

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23998 of 2019

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Shashi Bhushan Prasad son of Kailash Prasad, resident of Naya Tola,
Mehsaul, Ward No. 25, P.S. Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur, District- Vaishali.
3. The Principal Chief Engineer, East Central Railway, Hajipur, District- Vaishali.
4. The Divisional Rail Manager/ Engineer, East Central Railway, Samastipur.
5. The Senior Divisional Engineer (1), East Central Railway, Samastipur.
6. The Senior Section Engineer (Works), East Central Railway, Darbhanga.
7. The Assistant Divisional Engineer (1st), East Central Railway, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pushpendra Kumar Singh, Adv Smt. Divya Bharti, Adv
For the Railways	:	Mr. Anshuman Singh, CGC Mr. Amarjeet, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2022

Heard learned counsel for the parties.

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

- (I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the demand notice contained in letter nos. W/2-14 / Shop / Sam./ W-4 dated 30.01.2017 issued under the joint signature of the Respondent no.4 whereby and where under the petitioner was directed to deposit the amount of Rs. 93,804.55 in the office of the Respondent no.6 within seven days against the arrear of revised license fee in respect of land of Railway allotted to the petitioner bearing Shop/Plot no.78 outside the Sitamarhi Railway Station from 1995-96 till 2016-17 in view of the Board Letter No.2005/LML/18/08 dated 10.02.2005 and 08.06.2005 on the ground that the petitioner's allotment is not covered by the revised license fee of the Railways issued under Railway Board Letter No. 2005/LML/18/8 dated 10.02.2005 and 08.06.2005.
- (II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the demand notice contained in letter nos. W/214 / Shopping dated 09.07.2019 issued under the joint signature of the Respondent no.6 and 7 whereby and where under the petitioner was directed to deposit the amount of Rs.1,24,673.69 against the arrear of revised license fee till March, 2019 within 15 days in the office of the Respondent no.6 failing which action would be taken for cancellation of his license .
- (III) For a declaration that since according to the Railway Board Letter No. 2005/LML/18/8 dated 10.02.2005 and 08.06.2005 and the minimum size of land which is covered under revised license fee is 100 square meter and onwards , the petitioner's land of the size 10ft X 10ft is not covered by the aforesaid revised license fee and ,therefore, the action of the Respondents while demanding revised license fee from the writ petitioner is illegal and unwarranted .

(IV) For a further declaration that since the petitioner was regularly depositing the license fee as fixed by the Respondents and the same was accepted by them without any objection till the date of issuance of the impugned notice i.e. till the year 2017, the Respondent Authorities are not entitled to charge the petitioner to deposit the license fee at the enhanced rate with retrospective effect i.e. since 1995-96 and onwards.

Learned counsel for the petitioner prays that the matters be disposed of in terms of the order dated 04.11.2019 passed by different Benches of this Court in C.W.J.C. No. 18109 of 2018 titled as Vijay Sah Vs. The Union of India & Ors.; order dated 06.11.2020 in CWJC No.8604 of 2020 titled as Bharat Kumar Agarwal @ Bharat Kumar Vs. The Union of India & Ors. and other connected writ petitions; order dated 01.03.2021 in CWJC No.2807 of 2020 titled as Arun Kumar Singh Versus The Union of India and others and other connected writ petitions.

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 petitioners, 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 idiom of taking recourse to the Mechanism provided under the agreement, and the matter adjudicated in the light of the principles laid down by the Hon'ble the Apex Court in **Central Organisation for Railway Electrification** (supra).

As such, the writ petitions are 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 petitioners, either for

their 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 petitioners 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)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA