* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 9592/2021, CM. APPL. Nos.29694/2021, 4858/2022 & 31379/2022**

Date of Decision : 01.09.2022

**IN THE MATTER OF:**

RAILWAY PLATFORM TEA STALL TENDERED LICENSEE PROGRESSIVE WELFARE SOCIETY ..... Petitioner

Through: Mr. Akshat Bajpai, Ms.Ishanee Sharma & Mr.Shobhit Trehan, Advocates.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Jagjit Singh, Sr. Standing Counsel with Mr. Preet Singh, Mr.Vipun Choudhary, Mr.Arjun Wadhwa and Ms. Kalyani Arora, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. The petitioner claims to be a society registered under the Madhya Pradesh Society Registration Act 1973. Members of the petitioner/Society are stated to be actively engaged in the business of catering, i.e. selling food and beverages through units/tea stalls at various railway stations across the country. It is averred that the respondent, through its Zonal Offices, grants licenses to run trolleys, stalls and other catering units for selling food and

beverages to travelling passengers of railway stations as well as in trains and members of the petitioner/Society have also been granted such licenses by the respective zonal division of the respondent.

2. The petitioner/Society had earlier approached this Court by way of W.P.(C) 5722/2021, wherein it had impugned letter dated 01.06.2020 issued by the Director (Tourism and Catering) Railway Board, Ministry of Railways, Government of India. The said writ petition was disposed of on 02.06.2021 with a direction to Director (Tourism and Catering) Railway Board, Ministry of Railways, Government of India to treat the petition as a representation. It is apparent that the Railway Board, Ministry of Railways after considering the petitioner's representation and grant of personal hearing has passed a speaking order on 27.07.2021, which has been impugned in the present petition.

3. Learned counsel for the petitioner has submitted that on account of financial and operational difficulties faced by the members of the petitioner/Society due to COVID-19 protocols put in place by the Government of India/State Government, representations were made vide letters dated 24.05.2020 and 08.06.2020 addressed to DRM (C), West Central Railway, Bhopal/The Sr. DCM, West Central Railway, Bhopal.

4. Learned counsel for the petitioner has further submitted that although initially the Railway Board issued letter dated 01.06.2020 on account of various references received from zonal railways regarding review/revision of license fee for catering and vending units, it advised the zonal railways to take necessary action in terms of Master License Agreement of the SBD which provided that any change or modification in the Agreement/Annexures can be made only by written amendment to be

mutually signed by the Parties.

It is contended that despite advisory dated 21.05.2020 issued by the Railway Board to the zonal railways to implement the Force Majeure Clause in respect of static catering and vending units, followed by above mentioned letter dated 01.06.2020, the Board vide the impugned speaking order has left the quantum of license fee relief to be calculated by zonal railways based on '*passenger footfall'* in respect of individual station/platform, instead of granting a uniform license fee relief or basing the same on the '*passenger footfall'* of individual platforms.

5. The petition has been contested on behalf of the respondent, which has raised objections as to the maintainability of the present petition as well as the territorial jurisdiction of this Court. The impugned speaking order is sought to be justified on the basis that no uniform relief for pro rata license fee can be granted as the impact of COVID-19 has not been the same in all 18 zones of Indian Railways. Further, it is contended that the respondent has rightly advised zonal railways to consider the *'passenger footfall'* as the appropriate criteria while considering the quantum of license fee relief.

In this regard, it is also submitted that the *'passenger footfall'* data for reserved passenger/unreserved passenger/platform ticket passenger is maintained by 'CRIS', an independent organization of Ministry of Railways. As such, respective zonal railways would be in the best position to arrive at the relevant calculations.

6. Reference has been made to the following paragraphs of the short affidavit filed on behalf of the respondent:-

> *"7. In order to illustrate the said facts the deponent is placing on record the calculations of footfall data of New Delhi*

*Railway Station during the month of June' 2021 as under:*

| ***Sl.No.*** | ***Station*** | ***Passenger footfall in June' 2019(which includes Reserved, Unreserved & Platform Ticket Passengers)*** | ***Passenger footfall in June' 2021(which includes Reserved, Unreserved & Platform Ticket Passengers)*** | ***% Footfall during the June' 2021 as compared with June' 2019*** |
|---|---|---|---|---|
| *1.* | *New Delhi* | *7521659* | *2871375* | *38.17%* |

7. At this stage, learned counsel for the petitioner has shown an apprehension that zonal railways may grant relief station-wise and not platform-wise.

8. Vide the speaking order, the Railway Board has made the following observations:-

> *"2. Kind attention is drawn to Article 20.11 of Master License Agreement (MLA) under Standard Bid Document (SBD) for both General Minor Units (GMU) at A1, A, B, C & D, E, F category stations regarding Force Majeure. The force majeure clause is clear that in case of imposition of it, the tenure of the contract period will be extended for the period during which the license was not operational. This force majeure clause does not provide for reduction in license fee or any other measure. It may be noted that Railway Board further brought out instructions to Zonal Railways vide letter No 2020/catering/600/03 dated 01.06.2020 wherein it was directed to review the License fee taking due diligence considering the volume of passenger traffic in respect of individual station/ platform as a relief.*

*3. The relief in license fee as stated in para above was not mandated under Force Majeure clause but was in fact relief provided to catering contractors in view of CoVID 19. It may be noted here that the relief is not a matter of right but a privilege given to contractors in the wake of CoVID 19 pandemic. As such the prerogative of calculation of relief, quantum of relief, period of its applicability etc is solely and totally contingent upon Railway Administration. <u>Railway Board through instructions dated 01.06.20 has asked Zonal Railways to implement these diligently as the Zonal Railways are the implementing executive agencies of the Railway Administration considering the fact that resumption of passenger traffic which impacts the sales of these units would vary station to station and platform to platform.</u>*

*4. The petitioner has requested adherence to clause 12 of Catering policy regarding fixing of license fee based on sales assessment. However, the fact of the matter is that the said provision under para 12 is regarding fixing of Minimum License fee (MLF)/Reserve Price only, and since these are earning contracts the highest bid of contractor is accepted as per other terms and conditions. The Board's letter dated 01.06.2020 on the other hand is not regarding fixation of minimum license fee for tendering purpose but intends to provide relief by way of linking license fee to traffic restoration in the post lockdown phase, hence to passenger footfall. It may be appreciated that traffic restoration was happening at a varied pace across Zones/Divisions/Stations/platforms, hence there could be no one pan Indian Railways formula to be applied uniformly across all stalls. Hence it is completely erroneous to apply Clause 12 to this case.*

*5. The Board's letter of 1.6.2020 also does not intend to revise the license fee. Any reduction of license fee would lead to vitiation of the tender process. Reduction of license fee is envisaged as a relief measure to mitigate the adverse impact of reduced footfall, and it is brought out that the license fee which has been contracted would resume.*

*6. Passenger footfall cannot be viewed as delinked from sales assessment. As per Para 12.1 of Catering Policy 2017, sales turnover would be based on the following factors (i) category of station, (ii) type of licence, (iii) number of originating passengers, (iv) number of trains stopping (day & night), (v) duration of stoppages (vi) location of the unit at the station, (vii) approximate licence fees of a similar type of unit at a similar category of station in proximity. Therefore, it can be seen that passenger footfall is factored into the calculation for sales assessment. Passenger footfall has direct relation to decrease in number of trains and traffic volume, therefore is identified as the parameter on which relief is to be granted to petitioners.*

*7. The petitioners have stated that mutual agreement was not made by the Zones regarding the quantum of relief to be given. It is pointed out that the policy has to be followed in spirit. The petitioner cannot use the mutual agreement clause to coerce the Railway into granting license fee relief in excess of what is reasonable and calculated after factoring in the decrease in passenger footfall. The direction provided by the Board vide letter dated 1.6.2020 is a relief measure which has not been provided for in the Catering Policy 2017.*

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*9. The petitioner association has contended that all Zones are giving relief arbitrarily without following the Railway Board's instruction dated 01.06.20 i.e. ranging from 0% to 60 %. It was submitted before Hon'ble court that as per Board's instructions, Zonal Railways should with due diligence decide upon the quantum of relief based on the passenger footfall in respect of individual station/ platform. In this regard, it is stated that the intent behind providing relief in the license fee was to enable licensees to reopen their catering units. Since the license fee is linked to volume of traffic , and it is understood that restoration of passenger traffic may vary station to station,* *therefore it was left to the Zonal Railway to determine the license fee. Each station/platform may have seen passenger footfall change differently depending upon traffic pattern, hence giving the same relief for all catering units would be highly discriminatory in nature.*

*10. It needs to be understood here that each of the Zonal Railways is an independent Administrative unit of Indian Railways just like states of Union of India. These Zonal Railways have independent power to execute administrative decisions based on Schedule of Power (SOP) and depending upon the policies brought out by the Ministry of Railways. As such the Zonal Railway is the competent authority to decide the quantum of relief as directed by the Railway Board. Each zone, taking account of passenger footfall, has arrived at a certain license fee keeping their local conditions in mind including the stoppages of trains etc. Hence a uniform application of relief in license fee will not serve the purpose and will in fact contravene to the whole purpose of providing relief."*

*(emphasis added)*

9. After making aforesaid observations, the following directions have been passed:-

*"16. In view of above, following orders are issued in reference to the prayers made in the W.P.:-*

*In reference to Prayer (i), (ii):- The review of license fee by Zonal Railways is in accordance with the delegation given by Railway Board vide letter dated 01.06.2020. Clause 12.1 of Catering Policy is not applicable to this issue for reasons expounded in item no. 4-6 above. Further, Zonal Railways have been advised to expedite implementation at the earliest.*

*In reference to Prayer (iii):- Dies non will be applicable only in cases of non-operation of the unit, therefore no license fee to be paid. Contract may be extended as per the period of dies non. This is in accordance with* *instructions dated 21.5.2020 of the Board. Treating the operational period of stall as dies non is not envisaged within the scope of these instructions.*

*In reference to prayer (iv):- There can be no uniformity in license fee relief granted on account of pandemic across all Zones, since relief is tied to reduction in passenger footfall which would vary station to station depending upon the quantum of restoration of traffic at that particular station. Hence, Railway Board vide letter dated 01.06.20 has delegated the power to decide upon the quantum of relief to Zonal Railways to be done with due diligence based on the passenger footfall in respect of individual station/platform.*

*Regarding applicability of relief to new stalls/contracts that came into operation only post 22.3.2020, the Board has already issued clarification vide Board's letter no.2020/Catering/600/03 dated 14.7.2021.*

*No coercive action is proposed as such no orders are required to be passed in reference to prayer (v) & (vi).”*

*(emphasis added)*

10. A plain reading of the impugned speaking order would show that *‘passenger footfall’* is linked to sales assessment and sales turnover is based on following factors - (i) category of station, (ii) type of licence, (iii) number of originating passengers, (iv) number of trains stopping (day & night), (v) duration of stoppages (vi) location of the unit at the station, (vii) approximate licence fees of a similar type of unit at a similar category of station in proximity. Thus, passenger footfall has direct relation to decrease in number of trains and traffic volume.

11. Based on the observations recorded in the impugned speaking order,

this Court is of the opinion that the respondent has rightly denied uniformity in license fee relief on account of the Covid-19 pandemic. Since the impact of Covid-19 has not been uniform across 18 zones, the respective zonal railway would be the appropriate authority to decide the quantum of relief based on *'passenger footfall'* in respect of individual station/platform.

12. Admittedly, the respective zonal railways have not taken any decision yet. Accordingly, the petitioner's apprehension, as recorded above, is premature.

13. Keeping in view the above, the writ petition is disposed of alongwith the pending applications with a direction to the respondent to ensure that the process of calculation of quantum of relief to be granted is expedited. It is clarified that all other rights and contentions of the parties raised before this Court are left open.

**(MANOJ KUMAR OHRI)**
**JUDGE**

**SEPTEMBER 1, 2022**
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