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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJAY KUMAR; J., SATISH CHANDRA SHARMA; J.

Special Leave Petition (C) Nos. 15507-15509 of 2025; November 07, 2025

Indian Railways Catering and Tourism Corp. Ltd. *versus* M/s. Brandavan Food Products

Arbitration and Conciliation Act, 1996; Sections 34(2)(b)(ii), 34(2A), 28(3) - Arbitral Award - Setting Aside - Patent Illegality - Rewriting of Contract – Held, an Arbitral Tribunal, being a creature of contract, cannot unilaterally alter or rewrite the terms of the contract between the parties - An Arbitral Award that grants claims by rewriting the commercial contract, substituting the express terms of the agreement and binding policy directives of a statutory authority, is vitiated by patent illegality appearing on the face of the Award and is in conflict with the fundamental policy of Indian Law - Noted that Arbitrator's action of substituting the contractually agreed 'combo meal' tariff with the 'regular meal' tariff for the second meal of the day, and granting reimbursement for an item ('welcome drink') contrary to the policy directives binding on the caterers, amounts to creating a new contract for the parties and is violative of Section 28(3) of the Act, which mandates the Tribunal to take into account the terms of the contract - Appeal allowed. [Relied *Ssangyong Engineering and Construction Company Limited v. National Highway Authority of India*, (2019) 15 SCC 131; *Industrial Promotion and Investment Corporation of Orissa Limited v. Turbo Furguson Steel Private Limited & Ors.* 2012 2 SCC 261; Paras 64-72]

WITH Special Leave Petition (C) Nos. 17132-17136 of 2025) Special Leave Petition (C) Nos. 18076-18084 of 2025) Special Leave Petition (C) Nos. 17041-17042 of 2025) Special Leave Petition (C) Nos. 17299-17300 of 2025) Special Leave Petition (C) Nos. 16487-16488 of 2025) Special Leave Petition (C) Nos. 16831-16833 of 2025) Special Leave Petition (C) Nos. 16184-16186 of 2025) Special Leave Petition (C) Nos. 16742-16743 of 2025) Special Leave Petition (C) Nos. 15800-15801 of 2025) Special Leave Petition (C) Nos. 17438-17439 of 2025) Special Leave Petition (C) Nos. 17641-17642 of 2025) Special Leave Petition (C) Nos. 17037-17038 of 2025) Special Leave Petition (C) Nos. 18771-18773 of 2025) Special Leave Petition (C) Nos. 17550-17552 of 2025) Special Leave Petition (C) Nos. 16888-16889 of 2025) Special Leave Petition (C) Nos. 15650-15651 of 2025)

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J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. The scope and ambit of interference with an arbitral award under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996¹, arise for consideration once again.

3. These seventeen sets of appeals arise out of the common judgment dated 10.02.2025 passed by a Division Bench of the Delhi High Court in a batch of eighteen appeals filed under Section 37 of the Act of 1996. Indian Railways Catering and Tourism Corporation Limited² is the appellant in twelve sets of appeals while M/s. Brandavan Food Products³, a partnership firm, filed two sets of appeals. The remaining two sets of appeals were filed by R.K. Associates and Hoteliers Pvt. Ltd. and Satyam Caterers Pvt. Ltd respectively.

4. IRCTC had filed thirteen of the eighteen appeals before the High Court while BFP had filed the remaining five appeals. All those appeals, in turn, arose out of the order dated 13.08.2024 passed by a learned Judge of the Delhi High Court in a batch of petitions filed under Section 34 of the Act of 1996 assailing the Award dated 27.04.2022 passed by a sole Arbitrator in relation to thirteen claim petitions. The claim petitions were filed by three caterers, viz., BFP, R.K. Associates and Hoteliers Pvt. Ltd. and Satyam Caterers Pvt. Ltd. Out of the thirteen claim petitions, nine were filed by BFP in relation to its contracts for the Rajdhani, Shatabdi and Duronto Express Trains, while two claim petitions each were filed by R.K. Associates and Hoteliers Pvt. Ltd. and Satyam Caterers Pvt. Ltd respectively, in relation to their contracts for Shatabdi Express Trains. As all the claimants shared a common grievance, BFP's petition relating to its contract for the New Delhi-Dibrugarh-New Delhi Rajdhani Express was treated as the lead case. We, accordingly, deal with the factual aspects in the context of that case.

5. In terms of the Catering Policy of 2010 issued by the Railway Board, Ministry of Railways, Government of India, the Northern Railway published Tender Notice dated 27.05.2013 inviting bids for providing catering services on the train referred to above. The contract period was for 5+5 years from the date of commencement of the catering services. The tender document prescribed the food items/beverages which were to be supplied to the passengers travelling on these trains. The tariff/apportionment charges⁴ for each service were also prescribed. We may note, at this stage, that the tariffs are fixed on the basis of the commercial circulars issued by the Railway Board. At the time of issuance of the tender notice, the tariffs set out therein were reflective of the tariffs fixed in the year 1999, under Commercial Circular dated 27.05.1999.

6. While so, before the opening of the bids pursuant to Tender Notice dated 27.05.2013, the Railway Board issued Commercial Circular No. 63 of 2013 dated 09.10.2013 whereby, while increasing the tariffs, the concept of 'combo meal' was introduced as a measure to reduce wastage of food. It was proposed that, instead of providing a second regular/full meal during the course of the journey, a combo meal could be served, i.e., a smaller meal consisting of lesser number of items and quantities. The price of this combo meal for 1AC/2AC/3AC was fixed at ₹66.50/- (₹75/- with service tax) as against a regular meal, which was enhanced to ₹129.50/- (₹145/- with service tax) for 1AC/EC, and ₹112.50/- (₹125/- with service tax) for 2AC/3AC/CC. However, upon receiving feedback of the dissatisfaction of passengers with combo meals, the Railway Board issued Commercial Circular No. 67 of 2013 dated 23.10.2013, discontinuing combo meals, by deleting Para 1.4 of the earlier Commercial Circular dated 09.10.2013, and

¹ For short, 'The Act of 1996'.

² For short, 'IRCTC'.

³ For short, 'BFP'.

⁴ For short, 'tariff(s)'.

substituting it with a regular meal, but at the price fixed for a combo meal. Therefore, at the time of opening of the tender bids and the awarding of contracts thereafter, Commercial Circular dated 23.10.2013 was holding the field.

7. BFP's bid dated 27.06.2013 emerged successful in relation to Train Nos. 12423-24, viz., New Delhi-Dibrugarh-New Delhi Rajdhani Express, and the Northern Railway issued Letter of Award dated 17.01.2014 to it. Pursuant thereto, BFP started providing catering services with effect from 21.01.2014. Thereafter, BFP and the Northern Railway entered into Master Licence Agreement dated 21.04.2014. While so, by Commercial Circular No. 32 of 2014 dated 06.08.2014, caterers were directed by the Railway Board to provide a welcome drink to all passengers in AC classes at the time of commencement of the journey. Thereafter, the Railway Board announced a new Catering Policy on 27.02.2017 providing for management of catering services by the IRCTC in the place of the Zonal Railways. In consequence, Tripartite Agreement dated 10.08.2017 was executed by the Northern Railway, the IRCTC and BFP and the management of catering services stood transferred to the IRCTC.

8. The principal contention urged by the IRCTC before us is that the Arbitrator had no jurisdiction to re-write the terms of the contract contrary to the agreement entered into by and between the parties with their volition and their eyes wide open. It would, therefore, be necessary to examine the genesis and the nature of the contract underlying the claims put forth by the caterers. Hitherto, as stated earlier, Commercial Circular dated 27.05.1999 issued by the Railway Board, dealing with catering services in the Rajdhani and Shatabdi Express trains, set out the tariffs to be paid to the caterers for the meals that they would serve on those trains, viz., morning tea/welcome drink/light refreshment; breakfast; lunch; high tea/evening tea; and dinner. Separate charges were framed for 2AC/3AC/CC, on the one hand, and 1AC/EC, on the other. This circular held the field for nearly a decade and a half.

9. The tender document for provision of catering services on Train Nos. 12423-24, New Delhi-Dibrugarh-New Delhi Rajdhani Express, was issued by the Northern Railway on 27.05.2013. Chapter I therein dealt with the scope of work. Clause 1.3 stated that the bidder, once selected, shall become the licensee and shall be liable to pay licence fee as per the terms and conditions determined by the Northern Railway. Clause 1.2.1 stated that the licensee shall provide catering services on Train Nos. 12423-24 and provide meals from the kitchens at the originating/enroute stations of the train. Clause 1.3, titled 'Scope of work of catering services on train' indicated the major components. Clause 1.3.1 reads as follows:

'1.3.1 The Licensee shall be responsible for all catering services from pantry car on Train No. 12423/24 as per Policy, guidelines, instructions issued by Railway and other statutory regulations. This will include supply and service of fully cooked meals/food to passengers on demand viz. breakfast, lunch, dinner, snacks, tea, coffee etc. These meals/food shall be prepared, packed and transported from the Kitchens set-up and located at or around the originating/terminating /en-route station(s) on Railway premises/non railway area authorized by railway administration to be set up by the licensee.'

Clause 1.3.3 is also relevant and it reads as follows:

'The menus and rates for each service are enclosed at Section C. Railway reserves the right to modify/alter the catering tariff and menu and such changes in catering charges and menu shall be informed to the Licensee in advance for which the License Fee shall be varied based on the reassessment of sales. In the event of such changes, the Licensee shall maintain the same quality

and hygiene standards for preparation, supply and service of food/meals to passengers as it were prior to such change.'

10. The Special Conditions of Contract-I, contained in Section C, specified the menu for morning tea/coffee, the menu for welcome drink, the menu for breakfast, the menu for lunch/dinner and the menu for evening tea. These were the meals that were to be supplied on the train by the caterer. Section C contained a tabular statement, specifying the tariffs for Train Nos. 12423-24. Notably, the rates specified in the tabular statement were in tandem with those set out in the Commercial Circular dated 27.05.1999 that was then holding the field. There was obviously no mention of a combo meal as that concept had not been introduced by the time this bid document was issued in May, 2013.

11. It was only on 09.10.2013 that the Railway Board came up with the idea of introducing a combo meal, *vide* Commercial Circular No. 63 of 2013. It dealt with revision of the menu and tariff of catering services in Rajdhani/Shatabdi/Duronto Express Trains. It was noted therein that the menu and tariff of catering services were last revised in the year 1999 for these trains and that they were prestigious premier trains of the Indian Railways. As the cost of raw materials for catering services had increased manifold due to inflation, etc., since the year 1999, it was stated that a review of the menu and tariff had been done through Committees set up by the Railway Board to determine the norms for apportionment of catering charges in the fares of these trains. Clause 1.4 is of relevance in the context of a combo meal and it reads as follows:

'1.4 The concept of combo meal for Rajdhani/Shatabdi/Duronto express trains has been introduced in place of regular second meal of the day where more than one meal services are provided. The third/following meal shall be the regular meal and the sequence of every alternate meal as combo meal shall be followed for the particular train. At one point of time only one type of meal will be served in the entire train.'

The menu for each service was furnished in Annexure A, which was to be adopted uniformly. The price of lunch/dinner for 1AC/EC was increased to ₹145/₹129.50 (with and without service tax) and for 2AC/3AC/CC, it was enhanced to ₹125/₹112.50 (with and without service tax). The newly introduced combo meal for all AC classes was priced at ₹75/₹66.50 (with and without service tax).

12. However, on 23.10.2013, the Railway Board issued Commercial Circular No. 67 of 2013, again revising the menu and tariffs of catering services on the three trains. It was stated therein that a review of the decision on revision of the menu/tariffs of catering services in Rajdhani/ Shatabdi/Duronto Express Trains had been undertaken based on the feedback received from the Zonal Railways and instructions were issued to be complied with immediate effect. These instructions are of relevance and read as under:

'Accordingly, the following instructions may be complied with immediate effect: -

- (i) Regular Meal, in place of Combo Meal, may be restored. Accordingly, Para 1.4 of CC 63/2013 regarding combo meal is deleted.
- (ii) Quantity of Paneer dish, Chicken dish and Dal be restored to 150gms. Paneer dish with seasonal veg. (150gms with Paneer 70gms) and Chicken dish with thick gravy (150gms with Chicken 80-100gms) should be served (Neck and wing portion of chicken should not be served).
- (iii) Kathi Roll/Samosa/Patties/Kachori/Sandwiches be served in Evening Tea.
- (iv) Flavoured Milk/Milk Shake be served to the passengers in food grade per bottles/tetra pack.
- (v) Sale of beverages on board is pending. Accordingly, Para 13 of CC 63/2013 may be kept pending.

The above changes will be done without any increase in charges.'

13. The Northern Railway issued Letter of Award dated 17.01.2014 to BFP for 'Provision of Catering Services in Train Nos. 12423-24, New Delhi-Dibrugarh-New Delhi Rajdhani Express Train'. The term of the contract was for a period of five years @ ₹35,63,00,000/- and BFP was required to deposit the various amounts stipulated therein within a time frame. A copy of the revised catering charges was stated to have been enclosed with this letter. Pursuant thereto, Master License Agreement (MLA) dated 21.04.2014 was executed by the Northern Railway with BFP. Article 1 in the MLA dealt with 'Scope of the Arrangement'. Clause 1.1 therein stated that the scope of services shall be principally to operate, manage and supply catering services on the train from the nominated/approved base kitchens at originating/enroute stations. Clause 1.2 provided that the scope of arrangement between the parties shall be governed by the provisions of Annexure I (scope of services to be rendered by the licensee). Clause 1.4 is relevant and reads as under:

'1.4 It is agreed by the Licensee that the norms with regards catering charges payable to Licensee for providing catering services to the passengers on the Train are also subject to the predetermined prices as set forth in Annexure II of this Agreement. The Licensee also hereby confirms and acknowledges that Railway shall have the absolute right and discretion to change and modify the prices set forth in Annexure II without any need for prior discussion with the Licensee and the decision of Railway shall be strictly enforced by the Licensee during the Term of this Agreement.'

14. The tenure of the Agreement was to commence on 21.01.2014 and was for a period of five years. On the completion of five years, one renewal for another five years could be given subject to satisfactory performance. Article 20 was titled 'Dispute Resolution' and Clause 20.2 therein provided for settlement of disputes through arbitration, as per the provisions of the Act of 1996. Clause 21.6, titled 'Waiver', stated that unless otherwise expressly provided in the agreement, a delay or omission by either party to exercise any of its rights under the agreement would not be construed to be a waiver thereof. Annexure II to the MLA was a copy of the modified Section C, setting out Special Conditions of Contract I and Special Conditions of Contract II. The Special Conditions of Contract I detailed the cyclic menus for different meals for the AC classes. Cyclic menus for lunch/dinner for 1AC/EC and 2AC/3AC/CC were provided but no separate menu was provided for a combo meal, obviously, because a second regular meal was to be provided instead of a combo meal, as per Commercial Circular No. 67 of 2013. However, insofar as the revised tariffs were concerned, the tabulated statement therein referred to the pricing for different meals and mentioned CM (combo meal) also. This was owing to the aforesaid circular categorically stating that there would be no increase in charges. Article 8 of the MLA was titled 'Changes in menu, tariff and duration of train'. Clause 8.1 therein stated that the Railway reserved the right to change catering tariff and menu for the train at any time after the award of the licence and in the event of any such change by the Railway, the licensee was required to maintain the same quality and hygiene standards for preparation, supply and service of food/meals to passengers on the train as it was prior to such change.

15. Thereafter, Commercial Circular No. 32 of 2014 was issued by the Railway Board on 06.08.2014 further revising the menu and tariff of catering services in the Rajdhani/Shatabdi/Duronto Express Trains. Under the heading 'Rationalization of Menu', it was provided under Para 1.5 that a welcome drink would be served to all passengers in AC classes on commencement of the journey but, whenever breakfast followed immediately after the welcome drink, then Frooti tetra pack, hitherto being provided along with breakfast, would not be served. It was reiterated in Para 1.6 that, as per the instructions issued *vide* Commercial Circular No.67/2013, a regular meal (lunch/dinner)

was to be served in the place of combo meal (wherever applicable) at the tariff applicable for combo meal. Para 4 is of relevance and it reads thus:

‘4. Service-wise Tariff

4.1 The catering charges for each pair of station on up and down direction should be calculated and notified for each Rajdhani/ Shatabdi/Duronto Express trains by the concerned zonal railways in consultation with their associate finance. Since the catering charges are to be included on the basis of actual services rendered to the passengers there may be difference in catering charges in some cases on up and down direction between same pair of stations due to variation in catering services. It is advised that the actual charges of catering services as per the requirement of the journey of Rajdhani/ Shatabdi/Duronto Express trains should be added to the basic fare and the amount so arrived will be rounded off to the next higher multiple of Rs.5/-. Payment of appointment charges to the caterers should be made according to the actual services rendered to the passengers as per the following rates given below except in case of combo meal where charges will be as per below but menus shall be as per regular Lunch/Dinner meal as issued vide CC-67/2013: -

(in Rs.)

