IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C).No. 30855 of 2006 (W)

PETITIONERS:
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1. R. SATHEESH, LINCENSE,
BOOK STALL, CHANGANASSERY RLY.STATION.

2. P.S. REGHURAM, LICENSE
BOOK STALL, RLY.STATION, THIRUVALLA.

3. SMT.ROSE MATHEW, LICENSE,
BOOK STALL, RLY.STATION, MAVELIKKARA.

4. A. SAGARAN, LICENSE,
RLY.STATION BOOK STALL, KAYAMKULAM.

5. SMT.K. SREEDEVI,
LICENSE, BOOK STALL, ALAPPUZHA.

BY ADV. SRI.S.MOHANDAS

RESPONDENTS:
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1. CHAIRMAN, RAILWAY BOARD,
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI.

2. SENIOR DIVISIONAL COMMERCIAL MANAGER,
DIVISIONAL OFFICE, S. RAILWAY, TRIVANDRUM.

3. DIVISIONAL COMMERCIAL MANGER (CATERING)
S. RAILWAY, TRIVANDRUM.

*Addl. 4. INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD., REP.BY ITS MANAGING DIRECTOR,
BANK OF BARODA BUILDING, 16, PARLIAMENT STREET,
NEW DELHI 110 001.

(Addl.R4 is impleaded as per order dated 18.7.2007 in
I.A.No.9672/2007)

R,R.1,2,3 BY ADV. SMT.A.RAJESWARI, SC, RAILWAYS
R-R4 BY ADV. SMT.ASHA CHERIAN
R1-R2 BY ADV. SRI.C.S.DIAS,SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-11-2015, ALONG WITH WPC. 3889/2007 & WPC. 9581/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	A COPY OF NOTICE NO.V/C41/BOOKSTALL/P DATED 23.2.1988 ISSUED BY RAILWAYS.
EXT.P2	A COPY OF LETTER NO.V/C41/BOOKSTALL/POLICY DTD. 31.1P.2006 ISSUED BY THE SECOND RESPONDENT.
EXT.P3	A COPY OF ORDER NO.V/C41/II/CGY/BS DATED 9.11.2006 ISSUED TO FIRST PETITIONER.
EXT.P4	A COPY OF ORDER NO.V/C41/BOOKSTALL/III/TRVL DTD.9.11.2006 ISSUED TO THE SECOND PETITIONER.
EXT.P5	A COPY OF ORDER NO.V/C41/BOOKSTALL/MVLK/VOL.I DTD.9.11.2006 ISSUED TO THE THIRD PETITIONER.
EXT.P6	A COPY OF RODER NO.V/C41/BOOK STALL/KYJ DTD. 9.11.2006 ISSUED TO THE 4TH PETITIONER.
EXT.P7	A COPY OF REPN. DTD.12.11.2006 SUBMITTED BY THE FIRST PETITIONER.
ANN.A1	TRUE COPY OF ORDER/LETTER DTD.11.4.2007 OF RAILWAY BOARD.

TRUE COPY

p.s.to judge

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.30855/2006,
3889 & 9581/2007

Dated this the 24th day of November, 2015

JUDGMENT

Th enhancement of license fee and security deposit for certain book stalls run by the petitioners in different railway stations in the State is under challenge in these writ petitions.

<u>WPC No.30855/2015</u>

2. This writ petition is filed by certain unemployed educated persons who are allotted with book stalls in various railway stations in terms of Ext.P1. The petitioners are running the book stalls continuously from 1988 onwards. By threat of termination of license, the license fee was enhanced earlier also in violation of Ext.P1 terms and conditions. Though it was objected to by the petitioners, ultimately, they had to yield to the enhancement. By Ext.P2, the second respondent categorised the railway stations as A, B, D & E for the

purpose of enhancement of fees and security deposits. It was done without hearing the affected parties. The said classification is quite unreasonable and if those rates are paid by the petitioners, they would not get anything for their livelihood. Consequent upon Exts.P2, P3 to P6 enhancement orders are issued by which the license fee and security deposits have been arbitrarily and exorbitantly revised without hearing the petitioners. In fact it is an imposition upon the petitioners to their disadvantage; it is alleged.

3. WPC No.3889/2007 is filed by Malayala Manorama Company Limited, Kottayam. The petitioner alleges as follows:

The petitioner is a leading newspaper company having Headquarters at Kottayam. The petitioner entered an agreement, as evidenced by Ext.P1, with the second respondent in respect of book stall at Kottayam Railway station. It was agreed under clause 11(c) that license fee payable before the first week of each year was ₹50,300/-. The agreement so entered was for the period from

1.1.2002 to 31.12.2007. The amount of license fee and such other payments agreed to in the contract would remain unaltered during the subsistence of the contract.

The petitioner is aggrieved by the prohibitively excessive increase of license fee payable to the railways for running a book stall in Kottayam Railway station and for vending newspapers and periodicals in Kannur, Calicut, Shoranur and Palakkad Railway Stations. Enhancement of license fee is made at the rate of 243% for the existing period from 1.1.2002 to 31.12.2007. Even though the petitioner has submitted Ext.P4 representation before the second respondent with copies to respondents 3 and 4 requesting to restrict the increase of license fee to a moderate and reasonable rate, no action is forthcoming and instead the respondents are insisting to remit the license fee as demanded in Ext.P2; it is alleged.

WPC No.9581/2007 is filed by Mathrubhumi Printing & Publishing Co.Ltd., Kozhikode. The petitioner alleges as follows:

The petitioner is a leading Newspaper company having its Headquarters at Kozhikode. The petitioner entered into agreements with the second respondent in respect of Book Stalls at Shoranur, Palakkad, Aluva and Ernakulam Town Railway Stations and also for vending newspaper at Shoranur, Kozhikode and Kannur Railway Stations. The agreements so entered were for the period from 1.1.2002 to 31.12.2007. The amount of license fee and such other payments agreed to in the contract would remain unaltered during the subsistence of the contract.

The petitioner has now been issued with proceedings evidenced by Exts.P1, P2, P3, P4 and P7 and the petitioner is aggrieved by the prohibitively excessive increase of license fee mentioned therein, payable to the respondent Railways for running a Book stall at the above mentioned four Railway Stations and for vending newspapers and periodicals at Shoranur, Kozhikode and Kannur Railway Stations. Enhancement of License fee is made at the rate of 243% and 51067% for the existing period from 1.1.2002 to 31.12.2007. Even though the petitioner has submitted Ext.P5 as well as Ext.P8 representation before the respondents requesting to restrict the increase of License fee to a moderate and reasonable rate, no action is forthcoming. Instead, the respondents are insisting to remit the license fee as demanded in Exts.P1 to P4 and P7.

The respondent Railway has filed a counter affidavit in WPC No.30855/2006 wherein they would contend that the license fee demanded from the petitioners by way of Exts.P3 to P6 are not any fanciful amounts fixed at the discretion of the administration. In the case of petitioners 1 and 2, since they have been granted with temporary extensions in contract, tentative amounts have been fixed (subject to the outcome of Assessment due) with notional increase on the amounts earlier paid for by them. In the case of petitioners 3 to 5, the amounts claimed are based entirely upon the Assessment conducted in their stalls. The petitioners can have no dispute on the modalities of assessment done, in that until revision of rate of license fee to 12%, they have been paying license fee based on such assessment only. The license fee proportionate to sales is the sole amount payable by the petitioners to utilise railway premises for commercial purposes (Security deposit is refundable. As per new policy, no ground rent/conservancy charges is payable). It is contended that railway stations are accessed by huge number of passengers, apart from an equally large number of people who come to see off their relatives & friends, as also for purposes such as ticket reservation, enquiry etc. It is obvious that subject to train timings in particular stations, the petitioners would have business 24 hours a day, i.e. all 7 days a week, including National Holidays; it is contended. Further, it was contended that the petitioners can also operate their stalls without fear or favour, even on eventualities such as harthals etc. that usually paralyses the working of commercial establishments elsewhere.

