HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.9988 OF 2015

ORDER:

The petitioner prays for Mandamus declaring the action of 2nd respondent in proceedings No.G/C.79/MCS/MALM/PF.1/11 dated10.03.2015 demanding from petitioner to pay **Additional Amount** of licence fee of a sum of Rs.17,41,325/-, as arbitrary, violative of principles of natural justice and contrary to the terms and conditions of licence.

To appreciate the prayer, it is useful to excerpt the proceedings dated 10.03.2015.

"No.G/C.79/MCS/MALM/PF.1/11-

To

Sri G.P.Dinesh Kumar,

Licencee,

Modular Catering stall,

Platform No.1,

Mantralayam Railway Station.

Sub:- Final Notice for payment of arrears of licence fee-Reg.

Ref:-This office letter of even no.dt.17.12.2012, 21.02.2013,

04.04.2013, 20.06.2014, 15.07.2014, 29.09.2014,

20.11.2014, 26.11.14, 31.12.14, 04.02.15 & 13.02.2015.

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Further to this office letter of even no cited in above reference, where in you are advised to pay the licence fee of Rs.17,41,325/-(Rupees Seventeen Lakhs Forty One thousand Three Hundred and Twenty Five only) towards the provisional licence fee for the unauthorized occupation of the auxiliary counter at MALM on PF No.1 (towards GTL end) for the period from 01.11.2009 to 02.09.2014, still no remittance particulars are received to this office.

In view of the above failure, please treat this letter as final notice for termination of contract and pay the due amount of Rs.17,41,325/-(Rupees Seventeen Lakhs Forty One thousand Three Hundred and Twenty Five only) by means Divisional Cashier (Pay) S.C.Railway, Guntakal or send a Demand Draft to this office duly drawn in favour of Senior Divisional Financial Manger, S.C.Railway, Guntakal, and furnish the same to this office on or before 31.03.2015. Failing which the licence of the stall will be terminated.

Please Note.

(M.Sami Naik)

Sr. Divisional Commercial Manager,

South Central Railway, Guntakal."

The averments in brief are that the petitioner is a licencee for running a catering stall on Platform No.1 of Mantralayam Road Railway Station. The petitioner claims to be running the food stall by paying licence fee for quite some time. In the year 1988, the 2nd respondent granted permission to petitioner to open an additional sub stall on Platform No.1 towards Guntakal End for a period of five years subject to payment of additional licence fee of Rs.2,250/- per annum. The petitioner claims to be paying additional licence fee without any default. The reason for granting permission to establish additional sub stall/auxiliary counter is to compensate the loss the petitioner was incurring due to the non-suitability of location of main stall on the platform. In the year 2006, tender notification was issued calling bids for the food stall on Platform No.1 of Mantralayam Road Railway Station. It is the definite case of petitioner that the auxiliary stall is annexed to the stall for which tenders were invited. The petitioner became the successful bidder with a licence fee of Rs.2,97,999/-. Admittedly the tender was issued for a period of five years and the currency of licence period is from October,2009 till October, 2014. The petitioner is operating the food stall on the extension granted by the respondents up to 30.04.2015 vide letter dated 08.10.2014. The extension of licence period is not the subject matter of the present writ petition. It is the case of petitioner that the auxiliary stall operated by the petitioner was permitted by the Railway authorities and is part of the subject matter of tender issued in the year 2006. Therefore, the plea of petitioner is that there is no legal or factual obligation to pay licence fee to the auxiliary stall.