1A/EC		
Type of service	Catering charges to be disbursed to the licensee without service tax.	Catering charges to be included in fare (Inclusive of present service tax @8.66%)
(1)	(2)	(3)
Morning Tea	12.50	15.00
Breakfast	81.50	90.00
Lunch/Dinner	129.50	145.00
Evening Tea where dinner is served	41.00	45.00
Evening Tea where dinner is not served	66.50	75.00
Combo Meal	66.50	75.00
2AC/3AC/CC		
Type of service	Catering charges to be disbursed to the licensee without service tax	Catering charges to be included in fare (Inclusive of present service tax @ 8.66%)
(1)	(2)	(3)
Morning Tea	8.00	10.00

Breakfast	66.50	75.00
Lunch/Dinner	112.00	125.00
Evening Tea	40.00	45.00
Combo Meal	66.50	75.00
SL (Duronto Trains)		
Morning Tea	6.50	10.00
Breakfast	34.00	40.00
Lunch/Dinner	71.00	80.00
Evening Tea	18.00	20.00

16. It is an admitted fact that the caterers, including BFP, abided by the instructions and prices set out in the commercial circulars, replicated in their MLAs/contracts, for some time without protest. They raised bills for the second regular meals provided by them on the trains at the price fixed for a combo meal. However, on 22.06.2015, the Indian Railways Mobile Caterers Association submitted a representation to the Northern Railway expressing difficulties due to the revision in the menu and tariff of catering services, in addition to other grievances. Therein, it was pointed out that combo meals at the rate of ₹66.50/- (without service tax) with a reduced menu was introduced but the same was stopped and regular meal service was reinstated, but the rates were not revised and the caterers were compelled to serve regular meals in lieu of combo meals at a reduced price. They also raised the issue of welcome drinks being served as an additional item without any tariff being paid for the same. The Association stated that the caterers were facing losses on all fronts, which included the service of second meals at half the rate and free service of welcome drinks. This was followed up with several reminders and representations.

17. While so, the IRCTC entered into the picture in the year 2017 as per the new catering policy. It is an admitted fact that upon the recommendation of the IRCTC, under its letter dated 05.07.2019, the Railway Board issued Circular dated 03.10.2019, modifying the earlier Commercial Circular No. 32/2014 dated 06.08.2014. Thereby, the Board advised that reimbursement of catering charges to service providers should be made at the rate of regular meal tariff in place of combo meal tariff for service of a regular meal as the second meal of the day. It was further advised that passenger fares should be corrected accordingly by levying regular meal tariff for the actual service of the regular meal. These instructions were directed to be implemented with prospective effect. The 'Note' pertaining to this modification indicated that the IRCTC had highlighted the inadequacy of the tariff of catering services as there was a special case of the second meal of the day in the case of Rajdhani/Shatabdi/Duronto Express Trains. The IRCTC pointed out that after the tenders were allotted and agreements were executed, the menu of the second meal was changed and made similar to that of a normal lunch/dinner but instead of charging ₹112/- from the passengers, the Railway continued to charge ₹66.50/- for this meal. The IRCTC pointed out that this anomaly needed to be corrected with revision in the rates of the second meals and advised that either the menu of the meal should be restored as a combo meal or the tariff should be made similar to a normal meal. The IRCTC also pointed out that the caterers were continuously representing about this

issue. However, as per the mandate of the Circular dated 03.10.2019, the parity brought about thereunder was to be with prospective effect only.

18. The grievance of BFP and the other caterers, leading to the thirteen arbitration claim petitions, was that, despite being told to serve regular meals twice, after substitution of the combo meal with a regular meal under Commercial Circular dated 23.10.2013, they were reimbursed for the second regular meal only at the price of a combo meal, as was fixed by the earlier Commercial Circular dated 09.10.2013, and the price of a regular meal was not given to them for the second meal. BFP claimed that it tried to raise bills for the second regular meals supplied to the passengers at the same rates as were applicable to the first regular meal but the Northern Railway, the predecessor of the IRCTC, refused to accept the bills unless they were raised as per the Commercial Circular No.67 of 2013 dated 23.10.2013. BFP, therefore, asserted that it was forced to comply with this direction under financial and economic duress as it needed regular funds for maintaining day-to-day catering services to the passengers. Another grievance was with regard to supply of welcome drinks under Commercial Circular No.32 of 2014 dated 06.08.2014. The complaint was that the caterer was not paid for serving welcome drinks.

19. In the first instance, BFP filed a writ petition before the Delhi High Court in December, 2017, viz., W.P.(C) No. 11548 of 2017, assailing Commercial Circular No. 67 of 2013 dated 23.10.2013 and Commercial Circular No. 32 of 2014 dated 06.08.2014 and for recovery of the monies allegedly due to it for the second regular meals and welcome drinks. However, the writ petition was dismissed by the Delhi High Court on 23.09.2019, leaving it open to BFP to initiate arbitration proceedings. It is pursuant to this liberty that the matter went before the sole Arbitrator resulting in the Award dated 27.04.2022.

20. During the course of the arbitration proceedings, the caterers and the IRCTC examined one witness each. Documents were marked in evidence. The Arbitrator first dealt with the preliminary objection raised by the IRCTC that the claims put forth by the caterers were time-barred. He noted that the notice under Section 21 of the Act of 1996 was issued on 24.01.2020 and, therefore, claims three years prior thereto could not be treated as time-barred. He, then, considered whether the claims prior to January, 2017 would be hit by the bar of limitation. On the exclusion of the time spent in pursuing the writ petition before the Delhi High Court, i.e., from 22.12.2017 till 16.01.2020, when a certified copy of the judgment was made available, the Arbitrator found in favour of the caterers. Upon such exclusion, the Arbitrator concluded that the claims by the caterers could be said to have been instituted in or around January, 2018 and, in consequence, the claims of the caterers for three years prior to January, 2018, i.e., from January, 2015 would be within the period of limitation. He, accordingly, held that the claims prior thereto would be barred by time. The caterers were held disentitled to seek recovery of any amounts in relation to their catering services rendered prior to January, 2015.

21. The next objection of the IRCTC considered by the Arbitrator was as to whether the caterers could be said to have waived their right of recovery and reimbursement in relation to the second regular meal and the welcome drink provided by them, as they continued to raise their bills in terms of the commercial circulars and received regular payments against the bills so raised. The IRCTC contended that, as the caterers were satisfied with the payments made to them for the second regular meal at the price of a combo meal and with no payment being made for the welcome drink, they were deemed to have waived and were estopped from claiming any amount on those counts. The Arbitrator, however, rejected this contention. He noted that the tender notice had been issued prior to the Commercial Circular dated 23.10.2013 and the bids were also submitted prior thereto. The

Arbitrator observed that the IRCTC did not seek consent from the caterers as regards their willingness to supply regular meals at the price of combo meals. The Arbitrator also noted that Clause 21.6 of the MLA provided that mere delay or omission by either party to exercise any rights under the agreement would not be construed to be a waiver thereof. He further noted that the contracts between the parties were in the nature of commercial contracts, where the caterers had to incur costs for providing services and, unless proved otherwise, it could not be accepted that they had agreed to provide services and incur costs without being adequately reimbursed therefor. He, accordingly, rejected the argument of the IRCTC that raising of bills and acceptance of payments under those bills by the caterers would amount, by itself, to an act of waiver or relinquishment of their right to seek reimbursement, if they were otherwise entitled to seek the same under law. He also accepted the plea of the caterers that they were coerced into raising bills in accordance with the circulars as, if they failed to do so, they would not have been paid, putting them in a financially precarious situation. The Arbitrator opined that he had no reason to disbelieve their plea. He noted that representations had been made by the caterers to the Northern Railway in that regard, under letters dated 22.06.2015, 03.08.2016, 23.08.2016 and 25.11.2016.

22. The argument of the IRCTC that the caterers actually profited due to the increase in the tariffs under the Circular dated 09.10.2013 was rejected by the Arbitrator. He pointed out that the said circular was issued by the Railway Board on its own to revise the rates so as to set off inflation and to fix adequate catering rates and, therefore, the IRCTC could not contend that this led to undue profits being made by the caterers. Lastly, the Arbitrator observed that the IRCTC enjoyed a superior and dominant position in the contract, as the caterers had to pay the licence fees as well as security deposits in advance and their return on this investment was in the form of payments against regular monthly bills raised towards providing catering services on the trains. He opined that the caterers would not be in a position to adopt a cavalier attitude against the IRCTC given their status in the contractual arrangement and they could not, thus, be non-suited merely because they raised bills and received payments.

