

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8679 of 2014

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Bishwanath Rai, Son of Late Ramashish Rai, Resident of Village- Akilabad,
P.S.- Gadai Sarai, District- Vaishali

.... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. The General Manager, East Central Railway, Hajipur
3. The Divisional Rail Manager, East Central Railway, Sonapur
4. The Divisional Rail Manager (Engineering), East Central Railway, Sonapur
5. The Assistant Divisional Financial Manager, East Central Railway, Sonapur
6. The Divisional Engineer (Special), East Central Railway, Sonapur
7. The Section Engineer (Works), Hajipur, East Central Railway, Hajipur

.... Respondent/s

with

Civil Writ Jurisdiction Case No.8482 of 2014

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Satya Narayan Shukla @ Chandraketai Rai, Son of Late Nathuni Rai @
Narmadeshwar Prasad Rai, Resident of Village- Dighikala East, P.S.- Sadar
Hajipur, District- Vaishali

.... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. The General Manager, East Central Railway, Hajipur
3. The Divisional Rail Manager, East Central Railway, Sonapur
4. The Divisional Rail Manager (Engineering), East Central Railway, Sonapur
5. The Assistant Divisional Financial Manager, East Central Railway, Sonapur
6. The Divisional Engineer (Special), East Central Railway, Sonapur
7. The Section Engineer (Works), Hajipur, East Central Railway, Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birju Prasad, Advocate
For the Respondent/s : Mr. Siddherth Prasad, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER



10 29-08-2017 Heard learned counsel for the petitioners and learned counsel for the East Central Railways.

The common issue to be decided in these cases is whether the petitioners could be permitted to run Liquor Shop inside the railway premises or not, which purportedly has been leased to them in the year 1980. It appears from the agreement annexed to both the writ applications that some sort of agreement was arrived at between the parties and the Railways, by which certain portions of railway's land were allotted in their favour for running shops, the nature of which were duly specified in the agreement.

Learned counsel for the petitioners submits that contrary to the terms of the said agreement, the petitioners were issued notice for cancelling their agreement, which was never served on them. Pursuant thereto, the respective licenses were cancelled. This Court after appreciating the fact that no cancellation order could have been passed without issuing notice to the petitioners, quashed the same, giving liberty to the Railways to move afresh in accordance with law after giving notice to them. In both the cases, at the first instance, when the writ Court interfered, the Railways had not filed a counter affidavit. As such, the real picture was not before this Court when such orders were



passed. It further appears that after the orders passed by this Court, the case of the petitioners were considered once again in which the petitioners participated. The Railways after having found that the petitioners have been running the shops contrary to the terms of the licence issued in their favour has now proceeded to once again move afresh and also contemplates to pass fresh orders in their matter.

Learned counsel for the petitioners once again asserts that the orders passed by the railways, which were impugned in the present writ application, though stated to be “reasoned orders” have no basis and deserve to be set aside. Accordingly, they have approached this Court for seeking appropriate relief under Article 226 of the Constitution of India.

Learned counsel appearing on behalf of the Railways has strenuously urged that the impugned orders passed by the railways are not orders of cancellation, and, therefore, the application filed by the petitioners are wholly premature and do not warrant interference. It is further urged by the counsel that even taken on merits, the petitioners do not deserve remedy under Article 226 of the Constitution of India as they are guilty of *suppretio veri and suggestio falsi*, inasmuch as they have approached this Court with a false and fabricated document, as the



Railways never permit any Liquor shop to run over Railway's land. To demonstrate the said proposition, learned counsel for the Railways has referred to Annexure –R/1 of the counter affidavit filed in CWJC No. 8679 of 2014, which has also been adopted by the Counsel appearing for the respondents in CWJC No. 8482 of 2014. It has been categorically asserted in the said Annexure R/1 at paragraph -9 that the licensee would not sell any prohibited articles in the railway premises, for example, liquor, beef etc.

It is, indeed, a wonder that the petitioners of the respective writ applications have annexed an agreement which goes to show that they were permitted to run liquor shop. On a bare perusal of the said agreement, this Court observes that there is some sort of anomaly which can be best decided by the fact findings authorities. However, in view of the categorical assertion by the railways that the licensee could not sell any prohibited articles in the Railway premises, as is contained in and evident from the prescribed format of common agreement which is clearly used for grant of licence on Railway land at Gandhi Chowk, Hajipur “for shopping purposes by erecting wooden Gumti,” this Court is not inclined to interfere and issue writ in favour of the petitioners.

Accordingly, the writ applications, stand



dismissed.

However, it shall be open to the railways to take appropriate steps in pursuance of the order passed by this Court, in accordance with law.

(Anjana Mishra, J)

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