IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9177 of 2013

M/S Kanhaiya Lal, through its Proprietor Sri Surendra Prasad @ Surendra Prasad Gupta, S/O Sri Shital Prasad, R/O Village-Khirauli, P.O.-Khirauli, P.S.- Dumraon, District-Buxar

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railways, New Delhi
2. The General Manager, East Central Railways, Hajipur (Vaishali)
3. The Divisional Railway Manager, Danapur, East Central Railway
4. The Chief Commercial Manager, East Central Railway, Hajipur (Vaishali)
5. The Senior Divisional Commercial Manager, Danapur
6. The Assistant Commercial Manager/Catg., Danapur
7. The Station Manager, Dumraon

.... Respondent/s

Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate
with
Mr. Gautam Kumar Kejriwal, Advocate
Mr. Priya Gupta, Advocate
Mr. Mohit Agarwal, Advocate
Mr. Chandan Kumar, Advocate

For the Respondent-Railways : Mr. Ashok Kumar Keshri, Sr. Advocate
with
Mr. Brajesh Kumar, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
CAV JUDGMENT
Date: 28 -06-2017

The writ petitioner herein seeks (i) issuance of a writ in the nature of *certiorari* for quashing the letter dated 12.04.2013, bearing Ref. No.Com/Catg.Stall/DURE/13, as contained in Annexure 11, whereby he has been directed to vacate the catering stall at Dumraon Station and the space allotted outside the said platform within a period of three days on the ground of failure in payment of arrears of licence fee. (ii) The petitioner further seeks quashing the letter dated 16.01.2013, bearing Ref. No.Com/Catg./DURE/L.Fee/13, as contained in Annexure 9, and also the letter dated 25.02.2013, bearing Ref. No.Com/Catg./Stall/DURE/13, as contained in Annexure 10, whereby the respondent-Senior Divisional Commercial Manager, East Central Railway, Danapur has raised demand of arrears of licence fee without any regard being had to the terms of Indian Catering Policies 1999, 2000, 2005 and 2010. (iii) A *mandamus* is also sought for by the petitioner for directing the respondents to implement the guidelines of this Court contained in the order dated 19.07.2010 passed in CWJC No.9725 of 2005 (Annexure 6) by applying the uniform principle set out in the catering policies for the purpose of revision of rates of licence fee at periodic intervals. (iv) The petitioner further seeks a *mandamus* for providing him with the details of the factors and principles adopted for fixation of his licence fee from time to time between the year 1990 till the date of filing of the writ application and renewal of his licence as vending contractor, which is lying due since 1990.

2. The petitioner claims to be the proprietor of the proprietorship firm established by his father, who passed away in the year 2002 and since then, the proprietorship of the firm devolved upon the petitioner and his firm has been operating at Dumraon Railway Station (Platform) as special minor unit (Tea, Snacks, Biscuits Stall) under reserved category on account of the petitioner

being a person from Other Backward Classes.

3. The licence of the petitioner's father, who was the licence holder, was last renewed in the year 1985, i.e., on 01.04.1985, for a period of five years being valid till 31.03.1990. The renewal of the licence, which fell due in the month of April, 1990, was not so done by the respondents and the stall at Dumraon Station was allowed to be operated without any response from the end of the respondents. The petitioner continued to pay the licence fee at the rate of Rs.332.33 per month till March, 1992 in absence of any instruction from the respondents regarding revision of the licence fee on the renewal of the licence for a fresh period.

4. On demand being made by the respondents, a deposit of Rs.1445/- by way of security against renewal was made by the petitioner, which was duly acknowledged by the respondents, vide receipt dated 22.10.1992, but the licence was never renewed. However, on instructions from the respondents, the petitioner continued to deposit a sum of Rs.349.15 per month with effect from April, 1992 till April, 2002. It was noticeable to mention here that the respondents never asked to pay any renewed rate but, vide letter dated 28.03.2002 (Annexure 3), the petitioner was asked to pay a licence fee of Rs.720/- per month with effect from April, 2000, which was strictly complied with by the petitioner with effect from May, 2002.

5. Suddenly, in the month of May, 2005, the respondent-Senior Divisional Commercial Manager, Danapur, vide letter dated 26.05.2005, informed the petitioner about the retrospective revision on provisional basis of the licence fee at a figure of Rs.1728/- from 01.07.1999 and Rs.1901/- from 01.04.2000 and accordingly the petitioner was instructed to pay a sum of Rs.1,29,600/-, being the amount due till March, 2005.

6. Further, vide letter dated 20.09.2006 (Annexure 5), issued by the respondents during the pendency of CWJC No.9725 of 2005, the petitioner was required to pay the arrears of licence fee since February, 2006 at the rate of Rs.5000/- per month, which rate was brought to the notice of the petitioner for the first time and the same was without any assessment of the sales turnover and other factors relevant for the purpose of determining the licence fee. Though the arbitrary revision of licence fee and recovery thereof with retrospective effect was the subject-matter of challenge in CWJC No.9725 of 2005, the respondents arbitrarily issued the aforesaid letter dated 20.09.2006.

7. The said writ application (CWJC No.9725 of 2005) was, however, disposed of vide order dated 19.07.2010 (Annexure 6) upholding the action of the respondents of recovery of revised licence fee with retrospective effect but, at the same time, observed the necessity of fixation of licence fee on the basis of the parameters

relevant for the purpose. The said order further observed that no straitjacket formula could be adopted for fixing the licence fee for all places for the purpose and the Railway should conduct an exercise after making an exhaustive study of all factors which would collectively affect the determination of actual and proper rate of licence fee to be paid by the vending contractors.

8. The petitioner, being petitioner no.2 in CWJC No.9725 of 2005, was also to benefit from such observations but despite that, the licence fee was revised with retrospective effect without any application of mind and without assessing the sales turnover of the vending contractors, which is explicit from the tenor of letter dated 26.05.2005 (Annexure 7).

9. It was contended by the learned counsel for the petitioner that in the case of similarly situated petitioner M/s Din Dayal Gupta & Sons, who had three such stalls at Patna City Railway Station and outside the platform, the respondents have re-assessed the arrears of the licence fee and have provided a verified calculation of the revised licence fee with effect from 01.04.1995. It also appears from the letter dated 19.05.2011 of the Senior Divisional Commercial Manager, Danapur that the licence fee of the said M/s. Din Dayal Gupta & Sons has been revised every three years at an enhanced rate of 10% after an interval of every three years. But so far as the petitioner is concerned, to the contrary, the

respondents have issued a letter dated 16.01.2013 (Annexure 9) to the petitioner, wherein the petitioner was called upon to pay at the purported old rate up to December, 2012 the arrears of licence fee to the tune of Rs.83,644/-, failing which his catering licence is threatened to be terminated. The petitioner responded by stating that he had already paid Rs.20,911/- as against the arrears of licence fee. As such, the figure of Rs.83,644/- was not realistic and the same should not be deducted.

10. The Senior Divisional Commercial Manager, Danapur issued another letter dated 25.02.2013 (Annexure 10) acknowledging the payment of Rs.20,911/-. By the said letter, the petitioner was also advised to deposit the licence fee up to March, 2013 with the Station Manager, Dumraon Station within a week positively thereof, failing which the licence of the catering unit would be terminated. The petitioner was also advised to attend the office on 28.02.2013 for a meeting with the Senior Divisional Commercial Manager, Danapur. Finally, vide letter dated 12.04.2013, contained in Annexure 11, the petitioner's licence was terminated as he had failed to deposit the licence fee despite the final notice to him. It is under such circumstances that the petitioner has preferred the present writ application.

11. The Railways, on the other hand, have strongly opposed the writ application and have contended that the petitioner

Shri Surendra Prasad @ Surendra Prasad Gupta, son of Shri Shital Prasad, resident of Village-Khirauli, P.O.-Khirauli, P.S.-Dumraon, District-Buxar is an unauthorized person and has no locus whatsoever to contest the present matter as no catering stall at Dumraon has been allotted in his name. All the correspondences at catering stall at Dumraon Station were made in the name of Kanhaiya Lal and not with any proprietorship firm operated by Shri Surendra Prasad @ Surendra Prasad Gupta. The licence fee was also being deposited in the name of Kanhaiya Lal. It was further contended that in the year 2003 i.e., on 06.06.2003 Sri Surendra Prasad Gupta placed an application to this office for transfer of licence of catering stall, Dumraon Station from Kanhaiya Lal to the name of Surendra Prasad & Sons. In the application and the affidavit dated 08.04.2002 (Annexure A to the counter affidavit), executed before Notary Public, Dumraon, Sri Surendra Prasad had declared that Kanhaiya Lal was his father, who died in the year 2002, but in the affidavit of the instant case Sri Surendra Prasad @ Surendra Prasad Gupta has declared the name of his father as Sri Shital Prasad. Thus, he is misleading not only to this Court but also to the Railway administration by way of giving wrong and false information.

12. It is further stated in the counter affidavit that one catering stall at Dumraon Railway Station and a vacant space

outside Dumraon Railway Station was allotted in the name of Sri Kanhaiya Lal, vide Office Letter No.GV/1/34/Vol.6 dated 08.02.1950 (Annexure B). It is further contended that the licence fee of all catering stalls over Danapur Divisin, including the catering stall of the applicant at Dumraon Station, was last revised in the year 2005 and accordingly, letter dated 26.05.2005 (Annexure C) was issued to all the licensees, including the licensee of Dumraon Station, with a request to deposit the revised amount of licence fee with Station Manager, Dumraon. The revised licence fee was not paid by the licensee. It is further contended that the petitioner instead of payment of revised licence fee to the Railway along with other such licensees, went to file CWJC No.9725 of 2005. However, the High Court did not grant relief to the petitioner, vide order dated 19.07.2010 (Annexure D to the counter affidavit), and ordered in favour of the Railways.

13. The Railways handed over all the catering units of `A' and `B' category of Station of the Division, including the catering unit of Dumraon Station, on 03.02.2006 to the Indian Railway Catering & Tourism Corporation (IRCTC), which had come into existence as per the order of the Railway Board. After enforcement of the New Catering Policy, 2010, all the catering units of Danapur Division, which were taken over by the IRCTC from the Railways, were again handed back to the Railways in phase wise

manner and the concerned file of the catering unit, Dumraon Station was handed over to the Railways on 04.01.2013. It was then discovered, on the basis of a special report of the concerned Catering Inspector dated 31.01.2013 (Annexure E), that the licensee at Dumraon Station was not paying the licence fee of his allotted catering unit since May, 2009. Accordingly, on receipt of the above report (Annexure E), a letter was issued to the licensee, vide letter dated 16.01.2013 (Annexure F) stating therein that a sum of Rs.83,644/- for 44 months since May, 2009 to December, 2012 at the rate of Rs.1901/- per month is due. It was requested to deposit the said amount to the Station Manager, Dumraon within a week.

14. It is further contended that contrary to the above letter, out of the total due amount of Rs.83,644/-, the licensee deposited only Rs.20,911/-, i.e., the licence fee for the period May, 2009 to March, 2010 in the name of Kanhaiya Lal. Thereafter, a letter was issued to the petitioner, vide no.Com/Catg/Stall/DURE/13 dated 25.02.2013 (Annexure G) asking therein to deposit balance amount of due licence fee with the Station Manager/DURE within a week, on which the petitioner gave written undertaking that he will clear the entire amount of due licence fee, including the licence fee for the month of January, 2013 to March, 2013, by 31.03.2013. However, when the licensee did not pay the due licence fee by 31.03.2013, even on his written undertaking, termination letter was

issued on 12.04.2013 (Annexure H) with the instruction to vacate the catering stall and the railway land allotted to him at Dumraon Station.

15. It was further contended by the respondents that the aforementioned amount was calculated without following the instructions received from the Railway Board, vide Circular No.37 dated 09.08.2010, which was issued stating therein to increase 10% of licence fee after every three years over the previous one. Revision of licence fee by enhancing 10% over the previous one has been done to all the licensees and they are paying the same. This exercise over the catering stall at Dumraon could not be done due to late receipt of file from IRCTC. Thus, the licensee of Dumraon Station is still paying the old rate of license fee. In view of the above submissions, the prayer of the petitioner is fit to be rejected. Further, in spite of the repeated requests and instructions and even final notice issued to the petitioner for payment of due amount of licence fee of the catering stall and the space of Railway land at outside of Dumraon Railway Station by him, he did not pay the same though he had given a written undertaking to clear the Railway dues by 31.03.2013, the Railway administration terminated the licence of the petitioner and directed him to vacate the stall and the space of Railway land within three days.

16. It may also be noted that the order of the High Court

clearly stated that the Railway got a freehand to enforce the revision. Moreover, the revision of licence fee of catering units was done in accordance with the directives of Railway Board and accordingly, letter was issued to all the licensees, including the petitioner, for payment of the arrear amount of licence fee, vide office Letter No.Com/Catg/Licence Fee/05 dated 26.05.2005. It is further stated in the counter affidavit that the catering stall was allotted in the name of Sri Kanhaiya Lal, P.O.-Dumraon, District-Shahabad, vide office letter No.GV/1/34 Vol.6 dated 08.02.1950 and not to any proprietorship firm. Moreover, the petitioner has concealed the basic fact that he is in any manner connected with Shri Kanhaiya Lal and in his affidavit to the writ application he has shown the same being the son of one Shital Prasad whereas Kanhaiya Lal has since died in the year 2002 itself and no licence was ever allotted in the name of Shri Kanhaiya Lal and Sons or to any partnership firm. The petitioner being thus guilty of *suppressio veri* and having not come with clean hands is not entitled to any remedy under Article 226 of the Constitution of India. The said fact has been cleverly evaded by the petitioner and under the mistaken impression that the firm was in existence, this Court was persuaded to issue interim order in his favour.

17. It is important to clarify at this stage that the petitioner has sought to seek strength from the order of this Court

passed in CWJC No.9725 of 2005, though the order dated 19.07.2010 is self-explicit, wherein it has been clearly stated that the Railway has got a freehand to enforce the revision. It has been directed that the petitioners of the said case shall have the freedom to represent before the respondents for re-consideration, but till date Kanhaiya Lal, licensee of catering stall, Dumraon, has never followed the directives of this Court nor paid the revised amount of licence fee. Moreover, the licence fee was regularly being paid by the licensee of catering stall, Dumraon up to March, 2010.

18. Responding to the allegation of discrimination, learned counsel for the Railways submits that M/S Din Dayal Gupta & Sons, vending contractor at Patna Sahib Railway Station, had never accepted the revised licence fee of their stall and frequently approached this office for reconsideration of licence fee of their stall in view of the judgment of this Court in CWJC No.9725 of 2005 (supra). It appeared that he was not capable to pay the revised amount of licence fee and as such, his request was considered provisionally till fixation of fresh licence fee based on fresh sale assessment. Now the sale assessment has been completed and fixation of licence fee is under process. Contrary to above, Sri Kanhaiya Lal was paying the revised licence fee at the rate of Rs.1901/- per month up to March, 2010 and never protested regarding enhancement of licence fee or approached for

reconsideration of his licence fee. This proved that the licence fee for Dumraon is reasonable. Now, at this stage, when he has accepted the rate of licence fee and paid the same up to March, 2010, reconsideration would not be desirable.

19. It was also submitted by the learned counsel for the Railways that the demand of due amount of licence fee is not new revision, but the claim of arrears is that which the petitioner has not paid in time since April, 2010 even on his written undertaking that he would clear all the railway dues by 01.03.2013. But despite that and even after issuance of final notice along with written undertaking of the petitioner, the licence fee was not deposited by him, the said Kanhaiya Lal was called for to his office and he assured that he would clear all the Railway dues by 31.03.2013. But when the licence fee was not paid by the licensee till 31.03.2013, the termination letter, which is sought to be impugned in the present writ application, was issued on 12.04.2013.

20. Learned counsel for the respondents further contended that the writ application was not maintainable and was barred as the judgment in CWJC No.9725 of 2005 bound the petitioner to make payment of licence dues as the Railway was given liberty to enforce the outstanding dues from the vendors and it is open to the petitioner to represent before the Railways. The petitioner having not made any such representation, demand notice issued earlier in the year

2005 became final. Furthermore, the second demand notice issued by the Railways for the period 2005 onwards was also not paid after repeated notices and the undertaking given by the petitioner (Annexure-E). Thus, the writ application is wholly misconceived and is fit to be dismissed.

21. Learned counsel appearing on behalf of the petitioner has responded to the question of maintainability of the writ petition and the locus of the writ petitioner by stating that the continuation of the licence is like a contract by conduct and the respondents having accepted the money during the past years, would not come back to challenge the locus of the petitioner at this stage. It has been further contended by the learned counsel for the petitioner that the point as raised with regard to the maintainability was in no way raised in the counter affidavit and for the first time is being brought up during the course of argument, which is fit to be rejected. Furthermore, the action of the respondents is wholly discriminatory as the authorities having appreciated the judgment in a particular manner in the case of Din Dayal Gupta, petitioner No.10 of the judgment in CWJC No.9725 of 2005, whereas it has interpreted and implemented the order in a different way in the case of the petitioner.

22. Learned counsel for the petitioner has further submitted that the impugned order in the present writ application is for a different period and, therefore, the principle of *res judicata*

would not be attracted as the impugned order is a fresh cause of action to be tested by this Court judicially on its own merits.

23. Having heard learned counsel for the petitioner and the learned counsel appearing on behalf of the Railways, it appears that the petitioner, at the outset, has no locus to contest the present matter as his legal right to the licence has not yet been established. He has brought nothing on the record, either explicitly or implicitly, to show his connection with the licence issued and valid till the year 31.03.1990. The licence, as contained in Annexure-1, is in a standard form of agreement as is made by the Railways with petty vendors. The petitioner has not brought on record any further materials to show his connection with the deceased Kanhaiya Lal and all along the Railways have issued letter in the name of Kanhaiya Lal and the renewal has not been effected by the authorities or has been started in the name of the petitioner.

24. Thus, in the considered opinion of the Court, the petitioner has no locus to contest the present writ application. This Court further refrains from commenting on the conduct of the petitioner as all along before this Court, he has given the impression that he is a valid licence holder being entitled to the rights and liabilities of a duly authorized licensee. The earlier writ application also was under the mistaken belief that the petitioner therein was the licensee and the proprietor of the firm, which is not so. Under what

authority of law, he was pursuing the matter could not be established before the writ Court as he is neither the son of said Kanhaiya Lal nor any partner of any firm. The licence was clearly issued in the name of Kanhaiya Lal only and not any proprietorship firm. Paragraph 3 of the writ application clearly states that *"the petitioner firm was established several decades ago and was operated by the father of the proprietor of the petitioner firm. The father of the proprietor passed away in the year 2002 and since then the proprietorship of the firm devolved upon the present proprietor who has filed the instant writ application.*" It is thus evident that the petitioner has not produced a chit of paper to show that the Railways had issued a fresh licence or the licence was transferred and renewed in his favour. Thus, the petitioner is but a trespasser and illegal occupant of the stall. He has tried to mislead this Court and under such circumstances, his submission that the father's name was inadvertently typed wrongly is not fit to be considered as no further document was brought on record to establish his credentials/bona fide. Moreover, the writ application and the *Vakalatnama* as also the Interlocutory Application clearly show the father of the petitioner to be Shital Prasad. Thus, the petitioner, having not come to this Court with clean hands, does not deserve any remedy under the extraordinary jurisdiction of this Court,

25. In the result, in the considered view of this Court, the

writ application is devoid of any merit and is, accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

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