23. The IRCTC's next contention before the Arbitrator was that Clause 1.4 of the MLA would bar the caterers' demands being accepted. As per this clause, the Railway had the absolute right and discretion to change and modify the prices set forth in Annexure II without any need for prior discussion with the caterer and the same would be enforceable during the term of the contract. However, the Arbitrator found from a perusal of Annexure-II that it envisaged supply of a combo meal and not a second regular meal. He opined that this annexure did not support the case of the IRCTC as, once the caterer provided a regular meal instead of a combo meal, the reimbursement would also have to be on par with a regular meal.

24. The Arbitrator noted that Clause 8.1 of the MLA provided that the Railway had a right to change the menu but observed that, in the letter dated 05.07.2019 written by it, the IRCTC itself had pointed out the anomaly with regard to payment being made for a regular meal at the price of a combo meal and urged the Railways to either restore the menu of a combo meal or make the tariff similar to that of a normal meal. The Arbitrator also noted that, acting upon the recommendation of the IRCTC, the Railway Board had issued Circular dated 03.10.2019 stating that caterers would henceforth be reimbursed at the rate of a regular meal for the second regular meal also. The Arbitrator opined that the caterers were well within their right in seeking recovery of the differential amount, being the difference between the rates of a regular meal and a combo meal for all the second regular meals supplied by them even in the past.

25. The Arbitrator, then, addressed the issue as to the quantification of the amounts payable towards these claims. He noted that the Train Superintendent, who was an officer of the Indian Railways, was required to issue an Occupancy Certificate after the train reached its destination, certifying the number of passengers who undertook the journey. This certificate was required to verify as to how many passengers were actually provided catering services by the caterers. Their reimbursement was based on this Occupancy Certificate and not on the basis of the number of tickets booked. The Arbitrator noted that the factum of raising bills as well as payments made against the same was not disputed by both parties and, therefore, the IRCTC could not claim that there were no details available for computation of the amount to be paid for the second regular meal, which was already paid for at the price of a combo meal. The Arbitrator noted that the caterers had set out the details of the regular meals and the welcome drinks supplied by them, duly certified by Jeetmal Khandelwal, a Chartered Accountant (CW-I), who spoke of the claims and the computation thereof in terms of the charts annexed to the claim petitions. The Arbitrator noted that no contrary figures and numbers had been provided by the IRCTC as to the second regular meals and the welcome drinks supplied by the caterers and, in the absence of such contrary evidence, he accepted the amount computed by the caterers.

26. The Joint General Manager (Mobile Catering Services), North Zone, IRCTC, was examined as DW1. He spoke of the commercial circulars issued from time to time and the invoices submitted by the caterers based on the tariffs fixed in the said circulars. He stated that the caterers were reimbursed for regular meals at significantly higher prices than the prices fixed in the earlier Commercial Circular dated 27.05.1999 and that payments were made by the IRCTC for the bills, as submitted. He asserted that these transactions stood concluded and no further record was available with the IRCTC. He further stated that the transactions could not be re-opened as the caterers had received the payments made on the basis of the bills submitted by them.

27. However, holding that the documents produced by the caterers were sufficient evidence under Section 65(g) of the Indian Evidence Act, 1872, the Arbitrator noted that the IRCTC had all along maintained the stand that it was for the caterers to prove their computations but failed to point out any errors either in such computation or on account of insufficiency of supporting documents. The Arbitrator, accordingly, held that BFP was entitled to claim reimbursement of ₹20,97,85,202/- for the second regular meal which it had provided at the price of a combo meal and also ₹5,04,99,122/- for the welcome drinks supplied by it, post January, 2015.

28. As regards the claim of BFP for interest on the amounts recoverable by it, the Arbitrator refused to accept the computation of interest offered by BFP at the rate suggested by it. He noted that Section 31(7) of the Act of 1996 provided that the Arbitrator could grant interest at a reasonable rate and, accordingly, awarded simple interest at the rate of 6% from January, 2018 onwards. Further, if the IRCTC failed to make the payment due under the Award within four months, the Arbitrator directed simple interest to be paid to BFP at the rate of 9% per annum from the date of the Award till the date of payment. Parties were to bear their own costs.

29. The Arbitral Award dated 27.04.2022 was corrected and modified by the Arbitrator, under order dated 26.07.2022 passed in exercise of power under Section 33 of the Act of 1996. The corrections were at the behest of BFP, which pointed out an error in recording its name and that the numbering of the paragraphs was incorrect.

30. Aggrieved by the Award dated 27.04.2022, corrected on 26.07.2022, the caterers and the IRCTC filed petitions under Section 34 of the Act of 1996. These petitions were disposed of by a learned Judge of the Delhi High Court, *vide* judgment dated 13.08.2024. On the issue of limitation, the learned Judge opined that there was no infirmity in the reasoning adopted by the Arbitrator on the issue and concurred with the view taken on the exclusion of time under Section 14(2) of the Limitation Act, 1963, in relation to the period of time spent by BFP in pursuing the writ petition before the High Court. As regards the contention of the IRCTC with regard to waiver and estoppel applying to the caterers, the learned Judge disagreed with the view taken by the Arbitrator. According to him, the two aspects, i.e., the second meal and the welcome drink, had to be dealt with separately. On the issue of the second meal, the learned Judge noted that, at the time the bids were invited by the Northern Railway, the catering tariff was as per the Circular of 1999, as per which the caterer was to receive only ₹150/- for both regular meals @ ₹75/- each. He noted that Circular No. 63 of 2013 dated 09.10.2013 came to be issued which entitled the caterer to a combined tariff of ₹178.50/- for the supply of a first regular meal @ ₹112/- and a combo meal @ ₹66.50/- to the passengers in 2AC/3AC/CC. However, the combo meal came to be substituted by the later Circular No.67 of 2013 dated 23.10.2013 with a second regular meal. The learned Judge noted that it was only thereafter, i.e., on 17.01.2014 that the Letter of Award was issued to BFP and catering services commenced on 21.01.2014. The MLA was then executed on 21.04.2014 and, thereafter, Circular No.32 of 2014 dated 06.08.2014 was issued, directing the provision of welcome drinks at the beginning of the journey.

31. The learned Judge observed that the caterers had entered into their contracts with open eyes, knowing the rates of the meals to be supplied by them. He also noted that Clauses 8.1 and 1.4 of the MLA empowered the IRCTC to modify/alter the menu and the catering tariff without consulting the caterers. He, therefore, opined that Clause 21.6 of the MLA had no applicability and it was erroneously relied upon by the Arbitrator. He, accordingly, concluded that the finding of the Arbitrator with regard to waiver was perverse, having been passed in blatant ignorance of the binding contractual terms between the parties. The learned Judge further noted that the caterers, having commenced services on 21.01.2014, continued to supply meals till 22.06.2015 without protest, as it was only on 22.06.2015 that they chose to make their first representation to the Railway. As they had continued to raise bills and receive payments without demur, the learned Judge rejected the plea of the caterers that they were coerced into raising bills and receiving payment, owing to financial constraints. The learned Judge summed up that these were bald assumptions without any evidence to support the same.

32. The learned Judge was of the opinion that the caterers could not claim the benefit of higher tariff under Circular No.63 of 2013 dated 09.10.2013 while seeking to resile from the later Circular No. 67 of 2013 dated 23.10.2013. He was not inclined to place any reliance upon the letter dated 05.07.2019 addressed by the IRCTC to the Railway Board, resulting in the Circular dated 03.10.2019 establishing prospective parity between the tariffs for the first and second regular meal. The letter was brushed aside as an internal communication which did not confer any right upon the caterers. The learned Judge opined that the reasoning of the Arbitrator, while seeking to achieve an equitable outcome, completely ignored the contractual terms which permitted the IRCTC to change the menu and tariff. He, accordingly, concluded that the doctrine of waiver was irrelevant in this case, as BFP did not have the right to seek reimbursement for providing the second meal, having entered into the contract that allowed IRCTC to change the menu and tariff unilaterally.

33. As regards the issue of welcome drinks, the learned Judge found no infirmity in the approach of the Arbitrator, on the strength of what he termed was a distinguishing factor. He noted that Circular No.32 of 2014 dated 06.08.2014 provided for supply of welcome drinks to all passengers boarding the trains but no payments were to be made for the same. According to the learned Judge, this could not fall within the ambit of Clauses 1.4 or 8.1 of the MLA. The learned Judge observed that, though the IRCTC had the power to modify/alter the menu/tariff, it could not have asked the caterers to provide an additional item without intending to reimburse them for the same. He, accordingly, concurred with the Arbitrator's finding that, given a contract of commercial nature for supply of services, a party could legitimately expect reimbursement for actual services rendered. The learned Judge observed that this was not a case of inadequate reimbursement, as it was with the second regular meal, but a case of no reimbursement, which was a point of difference. The learned Judge, accordingly, upheld the view of the Arbitrator on this count.

