

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22079 of 2014

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Mattan Mahaldar @ Matan M, Son of late Govind Mahaldar, resident of Village- Mathurapur (Shivnarayanpur), P.S- Shivnarayanpur (Kahalgaon), District- Bhagalpur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Indian Railways, Rail Bhawan, New Delhi.
2. The Chief Commercial Manager (P.S. & Catg.)/E.Rly/Kolkatta.
3. The Divisional Railway Manager Eastern Railway, Maldah Division.
4. The Maldah Senior Divisional Commercial manager, Eastern Railway, Maldah.
5. The Station Manager, Eastern Railway Shivnarayanpur, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tarun Prasad Mandal, Advocate.

For the Respondent/s : Mr. Anil Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 13-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

"Quashing the order dated 27.10.2014 issued by Senior Divisional Commercial Manager, Eastern Railway, Maldah Division Maldah whereby the petitioner has been directed to pay arrears of vending Licence fee of Rs. 975797/- arouse from Shivnarayanpur Station Vending business from 1.12.1993 to 23.09.2014 within one month of receipt of letter failing which necessary money suit and First Information Report will be instituted for recovery of the said amount."

2. Having regard to the nature of non-statutory agreement between the petitioner and the Railways of vending



services, this Court in view of law laid down by the Apex Court in the case of **Radha Krishna Agrawal Vs. State of Bihar and others** reported in AIR 1977 SC 149 will find it difficult to interfere with the impugned demand notice dated 27.10.2014 for a simple reason that these are the matter arising out of terms and condition of contract and the parties to the contract for their enforcement will be always at liberty to lead evidence in support of their respective claim in a civil suit for specific performance of such contract.

3. This Court infact has also not been aware as to what was the basis of the Railways on which vending charges could become higher in subsequent year beyond the amount, on which the petitioner had initially started his work pursuant to the agreement. Thus it will be absolutely necessary for the petitioner to establish in an appropriate proceeding in the Civil Court that such vending charge could not have been enhanced by the Railways unilaterally. This Court infact does not find any basis on which it could interfere with the impugned demand notice of the Railways where all that has been communicated to the petitioner that if he does not pay the amount of vending charges, the Railways for its recovery could file civil suit or even take recourse to criminal proceeding. Thus if the petitioner finds that such

enhanced amount as demanded in the impugned notice is not payable by him in view of the stipulation made in the agreement he can either sue the Railways in an appropriate civil suit or raise his defence as and when the Railways would file its civil suit for realisation of such amount.

4. Thus for the reasons indicated above this writ application fails and is, accordingly, dismissed. The dismissal of this writ application, however, will not stand in the way of the petitioner in moving the competent Civil Court for adjudication of the issue raised herein.

(Mihir Kumar Jha, J)

Sujit/-

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