon which a writ petition was preferred. Upon the said writ petition getting

dismissed, an appeal was preferred which was also dismissed, affirming the order of the learned Single Judge. Ultimately, the Supreme Court dismissed the petitioner's SLP as well. It is submitted that the clarification in the Supreme Court's order pertain to some other scheme. However, the 2017 scheme was already in force at the relevant juncture when the learned Single Judge and the Division Bench passed their orders in the first round of litigation.

- 6.** Learned counsel also relies on Clause 16 of the 2017 policy which stipulates that nomination of the legal heir should be obtained from the license holder at the time of entering into contract, which is absent in the present case. That apart, the petitioner has been dispossessed as long back as in the year 2018 pursuant to the orders of the court.
- 7.** Learned counsel for the petitioner controverts such allegations in reply and denies that the eviction was not in terms of any order of court.
- 8.** A perusal of the materials annexed to the writ petition clearly shows that the chapter which is sought to be reopened by the petitioner at present had already been closed long back, at least five years ago.

- 9.** By the order dated November 01, 2018 passed in W.P. 22071(W) of 2018 in the writ petitioner's challenge to a rejection by the railway authorities of his prayer for transfer of licence issued in his brother's name, the learned Single Judge observed that the writ petitioner is an illegal occupant of the book stall and is liable to be evicted.
- 10.** The railway authorities were directed by the learned Single Judge to take immediate steps to evict the petitioner from the book stall and also take steps for recovery of any occupation charges from the petitioner post the death of the original allottee, late Santosh Kr. Ray, the petitioner's brother.
- 11.** In the appeal preferred against the said order, a Division Bench of this court not only dismissed the appeal and affirmed the order of the learned Single Judge, it was clearly observed in specific terms that the appellant, that is, the present petitioner, confirmed that he had by then been removed from the Baruipur Station. The Division Bench observed in its order dated February 03, 2020 that since there was no merit in the matter as it did not appear that the writ petitioner or his predecessor-in-interest was inducted upon any

competitive process being conducted, the writ petitioner could not have claimed any right to remain in occupation of the railway premises or continue to run the book stall indefinitely.

- 12.** It is noteworthy that the order of the learned Single Judge was passed on November 01, 2018 which continued up to the Division Bench which passed its order on February 03, 2020 and the Supreme Court passed its order on November 18, 2020 in the SLP preferred by the petitioner against the Division Bench order. Hence, the entire chain of orders were passed after the date of the policy of 2017 on which the petitioner now relies, which was dated September 05, 2017.
- 13.** The Supreme Court dismissed the special leave petition of the petitioner with the clarification that if the petitioner is eligible to apply for “any other scheme”, he may do so, which request be considered in accordance with law.
- 14.** By using the expression “other” to prefix the expression ‘scheme’, the Supreme Court made it clear that it was not referring to the 2017 scheme, which was already in force at the relevant juncture although the petitioner argues that the same was not considered by the learned Single Judge.

- 15.** The petitioner got an opportunity to point out before the Division Bench as well as the Supreme Court that the 2017 policy was not considered by the learned Single Judge. Having not done so, and not advanced the arguments on such count before the said forums, the said issue is now barred by the principle of constructive *res judicata*.
- 16.** Hence, the petitioner cannot reopen the entire issue at this belated juncture, five years after the order was passed by the learned Single Judge and pursuant thereto the petitioner was dispossessed from the property. In any event, there does not arise any occasion of any nomination by the original licence holder in terms of the scheme, since the original licence holder met his demise in 2005.
- 17.** Hence, there is no scope of interference in the present writ petition and the railways were justified in rejecting the renewal of the prayer of the petitioner to be granted a licence under the 2017 policy.
- 18.** Accordingly, WPA No. 3309 of 2023 is dismissed on contest, without any order as to costs.
- 19.** It is made clear that keeping in view the advanced age of the petitioner, no costs are being

imposed on the petitioner despite the petitioner having sought to abuse the process of court by this third round of litigation.

- 20.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)