34. The learned Judge concluded that the Award insofar as it pertained to recovery of differential costs for supplying the second regular meal was against public policy as it was in violation of the provisions of the Indian Contract Act, 1872, and was liable to be set aside. On the issue of welcome drinks, the learned Judge affirmed the reasoning of the Arbitrator, both on the liability aspect as well as on the computation aspect. He confirmed that there was no infirmity in the findings of the Arbitrator and upheld the Award to that extent. Lastly, on the issue of interest, the learned Judge observed that the same was solely within the domain of the Arbitrator under Section 31(7) of the Act of 1996 and observed that he found no infirmity with the reasoning of the Arbitrator. The Award dated 27.04.2022, corrected on 26.07.2022, was set aside insofar as it pertained to recovery of differential costs for supply of the second regular meals but was confirmed in relation to recoveries for supply of welcome drinks along with the interest payable thereon.

35. Both parties were dissatisfied with this order of the learned Judge. They, accordingly, filed appeals under Section 37 of the Act of 1996. Their appeals were disposed of by a Division Bench of the Delhi High Court, *vide* the impugned judgment dated 10.02.2025. It was contended on behalf of the IRCTC that it had charged pre-fixed meal prices from the passengers and had passed it on to the caterers, without retaining any amount and, therefore, the claims for past supplies of meals to the passengers, which could no longer be passed on to the passengers concerned, would be a burden upon the IRCTC. It was further contended that once the learned Judge rejected the claim of the caterers for reimbursement for supply of the second regular meals on par with the first regular meal, the same logic should have applied to the supply of welcome drinks also. According to the IRCTC, the Arbitrator could not have allowed the claim on the ground of equity, as Section 28(2) of the Act of 1996 empowered the arbitral tribunal to decide *ex aequo et bono* only if the parties expressly authorised it to do so and, in the case on hand, no such authorization was given by the IRCTC. The quantification of the claim towards welcome drinks was also challenged along with the grant of interest thereon. It was pointed out that the Award granted interest to the caterers from 01.01.2018 on a lumpsum amount, which would mean that even on the amount that became due past 01.01.2018, interest would be granted from the date. *Per contra*, it was contended on behalf of the caterers that the learned Judge had erred in setting aside the Award insofar as it pertained to the second regular meal. It was further contended that the claims of the caterers *qua* the supply of the second regular meal and the welcome drink were not barred by waiver/estoppel, as the issues were raised time and again by the caterers under their various letters, commencing with the letter dated 22.06.2015. They, accordingly, sought to justify the Award in that regard.

36. Reviewing the precedential law on the scope of interference with an arbitral award under Sections 34 and 37 of the Act of 1996, the Division Bench opined that interference under Section 34 could be on very limited grounds. It observed that the Court exercising jurisdiction under Section 34 could only see whether the arbitral tribunal's view was perverse or manifestly arbitrary. However, the Bench misread the finding of the learned Judge on the issue of waiver, as it observed that he had invoked the doctrine of waiver against the caterers in respect of their claim for the second regular meal. In this regard, we find that the learned Judge did not apply the doctrine of waiver at all. On the other hand, he held that the principle of waiver had no applicability to that claim as the contractual terms specifically empowered the IRCTC to unilaterally change the menu and the tariff. The Bench also noted the fact that the Arbitrator had placed reliance on Annexure-II appended to the MLA, which spoke of a combo meal instead of a second regular meal, and observed that the Circular dated 09.10.2013 seems to have been relied upon in the MLA, not realising that the concept of combo meal was no longer in vogue. It was observed that the caterers could not have served a combo meal in violation of the Circular dated 23.10.2013 but, at the same time, the IRCTC could not pay the caterers, as if they had served a combo meal.

37. The Bench opined that the Arbitrator was right in holding that Clause 1.4 of the MLA and Annexure II attached to the MLA could not come to the aid of the IRCTC to deny the claim of the caterers for reimbursement of the second regular meal. Referring to Clause 1.3.1 of the Tender Document, the Bench observed that the IRCTC had the right to issue policy guidelines, instructions and regulations, including for supply and service of fully cooked meals/food to the passengers on demand, and the caterers were bound to follow such instructions but the clause could not be read to mean that even when the IRCTC insisted upon the caterers serving a second regular meal instead of a combo meal, the IRCTC would pay the caterers at the rate specified for a combo meal. The Bench further noted that, in neither the circulars nor the tender document/MLA was there any clause which stipulated that for the second regular meal, the caterer would be paid at the rate specified for a combo meal. According to the Bench, Clause 1.3.1 of the Tender Document and Clauses 1.4 and 8.1 of the MLA would have had relevance, if there was such a clause which stipulated that though the caterer was obliged to serve a second regular meal, it would only be paid at the rate specified for a combo meal. The Bench opined that the learned Judge exceeded his jurisdiction by interfering with the arbitral award. Noting that the arbitral tribunal was the final arbiter on facts as also the interpretation of the contractual terms, the Bench held that the learned Judge erred in holding that the Arbitrator had exceeded his jurisdiction and travelled beyond the terms of the contract.

38. As regards, the supply of welcome drinks, the Bench opined that the learned Judge had given contradictory findings on the issue of waiver, as the fact situation in the claim relating to welcome drinks was almost identical to that relating to the second regular meal. The caterers had not raised claims either for the second regular meal or for the welcome drink in their bills for over a period of one and a half years and the Arbitrator had opined that, as the IRCTC was in a dominant position and the caterers were forced to raise bills as directed by it so as to obtain regular payments, the learned Judge was not correct in rejecting this premise.

39. Affirming the view of the learned Judge that a plea of economic duress could not be accepted on the strength of mere pleadings without any evidence, the Bench noted that the Arbitrator had inferred the same from various facts, including the fact that the caterer had already deposited the license fee in advance along with the security deposits and their return was only in the form of payments regularly received against monthly bills. The

Bench, therefore, concluded that the Arbitrator was entitled to draw his inferences from the facts proved before him and the scope of jurisdiction under Section 34 of the Act of 1996 did not extend to interfering with the merits of the inferences so drawn. The Bench was of the view that it is only where an inference was drawn completely without evidence or contrary to the express terms of the contract or the evidence led by the parties and where no reasonable person could have drawn such an inference, interference with the arbitral award may be warranted. The Bench opined that the present case was not such a case.

40. While appreciating the contention urged by the IRCTC that, by not raising the bills within time, the caterers had denied it an opportunity to charge the same from the passengers, the Bench observed that this could not be a ground to reject a legitimate and legal claim arising out of the MLA and the circulars. The Bench observed that the IRCTC itself should have rectified its stand at least when the first representation in that regard was received by it. The Bench further noted that, in any event, the caterers had not been granted their claims for the entire period due to limitation. The Bench further opined that the question of estoppel did not arise, given the terms of the MLA and the circulars as were interpreted by the Arbitrator, with which the Bench found no reason to disagree. On the issue of limitation and exclusion of time, the Bench affirmed the finding of the Arbitrator which was upheld by the learned Judge. On the computation of the claims, the Bench was disinclined to accept the submission made on behalf of the IRCTC. Noting that the bills of the caterers were paid on the basis of Occupancy Certificates, wherein the amount payable for the second regular meal at the price of a combo meal was made by the IRCTC, the Bench observed that instead of the price of a combo meal, the caterer would be entitled to be paid the full price of a regular meal. The number of passengers who were served the second regular meal, having been accepted by the IRCTC, it was only a case of reimbursement of the differential cost of the regular meal when compared with a combo meal.

41. As regards the evidence of Jeetmal Khandelwal (CW-1), the Chartered Accountant examined by BFP in support of its claims, the Bench noted that the Arbitrator had accepted his testimony by invoking Section 65(g) of the Indian Evidence Act, 1872, and observed that the Court would generally not interfere with such exercise of power by the Arbitrator under Section 34 of the Act of 1996. The Bench observed that this could not be said to be a case where there was no evidence at all before the Arbitrator for allowing a claim. The Bench further observed that this would also apply to the issue of welcome drinks, where the rates adopted by the caterer, though not expressly determined by any circular issued by the Railway or by the IRCTC, was acceptable as it was on the basis of the charges applicable to service of tea to the passengers. The Bench, therefore, opined that there was no infirmity in this exercise.

42. The Bench further noted that the concept of welcome drinks was introduced after the signing of the MLA, by way of the Circular dated 06.08.2014, and there was, therefore, no stipulation either in the earlier circulars or the terms of the MLA, prohibiting payment being made for such welcome drinks. The plea of the IRCTC that it was entitled to set-off, as a drink was to be reduced from the breakfast which was to follow, was held to have been rightly rejected by the Arbitrator in the absence of pleadings and proof. The Bench opined that this was a matter for evidence and in the absence thereof, the same could not have been raised before the Arbitrator either to reject or reduce the claim of the caterers.

