

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.94 of 2012

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1. M/S. Jayaswal Brothers, Agent Indian Oil Corporation Ltd., Patna, At, P.O. & P.S.-Desari, District-Vaishali representing Indian Oil Corporation Ltd., Patna.
 2. Sudhanshu Jayaswal, son of Late Raja Chowdhary and Partner of Petitioner No. 1 aforesaid, resident of Village- Desari, P.O. & P.S.-Desari, District-Vaishali.

.... Petitioner/s

Versus

1. The Union of India through the General Manager, Eastern Central Railway, Hajipur.
2. The General Manager, Eastern Central Railway, Hajipur.
3. The Divisional Rail Manager, (Engineering), Eastern Central Railway, Sonapur, District-Saran.
4. The Assistant Div. Fin. Manager, (Engineering), Eastern Central Railway, Sonapur, District-Saran.
5. The Divisional Engineer, Eastern Central Railway, Sonapur, District-Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv. with
Mr. Dilip Kumar No. 1

For the Respondent/s : Mr. Vindhyachal Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 22-12-2015 Heard Mr. Rajendra Narain, learned senior counsel appearing for the petitioners and Mr. Vindhyachal Singh, learned counsel appearing for the respondents.

Despite the earlier order passed by this Court and the endeavour of Mr. Singh, the Railways have slept over their obligation to file a counter affidavit.

The petitioners are licensee with the railways and run a kerosene oil depot under the franchise of the Indian Oil Corporation. The land on which the depot exists belongs to the



railways and an agreement to such effect is present at Annexure-1 to the writ petition. The rate of licence fee is mentioned at clause-6 at Rs.2598.24 @ Rs.160.00 per 1000 sq. ft. and is to be paid annually in advance every year. Clause 8 of the agreement enables the railways to revise the licence fee.

The grievance of the petitioners is that vide letter dated 31.1.2011 the Divisional Railway Manager -cum-Engineer, Sonapur has enhanced the licence fee retrospectively with effect from 1.4.1988 until 31.3.2010 and again from 1.4.2010 until 31.3.2011. It is the contention of Mr. Narain, learned senior counsel appearing for the petitioners relying upon a Bench decision of this Court rendered in the case of M/s Hazari Lal Baidyanath Prasad arising from CWJC No.13263 of 2002 that a licence fee cannot be revised retrospectively.

As I have already observed, despite time being granted to the railways on four occasions yet the counter affidavit is wanting and the matter is pending consideration since 2.1.2012 on this account.

The legal position regarding retrospective revision of licence fee stands discussed in the judgment of M/s Hazari Lal Baidyanath Prasad (supra) and it would not require this Court to refer any further judgment to hold that neither the licence fee

can be enhanced unilaterally nor can be applied retrospectively. Further it is a condition of the agreement which is binding on the parties that any revision can be done only after one month notice to the petitioner.

Considering that all these aspects are missing in the present case and the Divisional Railway Manager has unilaterally enhanced the licence fee retrospectively hence in view of the legal position discussed, the same cannot be upheld and the revision in so far as it relates to the kerosene oil depot appearing at item no.2 of the letter impugned at Annexure-5 which governs the case of the petitioner, is set aside.

Since the intent of the railways to revise the licence fee is reflected from the letter dated 31.1.2011 it shall be a deemed notice to the petitioner and thus invoking Clause-8 of the agreement, the railways would be at liberty to prospectively revise the same in consultation with the petitioner and which would be binding on the petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

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