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

Date of Decision: 18.05.2026

\+ O.M.P. (COMM) 51/2024 & I.A. 1939/2024 (Stay)

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED .....Petitioner

Through: Mr. Harshit Agarwal, Mr. Aasheesh Gupta, Mr. Kamal Kumar and Mr. Deepesh Parashar, Advocates.

versus

FOODWORLD .....Respondent

Through: Mr. Naresh Kumar Thanai, Advocate through video-conferencing.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking the setting aside of the **Arbitral Award dated 28.08.2023**[2], passed by the learned Sole Arbitrator.

2. By way of the Impugned Award, the learned Arbitrator has held the Respondent entitled to a sum of Rs. 2,30,40,995/-, along with interest at the rate of 12% per annum and cost of litigation, payable within one month from the date of delivery of the Award. The said amount has been awarded primarily on account of the alleged

[1] A&C Act
[2] Impugned Award

difference in the price of combo meals and regular meals, as well as reimbursement towards welcome drinks.

3. The case of the Petitioner is that the Respondent had expressly agreed not to raise any claims in relation to the subject matter in dispute and that various circulars issued by the Petitioner had already been duly taken into consideration while determining and fixing the amounts payable to the Respondent under the terms of the contract itself; and therefore, since the said components already formed an integral part of the contractual arrangement, no separate or independent reimbursement in respect thereof could have been awarded by the learned Arbitrator.

4. This Court notes that, at the outset, only a narrow issue arises for consideration in the present proceedings, inasmuch as the controversy involved herein stands substantially covered by the judgment of the Hon'ble Supreme Court in ***Indian Railways Catering and Tourism Corp. Ltd. v. Brandavan Food Products***[3] *[hereinafter referred to as "**Brandavan case**"]*.

5. In view of the aforesaid position, this Court does not deem it necessary to traverse the entire factual matrix underlying the disputes between the parties in exhaustive detail. Suffice it to observe that, in the event the issue arising for consideration in the present Petition stands covered by the decision in the *Brandavan case* and is answered in favour of the Petitioner, the present Petition would not warrant any further elaborate adjudication.

SUBMISSIONS ON BEHALF OF THE PARTIES:

6. Learned counsel appearing on behalf of the Petitioner had, on

[3] 2025 SCC OnLine SC 2369

the previous date of hearing, drawn the attention of this Court to the Judgment passed by the Hon'ble Supreme Court in the ***Brandavan case***.

7. Learned counsel appearing on behalf of the Petitioner submits that the factual matrix underlying the disputes between the parties, the nature and scope of the contractual controversy, as well as the grounds and issues forming the subject matter of challenge in the *Brandavan case*, are substantially similar and materially akin to those arising in the present proceedings, and therefore, the principles and findings laid down therein would squarely govern the adjudication of the present Petition.

8. It is further submitted that in the *Brandavan case*, the Arbitral Award impugned therein was initially subjected to challenge under Section 34 of the A&C Act, whereupon the learned Single Judge had partially set aside the said Award, *vide* **Judgement dated 27.04.2022**[4]. The Section 34 Judgement was challenged in Appeals under Section 37 of the A&C Act, whereby, *vide* **Judgement dated 10.02.2025**[5], the Division Bench set aside the Section 34 Judgement and restored the Arbitral Award in its entirety.

9. Learned counsel further submits that the aforesaid Section 37 Judgement came to be challenged before the Hon'ble Supreme Court in the *Brandavan case*, whereby the Apex Court, *vide* the Judgement dated 07.11.2025, ultimately set aside the Arbitral Award impugned therein.

10. In the aforesaid backdrop, learned counsel for the Petitioner contends that the controversy involved in the present Petition would

[4] Section 34 Judgement
[5] Section 37 Judgement

also require examination in the light of the principles laid down by the Hon'ble Supreme Court in the *Brandavan case*.

11. ***Per contra***, learned counsel appearing on behalf of the Respondent submits that the present proceedings stand on a materially different factual footing and, therefore, the Judgement rendered in the *Brandavan case* would have no decisive application to the facts of the present Petition.

12. In elaboration of the aforesaid submission, learned counsel for the Respondent seeks to distinguish the present proceedings primarily on two grounds. *First*, that the **Commercial Circular dated 27.05.1999**[6], which formed part of the factual and contractual framework in the *Brandavan case*, does not form part of the pleadings or contractual matrix in the present proceedings, and *second*, that Clause 3.5.4 of the Tender document, which, according to the Respondent, materially alters the contractual position, was not under consideration in the *Brandavan case*.