43. Lastly, on the issue of interest, the Bench observed that the Arbitrator had awarded interest on the total sum payable to the caterers with effect from 01.01.2018 though the

amount would become due in instalments with each bill which was raised at the interval of 10 days, subsequent to 01.01.2018. It was opined that the entire amount did not become due and payable as on 01.01.2018. The Bench observed the cause of action for each bill would arise separately and, therefore, the cause of action for the amount due under the bills that were raised post 01.01.2018 or related to the billing period post 01.01.2018 would arise only after the said date. As the amount would become payable post the said date, the Bench opined that the Arbitrator had no authority under Section 31(7) of the Act of 1996 to award interest on an amount which was not even due as on a particular date and for which no cause of action had arisen as on that date. Holding that the Court exercising power under Section 37 could not modify an arbitral award, the Bench set aside the Award to the extent of award of interest. In effect, the Bench set aside the order dated 13.08.2024 passed by the learned Judge in part, i.e., insofar as it related to the setting aside of the Award *qua* the claim of the caterers for the second regular meal and the Award stood restored to that extent. However, the Award insofar as it pertained to grant of interest was set aside. The learned Judge's order and the Award, insofar as they pertained to the claim of the caterers for welcome drinks, were confirmed.

44. The IRCTC would contend before us that the Arbitrator exceeded his jurisdiction in rewriting the contract. It is argued that when a commercial contract was entered into by the parties with clarity and full volition, it would not be open to import therein the concept of fairness on the part of a State instrumentality and to hold that IRCTC could not have acted in a particular manner. It is pointed out that Section 28(2) of the Act of 1996 had no application in the present matter as the parties did not expressly authorize the Arbitrator to decide *ex aequo et bono* or as an *amiable compositeur* and, therefore, Section 28(1)(a) thereof had application, whereby the Arbitrator had to decide the dispute in accordance with the substantive law for the time being in force and also Section 28(3), which mandated that the Arbitrator had to take into account the terms of the contract and trade usages applicable to the transaction.

45. BFP would contend that the Arbitrator was justified in placing the interpretation that he did on the terms of the contract. Reference is made to the decision of the Railway Board on 03.10.2019 to bring parity between the prices fixed for the first and the second regular meals, thereby addressing the injustice that was being meted out to the caterers by paying them the price of a combo meal even for a regular meal. Though BFP would contend that the phrase 'the above changes will be done without any increase in charges' in Commercial Circular No. 67 of 2013 dated 23.10.2013 has to be interpreted to mean that the phrase was applicable only to Clauses (ii) to (v), i.e., in respect of the additional items that had been introduced and that it would have no application to Clause (i), which reinstated a regular meal in the place of a combo meal, we are not persuaded to agree. This argument does not stand to reason as a bare reading of the clauses in Commercial Circular No. 67 of 2013 dated 23.10.2013 indicates that there is no distinction made between the changes to be affected under Clause (i), on the one hand, and the changes under Clauses (ii) to (v), on the other. All the changes were to be made without any increase in charges is how the circular reads and no distinction can be drawn between one clause and the other.

46. During the course of arguments, the learned senior counsel appearing for BFP, while strenuously contending that the Award deserved to be confirmed insofar as the claims for reimbursement are concerned, fairly conceded that the Arbitrator had erred in awarding interest on a lumpsum amount from 01.01.2018 and that the Division Bench of the High Court was justified in finding fault with the same. The learned senior counsel would, however, argue that the interest component could be scaled down by making it

payable only from 13.01.2020, being the date of filing of the statement of claims, instead of 01.01.2018.

47. Though it has also been argued on behalf of the caterers that the IRCTC is projecting a new argument before us based on Commercial Circular No. 32 of 2014 dated 06.08.2014, in the context of the second regular meal, we may note that BFP itself sought quashing of the said circular in its writ petition and it is, thus, clear that it had a grievance with the same at the time it filed the said writ petition. The circular is, therefore, not new to the litigation and was very much in focus even during the arbitral proceedings.

48. As already noted, BFP offered the highest license fees of ₹35,63,00,000/- and was issued the Letter of Award dated 17.01.2014. It was informed, thereafter, that the license fees would stand increased from ₹35,63,00,000/- to ₹43,14,08,040/- on a *pro rata* basis owing to the increase in the tariffs. However, having made a representation against this hike in the license fees, we are informed that BFP initiated a separate arbitration on that count and the issue is pending consideration as on date.

49. Certain undeniable facts may be noted at this stage. The catering policy under the Circular dated 27.05.1999 was holding the field at the point of time the Tender Notice was issued by the Northern Railway on 27.05.2013. BFP submitted its bid dated 22.06.2013, based on that catering policy. In terms of this policy, the menus as well as the tariffs for different meals were shown in the tender document for all AC classes in the train. Significantly, Para 6 of the Circular dated 27.05.1999 provided that, apart from breakfast, lunch, high tea/ evening tea and dinner, the caterer was also required to provide morning tea/welcome drink/light refreshment. The tariff fixed for lunch/dinner was ₹75 for 2AC/3AC/CC and ₹112.50 for 1AC/EC. As regards breakfast, the tariff fixed was ₹40 and ₹60 for the above two categories of classes; for high tea/evening tea, the tariff fixed was ₹40 and ₹60 respectively, while for the morning tea/welcome drink/light refreshment, the tariff was shown as ₹13 and ₹19.50, respectively. The catering policy introduced in the year 2010, *vide* Commercial Circular No. 35 of 2010 dated 21.07.2010, did not make any substantial changes as regards the menus and tariffs shown in the earlier circular of 1999 but left it open to the Railway Board to fix the menus and tariffs for Rajdhani, Shatabdi and Durgam Express Trains.

50. Therefore, when BFP and the other caterers made their bids pursuant to the tender notices in May, 2013, they did so under the impression that they would be supplying food on the trains in question as per the menus fixed under the circular of 1999 and would be paid tariffs in terms of the rates fixed therein. This is also evident from Clause 1.3.3 of the bid document, which stated that the menus and rates for each service would be as per Section C thereof, though the Railway reserved the right to modify/alter the menu and catering tariffs. Section C, appended to the bid document, contained the menus for morning tea/coffee; welcome drink; breakfast; lunch/dinner and evening tea for the two separate categories in the AC classes. More significantly, tariffs in terms of the rates mentioned in the Circular dated 27.05.1999 were replicated in the tabular statement appended thereto. Thus, the bid submitted by BFP was in contemplation of being paid the very same tariffs as were fixed in the Circular dated 27.05.1999 and in accordance therewith, it made its bid with license fees of ₹35,63,00,000/- for Train Nos. 12423/12424, New Delhi-Dibrugarh-New Delhi Rajdhani Express.

51. It was only during the processing of the bids received pursuant to the Tender Notice dated 27.05.2013, that the catering policy underwent a change and Commercial Circular No. 63 of 2013 dated 09.10.2013 was issued by the Railway Board, embodying the changes in the policy. Therein, it was noted that the menu and tariff of catering services

for Rajdhani, Shatabdi, and Duronto Express Trains were last revised in the year 1999 and as the cost of raw materials used for catering services had increased manifold due to inflation, etc., a review of the menu and tariff had been done through the Committees set up by the Railway Board. Based on the Committees' recommendations, the Railway Board had decided to revise the menus and tariffs as set out therein. The menu for each service was set out in Annexure A to the circular, and the same was to be uniformly adopted by the Zonal Railways.

52. It is this circular that introduced the concept of a combo meal. It was stated in Clause 1.4 thereof that a combo meal had already been introduced in Rajdhani and Duronto Express trains in the place of the second regular meal of the day, where more than one meal service was provided. The quantity of food to be served in a combo meal was lesser than that served in a regular meal, i.e., lunch/dinner, and the tariff was correspondingly lesser. For instance, the tariff for lunch/dinner, with service tax, was fixed at ₹145/- for 1AC/EC and at ₹125/- for 2AC/3AC/CC classes. However, the tariff for a combo meal was fixed at ₹75/-, with service tax, for all the AC classes. The Railway Board also advised the Zonal Railways to reassess and revise the license fees to be paid by the caterers in the light of the enhancement of the tariff/apportionment charges payable to them for the supply of food in these trains. It is on this basis that BFP was also required to pay higher license fees over and above its bid of ₹35,63,00,000/- and the same is now the subject matter of a separate arbitration.

53. In any event, the new policy in relation to a combo meal in the Circular dated 09.10.2013 came to be modified almost immediately thereafter under Circular No. 67 of 2013 dated 23.10.2013. This circular was stated to be a corrigendum to the earlier Circular dated 09.10.2013. In consequence, the Railway Board scrapped the newly introduced combo meal and directed that a regular meal should be restored in its place. The Railway Board directed that Para 1.4 of Circular No. 63 of 2013 dated 09.10.2013 in relation to a combo meal would stand deleted. Certain other changes in the menu were also indicated and, after setting out the details thereof in Clauses (ii) to (v), the Railway Board categorically stated that the above changes would be done without any increase in charges.

54. Therefore, by the time the bid of BFP was processed, resulting in the issuance of Letter of Award dated 17.01.2014 to it, the aforesaid revised catering policy was already in place. In fact, the Letter of Award ended with a reference to the revised catering policy and the concluding para therein reads as under:

'A copy of the revised catering charges is enclosed herewith for your reference; the revised license fee on 'Pro Rata basis' will be calculated and advised to you in due course. Difference amount of the license fee has to be deposited within seven days.'

55. Thus, knowing fully well that there was a change in the menu and in the tariffs payable to it for the food to be supplied by it on the New Delhi-Dibrugarh-New Delhi Rajdhani Express, BFP entered into the MLA dated 21.04.2014. This agreement made it clear that the scope of the arrangement made thereunder was governed by Annexure I (Scope of services to be rendered by the licensee). Clause 4.2(e) of the MLA noted that, in terms of the Circular dated 09.10.2013, catering charges had been revised. Article 8 of the MLA dealt with the changes in the menu, tariff and duration of the train and Clause 8.1 therein put it beyond the pale of doubt that the Northern Railway, the predecessor of the IRCTC, reserved the right to change the menu and the catering tariff for the train at any time after the award of the license. Annexure I to the MLA, titled 'Scope of the work', provided that the main objective was to appoint a licensee for Train Nos. 12423-12424 to

ensure the provision of hygienic, good quality meals/food to the passengers. As per the laid-down guidelines and as per the specified menu, rate and policy directives issued by the Railway, the menus and rates for each service, as per Clause 1.3.3 therein, were set out in Section C, and the Northern Railway reserved the right to modify/ alter the catering tariff and the menu.

56. Though an argument was advanced before us that Section C, marked as Annexure II to the MLA, was not provided to BFP, we find from the photocopy of the MLA and the Annexures placed before us in Volume III in I.A. No. 140341 of 2025, filed in Special Leave Petition (Civil) Nos. 15507-15509 of 2025, that the pages therein from 290 to 307, containing Section C/Annexure II, also bear the signatures of the partner of BFP who signed each of the pages of the MLA on its behalf. Annexure II/Section C consisted of two parts – 1. Special Conditions of Contract-I and 2. Special Conditions of Contract-II. The Special Conditions of Contract-I set out the cyclic menus for morning tea, breakfast, lunch/dinner and evening tea for both categories of AC classes. The revised tariffs were set out in a separate table therein. Notably, the tariffs were detailed with reference to the meal. For example, where lunch and evening tea were served, it was indicated as 'L+ET' and the tariffs were shown separately for 2AC/3AC and 1AC/EC. Significantly, where a first regular meal was served along with another meal, it was shown as L+ET+CM, i.e., lunch+evening tea+combo meal. The tariff payable was shown as the aggregate of the tariffs payable for lunch, evening tea and the second regular meal at the price of a combo meal. Merely because this tabular statement referred to CM (combo meal), it is not open to BFP and the other caterers to contend that they were only required to serve a combo meal and not a second regular meal. The circulars issued and put in place by the date of execution of BFP's MLA on 21.04.2014 clearly evidenced that the concept of a combo meal, which was introduced under Circular dated 09.10.2013, was already done away with under the later Circular dated 23.10.2013. Further, this circular made it clear that the changes made thereunder did not warrant any increase in charges and that is the reason why CM continued to be used in the context of the second regular meal.

57. Therefore, the policy as it stood then was that, though a second regular meal was to be resumed in the place of a combo meal, the lesser tariff payable for a combo meal was to be paid for the second regular meal. No doubt, on the face of it, this disparity between the tariff payable for two regular meals appears arbitrary and disproportionate, but it may be noted that the contracts entered into by Northern Railway with BFP and the other caterers were in keeping with the policy of the Railway Board and there was no independent discretion left with the parties to deviate therefrom.

58. It is perhaps for this reason that BFP chose to approach the Delhi High Court. It may be noted that in WP(C) No. 15548 of 2017 filed by BFP before the Delhi High Court, specific prayers were made to quash Commercial Circular No. 67 of 2013 dated 23.10.2013 and Commercial Circular No. 32 of 2014 dated 06.08.2014. The writ petition was dismissed by a learned Judge of the Delhi High Court on 23.09.2019, relegating BFP to the remedy of arbitration. Having suffered the dismissal of its writ petition by the High Court, BFP did not choose to carry the matter further and merely abided by the advice of the learned Judge that it should resort to arbitration. This failure on the part of BFP to maintain and succeed in its challenge to the policy decisions as to the payment of tariff for the first and second regular meals is fatal. Circular No. 67 of 2013 dated 23.10.2013 and Circular No. 32 of 2014 dated 06.08.2014 were not set aside and continued to remain in force. Once those policy decisions remained in place untouched, they necessarily had to be given effect to and the terms and conditions in the MLA merely reflected the same.

59. Significantly, Clause 21.1 of the MLA, titled 'Interpretation', states that the agreement and the arrangement between the parties shall at all times be read along with the terms of the bid and the response of the licensee to the bid. It further states that, in the event of any interpretation of the provisions of the arrangement between the parties, the documents shall be read in the following order of precedence:

- (i) Railway latest catering policy as applicable from time to time;
- (ii) The Articles of this Agreement;
- (iii) The Contents of the Annexure (s) to this Agreement;
- (iv) Licensee's response to the Bid; (v) The Bid.

This clause, therefore, made it clear that the policy decisions, as per the Railway Board's catering policy and circulars, had to be given primacy and priority over and above even the terms of the agreement and other connected documents.

60. As regards the issue of a welcome drink, the Railway Board had issued Circular No. 32 of 2014 dated 06.08.2014, wherein it was stated that review of the menu and tariff had been undertaken through the Committees set up by it, and based on the recommendations made, the revised menu and tariff had already been notified, *vide* Circular No. 63 of 2013 dated 09.10.2013. Circular No. 67 of 2013 was then referred to, whereby certain modifications were made in the earlier Circular No. 63 of 2013. It was then stated that, the Board had decided to revise the instructions and, therefore, consolidated instructions were being issued. One of the changes made thereunder was that a welcome drink would be served to all passengers in AC classes on commencement of the journey, but when breakfast followed immediately after the welcome drink, the Frooti/Tetra Pack drink hitherto being provided along with breakfast, would not be served. BFP and the other caterers claimed that this addition to the catering services to be provided by them resulted in extra costs being incurred, for which they were not reimbursed. This was the claim put forth before the Arbitrator which was accepted by him.

61. However, two crucial aspects were overlooked by the Arbitrator in this regard. The bid document dated 27.05.2013, pursuant to which BFP had submitted its bid dated 27.06.2013, clearly indicated that a welcome drink was contemplated at that stage. BFP would, therefore, have been conscious that this item was to be supplied when it submitted its tender. However, in the circulars that were issued thereafter, the welcome drink was overlooked and that oversight was sought to be rectified by the subsequent Circular dated 06.08.2014. No doubt, the MLA and the tabulated statement in Annexure II appended thereto, did not refer to a welcome drink and no tariff was stipulated therefor. However, Clause 8.1 of the MLA empowered the Railway to change the menu for the train at any time without consultation with the caterer. The reintroduction of the welcome drink on the train, which was initially contemplated in the bid document itself, was therefore squarely covered thereby. Addition of a welcome drink is clearly a change in the menu and was, therefore, directly traceable to the power conferred by Clause 8.1 of the MLA. That apart, the Circular dated 06.08.2014 again emphasized that, as per the instructions issued under the earlier Circular No. 67 of 2013, the regular meal (lunch/dinner) was to be served in the place of a combo meal, wherever applicable, at the tariff applicable to a combo meal. This categorical statement in the Circular dated 06.08.2014 put it beyond doubt that the Railway and the caterers were bound by this policy decision and there was no room for discretion or alteration in this regard.