It is further averred that the 2nd respondent through letter dated 17.12.2012 directed the petitioner to pay additional licence fee of a sum of Rs.11,04,795/-. On the ground that the operation of auxiliary stall is unauthorized, the petitioner is under obligation to pay licence fee. On 18.01.2013, the petitioner sent his reply *inter alia* stating that for the past 40 years, the petitioner is running auxiliary stall and running auxiliary stall is with the permission of Railway authorities. Both on the quantum and also about the permission, it is the case of petitioner that the 2nd respondent ordered sales assessment of subject stall for determination of licence fee payable to the auxiliary stall. The 2nd respondent instead of fixing the licence fee on the sales assessment directed by the 2nd respondent, is insisting to pay a sum of Rs.17,41,325/- as additional licence fee for the sub stall for the period from 01.11.2009 to 02.11.2014. The demand is without basis and additional fee cannot be demanded. The sub stall admittedly run by the petitioner has to be treated as adjunct to the main stall and no separate licence fee can be demanded. The inaction for about three years from 2009 is a circumstance relied upon by the petitioner to contend that the vending through auxiliary stall is as per the terms of the licence. Therefore, the demand of licence fee of Rs.17,41,325/- through impugned notice is without any basis much less issuing show cause notice to petitioner.

The petitioner refers to file noting dated 04.06.2013 which is to the effect that the 2nd respondent directed examination of sales assessment and re-fix the licence fee as early as possible. Unless and until re-fixation of licence fee is done, it is the case of petitioner that the 2nd respondent by relying upon the decision alleged to have been taken prior to the noting dated 04.06.2013 cannot demand same licence fee from the petitioner. Therefore, the petitioner prays for setting aside the impugned notice.

The 2nd respondent filed a petition to vacate the interim order dated 10.04.2015 and in the accompanying counter affidavit, the 2nd respondent refers to in great detail about the history of subject stall and various acts and commissions which are alleged to have done by the petitioner. This Court is not concerned with the other issues between the parties but the Court is confining the narration to the extent of notice impugned in the writ petition.

The subject stall was tendered through tender No.IRCTC/SCZ/OT/2/Stalls/ Gen/2006. The tender document is clear on the scope and object of the property auctioned for licence and according to condition 7.2, operation of additional stalls, counters, trolleys, trays, Comchas etc. are not permitted. In other words, the objection of 2nd respondent is that the alleged vending through auxiliary stall cannot be a ground for continuance with the issue of fresh tender. The petitioner through letter dated 20.06.2012 addressed to the Senior Divisional Commercial Manager, South Central Railway, Guntakal, admitted that there is written permission regarding the extension counter and through the instant letter requested permission to continue to run the auxiliary stall. The petitioner agreed to pay necessary charges and the fees fixed by the Railway administration. From the above two circumstances, the 2nd respondent contends that auxiliary stall is not part of the food stall for which a licence is granted to the petitioner both under the tender condition and according to letter dated 20.06.2012 addressed by petitioner. The utilization of auxiliary stall is unauthorized and the use of unauthorized stall was directed to be stopped by the licencee. The licence fee payable to food stall on Platform No.1 and the licence fee payable to auxiliary stall are separate and distinct. There is no extension order for auxiliary stall by IRCTC. The petitioner requested to allot auxiliary stall to him and pending decision the petitioner has unauthorisedly occupied the stall and doing catering business in the auxiliary stall. Therefore, according to the existing Railway Board Guidelines the 2nd respondent justifies the impugned notice demanding licence fee for auxiliary stall from 01.11.2009 till September, 2014. The demand of additional licence fee of Rs.17,41,325/- is correct and according to the extant policy applicable for determination. The 2nd respondent refers to the assessment done by Accounts and Commercial teams twice as stated by the licencee and determination of licence fee is as per the SAG formula. The 2nd respondent considers taking high side of either sales assessment or SAG determination and accordingly licence fee is fixed. The auxiliary stall in an extent of 125.1 square feet was in possession of the petitioner. The petitioner agreed to pay licence fee of Rs.2, 97, 999/- for 60 square feet per annum. If the proportionate rate is applied, for the extent of 125.1 square feet in possession of petitioner, the licence fee payable will be Rs.6,21,328/- per annum. By giving the details of calculations, the 2nd respondent concludes that the licence fee for the period 01.11.2009 till 31.10.2014 is at Rs.18,41,325/- and after giving credit of Rs.1,00,000/-, the net amount payable by the petitioner towards licence fee for auxiliary shop is Rs.17,41,325/-.

The petitioner filed reply and it is further stated the petitioner joins issue with the determination of licence fee by applying SAG formula. The determination of licence fee shall be on the sales assessment undertaken by the officers in two spells on 14.12.2013 and 24.04.2014. The petitioner complains that after a direction is issued on the representation of petitioner to examine sales assessment and re-fix the licence fee, no fresh notice is issued to petitioner and for all purposes the 2nd respondent is reiterating the determination of licence fee on 09.11.2012.

Sri C. Ramachandra Raju, learned counsel for the petitioner and Sri T.S.Venkatarama, learned standing counsel have made detailed submissions on the issue of payment of licence fee for the auxiliary stall. At the time of hearing, the learned counsel for the petitioner focused on the mode and manner of determining licence fee for the auxiliary stall. The long and short of learned counsel's objection is that there should be a determination of licence fee payable by the petitioner on the sales assessment data obtained on 24.04.2014, 25.04.2014 and 26.04.2014. Admittedly in the case on hand, no such determination is there. The 2nd respondent is reiterating what is stated through notice dated 17.12.2012 etc. The same is illegal and amounts to arbitrary exercise of power by the 2nd respondent. The petitioner prays for re-determination of licence fee on the sales assessment data collected on 24.04.2014, 25.04.2014 and 26.04.2014.

The learned standing counsel firstly contends that the 2nd respondent is required to take note of sales assessment data and also SAG formula and whichever is the higher, the licence fee for the auxiliary stall is determined on the higher component. According to the learned standing counsel, the sales assessment is done and decision is taken by the respondents to call upon the petitioner to pay a sum of Rs.3,68,265/- per annum. Therefore, no exception can be taken.

The learned standing counsel further contends that the impugned notice is a demand and if the petitioner refuses to comply with the demand made through the impugned notice, the 2nd respondent may either consider blacklisting the petitioner or take steps for recovery of the outstanding sum. Therefore, the learned standing counsel prays for dismissal of the writ petition.

The petitioner by record and pleading has stated that the licence fee for additional stall is required to be paid by him. Now the further inference that can be drawn is that the petitioner is not pursuing the preliminary objection of the impugned demand on the ground that auxiliary stall is part of the main food stall licensed in favour of the petitioner. In view of the above pleadings and submissions, the short point for consideration is:

Is the demand through impugned notice is after examination of sales assessment and re-fixation of licence fee as decided by the 2nd respondent?

The answer to the above point is usefully given by referring to the original file made available for perusal by the learned standing counsel.

> **"Sub:- Modular Catering Stall at MALM Railway station.**
>
> **The Modular Catering stall has been allotted by IRCTC in place of existing PF stall on PF No.1 of MALM Railway station through open tender system in favour of Sri G.P.Dinesh Kumar.**
>
> **The stall is allotted individually and no extension counter/auxiliary stall were allotted along with the modular catering stall.**
>
> **The IRCTC vide their letter No.IRCTC/SCZ/GTL, dt.10.08.2010 by AM/IRCTC/GTL has also instructed the licensee to close down the extension counter run by the licensee in accordance with reference from GGM/Finance letter dated 16.11.2009 and copy to the SMR/MALM for information and necessary action(Folio-51).**
>
> **As the stall was allotted to the licensee in place of the existing PF stall, the area of allotment pertains to the permanent structure of the existing building.**
>
> **As per CCM/SC Lr.no.C.78/F/Static Catg. Unit/Vol.I dt.18.4.2011 (F.No.55-54), Para No.3-**
>
> **"Whenever additional space is allotted in passenger interface area, the licence fee should be enhanced tentatively in directly proportionate to the space allotment as indicated in the tender or agreement entered into with the licensee."**
>
> **Accordingly, the area of the existing PF stall was obtained and same is placed at F.No.53.**
>
> **As per the report given by Sri Paddayya, CCI/Catg.Sr.DCM/O/GTL, the area occupied by the existing stall is 29.23 Sq.Mtrs. i.e.314.63 Sq.Feet and the licence fee for this area is 2,97,999/- per annum.**
>
> **Accordingly, for area occupied by the extension counter is 125.1 Sq.Ft.**
>
> **The licence fee as per above calculation is= Rs.1,18,091/- per annum**
>
> **As per para No.4, Page-2 of CCM/SC letter cited above, the license fee has to be calculated according to formula given by SAG committee.**
>
> **Accordingly, the assessment conducted as per SAG formula for fixation reserve price for new proposed unit is Rs.1,95,000/- for 10x6 Sq.Ft.(60 Sq.Ft) as placed at Folio-52. This is pertaining to platform No.2&3.**
>
> **The area occupied by extension counter on PF No.1 is 3.75 M x 3.1M=11.625 Sq.Mtres. i.e. 12.30 Ft x10.17 Ft =125.091 Sq.Ft.**
>
> **Accordingly, the license fee for the existing area as per :Rs.1,95,000/-**
>
> **SAG formula (calculated for new proposed unit) is**
>
> **For 60 Sq.Ft. i.e.195000 : Rs.3250/- per Sq.Ft.**
>
> **60**
>
> **The area of stall is 125.1 Sq.Ft.x Rs.3250: Rs.4,06,575/- per annum**
>
> **Date of allotment of stall by IRCTC : 1.11.2009**
>
> **Kindly advise whether calculation as per SAG committee is to be taken into account or the License fee arrived by the CCI/Catg./GTL is to be taken into account.**
>
> **Submitted for perusal and orders please.**
>
> 1. **Sr DCM may kindly take a decision on item No.(A)**

Sd/-

29/10/12

2. **We may write to Sr DCM to take action on the SMRs who failed to report the continuation of the stall which was closed by an order of F-(51). Pl.**

Sd/-

2/11 ”

“Reference to above orders, the license fee calculated as per PAD stall rates as detailed below:

S.No.	Description	Multiplying factor	Amount in Rs.
1	Basic License fee		15,000/-
2	Multiplying Factor for ‘B’ category of station	(x) 1.5	22,500
3	Multiplying Factor for No. of Originating passengers per day i.e.1,439/-	(x) 1.5	33,750/-
4	Multiplying Factor for location i.e. Entry of Platform 2&3 (middle of the PF)	(x) 1.5	50,625/-
5	Additive Factor for number of halting trains between 6.00 hrs. to 22.00 hrs. i.e.4 trains (4x3,000/-=Rs.12,000/- 19 trains halting for more than 5 minutes (19x6,000/- =Rs.1,14,000/- (12,000/- + Rs.1,14,000/-= Rs.1,26,000/-)	(+) Rs.1,26,000/-	1,76,625/-

The Reserve License fee proposed for the new 1,76.625/-

Stall for 60 Sq.Ft.

Rate per Sq.Ft. 176625/60 2943.75 per

Sq.Ft.

For 125.1 Sq.Ft (of the stall area) 2943.75 368263.125

The proposed licence fee for 125.1 Sq.Ft. Rounded off to

Rs.3,68,265/-

Submitted for perusal and orders please.

As per orders of Sr.DCM on N-8 the calculation as per PAD stall rates is put up. Pl.

Sd/ sd/-

09.11.12 9/11/12"

"Sub:- Payment of license fee for the unauthorized occupation of Auxiliary Counter at MALM

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As per NP-7 para 9 & 10 the licence fee the auxiliary stall was calculated and same was informed the license to pay it immediately with regards to the auxiliary stall on PF.No.1 GTL end.

In this connection the license has paid Rs.1,00,000/- vide DD.No.122689 dt.27.056.2013 of Andhra Pragathi Gramena Bank is placed at F.66.

The license has given a representation in this regard for refixation of licence fee the same is place at F.67.

Put up for kind perusal and orders please.

Ch. Os sd/-

Dealer

28/6/13

Sr.DCM.

Please send DD to accounts.

Examine sales assessment and refix the licence fee as early as possible.

