

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 337/2008

Miss Hemavati d/o Chandriya Jerpot,
aged about 45 years, occupation business,
r/o Jerpot Niwas, Khalasi Line,
Mohan Nagar, Nagpur

..... PETITIONER

// VERSUS //

1. Union of India through
Ministry of Railway,
Rail Bhavan, Rafi Marg,
New Delhi.

2. Divisional Railway Manager,
Central Railways, Divisional Office,
Commercial Branch, Nagpur.

.... RESPONDENT(S)

Shri N.R. Jadhav with Shri D.V. Chauhan, Advocate for the petitioner
Shri C.J. Dumane, Advocate for the respondents

CORAM : A.S. CHANDURKAR AND URMILA JOSHI-PHALKE, J.J.

DATED : 12/07/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

The challenge raised in this writ petition is to the communications dated 08.09.2004 and 19.11.2007 issued by the respondent no. 2 thereby demanding the amount of commission at the rate of 61% and thereafter 100% from the petitioner towards operating STD/PCO Booth at Nagpur Railway Station.

2. The petitioner suffers from disability since she is blind. With a view to make the living the petitioner approached the Railway Authority for installation of STD/PCO Booth at Nagpur Railway Station. No-objection Certificate for installation of such booth was granted to her by the Authority on 01.05.1995. Pursuant thereto, the petitioner started operating the said booth. Subsequently, the respondents came with a policy for charging commission and license fee for operating such booth at various railway stations in the country. In the Circular dated 20.05.2002 minimum commission of 10% of the amount earned from the STD/PCO was to be charged. License fees were to be paid as and when fixed by the Railway Authority. On 08.09.2004 this policy was modified and commission rates were increased to 4% for STD facility from 20.10.1998 to 27.04.2000. For PCO facility this rate of commission was 5%. The same was increased to 25% and subsequently from 17.05.2002 it was to be 61%. The petitioner issued a communication to the Railway Authority seeking reduction in the amount of commission. Notwithstanding the same, on 19.11.2007 the rate of commission was increased to 100% alongwith license fee of Rs.20,074/- per annum subject to 10% increase for every subsequent year. Being aggrieved, the petitioner has challenged the communication dated 08.09.2004 raising the commission to 61% as well as the communication dated 19.11.2007 making commission payable at 100%.

3. Shri N.R. Jadhav, learned Counsel for the petitioner submits that in so far as the policy decision of the Railway Authority to enhance the rate of commission from 10% to 61% and thereafter 100% the same has been the subject matter of challenge in various High Courts. A similar challenge was raised before the Delhi High Court in the case of *C.P. Mittal Vs. Union of India and anr.* [(2007) 144 DLT 824]. It was held by Delhi High Court that increase of commission to the extent of 100% was unconscionable and arbitrary. It was directed that the commission at the rate of 10% that to be charged. He further submitted that a similar order passed by this Court at the Principal Seat in Writ Petition No. 6831/2005 (*Railway Station Handicapped Telephone Booth Hlders' Association of Solapur Vs. Union of India and ors.*) decided on 07.02.2006 was challenged before the Hon'ble Supreme Court. Special Leave Petition (Civil) No. 8990/2006 was however dismissed on 20.04.2007. He therefore submitted that in so far as enhancement of the amount of commission is concerned the same to be set aside. He further submitted that the increase in license fee was also arbitrary and that increase also ought be set aside. Since the petitioner suffers from disability, the Railway Authority was not justified in increasing the license fee.

4. Shri C.J. Dumane, learned Counsel for the respondents opposed the aforesaid submissions. According to him, dispute raised by the petitioner is based on the policy decision of the Railway Authority. Pursuant to the contract entered into between the parties, the petitioner has operated STD/PCO Booth. It was therefore not permissible to challenge the increase in the rate of commission or license fee. He referred to the additional affidavit filed by the Senior Divisional Commercial Manager and submitted that possession of the booth was taken on 10.03.2022 and recovery of the amount of commission from the petitioner is being undertaken. He also invited attention to an undertaking submitted by the petitioner on 20.03.2007 agreeing to pay the outstanding amounts. It was thus submitted that the writ petition was liable to be dismissed.

5. On hearing the learned Counsel for the parties and after perusal of the documents on record, it is clear that in so far as increase in the amount of commission fee is concerned that issue has been decided by this Court as well as Delhi High Court which adjudication has attained finality. As stated above, when the petitioner was allotted the booth, the commission payable was 10%. This was increased to 61% on 08.09.2004 and thereafter to 100% on 19.11.2007. Considering the

challenge to such increase the Delhi High Court in paragraph no. 28 and 31 has observed as under:-

“28. Two important facts emerge. One, the petitioners' vulnerability and their eligibility on economic or such like conditions were the guiding factors impelling the second respondent to grant them licences. In the case of others (on the basis of whose bids, the commission recoverable from the petitioners is sought to be enhanced) allotment is admittedly a result of competitive bidding, on commercial considerations. Two, the conditions of MTNL, in terms of commission payable to the petitioners remain unchanged. Conversely the Railways has not disclosed the commission payable by MTNL or the other telecom companies to the said bidders, whose commission has now fuelled increase in the rates vis-a-vis the petitioners.

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31. No material was adduced before the court, nor was it even suggested that the petitioners had improved themselves to such an extent that their bargaining power approximated, if not equalled, the second respondent. In the above circumstances, I have no manner of doubt that the condition by which they have been asked to part with 100% of the commission (even if a charitable view is taken, that too would result in increase of the existing commission, by 100%) is unconscionable and arbitrary. The plea of uniform application of a non-discriminatory principle, in my opinion, sounds hollow, as it affronts the equality clause; it treats those who are facially unequals with equals. The condition is best exemplified in the following quotation from Anatole France:

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”

It was thus held that there was no basis to enhance the rate of commission from 10% to 61% and thereafter 100%. Considering this adjudication the petitioner is entitled to the benefit of the same. It is accordingly held that in so far as the amount of commission payable by the petitioner for occupying the space allotted for the STD/PCO Booth is concerned the same would be 10%.

6. In so far as, the challenge to the license fee is concerned, we find that the stipulation in that regard is part of the policy dated 20.05.2002. The petitioner has been occupying the area allotted to her on the basis of that policy and undertaking has also been furnished by the petitioner on 20.03.2007 to pay the arrears of license fees. Since the area occupied by the petitioner can also be allotted to any other person of the public, we do not find any reason to interfere with the challenge to the demand of license fees. It has not been shown that the license fees as demanded are arbitrary in any manner whatsoever.

7. It was submitted by the learned Counsel for the petitioner that the STD/PCO services were rendered at the booth only till 25.07.2016. On the other hand, as per the additional affidavit filed by the Senior Divisional Commercial Manager the possession of the licensed area was handed over by the petitioner on 10.03.2022. It is open for the petitioner to resolve this aspect with the Railway Authority in

accordance with law. That point is kept open for being considered by the concerned Authority.

8. In that view of the matter, the writ petition is partly allowed. In so far as, the amount of commission payable by the petitioner for the STD/PCO Booth is concerned, the same would be at the rate of 10%. In so far as license fees are concerned such challenge is not accepted.

9. Rule is made partly absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.) (A.S.CHANDURKAR, J.)

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