

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

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Date of decision: 10th November, 2014

+ LPA 887/2013, CMs No.18573/2013 (for stay) & 12873/0214 (for filing additional affidavit)

SH GHANSHYAM & ORS

..... Appellants

Through: Mr. Mahipal Singh, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Joydeep Mazumdar and Mr. Rohit Dutta, Advs. for Northern Railways.

AND

+ LPA 49/2014, CMs No.1107/2014 (for stay) & 1109/2014 (for condonation of 20 days delay in filing the appeal)

O.P. GUPTA

..... Appellant

Through: Mr. Mahipal Singh, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Joydeep Mazumdar and Mr. Rohit Dutta, Advs. for Northern Railways.

AND

+ LPA 76/2014, CMs No.1546/2014 (for stay) & 1548/2014 (for condonation of 33 days delay in filing the appeal)

SHIV KUMAR & ANR Appellants
Through: Mr. Mahipal Singh, Adv.

Versus

UNION OF INDIA & ORS Respondents
Through: Mr. Joydeep Mazumdar and Mr.
Rohit Dutta, Advs. for Northern
Railways.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. Each of the three intra-court appeals impugns the common judgment dated 28th October, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) Nos.6990/2007, 3322/2008 and 10539/2009 preferred by the three sets of appellants respectively.

2. Though LPA Nos. 49/2014 and 76/2014 are accompanied with applications for condonation of 20 and 33 days delay respectively in filing thereof and no formal order has been made condoning the said delay but arguments on all the three appeals were heard together, without regard to the

said aspect and judgment reserved. We accordingly now formally allow the applications in LPA Nos.49/2014 and 76/2014 for condonation of delay.

3. The writ petitions from which these appeals arise were filed pleading that:-

- (i) The appellants are engaged in the business of Catering / Vending Contractors and have been providing catering / vending services to the passengers of Northern Railway at different railway stations of Delhi Division for the last several decades and their licences were being renewed from time to time;
- (ii) Prior to the year 2000, the respondent Railways were charging lumpsum licence fee according to the class of the stations at which the catering / vending contractor had been granted licence of stalls / trolleys and keeping in mind other relevant factors viz. the number of vendors, salesmen / workers / bearers allowed, importance of station from the point of view of passenger traffic and demand for items sold, location of the stall at the railway station etc.;

- (iii) However in the year 2000, the respondent Railways issued new guidelines and started charging licence fee on the basis of 12% of the annual sales turnover and which resulted in increase of 4 to 5 times from the licence fee being earlier paid;
- (iv) However in August, 2007, the respondent Railways suddenly informed that the appellants are liable to pay arrears with effect from 1st January, 2006 in accordance with some letter dated 9th December, 2005 issued by the Railway Board;
- (v) On further inquiry, it was learnt that the said demand was in pursuance to the Commercial Circular No.51 of 2005 dated 9th December, 2005 of the Railway Board with respect to charging of licence fee for D, E and F category of railway stations (with which all the appellants are concerned) and though providing for licence fee to be at 12% of the sales turnover, further providing a lumpsum minimum amount to be charged as laid down therein.

The writ petitions were filed impugning the said Commercial Circular No.51 of 2005 dated 9th December, 2005 and the demand in pursuance thereto.

4. The learned Single Judge has dismissed the writ petitions finding/observing/holding that:-

- (a) Though the Railway Board vide Commercial Circular No.70 of 2006 dated 11th August, 2006 partially modified by Commercial Circular No.75 of 2006 dated 21st September, 2006 in supersession of the earlier Commercial Circular No.51 of 2005 dated 9th December, 2005 had directed that Divisional Railway Managers (DRMs) in concurrence with the Divisional Finance concerned will fix the minimum licence fee at D, E and F category railway stations, based on rational factors like GDP, purchasing power, land value, type of clientele, number of passengers, location of units but it was later realized that the same was not feasible and accordingly vide letter dated 18th April, 2007 of the Chief Commercial Manager, it was directed

that the Commercial Circular No.51 of 2005 dated 9th December, 2005 be followed.

- (b) The railway stations being under the management and control of Indian Railways and the appellants being its licensees, the respondent Railways are entitled in law to fix such licence fee as deemed appropriate by them and if the appellants want to continue as a licensees, they are under a legal obligation to pay such licence fee as is fixed from time to time and it would be competent to the respondent Railways as licensor to terminate the licence in case the licence fee fixed is not paid.
- (c) Reliance was placed on *Lala Ram Vs. Union of India* (Civil Appeal No.243-247/2003) reported as 2013 SCC Online SC 91 where the Supreme Court upheld the right of the Railways to increase the licence fee.
- (d) In view of the letter dated 18th April, 2007 (supra), the reliance by the appellants on the Commercial Circulars No.70 and 75 of 2006 was misconceived.

- (e) Though the counsel for the appellants without pleading it, also sought to challenge the classification by the respondent Railways of the railway stations but the appellants have no locus to challenge the same unless it was shown that the classification is based on grounds which are wholly irrational, arbitrary and unreasonable and which the appellants had failed to do; even otherwise a perusal of the catering policy showed the classification to be reasonable and rational.

Accordingly, the writ petitions were dismissed.

5. It would thus be seen that the validity of the Commercial Circular No.51 of 2005 dated 9th December, 2005 challenging which the writ petitions were filed, was not adjudicated, perhaps in view of the subsequent developments.

6. The counsel for the appellants before us also, without challenging the Commercial Circular No.51 of 2005 dated 9th December, 2005 and challenging which the writ petitions were filed, has only argued that:-

- (I) Since the said Circular No.51 of 2005 dated 9th December, 2005 has been superseded by subsequent Commercial Circulars No.70 and 75 of 2006, all that the appellants are seeking is for being governed by the said Circulars No.70 and 75 of 2006 and not by the superseded Commercial Circular No.51 of 2005 dated 9th December, 2005 as is being illegally done by the respondent Railways. With respect to the reasoning given by the learned Single Judge, of the Circulars No.70 and 75 of 2006 having stood superseded by the letter dated 18th April, 2007, it is argued that while the Circulars are issued by the Railway Board, the letter dated 18th April, 2007 is of the Chief Commercial Manager and the Chief Commercial Manager could not have changed the decision taken by the Railway Boards.
- (II) The application of the Commercial Circular No.51 of 2005 dated 9th December, 2005 by the respondent Railways qua the category D, E and F stations is resulting in the respondent Railways charging / claiming licence fee from the category D, E and F railway stations (which are supposed to be low revenue

earning) at a rate higher than from the category A, B and C railway stations; reliance in this regard is placed on responses received to the queries under the RTI Act with respect to the licence fee of category A, B and C stations.

7. Per contra, the counsel for the respondent Railways argued that:

- (A) The appellants were the licensees / vendors of the respondent Railways for nearly 60 years;
- (B) The appellants during the pendency of the writ petitions from which these appeals arise were permitted to continue by paying 50% of the dues;
- (C) Though the learned Single Judge ultimately dismissed the writ petitions and there is no stay of that order in these appeals but the appellants still did not pay the balance licence fee which had / has accumulated as due from them;
- (D) The licences of the appellants have been terminated and the appellants are now no longer the licensees of the respondent

Railways and have been thrown out from the respective railway stations.

8. Though the contention of the appellants that the Chief Commercial Manager of the respondent Railways vide letter dated 18th April, 2007 could not have negated the Commercial Circulars No.70 and 75 of 2006 issued by the Railway Board cannot be said to be without any merit but the position as aforesaid which emerges is that there have been substantial subsequent developments since the filing of the writ petitions. As aforesaid, writ petitions were filed impugning the Commercial Circular No.51 of 2005 dated 9th December, 2005 and which stood superseded by Commercial Circulars No.70 and 75 of 2006. The learned Single Judge has also decided the writ petitions from which these appeals arise taking note of the said subsequent as well as of the yet further subsequent event of the letter dated 18th April, 2007 of the Chief Commercial Manager of the respondent Railways, though all without any pleadings and which has resulted in the argument aforesaid raised before us, either being not raised before the learned Single Judge or being not answered in the impugned judgment. Now we have been told that the licences of the appellants have been terminated and the appellants have been removed from the railway stations of which

they were earlier the licensees. However there are no pleadings whatsoever on the said aspect. We, in the absence of pleadings, are unable to decide the contentions of the appellants. Moreover, substantial time has elapsed since 2006-07 also. We do not know what is the policy today with respect to such licences. From the order dated 11th April, 2014 of the Supreme Court in Special Leave to Appeals (Civil) No.9921-9923/2014 titled ***Senior Divisional Commercial Manager Vs. S.C.R. Caterers, Dry Fruits, F.J.S.W. Association*** handed over by the counsel for the respondents during the hearing, it appears that now the respondent Railways is resorting to tenders in this regard. The website of the Railways shows the Railway Board to have formulated and brought into force a new catering policy in the year 2010 and which provides for all existing operational catering licences to be governed by the earlier policy only upto the validity of their contractual period. If that is so, it would not be proper for us to in these appeals pass any orders which would not be in consonance with the prevalent situations. Even during the hearing there was no clarity on the said aspects.

9. We may also notice the contention of the counsel for the respondent Railways that one of the appellants has also filed a Civil Suit with respect to

the same cause of action and which is pending consideration. On the basis thereof, it was argued that the writ petition in any case is not maintainable.

10. We accordingly dispose of these appeals giving leave and liberty to the appellants to if remain aggrieved including from the non application of Commercial Circulars No.70 and 75 of 2006 by the respondent Railways, if the same are still applicable and if continue as licensees, to file a fresh proceeding.

In the circumstances, no costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 10, 2014
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