

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10479 of 2020

Vikhyat Kumar, son of Sanjay Barbariya (being successor in interest of Ram Bharas Sah), resident of Ward No. 3, Hasanpur Bazar, Rampur Rajawa, P.S. Hasanpur, Samastipur through his power of attorney holder namely Sanjay Kumar Barbariya male aged about 50 years son of Shri Gopal Prasad Barbariya resident of Ward No. 3, Hasanpur Bazar, Rampur Razawa, Hasanpur Sugar Mill, P.S. Hasanpur, Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, New Delhi.
2. The Director, Land and Amenities, Railway Board, Ministry of Railways New Delhi.
3. The General Manager, East Central Railway, Zonal Office Hazipur, Vaishali.
4. The Divisional Railway Manager, East Central Railway, Samastipur Division, Samastipur.
5. The Assistant Divisional Engineer, East Central Railway, Samastipur.
6. The Senior Section Engineer, (Works) Line, Eastern Central Railway, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Pawan Kumar Singh, Advocate
Mr. Prakash Chandra Agrawal, Advocate

For the Respondent/s : Mr. Bijoy Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-12-2021

Petitioner has prayed for the following relief(s):-



- (a) For issuance of a writ in the nature of certiorari for quashing of the notice dated 17/21.12.2019 whereby a demand for license fee with increment from retrospective effect (from 01.04.1995 till 2019 - 2020) has been made in direct contravention of the relevant guidelines issued by the respondent Railway Board from time to time;
- (b) For issuance of a writ or order or direction restraining the respondents from any action for recovery of the amount so demanded by way of the impugned letters and also for restraining the respondents from any other **consequential action as a result of non-payment of the amount so demanded through the impugned letter;**
- (c) For holding and a declaration that the revision of license fee can be done by the respondents only in accordance with clause 7 of the railway board's letter number 2005/7.ML/18/8 dated 10.02.2005;
- (d) For holding and a declaration that there can't be a retrospective revision of license fee with effects of enhancement so as to hold the petitioner liable for payment of the difference which is contrary to and violative of the guidelines issued by the respondent Railway Board;
- (e) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

Learned counsel for the petitioner prays that the present matter be disposed of in terms of the order dated 30.11.2021 passed by a Bench of this Court in C.W.J.C. No. 10606 of 2020 titled as **Pradeep Kumar Drolia (caretaker of the State of deceased holdeer Vijay Kumar Agrawal)**. Order



dated 30.11.2021 is reproduced as under:-

“Heard learned counsel for the parties.

The issue relates to demand having been made by the respondent Railways with regard to licence fee with an increment thereon from a retrospective effect.

Learned counsel are ad idem that the present case is squarely covered by a judgment dated 04.11.2019 rendered by a learned Single Judge of this Court in CWJC No. 18109 of 2018 (Vijay Sah v. Union of India and Others) as also by a judgment dated 06.11.2020 rendered by a learned Single Judge of this Court in CWJC No. 8604 of 2020 (Bharat Kumar Agarwal @ Bharat Kumar vs. The Union of India and Others) and another analogous cases.

We, thus, dispose of the instant case with the same direction and observation as has been made in the aforesaid judgment dated 04.11.2019 (supra) and 06.11.2020 (supra).”

However, we are of the considered view that the matters have to be decided in the light of the judgment rendered by Hon’ble the Apex Court in **Central Organisation for Railway Electrification Versus ECI-SPIC-SMO-MCML (JV) a Joint Venture Company, (2020) 14 SCC 712.**

Learned counsel for the parties state that they have no objection to the matters being disposed of in terms of the ratio laid down in **Central Organisation for Railway Electrification (Supra)**. However, with vehemence, learned



counsel for the petitioner states that till such time the arbitrator is appointed, respondent should not take any coercive action against petitioner, including initiating proceedings for eviction and realization of arrears of licence fee.

Well, we have no difficulty in accepting such prayer, more so, when the parties are *ad idem* of taking recourse to the Mechanism provided under the agreement, and the matter adjudicated in the light of the principles laid down by Hon'ble the Apex Court in **Central Organisation for Railway Electrification** (supra).

As such, the writ petition is disposed of in the following mutually agreeable terms:-

(a) The petitioner shall approach the respondents, invoking the arbitration clause and the respondents shall act in terms of the law down by Hon'ble the Apex Court in **Central Organisation for Railway Electrification** (Supra).

(b) Till such time the arbitrator is appointed, no coercive action shall be taken against the petitioner, either for his eviction or realization of any amount towards arrears of license fee.

(c) With the appointment of the arbitrator, it shall be open for the parties to seek extension of the order during the



period of the arbitration proceedings.

(d) The petitioner shall continue to pay the amount in term of the original agreement (pre existing rate of the license fee).

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	10.12.2021
Transmission Date	