4. In WPC No.3889/2007, the additional 5th respondent has filed a counter affidavit.

It is contended that in I.A.No.80/2008, the petitioner has prayed for staying the operation of Ext.P6 demand notice and all further proceedings pursuant to it, pending disposal of the writ petition. This would mean that the petitioner intends to continue and function as licensee for all times without payment of any license fee. In this connection, it is contended that Ext.P6 notice has been issued as permitted by this Court as per Ext.P5 order. In fact Ext.P5 order itself was passed on the basis of the judgment dated 7.12.2006 in W.A.No.2307/2006 arising from an identical case, WPC No.30855/2006. True copy of the said judgment dated 7.12.2006 is produced and marked as Ext.R5(A). It is contended that Exts.P5 and R5 (A) are considered and treated as orders to be in operation on continuing to pay 75% of the license fee demanded from the petitioner.

It is contended that the petitioner has remitted the license fee at 75% of the license fee as demanded for the period up to 31.12.2007. The petitioner has to pay the license fee for the next year also in advance. However, as a special arrangement and due to the pendency of the case, license fee in such cases is collected on quarterly basis. It is thus that Ext.P6 notice happened to be issued demanding 75% of the license fee in respect of the first quarter of the year 2008 (1.1.2008 to 31.3.2008). It is contended that in case the petitioner wants to continue as licensee, it has to pay the license fee in advance. As per Exts.P5 and R5(A), this Court has not permitted the petitioner to continue as licensee in future without payment of any license fee at all.

5. In WPC No.9581/2007, the Railway has filed a detailed counter affidavit as under:

It is contended that M/s Mathrubhoomi Printing & Publishing company is licensee for running bookstalls at Palghat Jn. and Shornur Jn. Railway stations under Palghat Division and at Aluva and Ernakulam Town Railway Stations under Thiruvananthapuram Division for more than 20 years. Licenses are awarded for a period of 5 years subject to specific terms and conditions issued by Ministry of Railways from time to time. Such guidelines and instructions issued by the Ministry of Railways are laws governing the licenses. Ministry of Railways issued instructions as per Circular No.88/TGIII/461/3/L.fee dated 20.12.1989 to collect lump sum license fee as in the case of catering stalls deviating from the earlier practice of collecting royalty at the rate of 2.5% plus land rent and conservancy cess. Copy of the same is produced and marked as Ext.R3(1). The license fees from all bookstalls were collected accordingly. The period of license for running bookstall at Shornur Jn. and Palghat Jn. Railway stations were up to 31.12.2001. Renewal of license and revision of license fee for the period from 1.1.2002 to 31.12.2006 was processed as per the policy in vogue and the assessment conducted at Shornur for a period from 17.3.2002 to 19.3.2002 and from Managers of the respective stalls who have acknowledged the same. As regards Aluva and Ernakulam Town the sales assessments were conducted from 21.8.2000 to 23.8.2000 and 2.7.2001 to 4.7.2001 respectively. The petitioner company was advised regarding the renewal of license and revision of license fee with effect from 1.1.2002 as per letters dated 26.7.2002. The license fee for Shornur Station was

₹1,33,000/- per annum and for Palghat ₹1,08,000/- for the period from 1.1.2002 to 31.12.2006. Copy of the letter pertaining to Shornur junction is produced and marked as Ext.R3(2). This fixation was done at 12% of the assessed sales turn over on par with catering stalls subject to further clarification from the Ministry of Railways. The license fee was then revised to ₹55,500/- for Shornur Jn. and ₹44,900/- for Palghat Jn. at 5% of the sales turn over as advised by the headquarters office and this amount was shown in the agreement keeping option to revise the percentage of license fee. Ministry of Railways as per Letter No.2000/TGIII/464/18 dated 26.7.2006 issued instructions to collect license fee at 12% of the sales turn over with effect from the date of issue of the circular. Copy of the same is produced and marked as Ext.R3(3). This was done to rationalise the license fee at par with other catering vending licenses and also to increase the earning from bookstalls/trolleys, which are occupying prominent space to Railway station. All bookstall licensees including the petitioner company were advised regarding the enhancement as per letter dated 18.8.2006. The license fee at 12% worked out to ₹1,33,000/- for Shornur Jn. and ₹1,08,000/- for Palghat Jn. per annum and amount claimed in Exts.P1 and P2 was only the difference of license fee to be paid by the petitioner company for the period from 26.7.2006 to 31.12.2006 Shornur Jn. and from 26.7.2006 to 30.9.2006 for Palghat Jn. Copy of the Railway Ministry's circular was also sent to all licensees including the petitioner company as per letter dated 7.11.2006. Copy of the same is produced and marked as Ext.R3(4). The petitioner company has submitted a representation dated 12.10.2006 to General Manager, Southern Railway, Chennai and as directed by the General Manager, the matter was examined and a reply dated 6.12.2006 was sent. Copy of the same is produced and marked as Ext.R3 (5). For Aluva Station, the license fee was fixed at ₹67,900/- and for Ernakulam Town Station, it was ₹1,42,000/- per annum for the period of license up to 31.3.2006.