ANALYSIS:

13. This Court has heard the learned counsel for the parties and, with their able assistance, perused the material available on record as well as the Judgement rendered by the Hon'ble Supreme Court in the *Brandavan case*.

14. At the outset, this Court deems it apposite to observe that the scope of interference under Section 34 of the A&C Act is both limited and circumscribed. This Court, while exercising jurisdiction under the aforesaid provision, does not sit in appeal over the findings rendered by an Arbitral Tribunal and ordinarily would refrain from re-

[6] 1999 Circular

appreciating evidence or substituting its own interpretation merely because another view may also be possible. Interference would therefore arise only where the Award is shown to suffer from patent illegality appearing on the face of the Award, perversity, or where the findings returned are contrary to the fundamental policy of Indian law or the governing contractual framework between the parties.

15. At the same time, it is equally well-settled that the limited scope of jurisdiction under Section 34 of the A&C Act does not preclude the Court from exercising its duty to interfere where the Award proceeds upon a view which is no longer sustainable in law at all. Where the interpretation adopted by the Arbitral Tribunal stands contrary either to the express terms of the contract or to the binding legal position declared by the Hon'ble Supreme Court, such a view would cease to remain a "possible view" in the eyes of law and would consequently render the Award vulnerable to interference within the limited contours of Section 34 of the A&C Act, particularly on the grounds of patent illegality and contravention of the fundamental policy of Indian law.

16. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[7], has reiterated that though the scope of interference under Section 34 of the A&C Act is limited, an arbitral award would nevertheless be amenable to interference where it disregards the binding effect of a judgment of a superior Court or adopts a view contrary to the settled legal position. The Hon'ble

[7] (2025) 2 SCC 417

Supreme Court observed as under:

> **"41.** In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that *audi alteram partem* principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:
> (*a*) orders of superior courts in India; and
> (*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.
> Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:
> (*i*) a finding is based on no evidence; or
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
> (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].
> To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.
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> ***In contravention with the fundamental policy of Indian law***
> **51.** As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:
> (*a*) the fundamental policy of Indian law; and/or
> (*b*) the interest of India; and/or
> (*c*) justice or morality.
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> **55.** The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and

Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*).

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67. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(*a*) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***SsangyongEngg. &***

***Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

"*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.".

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Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164**]."

(emphasis supplied)

17. Keeping these principles in mind, we proceed to consider the impact of the *Brandavan case* on the present matter. In the *Brandavan*

case, the Hon'ble Supreme Court was considering disputes arising out of catering contracts awarded by Indian Railway Catering and Tourism Corporation and the effect of the Commercial Circulars governing reimbursement for meals supplied by the caterers. The Hon'ble Supreme Court examined, *inter alia*, the interplay between the Circular dated 09.10.2013, introducing combo meals and the subsequent Circular dated 23.10.2013, substituting the same with regular meals, albeit at revised rates.

18. The relevant paragraphs of the Judgment in the *Brandavan case*, insofar as they concern the factual backdrop and the nature of the disputes, read as under:

> "**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 charges[4] 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.
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> **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 Rs. 66.50/- (Rs. 75/- with service tax) as against a regular meal, which was enhanced to Rs. 129.50/- (Rs. 145/- with service tax) for 1AC/EC, and Rs. 112.50/- (Rs. 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 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 Rs. 145/Rs. 129.50 (with and without service tax) and for 2AC/3AC/CC, it was enhanced to Rs. 125/Rs. 112.50 (with and without service tax). The newly introduced combo meal for all AC classes was priced at Rs. 75/Rs. 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 @ Rs. 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 changes 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 aforestated 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 Rs. 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 Rs. 112/- from the passengers, the Railway continued to charge Rs. 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. A perusal of the aforesaid observations leaves little room for doubt that the controversy involved in the present proceedings substantially mirrors the controversy which fell for consideration before the Hon'ble Supreme Court in the *Brandavan case*.

20. Further, the Hon'ble Supreme Court, in the aforesaid judgment, and in the backdrop of the factual matrix and circumstances noticed hereinabove, proceeded to undertake a detailed examination and analysis of the various issues arising for consideration from Paragraph 49 onwards, including the contractual stipulations, the scope of the claims raised, and the extent of the arbitral tribunal's jurisdiction and authority, in the following manner:

> "**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 Rs. 75 for 2AC/3AC/CC and Rs. 112.50 for 1AC/EC. As regards breakfast, the tariff fixed was Rs. 40 and Rs. 60 for the above two categories of classes; for high tea/evening tea, the tariff fixed was Rs. 40 and Rs. 60 respectively, while for the morning tea/welcome drink/light refreshment, the tariff was shown as Rs. 13 and Rs. 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 Duronto 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 Rs. 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 Rs. 145/- for 1AC/EC and at Rs. 125/- for 2AC/3AC/CC classes. However, the tariff for a combo meal was fixed at Rs. 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 Rs. 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 aforestated 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 reappreciation 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.

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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 aforestated 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 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."

(emphasis supplied)

21. A bare reading of the aforesaid extracts clearly demonstrates that the Hon'ble Supreme Court, while examining the issues arising

for consideration and adjudicating upon the validity and sustainability of the arbitral award under challenge, undertook an extensive analysis of the relevant factors, and ultimately arrived at the following determinations, though the same are not intended to constitute an exhaustive enumeration thereof:

(a) The caterers submitted their bids on the basis of the prevailing Railway catering policy and tariff structure existing at the time of the tender, which expressly contemplated the applicable menus, meals, and corresponding rates.

(b) The subsequent policy changes introduced by the Railway Board, including the concept of "combo meals" and revised tariff structures, formed part of the governing contractual framework before execution of the final agreement.

(c) Although the Railway Board later restored the second regular meal in place of the combo meal, it simultaneously retained the lower tariff applicable to combo meals, thereby making the policy decision binding upon the contracting parties.

(d) The caterers entered into the agreement with full knowledge of the revised policy framework, including the Railway's express right to alter menus and tariffs in accordance with Railway Board directives.

(e) The contractual documents, read together with the Railway Board circulars, clearly established that the Railway's catering policy and circulars enjoyed overriding primacy over all other contractual terms and bid documents.

(f) The Apex Court found that the expression "combo meal" in the contractual schedules could not be interpreted in isolation, since

the subsequent circulars had already clarified that a second regular meal was to be supplied at the tariff applicable to a combo meal.

(g) The policy circulars issued by the Railway Board were never set aside by any Court and continued to remain operative and binding throughout the relevant period.

(h) The caterers had earlier challenged the Railway Board circulars before the Delhi High Court but failed to pursue the challenge after dismissal of the writ petition; consequently, the validity and enforceability of the policy decisions attained finality.

(i) Since the contracts merely incorporated and reflected binding Railway Board policy decisions, neither the parties nor the Arbitrator could interpret the agreements contrary to those policies.

(j) The Apex Court held that the Arbitrator exceeded the permissible scope of contractual interpretation by effectively rewriting the contractual terms and ignoring the binding nature of the Railway Board circulars.

(k) The claim for reimbursement relating to the "welcome drink" was also rejected because the bid documents themselves originally contemplated such service and the contract expressly empowered the Railway to modify menus without consultation with the caterers.

(l) The Apex Court held that the reintroduction of the welcome drink was merely an exercise of contractual and policy powers already reserved under the agreement and therefore did not create any independent entitlement to reimbursement.

(m) The Arbitrator failed to accord due weight to the governing policy framework and overlooked the mandatory requirement under Section 28(3) of the A&C Act, which required the arbitral tribunal to decide disputes in accordance with the terms of the contract and the applicable trade usages.

(n) The Apex Court concluded that the arbitral award suffered from patent illegality and was contrary to the public policy of India because it granted reliefs in direct conflict with binding governmental policy and the contractual scheme.

(o) The Apex Court further held that principles of fairness and arbitrariness under Article 14 could not be invoked against IRCTC in the facts of the case, since IRCTC had no independent discretion and was bound to implement the Railway Board's policy directives.

(p) Consequently, the arbitral award, as well as the Section 34 Judgments partially affirming the arbitral award and Section 37 Judgement affirming it wholly, were set aside by the Apex Court.

22. A careful consideration of the aforesaid findings returned by the Hon'ble Supreme Court leaves no doubt that the controversy involved in the present Petition stands squarely covered by the principles laid down in the *Brandavan case*. The foundational contractual framework, the governing Railway Board Circulars, the nature of the claims raised by the caterers, as also the grievance pertaining to reimbursement of the second regular meal at combo meal rates, are substantially identical to the issues which came to be adjudicated by the Hon'ble Supreme Court.

23. This Court further finds that the principal reasoning adopted by

the learned Arbitrator in the present case proceeds substantially on the very interpretation which now stands expressly disapproved by the Hon'ble Supreme Court in the *Brandavan case*. The learned Arbitrator, while allowing the claims of the Petitioner herein, proceeded on the premise that once regular meals were restored in place of combo meals under the Circular dated 23.10.2013, reimbursement was necessarily required to be made at the tariff applicable to regular meals and not at the rates prescribed for combo meals.

24. However, the Hon'ble Supreme Court, after an exhaustive examination of the tender conditions, the Master Licence Agreement, and the governing Railway Board Circulars, has categorically held that the Circular dated 23.10.2013 consciously restored the regular meal while simultaneously retaining the tariff applicable to combo meals and that such policy decision continued to bind the parties during the relevant contractual period. The Apex Court further held that the contractual stipulations merely mirrored the extant policy framework and, therefore, could not have been interpreted by the learned Arbitral Tribunal in a manner contrary to the said policy decisions.

25. Significantly, the Hon'ble Supreme Court has further held that the learned Arbitrator, by granting parity of tariff between the first and second regular meals and by permitting reimbursement contrary to the governing policy circulars, had in effect rewritten the contract between the parties. The Hon'ble Supreme Court consequently held that such an approach rendered the Award patently illegal and contrary to the public policy of India within the meaning of Sections

34(2)(b)(ii) and 34(2A) of the A&C Act.

26. This Court has also perused the relevant clauses of the Tender document and the contractual framework forming part of the present proceedings. The clauses governing revision/modification of tariff, menu and policy directives are materially similar to those considered by the Hon'ble Supreme Court in the *Brandavan case* and likewise recognise the primacy of Railway Board policy circulars governing catering services.

27. In the considered opinion of this Court, the distinctions sought to be canvassed by learned counsel for the Respondent do not materially alter the legal position. The *first* distinction sought to be raised is with respect to the 1999 Circular not forming part of the pleadings or contractual framework in the present proceedings. However, as noticed by the Hon'ble Supreme Court itself, the relevance of the 1999 Circular lay only in tracing the historical evolution of the tariff structure and the catering policy governing the contracts in question. The actual controversy before the Hon'ble Supreme Court ultimately turned upon the effect of the Circulars dated 09.10.2013, 23.10.2013 and 06.08.2014 together with the contractual clauses incorporated in the tender documents and the Master Licence Agreements. The absence of an express reference to the 1999 Circular in the pleadings of the present matter, therefore, does not create any material distinguishing feature.

28. The *second* distinction sought to be urged pertains to Clause 3.5.4 of the Tender document. However, this Court finds no merit in the aforesaid contention either. The tender documents forming part of the present proceedings are the same which formed consideration

before the Hon'ble Supreme Court in the *Brandavan case*.

29. In fact, the Hon'ble Supreme Court itself has extensively examined the contractual stipulations governing modification of menu, tariff and catering charges and has conclusively held that the policy directives issued by the Railway Board held primacy over the contractual arrangements *inter se* the parties. Merely because Clause 3.5.4 has now been specifically pointed out in the present proceedings would not dilute the ratio laid down by the Hon'ble Supreme Court nor alter the binding effect thereof.

30. This Court is further of the considered view that once the Hon'ble Supreme Court has authoritatively interpreted the very same contractual framework and policy circulars and has unequivocally held that an arbitral award granting reimbursement contrary thereto suffers from patent illegality and contravention of the public policy of India, this Court, while exercising jurisdiction under Section 34 of the A&C Act, cannot sustain an Award founded upon the very reasoning which now stands expressly rejected by the Hon'ble Supreme Court.

31. The Impugned Award can, therefore, no longer be regarded as representing a plausible or even a possible view in law, inasmuch as the findings and interpretation adopted therein stand in clear discordance with the legal principles governing the underlying disputes, as comprehensively examined and authoritatively settled by the Hon'ble Supreme Court in the substantially identical dispute considered in the *Brandavan case*. The interpretation adopted by the learned Arbitrator in the present matter is directly contrary to the binding legal position declared by the Hon'ble Supreme Court and, consequently, falls foul of the settled principles governing patent

illegality and contravention of the fundamental policy of Indian law, as elucidated in ***OPG Power Generation*** *(supra)* and the *Brandavan case* itself.

DECISION:

32. In view of the aforesaid discussion, this Court is of the considered opinion that the Impugned Arbitral Award cannot be sustained in law and is liable to be set aside under Sections 34(2)(b)(ii) and 34(2A) of the A&C Act.

33. Accordingly, the present Petition is allowed and the Arbitral Award dated 28.08.2023 passed by the learned Arbitrator is set aside.

34. In view thereof, the present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 18, 2026/tk/DJ