

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 10.08.2023

DELIVERED ON: 10.08.2023

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 215 of 2023

With

I.A. No. CAN 1 of 2023

**M/s. N.K. Mondal & Sons, represented by its
Prop. Sri Rabindra Nath Mondal**

Vs.

Union of India & Ors.

Appearance:-

Mr. Kishore Dutta, Sr. Adv.

Mr. Ramdulal Manna

Ms. Manju Manna (Dey)

Mr. Sabyasachi Mondal

Mr. Sayan Mukherjee

Ms. Payel Khanra

.....for the appellant

Mr. Dwijadas Chakraborty

.....for the Union of India

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. We have heard Mr. Kishore Dutta, learned senior advocate appearing for the appellant and the learned counsel appearing for the Union of India/respondent.

2. The present appeal is directed against an order passed by the learned single Bench dismissing a writ petition filed by the appellant challenging a notice issued by the railway administration dated 13th September, 2019. By the said notice, M/s. R. S. Mondal was informed that the occupational fee or in other words, the license fee of Rs.4,000/- per annum has not been paid since the year 2000. Further there was an allegation that M/s. R. S. Mondal has resorted to duplicitous means to willfully avoid compliance of the order passed by the learned single Bench of this Court and sent cheques to fictitious payees, which could not be encashed by the railways and were sent back to M/s. R. S. Mondal with proper guidelines to make successful payment. Thereafter, also M/s. R. S. Mondal has adopted various dubious methods and continued to send cheques addressed to fictitious payments. Hence, since 1992/2000 neither the Indian Railways has earned a single rupee of revenue from M/s. R. S. Mondal nor have paid any service tax and later the G.S.T. while it continued to run the business of vending of food articles and earned substantial income at the cost of public exchequer. Further, it was pointed out that unavailability of food license for a catering unit is extremely dangerous and a serious cause of health hazard for travelling public as unavailability of medical fitness certificate of the staff handling the food. Thus, after considering these facts, the competent authority temporarily sealed the catering unit with effect from 16th September, 2019 for the safety of travelling public till M/s. R. S. Mondal rectifies all the deficiencies and clear the railway outstanding, as directed by this Court in an earlier writ petition.

3. Before the learned single Bench, the appellant had placed extensive reliance on the order passed by the learned single Bench of this Court in W.P. No.7531 (W) of 2000, firstly, on the interim order dated 7th July, 2000 and in the final judgment and order dated 29th June, 2001. It is, thereafter another eviction notice was passed on 14th November, 2003, wherein it was mentioned that a sum of Rs.2,20,885/- is the arrears of the license fee. Subsequently, another writ petition was filed in which the interim order, which was sought for was refused and the appellant was unsuccessful in his attempt to set aside the order before the Hon'ble Division Bench as the appeal stood dismissed. However, at that stage, when the appeal was heard by the Hon'ble Division Bench in M.A.T. 1475 of 2019, the appellant withdrew the writ petition with liberty to challenge afresh notice dated 4th July, 2011, which was challenged in the writ petition, which has culminated in the impugned order.
4. The argument of the learned senior advocate is largely based upon the earlier order passed in the appellant's case, wherein there was a reference by the learned single Bench to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Firstly, we need to see as to whether the provisions of the 1971 Act would apply. Section 2(1)(e) of the Act defines "public premises" to mean any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament

for providing residential accommodation to any member of the staff of that Secretariat. Section (2)(e)(2) states that any premises belonging to, or taken on lease by, or on behalf of (i) any company as defined in section 3 of the Companies Act, 2013, any university established or incorporated by the Institutes of Technology Act, any Board of Trustees or any Successor Company constituted under or referred to in the Major Port Trusts Act, 1963 etc. Therefore, it is submitted that the premises being owned by the railways namely, the Government of India, the premises is a public premises and the provisions of the 1971 Act would apply.

5. Under normal circumstances, the Court could have considered the said submission but, however, the said submission cannot be considered *de hors* the facts. We say so after referring to the agreement entered into between the South Eastern Railways and the petty vendor. One such agreement has been appended to the stay petition, which shows that the M/s. N. K. Mondal & Sons was permitted to vend vegetarian food stuff as per the tariff rate at Uluberia Station at an annual license fee of Rs.2,184/- for the period extending from 1st July, 1987 to 30th June, 1992. There was an earlier agreement, which was expired and a fresh agreement was entered into as on 1st July, 1987. A cumulative reading of the entire agreement shows that what was granted to N. K. Mondal & Sons was a license simpliciter and there was no possession of any immovable property granted to the licensee. Furthermore, the agreement places various embargo on the manner in which the vending can be carried on by the licensee. In fact, there was also a restriction on the products, which can be vended as it is stated that the products, which are to be vended by the

licensee are such of those supplied by the administration or by the approved contractors of the administration. Therefore, by any stretch of imagination, the said licensee cannot be stated to have acquired any right over any immovable property owned by the railway administration.

6. Therefore, we are of the clear view that in the facts and circumstances of the case, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has absolutely no application.
7. Be that as it may, the undisputed fact being that the original licensee is no more having expired in the year 1992 and the present appellant, who seeks to continue the license does not have any subsisting agreement in his favour. Thus, in the absence of any semblance of a right, the appellant has been dragging the railway administration before this Court from the year 2000 onwards.
8. That apart, the learned writ Court also took note of the fact that the orders passed in the earlier rounds of litigation can have no impact on the present proceedings as what was impugned in the present writ petition was the notice dated 13th September, 2019. It is not clear as to why the railway administration had been a mute spectator to the illegality, which was perpetrated by the appellant by unauthorizedly dragging the railway administration to litigation for more than 20 years. It is also not clear as to why the railway administration has not placed before the Court the change of policy guidelines with regard to vending of food articles in railway stations, platforms, inside coaches etc. after the incorporation of I.R.C.T.C.
9. Thus, we can safely conclude that the railway administration has also been slack and has not taken any effective step to protect the interest of the

railway administration apart from protecting the health and safety of the travelling public, who are likely to buy food stuff from the vendors in the railway station.

10. An argument was made before the learned single Bench that no food license is required under the relevant law. This argument was rightly rejected by the learned single Bench. Furthermore, we clearly note from the agreement, which was entered into with N. K. Mondal & Sons that it is pre-requisite that food license should be obtained. Apart from that, the staffs, who are employed are also required to undergo medical test so for that their fitness to ensure that hygiene is maintained. Though, we have little reservation with regard to the liberty granted by the learned single Bench while disposing of the writ petition in paragraph 13, since the railway administration has not challenged in the same, we refrain from expressing any opinion. In any event, the appellant having not availed that liberty in paragraph 13 of the impugned order, it goes without saying that the appellant is not willing to exercise that liberty by agreeing to enter into a settlement with the railway administration for payment of the occupational charges from the year 2000 onwards. Therefore, the liberty, which was granted in paragraph 13 of the impugned order has to be necessarily set aside.
11. For the above reasons, the appellant has not made out any case for interference with the order passed in the writ petition. Accordingly, the appeal and the connected application fail and are dismissed. The liberty, which was granted in paragraph 13 of the impugned order is set aside.

12. The railway administration is entitled to take appropriate action to remove the stall and demolish the same and implement the vending process as per the extant guidelines, which are in vogue as on date.
13. No costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/Krishnendu AR(Ct.)