It is further contended that the petitioner company has been awarded license for running bookstalls at Shornur Jn. and Palghat Jn. stations for the period from 1.1.2002 to 31.12.2006 and for Aluva and Ernakulam Town Stations from 1.4.2001 to 31.3.2006 and the agreements executed between the petitioner company and the Divisional authorities concerned and are valid only up to the above period and not up to 31.12.2007 as stated by the petitioner company. As per clause No.11(G) of the agreement, the Government of India reserves its right to enhance the percentage of license fee from time to time during the pendency of the agreement and the licensee has to pay the enhanced rate from the date notified by the Government.

It is also contended that the vending licenses for newspapers are issued on yearly basis to vend the newspapers when the regular bookstalls are not functioning. Such licenses are issued based on the specific request of the newspaper company on payment of the prescribed license fees. The petitioner company has requested and issued with vending license for the period from 3.5.2004 to 2.5.2005 at Shornur Jn. from 25.10.2005 to 24.10.2006 at Cannanore and 31.12.2005 at Calicut Railway Stations. The licenses are time bound. No agreements are executed, as these licenses are purely temporary in nature and issued for a specific period.

It is further contended that the proceedings evidenced by exhibits were issued not in isolation to the petitioner company. These were issued as per the decision taken by the Ministry of Railways on All India basis. This fact was brought to the petitioner company while replying their representations.

It is further contended that the license fee was revised based on the decision of the Ministry of Railways as per commercial Circular No.57/2006 circulated under Letter No.2000/TGIII/464/18 dated 26.7.2006 on all India basis and reasons for such enhancement has been clearly stated in the said circular. The period of agreement executed with the petitioner company in respect of book stalls at Shornur Jn. and Palghat Jn. is only up to 31.12.2006 and in respect of Aluva and Ernakulam Town is up to 31.3.2006. They are allowed to continue subject to the outcome of SLP filed before the Apex Court by the Railway Administration against the judgment of the Supreme Court of Judicature, Allahabad quashing the new Bookstall Policy 2004. The temporary vending licenses issued on yearly basis are all date expired. As such the statement of the petitioner is misleading.

It is further contended that the fact that 4 bookstalls are licensed to the petitioner company as detailed above and agreements also have been executed with clear provision to enhance the license fee during the tenure of license as decided by the Ministry of Railways. The specific clause is reproduced below:

> "The Government reserves to itself the right to enhance the percentage of royalty over and above 5% fixed at any time during the pendency of the agreement after giving due notice to the licensees shall pay at the revised rate on and from such date as may be notified to them by the Government".

It is further contended that the licenses for vending newspapers are issued on yearly basis subject to payment of the stipulated license fee. The period of license issued to the petitioner company in respect of Cannanore station was valid up to 24.10.2006, Shornur Jn. Up to 2.5.2005 and Calicut up to 31.12.2005 and after the expiry of the periods, the petitioner company has not renewed the license. The license fee was fixed and advised giving effect from the next renewal. If the petitioner company is interested in renewing the license, the said license fee needs only to be remitted. There is no compulsion on them to renew the vending license. The proceedings marked as exhibits were based on the petitioner company. The representation submitted by the petitioner company was replied as per letter dated 6.12.2006. Copy of the same is produced and marked as Ext.R3(5).