62. Given these facts, we have to examine whether the hermeneutical exercise undertaken by the Arbitrator, culminating in the Award dated 27.04.2022, warrants interference. It is now well settled that Section 34 of the Act of 1996 provides limited

grounds on which an arbitral award can be set aside. Section 34(1) makes it clear that recourse to a Court against an award may be made only by an application to set it aside in accordance with sub-sections (2) and (3) thereof. Section 34(2) details the grounds on which an award may be set aside. For the purposes of this adjudication, Section 34(2A) is also relevant. This provision was inserted with retrospective effect from 23.10.2015, *vide* Amendment Act No. 3 of 2016. It states to the effect that a domestic arbitral award may be set aside if the Court finds that the said award is vitiated by patent illegality appearing on the face of that award. The *proviso* thereto, however, adds a caveat that an award should not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

63. Pertinently, Section 34(2)(b)(ii) provides that if the Court finds that an arbitral award is in conflict with the public policy of India, the Court would be justified in setting it aside. *Explanation 1*, as it presently reads, and *Explanation 2* were inserted by the Amendment Act No. 3 of 2016 with retrospective effect from 23.10.2015. *Explanation 1* provides that, for the avoidance of doubt, it is clarified that an award is in conflict with the public policy of India only if its making was induced or affected by fraud or corruption or was in violation of Sections 75 or 81 of the Act of 1996 or it is in contravention with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice. *Explanation 2* provides that, for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

64. In ***Ssangyong Engineering and Construction Company Limited vs. National Highway Authority of India***⁵, this Court dealt with the expression ‘most basic notions of morality or justice’ mentioned in *Explanation 1*. It was opined that the breach must be of some fundamental principle of justice, substantively or procedurally, which shocks the Court’s conscience. On facts, this Court found that the award created a new contract by applying a Circular that was not even placed before the arbitral tribunal. It was, therefore, opined that a fundamental principle of justice was breached, viz., that unilateral alteration of a contract cannot be foisted upon an unwilling party nor can a party to an agreement be made liable to perform a bargain not entered into with the other party. This Court held that such course of conduct was contrary to fundamental principles of justice followed in this country and shocked its conscience. It was, however, cautioned that this ground would be available in exceptional circumstances only and under no circumstance can a Court interfere with an award on the ground that justice, in its opinion, was not done.

65. Again, in ***PSA Sical Terminals Private Limited vs. Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin, and others***⁶, this Court found that the arbitral tribunal had thrust a new term into the agreement between the parties and thereby created a new contract for them. Referring to ***Ssangyong Engineering*** (*supra*), this Court affirmed that rewriting a contract for the parties would be a breach of the fundamental principles of justice, entitling a Court to interfere as it would shock its conscience and would fall within the exceptional category.

66. A little later, in ***State of Chhattisgarh and another vs. SAL Udyog Private Limited***⁷, a 3-Judge Bench of this Court dealt with the issue as to what would constitute ‘patent illegality’ appearing on the face of the award, in terms of Section 34(2A) of the Act of 1996. Reference was made to the earlier decisions in ***Associate Builders v. Delhi***

⁵ (2019) 15 SCC 131

⁶ (2023) 15 SCC 781

⁷ (2022) 2 SCC 275

Development Authority⁸ and **Ssangyong Engineering** (*supra*) and it was held that the failure of the arbitral tribunal to decide in accordance with the terms of the contract governing the parties would certainly attract the 'patent illegality' ground as the said oversight amounted to gross contravention of Section 28(3) of the Act of 1996, which enjoined the arbitral tribunal to take into account the terms of the contract while making the award.

67. Much earlier, in **Industrial Promotion and Investment Corporation of Orissa Limited vs. Tuobro Furguson Steels Private Limited and others**⁹, this Court observed, on facts, that the High Court had completely overlooked the fact that the parties, with their eyes widely open, had entered into a contract, which was subject to the terms and conditions clearly spelled out therein, and in furtherance of the contract, payments were made and possession changed hands. This Court noted that both sides had therefore acted on the basis of the contract, changed their respective positions and assumed rights and obligations against each other. This Court held that the contract, having been acted upon, could not unilaterally be abrogated at the sweet will of either of the parties.

68. Given the settled legal position emerging from the above referred decisions, it is manifest that the Arbitrator erred in assuming that he was only interpreting the terms and conditions of the contracts/MLAs and was, therefore, at liberty to place a contrary construction on the express language used therein, which was actually reflective of the policy decisions of the Railway Board, Ministry of Railways, Government of India, in its circulars referred to *supra*. Merely because there was a subsequent change in the policy with prospective effect, based on the recommendations made by the IRCTC itself, whereby parity was brought about in the tariffs to be paid to the caterers for the first and the second regular meals, it did not have the effect of wiping out the policy decisions set out in Commercial Circulars No. 67 of 2013 and 32 of 2014, during the period that they continued to hold sway and were in operation.

69. In its wisdom, having chosen to challenge the aforesaid circulars, BFP did not carry it forward after the dismissal of its writ petition and, in consequence, BFP and the other caterers can raise no objection at this stage to the policy decisions embodied in those circulars which were merely replicated and applied in their contracts/MLAs. Once the contracts between the parties were strictly in terms of and in keeping with the extant policy, the terms of such contracts could not have been interpreted by the Arbitrator contrary to and in violation of the policy, which remained intact after the dismissal of BFP's writ petition. The Arbitrator was, therefore, not justified in undertaking interpretation of the contractual terms contrary to language used therein, which merely mirrored the policy decisions of the Railway Board which were binding in nature. In effect, the Arbitrator practically rewrote the contract between the parties in such a manner that it was in contradiction with the policy decisions set out in the Circulars dated 23.10.2013 and 06.08.2014, which he could not have touched. In the light of the judgments referred to *supra*, this error on the part of the Arbitrator resulted in the Award not only being against the public policy of India but also made it patently illegal. Section 28(3) of the Act of 1996 mandatorily required the Arbitrator, while deciding and making the Award, to take into account the terms of the contract and the trade usages applicable to the transaction. The trade usages in this regard were the policy decisions of the Railway Board, Ministry of Railways, Government of India, that governed contracts of this nature. Therefore, the Arbitrator was bound to consider such policy decisions in that light and evaluate the

⁸ (2015) 3 SCC 49

⁹ (2012) 2 SCC 261

contractual terms in the context thereof. In the present case, the Arbitrator completely overlooked the weightage to be given to the policy decisions embodied in the Railway Board's circulars and compounded the error by contrarily interpreting the contractual terms, which were strictly in consonance therewith, to grant relief to the caterers.

70. The last contention urged by the caterers is as to whether the IRCTC, being a State instrumentality, has to be tied down by principles of fairness and reasonableness even in the contractual sphere. It was argued that the IRCTC could not act unreasonably or unfairly even while acting under a contract. This contention no longer stands to reason as we have held that the IRCTC and its predecessor, Northern Railway, had no independent discretion in the matter while drawing up the contracts/MLAs and giving effect to them, in so far as the two subject issues were concerned, as they were bound by the policy directives of the Railway Board and could not have deviated therefrom. The circulars which embodied these policy directives were unsuccessfully challenged by BFP before the Delhi High Court and left at that. Therefore, those policy directives remained in force and the contracts/MLAs between the parties merely reflected the same. Once IRCTC had no independence of its own or discretion to condition or alter the contracts/MLAs, the question of applying the principles of fair play in action and lack of arbitrariness, traceable to Article 14 of the Constitution, would not even arise.

71. We are, therefore, of the considered opinion that the caterers were not entitled to seek parity of tariff/apportionment charges for the second regular meal on par with that payable for the first regular meal during the period in question. Similarly, as the Railways was well within its domain under Clause 8.1 of the MLA in reinstating the welcome drink to be provided to passengers at the beginning of the journey, which was, in fact, contemplated in the bid document dated 27.05.2013, the caterers were not justified in seeking reimbursement on that count also.

72. The errors committed by the Arbitrator were not noted in the correct perspective by either the Court exercising jurisdiction under Section 34 of the Act of 1996 or by the Court exercising appellate jurisdiction under Section 37 thereof. The Award, being patently illegal and in conflict with the public policy of India is, therefore, unsustainable in law and is liable to be set aside under Section 34(2A) and Section 34(2)(b)(ii) of the Act of 1996. In the light of this finding, the cross appeals filed by the caterers on the issue of award of interest no longer survive for consideration.

73. In the result, the appeals filed by the Indian Railways Catering and Tourism Corporation are allowed setting aside the Award dated 27.04.2022, corrected on 26.07.2022, along with the judgments and orders dated 10.02.2025 and 13.08.2024 passed by the Delhi High Court, and the appeals filed by the caterers, viz., M/s. Brandavan Food Products, R.K. Associates and Hoteliers Pvt. Ltd. and Satyam Caterers Pvt. Ltd. are dismissed.

Parties shall bear their own costs.