

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7090/2009 & CM Nos.2612-13/2009

SURJEET SINGH & ORS. Petitioners
Through Mr.Mahipal S. Rajput, Advocate

versus

UOI & ORS. Respondents
Through Mr.Saurav Agarwal with
Mr.D. Kumar, Advocates for Respondent No.3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

S.RAVINDRA BHAT, J. (Open Court)

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1. Issue notice. Counsel for the respondent no.3 accepts notice. The counsel agreed that the matter can be disposed of at this stage in view of the relief sought.

2. The petitioners were issued licences and permitted to operate stalls at Railway Stations managed by the Northern Railway. They were engaged in vending cooked and packaged food stuffs. The Railways formulated a new policy whereby the Indian Railway Catering and Tourism Corporation Ltd. (in short 'IRCTC'), was constituted to manage this part of its function. By a series of decisions, the Railways and IRCTC formulated commercial policies.

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This involved exhaustive survey of various railway stations, their classification, having regard to the different aspects such as number of trains, location, the general economy of the State and the concerned region, the nature of articles sold, the price, the size of stalls etc. There were six kinds of categorization; A to F.

6. The petitioners claim to be aggrieved by the revised catering policy and more particularly, the increase in the licence fee, sought to be imposed upon them. They aver to having approached the Court on an earlier occasion whereby an order was passed. This writ petition was disposed of on 22.4.2008 in the following terms:-

" WP(C)No.670/08 and CM No.1287/08

It is submitted by learned counsel for the petitioner that the new policy dated July 6, 2006 and circular dated November 7, 2006 whereby petitioners have been asked to pay minimum license fee to run their static units is prejudicially affecting them. However, the petitioners are prepared to make a representation to the Group General Manager of their respective zones for their favourable consideration. Learned counsel, appearing for the respondents, submits that in case the petitioners make representation, those will be considered on merits and appropriate orders thereon shall be passed. Learned counsel for the petitioners states that the representations to the Group General Manager will be made within two weeks and on the petitioner making such representations, the concerned Group General Manager will consider the same within three weeks and pass appropriate orders thereof.

With these directions, the writ petition is disposed of and the order dated January 25, 2008 passed in CM No.1287/08 stands vacated.

Rekha Sharma, J."

7. The petitioners contend that subsequent to the liberty granted they

approached the IRCTC with an appeal on 2.5.2008, and despite the Court directions, no orders were issued and on the contrary demands for amounts ranging between Rs.5.5 lakhs to almost Rs.8 lakhs have been issued to each of them. It is claimed that these demands are excessive and contrary to the existing policies. Learned counsel further contends that 8 of the 9 petitioners belong to reserved category applicants and licencees who are unable, under the revised category policy, particularly para 11, to continue with their trade.

8. It is contended on behalf of the IRCTC that after the order of the Court, on 13.9.2008, a policy decision was published whereby in principle 25% relaxation was permitted in respect of the arrears of licence fee wherever the enhancement was upto 300% in the existing licence fee, except in certain specific categories of station. It was further contended that the Group G.M. or the Chief Regional Manager, as the case may be is also empowered to reduce the licence fee for good and valid reasons, beyond 25%. Learned counsel contended that the petitioners are entitled to the benefit of relaxation granted on 13.9.2008 and that it is open to them to indicate whether so why any relaxation beyond 25% should be granted in their cases.

9. The policy of 13.9.2008, to the extent it is relevant, is extracted below :-

"5. The principal grievance of the licensees has been that the revised license fee is very high in comparison to the earlier license fee. The earlier license fee of catering units was fixed long back and was very low and did not reflect the sale

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potentiality of the stalls due to practical problem in assessing sales turnover. Non payment is causing serious and irrecoverable loss of revenue and steps should be taken to ensure that, where the licensees are being continued only on adhoc basis, the revised license fee is recovered from them. It is to be noted that revision of license fee on the basis of the aforesaid formula, pursuant to the Railway Board directives, has been done uniformly on an all India basis and any deviation from the said guidelines would affect the working of the Policy.

6. As observed by the Hon'ble Delhi High Court, in cases where the tenure of the licenses are still continuing and the license fee has been revised and representation has been made to the GGMs, then the GGMs are required to pass speaking orders on the representation. On consideration of overall situation and to ensure uniformity, it is advised that as an Interim arrangement, till the tenure of the license expires, the revised license fee of licensees may be relaxed by 25% in cases where it is fixed at 300% of existing license fee. For A1 category of stations and some Sub-urban stations of Mumbai (Borivali, Bandra, Andheri, Kalyan & Thane) where catering sales turnover is very high and very high bids have been received in the tender process, 25% relaxation would be applicable only when revised license fee is fixed at 450% of existing license fee.