6. Arguments have been heard.

7. The petitioners would point out that the categorisation of railways for the purpose of enhancement of license fee as security deposit is illegal and the enhancement effected by the impugned orders without affording the petitioners an opportunity of being heard is in violation of the principles of natural justice.

8. Inviting my attention to Ext.P1 agreement produced in WPC No.3889/2007, it was submitted by the learned counsel for the Railway that as per clause 11(g) of the agreement, the policy of the Government would prevail and as the petitioners are entered into an agreement with the eyes wide open, they cannot now say that they will not pay the enhanced rate.

9. Clause 11(g) of Ext.P1 reads as follows:

> *"the Government reserve to itself the right to enhance the percentage of Royalty over and above 2½% fixed at any time during the pendency of the agreement after giving due notice to the licensee and the licensee shall pay the revised rate on and from such date as may be notified to them by the Government."*

10. In support of their argument, the learned counsel for the respondent invited my attention to the decision of a Division Bench of this Court in ***Venkateswaran*** v ***Government of India*** (2002 KHC 209) where this Court has upheld the Railway Board's circular and proceedings revising the rates and license fee.

11. The learned counsel for the petitioners, per contra, would submit that they are attacking the enhancement of the license fee which is a fixed amount

covered by the agreement. In the decision referred to above, this Court was considering a case where the writ petitioners were continuing after the expiry of the license period on temporary arrangement. The question involved in this case is whether the license fee fixed for a fixed term as per an agreement entered into between the parties could be altered unilaterally by one of the parties.

12. The learned counsel for the petitioners in WPC Nos.3889/2007 and 9581/2007 would point out that the period of agreement entered into between the petitioners and the Railway, the licensee fee is for a period from 1.1.2002 to 31.12.2007. Therefore, according to the learned counsel for the petitioners, any increase during the currency of the agreement cannot be sustained as they are inconsistent and repugnant to the agreed terms. As far as the agreements of license fee are concerned, the license fee is very material and the material condition cannot be subject to change unilaterally, without consent or notice to the other party. The aforesaid petitioners have been paying license fee of ₹50,300/- per annum during the

currency of the agreement for 5 years which expired on 31.12.2007. However, during the pendency of the period of agreement, license fee has been enhanced abruptly to ₹1,72,400/- as per the communication dated 9.11.2006. That means, there is an increase of 243% without notice. The amount arrived at at the time of executing the agreement was based on some facts which existed then and anticipated increase in the sales turn over during the currency of the agreement. It was not an unmindful act on the part of the parties. It appears from the communication dated 9.11.2006 that 12% of the annual turn over is sought to be collected as license fee.

13. In this case, a substantive legitimate expectation has arisen in the mind of the petitioners. The Railway Administration has intended to create contractual relations of an enduring nature. The petitioners, relying on the consent of the railway, altered their position.

14. Now, the question to be answered is whether the aforesaid legitimate expectation could be defeated by change of policy. It is true that the policy of the

Government is not to be read as a piece of statute. The overriding public purpose for the award of contract for book stalls in the Railway stations is the need to provide good reading material to the Railway Passengers in particular and the public at large. Therefore, the mode of settlement of contract is only a step in the aid of achieving the aforesaid object. Therefore, a policy which observed the said purpose best has to be adopted.

15. Undoubtedly, the Railway administration have recognised the long standing satisfactory contribution of the petitioners in this field. It is settled by the Apex Court that the change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior motive. Every State action must be informed by reason. The decision of the Railway to unilaterally increase the licensee fee during the term of the contract that too respectively would not stand the test of reason. Therefore, the matter requires a re-look by the Railway Administration.

In the result, these writ petitions are disposed of directing the respondent Railway Administration to re-consider the issue in the light of what has been stated above, after affording all the petitioners an opportunity of being heard. Formal orders shall be passed within a period of one month from the date of receipt of a copy of this judgment. The amount already deposited by the petitioners on the basis of the interim orders shall be kept by the Railway till a final decision is taken and the release of the said amount shall be subject to the final outcome of the decision so taken by the Railway.

SD/- A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE