

GAHC010209822024



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

Case No. : WP(C)/5160/2024

MANOJ KUMAR DAS
S/O- LATE PRAMOD CHANDRA DAS,
R/O- RAILWAY QUARTERS NO-186/B, TRIANGULAR COLONY,
P.O- PANDU, P.S- JALUKBARI, DIST- KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
RAILWAYS, RAIL BHAWAN, NEW DELHI

2:THE RAILWAY BOARD
REP. BY ITS CHAIRMAN
RAILWAY BHAWAN
NEW DELHI

3:THE DIRECTOR (LAND AND AMENITIES)
RAILWAY BOARD
RAILWAY BHAWAN
NEW DELHI

4:THE GENERAL MANAGER
N.F RAILWAY
HEADQUARTERS
MALIGAON
GUWAHATI-11

5:THE DIVISIONAL RAILWAY MANAGER
N.F RAILWAY
HEADQUARTERS
MALIGAON
GUWAHATI-11

6:THE SENIOR DIVISIONAL RAILWAY MANAGER
N.F RAILWAY
HEADQUARTERS
MALIGAON
GUWAHATI-11

7:THE DIVISIONAL ENGINEER
N.F RAILWAY
HEADQUARTERS
MALIGAON
GUWAHATI-11

8:INDRA DAS
R/O- RAILWAY QUARTERS NO-DS-39/D
REST CAMP

P.O- PANDU
P.S- JALUKBARI
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MS D CHAUDHURY, MR. A PAUL,MS. H DAS

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

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

04.10.2024

Heard Ms D. Choudhury, learned counsel for the petitioner. Also heard Mr. S.P. Choudhury, learned CGC appearing for the respondent Railway Authorities, i.e., respondent Nos.1-7. Also heard Mr. D. Nandi, learned counsel appearing for the respondent No.8.

2. The petitioner's grievance is that the respondent No.8 is going to be allowed to organize a mini fair/mela/carnival at Rest Camp area, which belongs

to the North East Frontier Railways, without giving the petitioner an opportunity to participate in any selection process.

3. The petitioner's case is that during the Durga Puja festival, a mini fair (mela) has been held by the Rest Camp Kalibari Puja Committee in the surroundings of Rest Camp area, which belongs to the Railways. Though the petitioner had submitted an application dated 27.08.2024 to allow the petitioner to hold a mini fair(mela) on the said land, the said permission has been given to the respondent No.8, who has also submitted an application in the same line.

4. The petitioner's counsel submits that Clause 2.2 of the Policy on Licensing of Railway Land for Commercial Plots Etc. (Master Circular) No.2005/LML/18/8 dated 10.01.2005 issued by the Government of India, Ministry of Railways (Railway Board) states as follows :-

“Temporary licensing of railway land to private individuals for the purpose of setting up shops, commercial offices, vending stalls, clinics etc. not connected with the Railway working was stopped in terms of Board's letter No. 80/W2/18/0/A dt. 7.6.1984. This ban will continue. In exceptional cases, where such licensing may have to be done with the prior approval of the board, licence fee must be fixed by resorting to public auction/open tenders for getting the maximum revenue.”

5. Further, for temporary licensing of land for short duration for the purpose of melas/carnivals etc., open auction is to be done to fetch better revenue in terms of Clause 821 (k) of the Indian Railways Works Manual issued by the Government of India, Ministry of Railway (Railway Board), which states as follows:-

“k) Licensing Of Land For Short Duration

Temporary licensing of land for conducting exhibitions, melas,

carnivals, circus shows and such other cultural activities including temporary shops on such festive occasions, should be permitted subject to a maximum of three months with the personal approval of the General Manager. The power is not to be delegated to the lower authorities. The usual safeguards in regard to recovery of license fee and taking back the railway land after the period of license in original condition as also the licensees abiding by the terms and conditions of the local authorities, should be kept in view while licensing the Railway land. The rate of license fee should be fixed at 20% of the market value of land for shopping etc. However, when more than one party is involved, open auction may be done to fetch better value."

6. The petitioner's counsel further submits that in PIL No. 61/2022, the respondent Nos. 1-7, i.e., the Union of India and the Railways had in Para 5 of their affidavit-in-opposition filed on 29.09.2022, stated that a competitive Bidding is possible when more than one party is involved and open auction may be done to fetch better value.

7. The petitioner's counsel submits that in view of the fact that the petitioner and the respondent No. 8 had both made applications to the authorities to allow them to run the mini fair (mela) on Railway land, the State respondents were duty bound to award the running of the mini fair (mela), by resorting to public auction/open tenders in terms of the Master Circular dated 10.01.2005, the Works Manual and the stand taken by the Union of India and the Railways in PIL No. 61/2022.

8. Mr. S.P. Choudhury, learned CGC appearing for the respondent Nos.1-7 submits that he has been given letter No.W/13/1/G dated 04.10.2024 issued by the Divisional Engineer, Guwahati N.F. Railway, Maligaon, which is to the effect that one Sri Nabin Sarma had filed a Public Interest Litigation bearing PIL No.61/2022, which has been disposed of on 19.10.2022, wherein he had prayed

for a direction to be issued to the Union of India and the Railways directing the Railway Authorities for providing temporary licensing of the railway land during the Durga Puja festival of 2022 through competitive bidding process in terms of Clause 2.2 of the Master Circular dated 10.05.2005, thereby enabling the public to participate in the bidding process for obtaining temporary licence to conduct trade fair/mela/carnival and also for generating revenue for the Railways.

9. The letter dated 04.10.2024 issued by the Divisional Engineer states that the Circular dated 10.01.2005 has been superseded by the Railway Board's Circular No.2021/LML/25/5 dated 04.10.2022.

10. The letter also states that as the bidding/tendering process takes a lot of time and as the application of the petitioner was received late, i.e., 27.08.2024, the Railways decided that the vacant land should be allotted to the Rest Camp Kalibari on first come first serve basis, as the Rest Camp Kalibari had submitted application on 16.04.2024 and as the petitioner's application had only been received on 27.08.2024, which required time for obtaining administrative approval from the competent authority, the land was allotted to the Rest Camp Kalibari.

11. Mr. D. Nandi, learned counsel for the respondent No.8, on the other hand, submits that they have started construction for conducting the temporary mini fair (mela) to be held in the vacant land and the same is going to be finalized within a day or two. He accordingly submits that though the respondent no.8 and the Rest Camp Kalibari Committee to which he belongs to, has not been given written approval by the railways, for organizing the temporary mini fair/mela in the Rest Camp area, the respondent no.8 in anticipation, has taken the permission of the Deputy Commissioner of Police, West Guwahati Police District for organizing the mini fair. He also submits that the Rest Camp Kalibari

Committee which the respondent no.8 is a part of, has not been made a party in the writ petition.

12. Mr. S.P. Choudhury, learned CGC submits that till date no person/Committee including the respondent no.8, has been given the permission to organize the mini mela/fair in the Rest Camp area.

13. I have heard the learned counsels for the parties. The letter dated 04.10.2024 issued by the respondent no.7 is made a part of the record and marked as Annexure-X.

14. The submissions made by the learned counsels for the parties show that though a decision has been taken by the Railways to award organizing/conduct of the mini fair/mela to the respondent no.8 and the Rest Camp Kali Bari Committee, no written order has been issued to them till date. Further, a perusal of the Master Circular dated 10.01.2005, the Indian Railways Works Manual and the affidavit of the respondent nos. 1 to 7 in PIL 61/2022 shows that when there are more than one party applying for temporary licensing of land for conducting melas/carnivals, tendering process or open auction is to be done to fetch better revenue.

15. The Division Bench of this Court, vide order dated 19.10.2022 passed in PIL 61/2022, has also directed the Union of India and the Railways to make allotment of railway land for trade fair/mela/carnival, only in accordance with law.

16. In view of the above, it is clear that the decision of the Railways to allow the respondent no.8 and the Rest Camp Kali Bari Committee to conduct the mini mela/carnival on the basis of first come first serve basis as per the letter dated 04.10.2024 issued by the respondent no.7, is patently illegal and in violation of

the circulars issued by the Railways and the order passed in PIL 61/2022. The letter dated 04.10.2024 is accordingly set aside. As such, this Court is of the view that the Rest Camp Kali Bari and the respondent no.8, who is a part of Rest Camp Kalibari, cannot be allowed to conduct the mini mela/fair unless and until a tender process or an open auction is conducted by the authorities.

17. At this stage, the counsels for the petitioner, the Railways and Mr. D. Nandi, learned counsel for the respondent no.8 submit that they have got no objection if an auction process is conducted by the Railway Authorities on 05.10.2024 between the petitioner and the respondent no.8/Rest Camp Kalibari Committee, for conducting the mini fair/carnibal.

18. Accordingly, in view of the consent of the parties, a direction is issued to the respondent no.5 to conduct an open auction between the petitioner and the respondent no.8/Rest Camp Kalibari Committee and any other eligible person who wants to participate in the auction process, for conducting/organizing a mini mela/fair in the Rest Camp area in Pandu belonging to the Railways during the present Durga Puja period. It is needless to add that the highest bidder should be allotted the work of conducting the mini mela/fair, if he is eligible in all other respects also. It is accordingly directed that the open auction between the parties herein and any other interested bidder may be held at 2 p.m. on 05.10.2024 in the office of the respondent no.5.

19. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant