

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

% **Date of Decision: 28.10.2013**

+ **W.P.(C) 6990/2007**
GHANSHYAM & ORS

..... Petitioners

Through: Mr. Nishant Sharia, Adv.
versus

U.O.I & ORS

..... Respondents

Through: Mr. Shankar Kumar Jha, Adv.

+ **W.P.(C) 3322/2008 & CM 6376/2008**
O.P.GUPTA & ANR

..... Petitioners

Through: Mr. Nishant Sharia, Adv.
versus

UOI & ORS

..... Respondents

Through: Mr. Shankar Kumar Jha, Adv.

+ **W.P.(C) 10539/2009 & CM No.9323/2009**
SHIV KUMAR & ANR.

..... Petitioners

Through: Mr. Nishant Sharia, Adv.
versus

UOI & OTHERS

..... Respondents

Through: Mr. Shankar Kumar Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

In these writ petitions, the petitioners are the licencees of the respondent- Indian Railways for providing catering/ vending services at railway stations and their contracts are being renewed from time to time. They had been paying the licence fees to the Indian Railways @ 12% of the annual sale turnover. Vide Circular No. 51 of 2005 dated 09.12.2005, the Railway Board decided to revise the licence fees in respect of the Category D,E&F Railway Stations. It was decided that for new static units or those units for which the contract was being renewed @ 12% licence fee shall be charged subject to minimum of lump sum amount of Rs.1 lac per annum refreshment rooms, Rs.60,000/- per annum for stalls and Rs.12,000/- for trolleys at Category D Stations, Rs.60,000/- per annum for refreshment rooms, Rs.30,000/- per annum for stalls and Rs.9,000/- per annum for trolleys at Category E Stations and Rs.20,000/- per annum for stalls and Rs.6,000/- per annum at category F Stations.

2. Pursuant to the aforesaid circular, demands were raised against the petitioners to pay the arrears of licence fees calculated in terms of the said circular. The revision of the licence fees was effected with effect from 1.1.2006. Since the petitioners have not paid the arrears

demanded from them, the respondents are not renewing their contracts. Being aggrieved from the aforesaid demand, the petitioners are before this Court seeking quashing of the said demand with direction not to raise any further demand on the basis of the circular dated 9.12.2005. The petitioners are also challenging the categorization of the railway stations into various classes which is stated to be based on the revenues generated from advance booking tickets as well as from parcel tickets. However, there is no specific prayer made in the writ petition to quash the categorization of the railway stations into various categories.

3. In their counter affidavit, the respondents have stated that in terms of the circular dated 9.12.2005, the categorization of the stations has been revised and now the stations having passenger earning between Rs.1 crore to Rs.3 crore is categorized in Category D. As regards, revision of the licence fees, it is stated in the counter affidavit that a policy decision was taken considering that the volume of contracts has increased manifold whereas the licence fees remained static during the last many years. It is further stated that though vide Circular No.75 of 2006 it was decided that the DRMs with the concurrence of the Divisional Finance would fix minimum licence fee for refreshment room, stalls and trolleys at D,E and F category stations based on rational

factors like State GDP, purchasing power, land value, type of clientele, number of passengers, location of units, sales turnovers etc. It was later realized that as the divisions were spread over more than one State and the adjoining stations in the same division could fall under different States which would result in variation in the licence fee due to wide difference in the factors enumerated in the Circular No.75 of 2006 and in order to avoid such a situation, it was directed, vide Circular dated 18.4.2007, that the guidelines laid down in the Commercial Circular No.51 of 2005 dated 9.12.2005 be followed.

4. The railway stations being under the management and control of Indian Railways and the petitioners being its licencees, the respondent is entitled in law to fix such licence fee as is deemed appropriate by them to permit its licencees to provide catering/vending services at the railway stations. If the petitioners want to continue to provide the aforesaid services at railway stations, they are under a legal obligation to pay such licence fee as is fixed by the Indian Railways from time-to-time. It would be competent for the licensor to terminate the licence in case the licence fee fixed by it from time-to-time is not paid by the licencee, recover the arrears of licence fee and also evict the erstwhile licencees from the railway stations where they are providing the

catering/vending services. No exception can be taken by the licencees to the quantum of licence fee fixed by the licensor from time-to-time, except in a case where the licence fee is sought to be enhanced, during the fixed period, if any, of a licence and without there being any provision in the Licence Deed or the terms and conditions, subject to which the licence was granted, to enhance such fee.

5. In Lala Ram(D) by L.R. & Ors.versus Union of India & Anr. [Civil Appeal Nos.243-247 of 2003], the Apex Court upheld the right of the Railways to increase the licence fee. The licence fee in the aforesaid case was enhanced by as much as 13 times. The enhancement was challenged on the ground that it was excessive. Rejecting the challenge, the Apex Court, *inter alia*, held as under:

“8. Undoubtedly, the enhanced license fee being 13 times, the earlier license fee amount seems excessive, and such an observation was also made by the Hon’ble Railway Minister in order dated 11.4.1981, but the enhanced license fee would be illusory if the same is compared with the prevailing license fee in the said market as applicable to private shops. A welfare state must serve larger public interest, “*Salus Populi Suprema lex*”, means that the welfare of the people is the supreme law. A state instrumentality must serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own resources, as it cannot serve such higher purpose while in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the

absence of any proof of violation of their rights, such concession cannot be granted to them.”

6. The whole case of the petitioners is based upon Circular No.75 of 2006 whereby it was decided that the DRMs with the concurrence of the Divisional Finance would fix minimum licence fee for refreshment room, stalls and trolleys at D,E and F category stations based on rational factors like State GDP, purchasing power, land value, type of clientele, number of passengers, location of units, sales turnovers etc. The respondents have placed on record a copy of their subsequent communication dated 18.4.2007, which to the extent it is relevant reads as under:-

“The divisions are spread over more than one state. The adjoining stations in the same division may fall under different states and hence, the license fee will vary widely at the stations due to wide differences in GDP, Purchasing Power, land value, etc. Since, applications had already been called by the divisions and applicants had quoted the license fee as per Comml. Circular No.51 of 2005, cancellation of notification was not considered advisable. Moreover, license fee fixed as per Comml. Circular No.75 of 2006 could have given rise to anomalous situation with two adjoining stations on the same division having wide differences.

In order to avoid the anomalous situation, Northern Railway followed the guidelines laid down in Comml. Circular No.51 of 2005 for fixing minimum license fee subject to the license fee so fixed being higher than the license fee as per Comml. Circular No.75 of 2006. This has been followed for applications already invited and also for future contracts. The above decision was subject to the

license fee being higher as per Comml. Circular No.51 of 2005.”

7. In view of the decision conveyed vide letter dated 18.4.2007 sent by Northern Railways, the respondents are entitled to recover licence fee in terms of Circular No. 51 of 2005. I, therefore, find no merit in the challenge to the licence fee fixed and demanded by the respondents from the petitioners.

8. As regards challenge to the classification of the railway stations, it is for the Indian Railways to lay down from time-to-time, the norms on the basis of which the railway stations are classified into various categories. The petitioners have no *locus standi* to challenge such classification by Indian Railways, unless it is shown that the classification is based on grounds which are wholly irrational, arbitrary and unreasonable and such wrong classification is adversely affecting their legal rights. A perusal of the catering policy filed by the petitioners themselves shows that categorization of railway stations is now based on annual passenger earnings, as far as Category A,B and D stations are concerned. All suburban stations have been categorized Category C whereas stations other than those categorized as Category A,B,C,D and F have been placed in Category E. All flag, halt stations are categorized as Category F. The petitioners have failed to show how

the aforesaid categorization can be said to be arbitrary or unreasonable. Categorization on the basis of passenger revenue, in my view, cannot be said to be even unjustified. I, therefore, find no merit in the challenge in the categorization of railway stations. In any case, as noted earlier, no specific relief with respect to categorization of various railway stations has been claimed in these petitions.

9. For the reasons stated hereinabove, I find no merit in the writ petitions and the same are hereby dismissed. There shall be no order as to costs.

OCTOBER 28, 2013/*rd/ks*

V.K. JAIN, J.