

GAHC010042602023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/87/2023

RAM PRIT SAH AND 8 ORS
S/O. LT. ANUP PADA SAH, R/O. RANGIA, P.O. AND P.S. RANGIA, DIST.
KAMRUP (R), ASSAM-781354.

2: BIJAY KR. SAH

S/O. LT. RAM CHANDRA SAH
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

3: SATYANARAYAN CHAUHAN

S/O. LT. INDRAJEET CHAUHAN
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

4: SMT. PRIYABALA V.B. @ PRIYABALA

D/O. LT. V. K. BALAKRISHNAN
W/O. BIJESH KANAKACHARIE
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

5: SWAPAN BHOWMIK

S/O. MANORANJAN BHOWMIK
R/O. RANGIA
P.O. AND P.S. RANGIA

DIST. KAMRUP (R)
ASSAM-781354.

6: MD. ABUL KHAYER

S/O. LT. BHOBAN ALI
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

7: ABHIJIT GHOSH

S/O. LT. PRAHAT CH. GHOSH
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

8: BIJOY KR. SINGH

S/O. LT. RARI KANT SINGH
R/O. RANGIA
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354.

9: PRASHEN KR. DAS

S/O. LT. KAMALA KANTA DAS
R/O. NEAR RANGIA RAILWAY STATION
WARD NO.7
P.O. AND P.S. RANGIA
DIST. KAMRUP (R)
ASSAM-781354

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
RAILWAYS, RAIL BHAWAN, NEW DELHI.

2:THE GENERAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI-11.

3:INDIAN RAILWAY CATERING AND TOURISM CORPN. LTD.

NEW DELHI
INDIA
REP. BY THE CHAIRMAN AND MANAGING DIRECTOR REGIONAL OFFICE-
4-D
MANDOVI APARTMENT
AMBARI
G.N.B. ROAD
GUWAHATI-781001.

4:THE CHAIRMAN AND MANAGING DIRECTOR

INDIAN RAILWAY CATERING AND TOURISM CORPN. LTD. NEW DELHI
INDIA
REGIONAL OFFICE- 4-D MANDOVI APARTMENT
AMBARI
G.N.B. ROAD
GUWAHATI-781001.

5:THE DIVISIONAL RAILWAY MANAGER (C)

N.F. RAILWAY
RANGIA DIVISION
RANGIA
DIST. KAMRUP (R)
ASSAM.

6:THE CHIEF COMMERCIAL MANAGER

N. F. RAILWAY
MALIGAON
GUWAHATI-11
DIST. KAMRUP (M)
ASSAM.

7:THE DIVISIONAL COMMERCIAL MANAGER

RANGIA DIVISION
RANGIA
DIST. KAMRUP (R)
ASSAM

Advocate for the Petitioner : MR. N DAS

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

Date : 10-03-2023

JUDGMENT & ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Mr. D Mazumdar, learned senior counsel assisted by Mr. SP Das and Mr. N Das, learned counsel for the appellants, MR. RKD Choudhury, learned Deputy SGI for the respondents in the Union of India and the authorities in the NF Railways and Mr. N. Anix Singh, learned counsel for the respondents No. 3 and 4 being the authorities in the IRCTC.

2. The nine appellants herein are all license holders to operate minor vending units in the Rangia railway station and it is stated that the appellants have been in the business of operating the minor vending units for almost 35/40 years. Under the catering policy of the respondent railway authorities undertaken from time to time, the vending fees that the appellants are required to pay have been enhanced. It is stated that enhancement was made in the year 2003 as well as in the year 2008. On both occasions, the appellants as well as other similarly situated vendors instituted writ petitions assailing the enhancement where the common trend was to grant an interim order requiring the appellants to pay the vend fees at the existing rate, but ultimately all such writ petitions were dismissed resulting in a requirement of the appellants to pay the vend fees at the enhanced rate.

3. In the year 2018, the respondents in the railway authorities demanded the appellants to pay the arrear being the difference between the enhanced rate

and the existing rate which they paid because of the various interim orders of the Court. Being aggrieved, WP(C) No. 7339/2018 had been instituted.

4. WP(C) No. 7339/2018 was given a final consideration by the judgment and order dated 23.01.2023. We also take note that in WP(C) No. 7339/2018 there was an interim order allowing the appellants to pay the vend fees at the existing rate. By the judgment and order dated 23.01.2023, the writ petition stood dismissed, meaning thereby that the claim of the respondent authorities in the railways requiring the appellants to pay the arrear difference between the enhanced vend fees and the existing fees are now required to be paid. But, however, a modification was made as regards the enhanced vend fees that is they are required to pay to the extent that the enhancement would be limited to 10% of the earlier existing rate as per the prevailing catering policy of the respondent railway authorities. However, in paragraph 19 of the judgment dated 23.01.2023, it had been provided as extracted:-

19. This Court would also take note of the fact that by virtue of the interim orders, the petitioners are continuing to vend irrespective of the fact that presently they have not renewed their licenses. It is the opinion of this Court and accordingly clarified that the right of the petitioners to vend is dependent upon the licenses given by the Railway administration and sans the renewal/allotment, the petitioners would have no right to vend. Accordingly, the Railway administration would be within their rights to take appropriate actions as per their existing policy."

5. Primarily being aggrieved by the provisions of paragraph 19 of the judgment dated 23.01.2023 in WP(C) No. 7339/2018, this writ appeal is instituted.

6. One of the implications of paragraph 19 of the judgment dated 23.01.2023 would be that there is an observation that the appellants are continuing to vend irrespective of the fact that presently they have not renewed their licenses and

accordingly an opinion was expressed that the right of the appellants to vend would be dependent upon the licenses being given by the railway administration and sans the renewal/allotment, the appellants have no right to vend.

7. Mr.D Mazumdar, learned senior counsel for the appellants has made a categorical statement on facts that although the respective licenses of the appellants may not have been renewed, but on fact they continued with their vending licenses by paying the existing rate as per the interim orders. Accordingly, it is the submission of Mr. D Mazumdar, learned senior counsel for the appellants that as the appellants are continuing with their vending business by paying the vending fees at the existing rate, there is an implied extension of their licenses although factually the respective licenses may not have been renewed or extended.

8. Although Mr. RKD Choudhury, learned Deputy SGI raises an objection to such submission of Mr. D Mazumdar, learned senior counsel for the appellants, but on principle we see no reason as to why the said submission should not be accepted in law. We take note of a particular factual aspect that although the licenses of the appellants may not have been renewed or extended, but the respondents in the railway authorities continued to accept the vending fees at the existing rate on regular basis without raising any objection meaning thereby that the appellants continued with their vending business with the full knowledge of the respondent authorities inasmuch as, the vending fees at the existing rate were accepted from time to time as required.

9. Mr. RKD Choudhury, learned Deputy SGI states that although the said acceptance was with the complete knowledge of the respondent authorities in the railways, but it was done pursuant to the interim orders of the Court.

10. We are unable to accept the said submission for the reason that all that

the interim orders provided was that as long as the appellants are required to pay the vend fees, they would be paying it in the interim at the existing rate, but the interim order did not preclude the respondent authorities in any manner to act upon their discretion not to extend the licenses and also not to accept the vend fees. All that the interim order provided was that the vend fees should be accepted at the existing rate and not at the enhanced rate. Although a stand was taken in the affidavit by the respondent railway authorities that because of the pendency of the Court proceeding the licenses could not be renewed or extended, but the said stand would also be unacceptable inasmuch as, there was no restrain order in any manner from the Court during the proceeding disentitling the respondent authorities from extending the licenses.

11. Be that as it may, the factual aspect that remains is that the appellants continued to pay the vend fees at the existing rate and the respondent authorities continued to accept the same leading to an equitable situation of there being an implied extension of the licenses, as no pro active measure was taken not to allow the appellants to continue with the vending business.

12. Another aspect of dismissal of the WP(C) No. 7339/2018 and other writ petitions would be that all the appellants would now be required to pay their vend fees at the enhanced rate.

13. Mr. D Mazumdar, learned senior counsel for the appellants candidly makes a categorical statement that all the appellants are agreeable to pay the vend fees at the enhanced rate for the entire period and for the purpose are ready and agreeable to pay the difference between enhanced rate and the existing rate which they have already paid.

14. If the appellants pay all the arrear amounts at the enhanced rate being the difference between the enhanced rate and the existing rate, the situation as

of today would be as if the appellants had never approached the Court, there was no interim order and they have readily agreed to pay the respondents the entire dues at the enhanced rate and they have actually paid it. If that is the situation, we now leave it to the respondent authorities in the respondent railways to take their decision as to what they would have done had the appellants paid the vend fee for the entire period at the enhanced rate without raising any dispute and accordingly we also leave it at their discretion to do the needful as they would have done otherwise.

15. In doing so, the appellants be also given an opportunity of hearing to arrive at any effective reasoned decision between the parties. Till any such reasoned decision is arrived at, the appellants be allowed to continue with the vending business, but with a clarification that the payments of the vend fees would be at the applicable enhanced rate for the interim period

16. All other terms of the judgment and order dated 23.01.2023 in WP(C) No. 7339/2018 shall remain as it is provided therein, except for the modification/clarification as indicated above.

The writ appeal stands partly allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant