

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17280 of 2012

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1. M/S National Auto Service Agent Indian Oil Corporation Ltd. Petrol Pump Hajipur, District- Vaishali
 2. Suresh Prasad Sinha Son Of Late Parmeshwari Narayan Sinha And Partner Of Petitioner No. 1 Aforesaid, Resident Of Village & P.S. Bagwatpur, P.S. Sarai Ranjan, District- Samastipur And At Present Residing At Mohalla- Pokhara, Magistrate Colony, P.S. Town, Hazipur, 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
4. The Assistant Divisional Fin. Manager, Eastern Central Railway, Sonapur
5. The Divisional Engineer, Eastern Central Railway, Sonapur
6. The Section Engineer (Works) Hajipur Eastern Central Railway, Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birju Prasad
For the Respondent/s : Mr. Anil Kr. Sinha

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 29-01-2016

Heard Mr. Birju Prasad for the petitioners and Mr. A.K. Sinha for the respondent-East Central Railway (for short 'the respondent-ECR').

In spite of indulgence granted, no counter affidavit has been filed.

The petitioners claiming to be agents of Indian Oil Corporation (for short 'the IOC'), have filed the present writ application to set aside the communication dated 11.01.2011 (Annexure-12 series) issued by the Section Engineer(Works) of the respondent-ECR, Hajipur along with the memorandum issued by the Divisional Rail Manager/Engineer Sonapur through letter dated 19.01.2011 (Annexure-12/1). It is stated that under an agreement between the Union of India through ECR and the petitioner no.1,

the petitioner no.1/licensee was permitted to use part of railway land at the Hajipur Station. The petitioners, in fact, are aggrieved by the escalation in the licence fee from a retrospective date.

It is stated that the issues raised herein were raised in another writ application being CWJC No. 13263 of 2002 wherein this Court by a proceeding dated 16.04.2010 (Annexure-14) allowed the writ petition after considering the submissions of the parties and perusing the relevant materials for resolution of the claim including the terms of the agreement, notice and the circular issued by the respondent-ECR. For better appreciation, this Court would extract the relevant part/portion of the order which reads thus:-

I have considered the submissions of the parties and the materials available on the record. It is evident that the petitioners are occupying the commercial Railway land on the basis of the licence agreement dated 8.10.1980 as the licensee for the said land. They are therefore, bound to comply with the terms and conditions laid down in the licence agreement which also binds the Railway Administration. In terms of the said licence agreement, the Railway authorities had the right to enhance the licence fee from the date as they may fix in the notice of their intention to revise the licence fee. However, the requirement was to give one month's notice to the licensee of the Administration's intention to revise the licence fee. The terms of clause 8 of the licence agreement that the licensee shall be bound to pay the licence fee at the rate revised from the date mentioned in the notice cannot at all be interpreted as a right to enhance the licence fee from retrospective



date. This Court had earlier specifically directed the respondent Railway to satisfy this Court as to under what authority of law they can revise the licence fee with retrospective effect. The respondents have failed to show any authority of law except falling back upon clause 8 of the agreement. According to this Court, the said clause does not give any authority to Railway Administration to fix retrospectively any date with effect from which the revised licence fee shall operate.

Even under the general principles of law, it would be contrary to the principles of fairness for State under Article 12 of the Constitution, which the Railway is, to enhance the licence fee from retrospective date, as the same would be unreasonable, arbitrary and whimsical and cause undue hardship upon the licensee. Unless there is any such statutory power to revise the licence fee from a retrospective date that too from a date which may be reasonable, proximate and not excessive like the period going back to 16 years, it is not at all possible for this Court to hold any such revision of licence fee with retrospective effect as reasonable and rational and the same is wholly impermissible.

So far as the enhancement of licence fee is concerned, this Court finds that the authorities have acted in terms of the guidelines contained in the Circular dated 29.8.1995 issued by the Railway Board and the same does not appear to be irrational or contrary to law. By providing for notional increase every year from 1.4.1986 it is evident that there was no intention to provide for actual increase of licence fee from a

retrospective date. However, if the Railway authorities have slept over the matter for seven years before they woke up and issued notice revising the licence fee, then they themselves are to be blamed for the same and they cannot be permitted to revise retrospectively only on the basis of the said Circular of the Railway Board.

Thus, in the light of the aforesaid discussions, this Court is of the view that the letter dated 30.7.2002/6.8.2002 can only have effect prospectively that too after at least one month's notice on the licensee of the Administration's intention to revise the licence fee in terms of clause 8 of the licence agreement dated 8.10.1980. Accordingly, that part of the letter which directs the payment of enhanced licence fee for a period prior to 6.9.2002 is fit to be quashed. It is accordingly quashed to that extent.

It has been submitted that the present writ application may also be disposed of in the light of the said order.

Mr. Sinha appearing for the respondent-ECR, on the other hand, has contended that the circular of the Railway Board has been upheld by the Court. Although the respondent-ECR has been restrained from charging any enhanced licence fee from the retrospective date but such fee can be charged by the respondent-ECR from the prospective dates according to the circular of the Railway Board providing notional fixation of rent. He also submits that subsequently another circular governing the case has been issued by the Railway Board which has not been placed for consideration.

The petitioners apart from challenging the legality of the

communication dated 11.02.2011 (Annexure-2 series) also prayed for direction to confirm or grant the licence of the petrol pump of the petitioners from 01.04.2008 which, according to them, was revised on 01.03.2008. The said prayer of the petitioners need not be adverted to as the principle or the law in connection with such escalation of fee has already been considered and decided by this Court (Annexure-14). The respondent(s) shall proceed to act accordingly in the matter.

The writ application is allowed in the light of the order passed by this Court in CWJC No. 13263 of 2002 (Annexure-14), relevant portion/part whereof has been extracted hereinabove. Both parties shall comply with the aforesaid order passed in the said case. As observed in the said order, the petitioners shall be at liberty to file an appropriate representation before the appropriate/competent authority of the respondent-ECR for consideration of their claim with regard to calculation of the dues and for adjustment/refund of the payment already made by the petitioners, if any, which shall be considered expeditiously by the respondent-ECR in the light of the order of this Court and relevant circular(s) issued by the Railway Board.

(Kishore Kumar Mandal, J)

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