7. It is however important while allowing relaxation that the following conditions may be strictly followed :

- All dues have to be cleared by the license.
- A certain amount of uniformity in the license fee charged from different licenses of the same type (type, size, location of stall/ trolley) may be maintained to avoid discriminatory treatment.

8. To provide more choice to passengers, extra items for sale on Catering stalls/ Fruit Juice stalls have already been allowed to Catering Licenses vide Catering Circular No.01 of 2008 dated 25.8.2008.

9. In case where the license term has come to an end, but the licensees are continued on adhoc basis, the GGMs may relax the license fee in light of the principles laid down in S.No. 6 & 7 above.

10. The speaking order of GGMs/CRMs relaxing the license fees in exceptional cases beyond 25% should be specific and vetted

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by local finance.

11. In all cases it needs to be specified and stated to be licensees that non-payment of license fee would disqualify them from participation in the tender process. Further, it needs to be stated specifically that grant of adhoc extension would not confer any legal right to the licensee to continue beyond the extension granted by IRCTC.

12. For recovery of old dues, remittance in installments may be permitted in 12 monthly installments. In case the installments are due but tenure of license has expired and licensee wants to participate in tender process, he may be allowed to participate after submission of bank guarantee for the due amount."

10. The circular had also noted, that a large number of cases were filed before the Court and that this Court dismissed the challenge after taking into cognizance the letter dated 7.11.2006. That refers to the decision in WP (C) No.774/2007. The Court in its order dated 24.5.2007, after recounting the previous history of the policy, while disposing of the writ petition observed and found as follows :-

".....After hearing counsel for the parties, it appears that under the new Catering Policy of 2005, as amended by the aforesaid two circulars, the Railway Board has decided not to renew any licences falling under the general category and to subject the same to an open tender bid system. It also appears that insofar as the reserved category is concerned, which is limited to 25% of all the units, the same shall be permitted to be renewed. However, the impugned circular dated 06.07.2006 would be applicable to both general and reserved category units for the purposes of fixation of minimum licence fees. In other words, the distinction between the general and reserved categories is only with regard to the question of renewal. There is no distinction between the two categories insofar as fixation of the minimum licence fees is concerned. The present petitions pertain only to the question of fixation of minimum licence fee and, therefore, the distinction, which the petitioners have sought to bring about between the general and reserved category,

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would be of no consequence.

It is apparent that licences falling under the general category, which have expired or would shortly expire, would be covered under the Catering Policy of 2005 as amended and would be subject to fresh bids under a competitive system.

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In this context, I feel that the right course to follow in the present -

- cases would be that insofar as the petitioners whose licences are to subsist for some duration of time are concerned, their cases for revision in the licence fee should be considered in the first instance by the concerned Group General Manager and a decision be taken by them through speaking orders after hearing the parties. Till such time the speaking orders are passed, such petitioners would not be charged the enhanced licence fee. The said decisions by the Group General Managers be taken within four weeks. To enable the Group General Managers to initiate the process, such petitioners who fall under this class, shall file their representations within two weeks of this order. Insofar as the petitioners who do not fall in the said class are concerned, they would, as per the Catering Policy of 2005, as amended, be dealt with in accordance with the policy. It is made clear that in these petitions the question of renewal has not been taken up nor has any opinion been expressed on that.

The interim order dated 01.02.2007 in WP(C) 747/2007 stands superseded by this order. These writ petitions and all pending applications stand disposed."

11. In view of the subsequent development which took place after the previous decision of the Court, in the proceedings filed by these very petitioners along with 11 others, this Court is of the opinion that the IRCTC should, in the first instance, review the impugned demand, in the light of the para 6, and para 10 of the circular dated 13.9.2008.

12. To enable the IRCTC authorities, to exercise their powers – if required under para 10, the petitioners should draw the attention of such authorities, within four weeks from today, the special circumstances to which the licence

fee and arrears beyond the 25% are to be reduced. The IRCTC shall thereafter pass individual speaking order briefly containing the reasons, dealing with the petitioners specific grievances. Such orders shall be communicated directly to the petitioners within 10 weeks from today. In any event, the petitioners shall be entitled to the facility of paying installments in terms of para 12 of the circular dated 13.9.2008.

13. It is contended by the petitioner that GDP formula adopted by the IRCTC is challenged before the Supreme Court and that they would approach the Court as interveners.

14. The writ petition is disposed of in terms of the above directions. Dasti.


S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 24, 2009
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