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

+ **W.P.(C) Nos. 6293/2007 & 9447/2007**

ANIL BHARGAVA & ORS ..... Petitioner in WPC 6293/07.  
HARI RAM & ORS. .... Petitioner in WPC 9447/2007  
Through Mr. Amarjit Singh Bedi, advocate.

versus

U.O.I & ORS ..... Respondents  
Through Mr.Saurabh Agarwal, Mr.Dinesh  
Kumar, advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**  
**08.07.2009**

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Learned counsel for the parties state that the issues involved in the present cases are covered by the judgment of the learned Single Judge of this Court in Writ Petition No. 7090/2009 titled *Surjeet Singh and others versus Union of India* decided on 24<sup>th</sup> February, 2009.

2. The petitioners herein were initially granted licences by Railways and permitted to operate stalls/trolleys at railway stations. Railways formulated a new policy whereby the Indian Railway Corporation and Tourism Corporation (IRCTC, for short) was given authority to manage and control stalls/trolleys at railway stations. IRCTC thereafter formulated a policy in respect of licence fee payable, depending upon the number of trains, location, general economy of the State, region concerned, nature of article sold, price and the stalls, etc. The petitioners have challenged the said policy in the present Writ

Petitions. It appears that IRCTC has also claimed arrears from the petitioners on the basis of enhanced licence fee as per the new policy

3. Similarly, writ petitions were filed all over India by stalls/trolley operators challenging the enhanced license fee demanded as per the new policy.

4. IRCTC subsequently examined the matter and on 13<sup>th</sup> September, 2008 took a policy decision whereby in principle 25% relaxation was permitted in respect of arrears of licence fee, wherever enhanced fee demanded was 300% of the earlier licence fee except in certain specific category of stations. Group General Manager/Chief Railway Manager as the case may be, was empowered to reduce the licence fee for good and valid reasons beyond 25%. Relevant portion of the policy dated 13<sup>th</sup> September, 2008 reads as under:-

“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 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 in 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 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."

5. Following the aforesaid policy decision, Writ Petition No. 774/2007 filed in this Court, was disposed of on 24<sup>th</sup> May, 2007

observing as under:-

“....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 255 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, 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."

6. **Surjeet Singh** case (supra) was also disposed of in terms of the said directions holding, inter alia, that IRCTC should at the first instance review the impugned demand in the light of para 6 and 10 of the Circular dated 13<sup>th</sup> September, 2008. Court further observed that in case the petitioners want to rely upon any special circumstances or para 10 of the policy, they were at liberty to do so by making a representation within four weeks and individual speaking orders containing the reasons dealing with the petitioner's specific grievances will be passed.

7. Accordingly, the present Writ Petitions are also disposed of with the direction that IRCTC at the first instance should review the impugned demand in terms of the Circular dated 13<sup>th</sup> September, 2008 including paras 6 and 10. Petitioners are also given liberty to submit a representation within four weeks from today disclosing special circumstances in case they want reduction in demand of arrears beyond 25%. Speaking orders will be passed within ten weeks from today. Petitioners will also be entitled to facility of making payment in installments in terms of para 12 of the said Circular. Learned counsel for the petitioners state that the GDP formula adopted by IRCTC has been challenged before the Supreme Court and the petitioners will be

approaching the Supreme Court as intervenors.

8. The above directions and observations will equally apply to circulars issued by IRCTC in respect of trolleys.

9. It is stated that trolleys of petitioner nos. 1 and 2 in Writ Petition (Civil) No.9447/2007 have been seized and they have made a representation. The said representation will also be disposed of within ten weeks from today.

Writ Petitions are accordingly disposed of. DASTI.

**SANJIV KHANNA, J.**

**JULY 08, 2009**  
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