In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No. 1623 of 2023

Griham Food and Hotel Pvt. Ltd.
VS
Union of India and Ors.

For the petitioner	:	Mr. Kishore Dutta, Sr. Adv. Mr. Biswaroop Bhattacharjee, Adv. Mr. A. Agarwal, Adv. Mr. Arif Ali, Adv. Mr. Sarban Banerjee, Adv.
For the respondent nos.2 to 5	:	Mr. Ranjan Bachawat, Sr. Adv. Mr. Sarosij Dasgupta, Adv. Mr. Sabyasachi De, Adv. Ms. Afreen Begum, Adv.
Hearing concluded on	:	04.12.2023
Judgment on	:	11.12.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a Company providing catering services on behalf of the respondent no.3, the Indian Railway Catering and Tourism Corporation Limited (IRCTC).

2. The present challenge has been made against a Demand Notice dated August 10, 2023 for revised licence fee post-sale assessment "in lieu of" CC-60 of 2019. . The initial letter of award to the petitioner for management of on-board mobile catering service in Train No.15647-48

GHY-LTT-GHY Express was issued to the petitioner on October 17, 2014, which has subsequently been renewed from time to time.

3. Learned senior counsel for the petitioner argues that the IRCTC does not have the jurisdiction or authority under any statute to revise the licence fees fixed by the respondent no.2, the Railway Board. Section 2 of the Indian Railway Board Act, 1905 confers such authority only on the Railway Board.

4. As such, the enhanced licence fees now claimed by the IRCTC are *de hors* the law.

5. It is argued that CC-60/2019 ("CC" being the short form of "Commercial Circular") pertains merely to revision of menu and tariff of catering services on the concerned trains and has nothing to do with enhancement of licence fees.

6. The only document which could be relied on by the IRCTC for enforcement of such claim was a Commercial Circular numbered as CC-53/2018 dated September 18, 2018, which pertained to revision in tariff of tea/coffee. Clause (v) thereof provided that the Railways/IRCTC may work out the amount by which the licence fee may go up on account of the changes in tariff and adopt suitable means to adjust the licence fee on this account and take necessary action accordingly. Thus, at best, the increase in licence fee could be linked with enhancement of tariff of tea and coffee and not other food items. However, C-60/2019 refers to all food items, which could not be brought within the purview of consequential increase in licence fees.

7. By placing reliance on the communications between the parties and several Commercial Circulars, it is argued that at no point of time was catering tariff enhancement in general linked to increment in licence fee.

8. In the Catering Policy of 2010 (CP 2010), Clause 17.5 provided that the licence fee shall be revised and reassessed at the time of each renewal subject to a minimum increase of 10% of the existing licence fee. Clause 18.3 thereof provided the modality, it being that the licence fee should be enhanced/reassessed based on actual sales tariff turnover of the unit. The licence fee would be reassessed and revised at the time of each renewal, as per the said Clause, subject to a minimum of 10% increase over the prevailing licence fee of the Unit. However, in the present case, the enhancement sought to be imposed by the IRCTC is not a flat 10% but has been attempted to be linked to increase in catering service tariff.

9. Learned senior counsel further argues that in terms of the renewal contract dated December 12, 2019, the petitioner had paid licence fee for the renewal period that is November 4, 2019 to November 3, 2020. Thus, a further claim cannot be made for the same period on the ground of alleged enhanced licence fees at this belated stage by the impugned Demand dated August 10, 2023. Such double payment is not contemplated under any of the contracts between the parties.

10. Learned senior counsel for the IRCTC submits that IRCTC has been operating for providing catering service for the Indian Railways throughout the relevant period and has sufficient authority to determine the licence fees. More importantly, it is argued that the petitioner has entered into contract with the IRCTC which provides specifically for enhancement of licence fee on the premise of increase in catering tariff. Learned senior counsel places reliance on the terms of the licence and renewals of licence subsequently in favour of the petitioner on such score.

11. It is further argued that initially the 2010 Catering Policy and subsequently the 2017 Catering Policy governs the field, both of which contemplate reassessment of licence fees upon increase in food tariff. The stipulations in the relevant clauses thereof are that there will be a 'minimum' increase of 10%. Thus, the increase would not be limited to 10%.

12. Insofar as the allegation of double payment is concerned, it is argued that the December 12, 2019 communication pertained to the regular licence fee payable for the relevant period that is from November 4, 2019 to November 3, 2020.

13. However, as per the conditions of the contract between the parties and the Catering Policies, the Railways were at liberty to charge enhanced licence fees upon reassessment and revision of such enhanced fees on the basis of the alteration in food tariff. Thus, the payment of the petitioner on the demand for renewal of licence for the relevant period has nothing to do with the subsequent claim for enhanced licence fee on the basis of increased food tariff.

14. The documents relied on by the IRCTC, are crucial. The contract renewal letter issued by the IRCTC to the petitioner on September 23, 2019 (page 393 of the writ petition) mentions that Quoted License fee will be enhanced by 10% as per Clause 17.5 of CP 2010 and Clauses 3.2 and 21.1 of the Master Licence Agreement of SBD contracts. In case of revision of catering tariff, the licence fee payable to IRCTC shall be varied based on pro rata from the date of revision of catering tariff.

15. The IRCTC sought unconditional acceptance to the offer of renewal from the petitioner, which was duly given. The affidavit for submission of acceptance affirmed and submitted by the petitioner clearly enumerates in Clause 3 that the petitioner agrees to the said terms and conditions of licence as enshrined in the letter dated September 23, 2019 of the IRCTC and gives unconditional acceptance to the said terms and conditions.

16. The argument of bargaining power does not hold good here, since the petitioner is a contractor operating in the field for long and has been working for the IRCTC over quite a period of time. Moreover, the contract is commercial in nature and there is no question of the petitioner being under any pressure to enter into the same.

17. The Master Licence Agreement entered into between the petitioner and the President of India acting through the Chief Commercial Manager, South Eastern Railway dated May 26, 2017 provides in Clause 8.3 that in case of any revision in catering tariff, the licensee shall be allowed to sell food/meals at the revised rates to the passengers. In that event, the licence fee payable to Railways shall be varied based on the reassessment of sale from the date of revision of catering tariff.

18. A Rider Agreement for renewal of SBD trains for on-board catering services was also entered into between the IRCTC and the petitioner on June 16, 2022 for the period of five years, which is still subsisting.

19. The said agreement, as per Clause 1 thereof, was to come into force from November 4, 2019, to be valid up to November 3, 2024. Clause 3(f) thereof provides that licence fee for renewal would further be revised as per outcome of sales assessment in lieu of CC-60/2019 and any other revision in tariff.

20. The expression "in lieu of" has to be read in proper perspective, linking the increase in tariff as per CC-60/2019 for food items with a corresponding increment in licence fees. The above documents, read in conjunction, leave no manner of doubt that the petitioner knowingly entered into agreements with the IRCTC to be subject to enhancement of licence fee proportionately with increase in food tariff.

21. The relevant clauses of the said agreements clearly stipulate that in the event of revision in catering tariff, the licence fee shall be varied based on reassessment of sale from the date of revision of catering tariff.

22. As the Rider Agreement for renewal came into force from November 4, 2019, the same squarely applies, subjecting the petitioner to an enhancement of licence fee as per outcome of sales assessment in terms of CC-60/2019.

23. CC-60/2019 is dated November 14, 2019. Coming back to the impugned demand of the IRCTC dated August 10, 2023, the same refers to CC-60/2019 and mentions that the revised licence fees were calculated on the basis of sales in post-paid SBD and non-SBD trains in terms of CC-60/2019, as per the agreement between the petitioner and the IRCTC.

24. On the other hand, the previous payment made by the petitioner on December 12, 2019 was only the licence fee for the renewal period from November 4, 2019 to November 3, 2020. At that juncture, there had not been any post-sales assessment and revised licence fees on the basis of the food tariff increment had not been calculated. Hence, the argument of double payment made by the petitioner is not tenable in the eye of law.

25. Since the contract between the petitioner and the IRCTC clearly mandates the petitioner to pay the enhanced licence fees in terms of the increased food tariff, there is no occasion for the petitioner to argue that the IRCTC does not have jurisdiction in law to do so. Even if not in law, the petitioner is bound by contract from making such payments to the IRCTC. The petitioner has been engaged by the IRCTC and the petitioner is bound by its contract with the IRCTC.

26. Clause 17.5 of the 2010 Policy merely enumerates that the licence fee shall be revised and reassessed at the time of each renewal subject to a minimum increase of 10% of the existing licence fee. Such Clause speaks about a general revision in licence fee and has no direct nexus with the increase in food tariff.

27. On the other hand, Clause 18.3 stipulates that at the time of renewal of licence, licence fee should be enhanced/reassessed based on actual sales turnover of the unit. Licence fee will be reassessed and revised at the time each renewal subject to a minimum of 10% increase over the prevailing licence fee of the unit. Both in Clauses 17.5 and 18.3, the 10% increase is stipulated as a 'minimum', being the lower limit and not the ceiling of such increase.

28. Clause 18.3 further provides that 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 with periodicity of three – three months in order to assess the actual sales turnover so as to fix the revised licence fee.

29. Thus, an overall reading of all the provisions of the contracts between the parties and the Catering Policies shows that the IRCTC/railways were entitled to make fresh assessment of sales turnover as per the modality stipulated in Clause 18.3 of the 2010 Catering Policy, which is perfectly in tandem with the provisions linking the enhancement of licence fee with increase in tariff/sales.

30. Thus, the argument of the petitioner that Section 2 of the Indian Railway Board Act, 1905 does not confer any jurisdiction on the IRCTC but the Railway Board has no relevance whatsoever, in view of the petitioner being bound by contract to make the payments as per the impugned claim.

31. In such view of the matter, there is no occasion for this Court to interfere in its writ jurisdiction with the impugned Demand dated August 10, 2023.

32. Accordingly, WPO No. 1623 of 2023 is dismissed on contest without, however, any order as to costs.

33. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)