

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.6662 of 2012

- =====
1. M/S Hazarilal Baidyanath Prasad, Agent Indian Oil Corporation Ltd. Dighwar, District-Saran (Chapra)
 2. Arbind Kumar, son of Late Ramchandra Prasad, proprietor and partner of petitioner No.1 aforesaid, resident of Dighwara, P.S. Dighwara, District- Saran (Chapra).

.... Petitioners

Versus

1. The Union of India through the Divisional Engineer, East Central Railway, Sonpur
2. Sri P.R. Singh, son of not known, the Divisional Engineer-cum-D.E.N. (Special) D.R.M. office, East Central Railway, Sonpur
3. Sri S.K. Gupta son of not known, the then Divisional Rail Manager (Engineering), Sr. D.E.N. (Co-ordination) Sonpur and at present posted as Dy. C.E.T.S.P. (Dy. Chief Engineer Track Planning, G.M. (Engineering) zonal office, East Central Railway, Hajipur, District- Vaishali.
4. Sri Krishna Kumar son of not known, the Divisional Rail Manager (Engineering) East Central Railway, Sonpur

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Birju Prasad
For the Opp. Parties : Mr. Anil Kumar Sinha
(Railways) Mr. Ankit Kartriar

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 19-02-2016 Heard learned counsel for the petitioners and learned counsel for the Railways.

The petitioners allege wilful disobedience of the order dated 16.04.2010 passed by this court in C.W.J.C. No.13263 of 2002. By the said order, this Court while upholding the enhancement of licence fee in terms of the guidelines/circular dated 29.08.1995 issued by the Railway Board held that the same does not appear to be irrational or contrary to law by providing for notional increase every year from 1.4.1986 and further went on to



hold that there was no intention to provide for actual increase of licence fee from a retrospective date but only prospectively, that too after at least one month's notice to 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, by the order dated 16.4.2010 passed in C.W.J.C. No.13263/2002, this Court quashed that part of the letter dated 30.07.2002/06.08.2002 which directed the payment of enhanced licence fee for a period prior to 06.09.2002. This Court also noted that the petitioners have already paid the difference of licence fee along with the interest in terms of clause 9 of the agreement as demanded by the Railway authorities but noted that the petitioners would be entitled to refund of excess amount paid for the period from 01.08.2002 to 06.09.2002, after which date alone the said enhanced rate shall take effect. Further liberty was given to the petitioners to represent before the Railway authorities and if there was any arithmetical error, the same ought to be rectified by the respondent-authorities within three months from the date of filing of the representation and the consequential refund would be adjusted against future licence fee.

The present contempt application has been filed alleging that despite the representation of the petitioners, the opposite

parties of the Railways have not rectified the calculation made.

Show cause and supplementary show cause have been filed on behalf of the Railways. A calculation chart has been filed in the supplementary show cause. It is stated that the earlier calculation chart had shown enhancement of the licence fee itself at the rate of 10 %, whereas as per the Circular of the Railway Board, which has been upheld by this Court, the enhancement has to be made on the land value as on 01.04.1985 from year to year at the rate of 10% with corresponding increase in the licence fee. A calculation chart has been annexed as Annexure- R/1 in which details fixing the land value as on 01.04.1985 and thereafter increasing the licence fee from year to year as also the actual charging of licence fee from 06.09.2002 till the year 2014-15 have been shown. The total licence fee along with penal interest at the rate of 1 % per annum comes to Rs., 3,34,178.01, whereas the petitioners had already paid Rs.3,58,766 in the year 2010, pursuant to the interim order dated 07.03.2003 passed by this Court. Accordingly, an amount of Rs. 24,587.99 is still found to be excess in the account of the petitioners to be adjusted against the future licence fee.

Learned counsel for the petitioners submits that the interest at the rate of 1 % could not have been charged as the

petitioner had paid a lump sum amount in the year 2010, pursuant to the interim order of this Court and thus the calculation does not appear to be correct.

It is submitted that in view of the direction of this Court by interim order dated 07.03.2003 it was clear that only the amount recovered for the period between 01.04.1986 to 30.07.2002 would remain in abeyance but it was clearly directed that the petitioners if they wanted to continue their possession over the property, then they must pay the lease amount/licence fee as demanded by the respondents and if the petitioners did not deposit the licence fee/rent then the respondents would be entitled to take action in accordance with law.

In view of clear direction given in the interim order which was not modified in any way by the order dated 8.3.2010 passed by this Court subsequently, there was no occasion for the petitioner not to have deposited the licence fee immediately after passing of the interim order since no stay order in that regard was there in favour of the petitioners.

So far as deposit of the licence fee from July, 2002 is concerned, as has been wrongly sought to be submitted by learned counsel for the petitioner in view of the clear direction given in the interim order dated 7.3.2003, it is evident that the Railway

Administration was entitled to levy interest at the rate of 1% per month on the licence fee and thus the charge of the same till the year 2009-10 does not appear to be unjustified nor it amounts to any violation of the orders of this Court.

In the light of the aforesaid facts, we do not find that any contempt has been committed by the opposite parties in the matter.

The contempt application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

U			
---	--	--	--