Sd/-

29.6.13"

"A letter received from licensee of Modular catering stall at Mantralayam Railway Station, requesting to re-fix the licensee fee of the unauthorized extension counter/auxiliary stall according to the sales assessment is placed at (Folio No.115). In this regard the synopsis of the case is as follows:

1. **The Modular Catering stall on Platform No.1 at Mantralayam Railway station was allotted in favour of Sri G.P.Dinesh Kumar, for a period of 05(five) years from 01.11.2009 to 31.10.2014, by IRCTC, under Two packet tender system at an annul License fee of Rs.2,97,999/-.(F.No.16).**

2. **The stall was allotted as individual unit with out any extension counter/auxiliary stall attached with the main units as per agreement copy (F.N.13)**

3. **IRCTC vide there letter no.IRCTC/SCZ/GTL dt.10.08.2010 by AM/IRCTC/GTL had instructed the Licensee to closed down the extension counter run by the licensee in accordance with reference from GGM/Finance letter dated 16.11.2009. The copy of the letter was served to the SMR/MALM for necessary action (F.N.51)**

4. **During Sr.DCM inspection on 16.09.2012 at Mantralayam Railway station, it was noticed the extension counter/auxiliary stall was under operation and accordingly the license fee of the unit was calculated as per SAG formula and it was fixed at Rs.3,68,265/- per annum.(F.NP.9)**

5. **The licensee was advised to remit the license fee of the extension counter/auxiliary stall from the date of allotment (of the new stall) i.e. 01.11.2009 to 31.10.2012 (for three years) at the rate derived from the SAG committee formula (F.N.9 Para.10).**

6. **The licensee remitted Rs.1,00,000/- (Rs.One lakhs only) towards the license fee of the unauthorized extension counter/auxiliary stall and requested for conducting the sales assessment of the stall for re-fixing the license fee.**

7. **On the instruction of Sr.DCM, two sales assessments was conducted by a two different team of commercial and accounts personals, in two different period. The summary of the sales assessment and the work sheet, (Calculating the license fee as per the sales assessment) is prepared and sent to associate finance for concurrence (F.N.104/105).**

8. **The reply received from associate finance accounts, on the above proposal is placed at (F.No.106). In the reply, the associate finance has question about the existence of the stall and it its legitimacy, and further process of the regularization of this unauthorized extension counter/auxiliary stall.**

9. **However, the licensee was once again advised to pay the license fee of this unauthorized extension counter/auxiliary stall for the complete period from 01.11.2009 to 31.10.2014, along with arrears amounting to Rs.17,41,325/- (F.N.107) and a reminder of the same on 15.07.2014 (F.N.108).**

10. **As per SAG formula the minimum license fee of the unit fixed is Rs.3,68,265/-(F.Np.9 Para.10), where as the license fee derived as per sales assessment is Rs.1,15,851/- (F.N.106)**

Put up for kind perusal and further orders please.”

From the above, it is clear that the 2nd respondent has undertaken the exercise for determination of licence fee payable for the auxiliary stall. In the manner decided by him on 04.06.2013, no decision is found in the note file. On the other hand, recommendation for demand of licence fee on the basis of sales assessment was mooted. The 2nd respondent no doubt is entitled to collect licence fee for auxiliary stall. In the facts and circumstances of this case, this Court constrained to observe that there is failure on the part of the Railway authorities in taking timely action for levy of licence fee on the auxiliary stall. On the representations received from the petitioner, a direction is issued for examination of sales assessment and re-fixation of licence fee. To fasten liability towards licence fee for auxiliary stall, the 2nd respondent ought to have considered all the aspects and a decision is objectively taken. As this Court cannot sit in appeal on the proposals pending with the 2nd respondent in the matter of levy of licence fee for the auxiliary stall, the writ petition is disposed of by directing the 2nd respondent to examine the sales assessment and re-fix the licence fee in accordance with law and communicate such decision to the petitioner. The petitioner if so advised is given liberty to file his explanation within a period one week from today to 2nd respondent.

With the above direction, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date:01.05.2015

Stp