IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18834 of 2021

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M/s P.K. Caterers through its Proprietor Praveen Kumar, aged about 54 years, (Male), Son of Late Vijay Kunwar Poddar, Resident of Safullaganj, Opposite Poor Home, P.S.- Town, Darbhanga, District- Darbhanga.

... ... Petitioner/s

Versus

1. The Union of India
2. The Railway Board, Ministry of Railway through the Executive Director, Rail Bhawan, New Delhi.
3. The Principal Chief Commercial Manager, East Central Railway, Hajipur.
4. The Sr. Divisional Commercial Manager, East Central Railway, Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyam Shivam Sundaram, Advocate

For the Respondent/s : Mr. Ramadhar Shekhar (Addl. S. C. Railway)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SATYAVRAT VERMA)

Date : 09-01-2023

Heard learned counsel for the petitioner and learned counsel for the Railways.

The present writ application has been filed seeking quashing of the letter Dated 20.09.2021 (*Annexure*-4 series) issued by the Assistant Commercial Manager, East Central Railway, Samastipur whereby the petitioner has been intimated that the license fee of catering stalls, held by him at Samastipur, Darbhanga, Madhubani and Sitamarhi Railway Stations (total of 8 stalls) have been revised and fixed with effect from 01.05.2017 and the differential amount of license fee, GST and Service Tax which comes to Rs. 31,04,0790/- indicated in the impugned letter has been directed to be deposited. Further prayer in the writ petition is for quashing all the consequential letters issued by the Railway Administration in this regard. A mandamus therefore has been sought by the petitioner against the Railways to grant him the benefit of exemption/reduction/revision of license fee as directed by the Railway Board *vide* letter dated 01.06.2020 (*Annexure*-6) in view of *Covid-19* Pandemic and also for holding that action of the concerned respondents in fixation of revised license fee with retrospective effect and in an arbitrary manner is illegal.

The learned counsel submits that in pursuance of an open tender issued in the year 2009-2010 inviting bids for catering stalls at Railway Platforms of Samastipur, Darbangha, Madhubani and Sitamarhi Railway Station, the petitioner had participated in the bid process and had qualified as a successful bidder, being a proprietor of a firm. Thereafter, an agreement between the petitioner and the I.R.C.T.C. was executed which came into force w.e.f. 1st July, 2010 for a period of 5 years (*Annexure*-1).

The petitioner thereafter was awarded license to run 8 stalls on the aforesaid railway stations platforms *vide* letters dated 16.07.2009, 25.02.2010 and 13.07.2010 respectively (*Annexure*-2 series).

A New Catering Policy, 2010 came into effect, (*Annexure* R/1 to the counter affidavit) in pursuance whereof, the catering stalls were handed over by the IRCTC to Indian Railways. Thus, a subsidiary agreement was entered between the Railways and the petitioner in May 2018 (Annexure-3) for the petitioner to work as a vending contract or at the aforesaid railway station platforms under the said agreement, which remained operative from 21.01.2018 to 30.06.2018, the petitioner paid the licence fee as per the terms of the agreement.

By the impugned letter dated 20.09.2021, issued by the Assistant Commercial Manager, East Central Railway, Samastipur, it was intimated to the petitioner that the license of the catering stall held by the petitioner on aforesaid railway station platforms have been revised with effect from 01.05.2017 (Railway Administration claims the remission in rates from 01.11.2018 though) and the differential amount of license fee, G.S.T and Service Tax would stand computed at Rs. 31,04,079/-.

The learned counsel for the petitioner has challenged the impugned letters on the ground of non observance of the provisions contained in Clause 18(3) of the catering policy of 2010.

The major thrust of challenge to the aforesaid impugned letters contained in *Annexure*-4 series is the non-implementation and non-observance of the provisions contained in Clause 18.3 of the Catering Policy of 2010.

Clause 18.3 of the Catering Policy of 2010 reads as hereunder:-

> "18.3 At the time of renewal of license, license fee should be enhanced / reassessed based on actual sales turnover of the unit. License fee will be reassessed and revived to a minimum of 10 % increased over the prevailing license fee of the unit. To arrive at a realistic figure, zonal railways will ensure that a fresh assessment of sales turnover/revenue is conducted during the peak period and lean period i.e. with the periodicity of three-three months in order to assess the actual sales turnover so as to fix the revived licensee fee. Renewal will be done for the existing licensees, if any, against the railways and payment of railway dues and arrears."

A bare reading of the aforesaid provision would indicate that at the time of renewal of license, license fee shall be reassessed and revised but subject to a minimum of 10% of increase over the prevailing license fee of the unit.

The Railway Administration has further been obligated, for any further hike in the license fee, to first arrive at a realistic figure, by making a fresh assessment of sales turnover/ revenue during the peak and lean periods i.e. with the periodicity of three months in order to assess the actual sales turnover for fixation of the revised license fee. There is a further caveat in the aforesaid clause which says that there shall be no renewal in case the existing licensees do not withdraw court cases against Railway Administration or for payment of railway dues and arrears.

The learned counsel for the petitioner submits that from the perusal of the impugned letters, it does not even remotely manifest that requirement under Clause 18.3 of the Catering Policy of 2010 was taken into consideration before enhancing the license fee drastically in an unreasonable manner. Further, the learned counsel submits that in the present case, renewal of policy was made with effect from 01.11.2018 and the revised license fee was issued on 20.09.2021 which is contrary to the Catering Policy 2010 of the Railways.

The learned counsel for the petitioner has relied on an order dated 30.10.2018 passed by the Hon'ble Supreme Court in the case of ***Vendors Co-operative Society Limited & Ors. Vs. Union of India & Ors.*** to submit that the Respondents were aware of the said decision in which the petitioner was also a party before the Supreme Court and the Supreme Court had directed that the units covered by the judgment in the case of ***Senior Divisional manager, South Central Railway and Ors. Vs. S.C.R.***

Caterers, Dry Fruits, Fruit Juice Stalls Welfare and Another, 2016 (3) SCC 582 shall be entitled to renewal of all the licenses fee held as on the date of the expiry of those licenses. Thus, it is submitted that the case of the petitioner was required to be considered in the light of the Catering Policy, 2010 as directed by the Hon'ble Supreme Court but the same was not done.

The learned counsel for the Railways rebuts the submissions of the petitioner and submits that it would be relevant herein in this context to refer to the decision of the Hon'ble Supreme Court in ***Senior Commercial Divisional Manager, South Central Railway and Others (supra)*** wherein taking the mandate of Article 38 of the Constitution into consideration which made it obligatory for the State to promote the welfare of the people by securing and protecting, as effectively as it could, a social order, in which justice, social, economic and political, shall inform all the Institutions of the national life and that the State shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, held that the Railway Administration ought to grant renewal of licenses under the Catering Policy of 2010 to the members of the Association which were the respondents before the Supreme Court, as not doing so would be arbitrary, unfair, discriminatory and unsustainable in the eyes of law.

This judgment was with a disclaimer that the verdict would not be applicable in cases of licensees who would not declare on affidavit that they do not have the license of more than one shop or kiosk in their name or *Benami* license at the Railway Stations, and the renewal of such licenses shall be made with periodical and reasonable increase of license fee.

It would be however relevant here to point out that in the review jurisdiction, the Hon'ble Supreme Court was informed that the licensees were not merely individual persons but were co-operative societies; partnership firms and HUF etc. In that situation, each of the associations of persons held more than one license. The observation of the Supreme Court in South Central Railways (*supra*) it was urged, was being mistakenly construed by the authorities to prevent those persons from claiming renewal of license.

The Supreme Court thus clarified the same on 30.10.2018 in ***Vendors Co-Operative Society Ltd and others v. Union of India and others (supra)*** that the observation of the Hon'ble Supreme Court in South Central Railway (*supra*) was for the purposes of increasing employment amongst those who had opted for that kind of business. It was in that context that the Supreme Court had declined to continue several licenses in the name of one person. It was further explained that if licenses, over and above, were distributed to such associations, the other applicants desired to do the same business, it would only result in more people to get employed. It was further declared that the Supreme Court had not considered the case of the Association of persons like co-operative societies, partnership firms and HUF which held more than one licence.

Any limited interpretation of the observations in South

Central (*supra*) would, the Supreme Court observed, result in reducing the employment by restricting the number of licenses to those associations or persons to only one licence. In other words, the Supreme Court held that in addition to the number of existing licenses held by co-operative societies, partnership firms and HUF, other members shall be allowed to carry on such business and their licenses also shall be renewed as before in accordance with existing policy.

With respect to partnership firms, it was observed by the Supreme Court that a partnership firm is a compendious name for all the partners and, in essence, a partnership firm consists of number of individuals, who are its partners. In that situation, there would be no reason why a partnership of several partners can have only one license. Similar was the situation in HUF where the Supreme Court conceived of a situation/possibility where the individuals forming part of same HUF would be interested in doing business individually and also out of such HUF. Any other interpretation would mean undue liability imposed on such members of the HUF.

Thus, in sum and substance, it was held that even if the number of licenses held by a Firm or HUF or a co-operative society was more than one, the other members of such association would also be entitled to the benefit of the judgment in ***South Central*** (*Supra*) and they also would not be precluded from running such business.

The learned counsel for the Railways however submits that the case of the petitioner is on a different footing as it is a sole proprietorship but owns 8 such catering units and it has never been the case of the petitioner that such licenses are held by different persons under the HUF or partnership firms or whichever associations. The Railway Administration instead of canceling the license of the petitioner at different locations, has only hiked the license fee.

We have heard the learned counsel for the parties and after taking note of the arguments as afore-noted, it becomes clear that there is no rebuttal by the Railway Administration of the charge of the petitioners that such hike was made without any assessment of the sales/revenue turnover.

In fact, the categorical statement of the petitioner made at paragraph 14 of the writ petition that there has been no assessment under the relevant Clause of Catering Policy, 2010, has not at all been controverted except that the respondents in their reply in their counter affidavit at paragraph "17" have stated that since the matter is *sub-judice* before the Delhi High Court, the renewal of the contract with the proprietorship firm has not been done but only license fee has been hiked.

For the afore-noted reason, we hold that enhancement of license fee with respect to stalls held by the petitioner was made without any assessment as contemplated under Section 18(3) of the Catering Policy, 2010 which is a wrong exercise of power and it cannot be countenanced in the eyes of law.

The impugned letters are thus set aside and the matter is remanded to the Railways Administration to make a fresh assessment as contemplated under Section 18(3) of the Catering Policy, 2010 and only thereafter to fix the new license fee. This exercise must be completed within a period of 3 months from the date of receipt/ production of a copy of this order before the concerned authority of the Railway.

It would however be open for the Railway Administration to also consider at that time whether holding of 8 *kiosks* by a sole proprietorship firm would come within the definition of such beneficiaries as has been explained by the Supreme Court in *South Central* (*supra*).

(Satyavrat Verma, J)

(Ashutosh Kumar, J)

Rishabh/Gaurav

AFR/NAFR	NAFR
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