

GAHC010042672023



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

Case No. : WA/114/2023

1: ARUNAVA DAS AND 12 ORS.
S/O. LT. HAJARI LAL DAS, C/O. LILA DAS, BONGAIGAON ROAD, OPPOSITE
BONGAIGAON POLICE STATION, P.O. AND DIST. BONGAIGAON, ASSAM-
783380.

2: RANJIT GUPTA KANU
S/O. LT. RAMRATAN KANU
RAMKRISHNA MISSION ROAD NEAR MANASHA MANDIR
P.O. AND DIST. BONGAIGAON ASSAM-783380.

3: PIJUSH KANTI GUPTA
S/O. LT. PREM NATH GUPTA
NATUNPARA COLLEGE ROAD
P.O. AND DIST. BONGAIGAON ASSAM-783380.

4: PRADIP GHOSH @ PRADIP KUMAR GHOSH
S/O. LT. PARESH CH. GHOSH R/O. BABUPARA
DIST. BONGAIGAON ASSAM-783380.

5: HARI MOHAN CHOUDHURY
S/O. LT. RAMESH CH. CHOUDHURY
R/O. CHOUDHURY BHAVAN NATUNPARA COLLEGE ROAD
DIST. BONGAIGAON ASSAM-783380.

6: SMT. TARA MAHATO
S/O. LT. RAJAN MAHATO
R/O. RLY QTR. NO. F-254-B HOSPITAL COLONY
P.O. AND DIST. BONGAIGAON ASSAM-783380.

7: TAPASH NATH
S/O. LT. NAKUSWAR NATH
R/O. BHAKARIVITA BONGAIGAON
P.O. AND DIST. BONGAIGAON ASSAM-783380.

8: SMT. BHARATI SAHA
W/O. LT. JYOTSNA KUMAR SAHA
R/O. BAGAN ROAD WARD NO. 2
P.O. AND DIST. BONGAIGAON ASSAM-783380.

9: SMT. RAM PIYARI DEVI
W/O. LT. BHANU SAHANI
R/O. NEW BONGAIGAON TUNIA PAR BHAOULAGURI
WARD NO.9 P.O. AND DIST. BONGAIGAON -783380.

10: PRADIP KISHORIE BHATTACHARJEE
S/O. LT. P. K. BHATTACHJEE
R/O. WEST KHARABARI ROAD WARD NO. 2 JIBAN BISWAS SARAVI
P.S. KOTWALI P.O. AND P.S. KOCHBIHAR WEST BENGAL.

11: SMT. ILA BANERJEE
W/O. LT. DULAL CH. BANERJEE
R/O. BIRPARA- 1 GP P.S. JALPAIGURI P.O. BIRAPARA
DIST. JALPAIGURI WEST BENGAL.

12: HARENDRA NATH DAS
S/O. LT. UPENDRA NATH DAS
R/O. EAST KHALISAMARI BHATIBARI
JALPAIGURI WEST BENGAL DIST. ALIPUR PIN-736202.

13: P. SURESH KUMAR
S/O. LT. E. PANKAJASON
R/O. 28/1399 PANKAJ KADAVANTHRA ERNAKULAM
KERALA INDIA KOCHI-682020

VERSUS

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

4:THE CHAIRMAN AND MANAGING DIRECTOR INDIAN RAIWAY
CATERING AND TOURISM CORPORATION LTD. NEW DELHI INDIA
REGIONAL OFFICE 4-D MANDОВI APARTMENT AMBARI G.N.B. ROAD
GUWAHATI-781001.

5:THE DIVISIONAL RAILWAY MANAGER (C) N.F. RAILWAY RANGIA
DIVISION RANGIA DIST. KAMRUP (R) ASSAM-781354.

6:THE CHIEF COMMERCIAL MANAGER N.R. RAILWAY MALIGAON
GUWAHATI-11 DIST. KAMRUP (M) ASSAM.

7:THE DIVISIONAL COMMERCIAL MANAGER
RANGIA DIVISION RANGIA DIST. KAMRUP (R) ASSAM-781354

For the Appellants : Mr. D. Mozumder, Sr. Advocate, assisted by Mr. S.P. Das, Advocate.

For the Respondents : Mr. R.K.D. Choudhury, Deputy Solicitor General of India, for respondent
Nos.1, 2, 5, 6 & 7.

: Mr. A. Singh, Advocate for respondent Nos.3 & 4.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

29.03.2023

Heard the learned counsel appearing for the parties.

It has been submitted by Mr. D. Mozumder, learned senior counsel representing the appellants that the controversy raised in this appeal stands covered by the judgment & order dated 10.03.2023 passed by a Coordinate Bench of this Court in Writ Appeal No.87/2023. He, therefore, prays that this appeal may also be disposed of in terms of the observations and directions contained in the judgment & order dated 10.03.2023 passed in the aforesaid writ appeal.

The above referred writ appeal was preferred by the appellants against the judgment & order dated 23.01.2023 passed by the learned Single Bench in WP(C) No.7339/2018. Writ Appeal No.87/2023 was disposed of vide order dated 10.03.2023 by a Coordinate Bench of this Court in the following terms:-

“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.”

In view of the above submissions noted hereinabove, without recording separate reasons, the writ appeal is partly allowed in the light of the judgment & order dated 10.03.2023 passed by a Coordinate Bench of this Court in Writ Appeal No.87/2023 but with the modifications as indicated in the judgment & order dated 23.01.2023 passed by the learned Single Bench in WP(C) No.7339/2018.

JUDGE

CHIEF JUSTICE

Comparing Assistant