

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Moushumi Bhattacharya.

WPA 5681 of 2016

with

IA NO: CAN/1/2016 (Old No. CAN 4451/2016)

CAN/2/2016 (Old No. CAN/6828 /2016)

CAN/3/2021

Electrosteel Castings Limited & Anr.

Vs.

Union of India & Ors.

For the Petitioners : Mr. Samrat Sen, Adv.
Mr. Rajesh Gupta, Adv.
Mr. O.P. Jhunjhunwala, Adv.

For the Respondent Nos. 2 to 6 : Mr. Pinaki Bhattacharyya, Adv.

Last Heard on : 03.03.2022.

Judgment on : 15.03.2022.

Moushumi Bhattacharya, J.

1. The writ petitioners claim refund of Registration Fee and excess Land Licensing Fees procured by respondent, South Eastern Railway in connection with construction and commission of a private siding on railway land at Barajamda Railway Station in Jharkhand. The claim for

refund arose out of the Railways granting an in-principle approval for the said siding on 6th February, 2006 and furnishing a clearance and approval of a Detailed Project Report on 25th October, 2007. The construction was carried out by the petitioners pursuant to such approval. The Railways however refused to commission the siding thereafter and threatened to withdraw the permission granted to the petitioners unless the Registration Fee and the Land Licensing Fees were paid by the petitioners to the extent of the demand of the Railways. The petitioners were hence forced to pay substantial amounts to the Railways, namely, Rs. 10 Crore towards Registration Fee and Rs. 15,91,46,429.00/- towards Land Licensing fees.

2. The adjudication of the petitioners' claims shall be decided under the following headings and based on undisputed facts :-

Registration Fee:-

3. The demand for an imposition of the Registration Fee by the Railways was based on an erroneous interpretation of the Freight Marketing (FM) Circular dated 28th August, 2008. The said Circular was however withdrawn on 17th November, 2014 by the Ministry of Railways – reference: Circular of 29th September, 2014 clarifying that sidings that were given approval prior to the 2008 Circular would be governed by the siding policy prevalent at that time and investors who had deposited registration fee and were given approval before issue of the 2008 Circular will be refunded by way of rebate of 10% in freight for loading which has to be done after issue of the amendment. The petitioners thus, became

entitled to refund of the Registration Fee of Rs. 10 Crore by way of rebate of 10% in freight for loading which was done by the petitioners on and from 29th September, 2014. In fact, the petitioner No. 1 had paid freight worth Rs. 349,15,38,189.00/- for loading after 29th September, 2014. However, no part of Rs. 10 Crore was refunded to the petitioners towards Registration Fee for the last seven and a half years. At a meeting held between the parties on 18th December, 2020 and attended by senior officials of the Railways, the Railways acknowledged that the registration Fee was to be refunded and the petitioners were shown a letter dated 25th June, 2019 where the Railways had admitted and acknowledged that the Registration Fee of Rs. 10 Crore should be refunded by way of rebate of 10% in freight for loading. This letter was produced by the Railways pursuant to an order of 4th February, 2022 and it contains an admission of the indebtedness of the Railways with regard to Rs. 10 Crore. The letter also records that the registration Fee of Rs. 10 Crore was deposited by the petitioners under protest. The letter further records the changed policy with regard to construction of sidings brought about by the FM Circular of 29th September, 2014. From the letter, which contains an unqualified admission of the liability of the railways with regard to refund of Rs. 10 Crore as Registration Fee, the claim of the petitioners stands confirmed and shows that the Railways have deprived the petitioners of the said sum from 2014 onwards. This Court finds substance in the arguments of learned counsel appearing for the petitioners that once the claim of the

petitioners is admitted, the Railways cannot dictate the terms of the refund, more so, when the Railways have wrongfully held on to Rs. 10 Crore for more than seven and a half years.

Refund of the excess Land Licensing Fees :-

4. The records show that the petitioners had sought refund on account of the excess Land Licensing Fees by letters from 2008 to 2021. The Railways, on the other hand, demanded an affidavit from the petitioners withdrawing the present writ petition as a condition for reviewing the matter. This letter of 15th December, 2020 is part of C.A.N. 3 of 2021.

5. The Railways acknowledged that the amount of the Land Licensing Fees occupied from the petitioners would be worked out at a meeting held between the parties on 18th December, 2020. A letter shown by the Railways to the petitioners was subsequently produced by the Railways by an order of Court. This letter is of 15th November, 2019 and contains an admission that the Land Licensing Fees had been erroneously computed by the Railways. The last paragraph on this letter requests the concerned official to examine the issue and indicate the outstanding amount which would then be adjusted with the refundable amount. The Railways also produced a letter dated 21st February, 2022 pursuant to an order of the Court which contained a final calculation of the excess Land Licensing Fees which should be refunded to the petitioners. The computation contained in this letter for the period from 01.08.2007 to 31.03.2021 is the same as the tabulated statement in C.A.N 3 of 2021 and only adds the

Land Licensing Fees for the succeeding financial year i.e. 01.04.2021 to 31.03.2022. Hence, the total Land Licensing Fees for the period from 01.08.2007 comes to Rs. 5,96,69,118.00/-. As would be evident from the calculation handed up by the Railways as part of the letter dated 21st February, 2022, the excess Land Licensing Fees which should be refunded to the petitioners is Rs. 9,94,77,331.00/-; which is Rs. 15,91,46,429.00 – Rs. 5,96,69,118.00.

6. An amount of Rs. 9,94,77,331.00/- thus stands admitted from the documents disclosed by the Railways and this Court is not required to deal with any further facts which may have been disputed before Railways calculated the final amount due to the petitioners. It should however be noted that in the letter dated 21st February, 2022, while acknowledging that Rs. 9,94,77,331.00/- is the excess Land Licensing Fees procured by the Railways, the Railways also contended that it is entitled to adjust a further sum of Rs. 5,56,67,520.00/- from the petitioners on account of a provisional calculation towards Land Licensing Fees in advance for a further period of 5 years in the future. The 5 years has been taken from 01.04.2022 to 31.03.2027. This Court is of the view that there is no factual or statutory basis for such provisional calculation or adjustment of an amount as Land Licensing Fees for 5 years in advance.

7. The stand of the Railways is contrary to the Indian Railways Code for the Engineering Department published by the Government of India, Ministry of Railways which provided, inter alia, recovery of 12 months

occupation fees in advance every year with a grace period of 1 month [Clause- 1025(iii)].

8. Hence, the Railways is not entitled to recover the Land Licensing Fees for 5 years in advance. It is also relevant that previous bills raised by the Railways from the petitioners have always been for 12 months occupation fees in advance every year; a few of such bills are annexed to the Writ Petition. Besides, the claim of Land Licensing Fees on the assumptions that the License for siding would continue for 5 years is speculative and premature. Significantly, the letter dated 21st February, 2022 from the Chief Engineer, South Eastern Railway or the notes handed up by learned counsel appearing for Railways do not indicate any reason for adjusting the Land Licensing Fees for 5 years in advance. In the aforesaid facts, the petitioners are also entitled to return of the bank guarantee of Rs. 1 Crore which the petitioners had furnished pursuant to interim orders dated 10th May, 2016 and 19th May, 2016.

9. In view of the above reasons, the Railways are directed to refund an amount of Rs. 10 Crore as Registration Fees and Rs. 9,94,77,331.00/- as Land Licensing Fees to the petitioners within 6 weeks from date. The petitioners shall also be entitled to interest of 6% on the total amount to be refunded to the petitioners on account of the petitioners being deprived of the use of the said amount which the petitioners were legitimately entitled to from 2014 onwards. The Land Licensing Agreement does not prohibit grant of interest. It has now been stated by the Supreme Court

that monetary relief can be granted in the writ petition; Ref. *Uttar Pradesh Power Transmission Corporation Limited vs. CG Power and Industrial Solutions Limited*; (2021) 6 SCC 15. Reference in this context may also be made to a five-judge Bench of the Supreme Court in *Secretary, Irrigation Department, Government of Orissa Vs. G.C. Roy*; (1992) 1 SCC 508, wherein paragraph 43 of the Report laid down the principles for grant of interest and held that a person deprived of the use of the money to which he is legitimately entitled has a right to be compensated for the deprivation regardless of the nomenclature by which it may be called including interest, compensation or damages. The petitioners shall hence be entitled to interest at the rate directed from 28th April, 2014 onwards which is the date when the petitioners had completed the payment of Rs. 15,91,46,429.00/-.

10. W.P.A 5681 of 2016 along with all connected applications is disposed of by this judgment.

Urgent Photostat certified copies of this judgment, if applied for, be given to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)