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W.P.No.28814 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2023

Pronounced on : 10.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.28814 of 2019
and WMP.No.28564 of 2019

Higginbotham Private Ltd.,
No.116, Anna Salai
Chennai - 600 002.

Rep. by its Deputy General Manager

...

Petitioner

Vs.

1.Union of India
Ministry of Railways
Rail Bhavan, New Delhi.
Rep by its Secretary

2.Railway Board
Rail Bhavan, New Delhi.
Rep by its Chairman

3.The Principal Chief Commercial Manager
Southern Railway - Commercial Branch
Catering Section, Chennai - 600 003.

...

Respondents



W.P.No.28814 of 2019

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus and call for the records connected with notice bearing No.C.41/Book Stalls /15 dated 24.09.2019 issued by the third respondent and quash the same and forbear the respondents from levying and collecting the license fee from the petitioner other than in accordance with the comprehensive book stall policy vide its Commercial Circular No.19 of 2004 dated 11.06.2004.

For Petitioner : Mr.Krishna Srinivasan, Senior Advocate
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.P.T.Ramkumar
Standing Counsel for Railways

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the notice of the third respondent dated 24.09.2019, under which it claimed a sum of Rs.3,52,56,356.73 as arrears of licence fee from 2004.

2. The facts that led to the filing of this petition may be bullet pointed :

- The petitioner is a renowned book seller, established in 1844, which runs a chain of book stalls in several railway stations of Southern Railways, South Central Railways and South Western Railways, for



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W.P.No.28814 of 2019

which it was granted licence by the Railways. The last such licence was issued from 1998 to 2003, and for renewal of licence from 2004, the petitioner had made necessary applications.

- Be that as it may, the Ministry of Railways came out with a Commercial Circular No.19 of 2004 dated 11.06.2004, and launched its Book Stall Policy-2004. Broadly, this policy deals with granting of licence to book stalls and book vendors in the railway stations, fixation of licence fee, and also for renewal of licence earlier granted.
- Turning to the specifics of the book stall policy, now under reference, it categorised various railway stations across the country into five major categories namely 'A', 'B', 'C', 'D' and 'E'. When it comes to the fixation of licence fee, it again fixed it for the five categories of railway stations in a certain way, but picked the petitioner (Higginbothams) and another M/s.A.H.Wheeler & Co., (which has a chain of book stalls in northern India), for a separate treatment. Under Clause 5.2.1(a), licence fee for the petitioner and M/s.A.H.Wheeler & Co., were fixed under the caption 'Licence fee for major bookstall chains'. In terms of this clause, the licensee will



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W.P.No.28814 of 2019

have to pay 5% of the sales turn over as its annual licence fee, which will undergo an annual increase of 0.2% upto five years.

- Barely four months thereafter, the Ministry of Railways came out with another Commercial Circular No.38/2004 dated 12.10.2004, which superseded the earlier mentioned 11.06.2004 book stall policy. Broadly, it retained the structure of the earlier book stall policy issued in June 2004, but it removed the renewable clause as was available in the earlier policy.
- This was challenged by the petitioner before this Court in W.P.No.13550 of 2005, and by M/s.A.H.Wheeler & Co., in W.P.No.475 of 2005 before the Allahabad High Court. Indeed, it has recorded that in spite of the fact that there was no stay of the order, Railways has not chosen to take any precipitate action against M/s.A.H.Wheelers & Co. Turning to W.P.No.13550 of 2005, this came to be disposed of by this Court on 13.04.2018, but more about it would be stated later.

3. The origin of dispute or controversy now before the Court has arisen after the second mentioned book stall policy dated 12.10.2004, and during the



W.P.No.28814 of 2019

pendency of W.P.No.13550 of 2005 before this Court and W.P.No.475 of 2005 before the Allahabad High Court, when the second respondent had come up with another Commercial Circular dated 25.07.2006. Under this circular, the Railways has rationalised the licence fee payable for the book stalls run in all categories of railway stations and pegged it at 12% per annum. The only difference was in the minimum licence fee payable for each category of railway stations. And, it has done away with certain special treatment given to the petitioner and M/s.A.H.Wheeler & Co., in its circular dated 11.06.2004. Based on this circular, the Railways periodically issued demand notices to the petitioner claiming differential licence at 7% of the turnover, over the 5% that it was paying under the earlier circular dated 11.06.2004. This exercise, the Railways persisted even after IRCTC replaced the Indian Railways.

4. The notice now under challenge in this writ petitioner is perhaps the last in the line of notices dated 24.09.2019 which the petitioner has received.

5. Be that as it may, Railways have come forward with a new policy which it has named as 'Multi-purpose Policy 2017' where under even those licensee



which run the book stall must expand the business to accommodate other ancillary businesses that would be convenient to the passengers.

6. The learned counsel for the petitioner has made the following submissions:

- The circular dated 25.07.2006 is something which those who raised the demand on the petitioner, but never was it given importance before the judicial forum. In particular, when Civil Appeal No.2919 of 2006 came up for disposal before the Hon'ble Supreme Court on 12.08.2015, this is what the Supreme Court has recorded :

' The other main consideration was whether the new Policy would meet the Wednesbury reasonableness test. The view in the Impugned Judgment is that it was totally unworkable to insist firstly that the licensee must have a book stall in the city in which it was seeking a licence for sale of its books, journals etc. on the Railway Station located therein; secondly insistence that 50 per cent graduates to be employed by the licensee, was not possible to implement on commercial basis. Other issues have also been considered. The fact remains that the Impugned Judgment permitted or rather expected the appellants to devise new Policy and in the meanwhile to renew the licence as per the Circular dated 11th June, 2004. Although Leave had been granted in these matters, the



W.P.No.28814 of 2019

Impugned Judgment was not stayed. The Union of India has not considered it appropriate to take an appropriate decision in the matter, even post permitted renewal period, which expired in 2011.

We are persuaded to accede with the submissions made by the learned Senior Counsel for the Respondents that the Appeals have been rendered infructuous. We clarify that it is open to the Union of India to promulgate a new policy and also to consider in accordance with law, which party should be granted a fresh licence.'

In this there was no reference to 2006 policy. When W.P.No. 13550 of 2005 came up before this Court on 13.04.2018, the learned Single Judge of this Court has extracted and reproduced paragraph Nos.4 & 5 of the additional counter affidavit of the respondent, which run as follows :

' 4. I submit that in compliance with the judgment of the Hon'ble Supreme Court, Railway Board has promulgated a new policy vide Circular No.61 of 2017 dated 05.09.2017. In terms of Clause 1.1 of the new circular "All miscellaneous / Curio stalls, book stalls (other than philanthropic), chemist stalls / corners will come under Multi Purpose Stalls". It is categorically mentioned in Clause 11.5 of the new circular as "The Multi Purpose Stall Policy will be applicable with immediate effect i.e.,



W.P.No.28814 of 2019

from the date of issue. This policy supersedes Misc. Article Policy 2012, Chemist Stall Policy 2000 & 2008 and Bookstall Policies of 2004 and their related instructions, unless specifically referred to in this policy document.

5. I submit that in view of the issuance of the new circular dated 05.09.2017 as per the directions issued by the Hon'ble Supreme Court, the circular no.38 dated 12.10.2004 which is challenged by the petitioner in this writ petition is no more in existence. Hence the cause of action raised by the petitioner and relief sought for in this writ petition has become infructuous. In future, the case of the petitioner shall be governed only by the terms and conditions mentioned in the new circular dated 05.09.2017."

Again there is no reference to the licence fee policy 2006. And when one turns to the Multi Purpose Policy dated 05.09.2017, it does not makes any reference to 2006 Policy either, but only makes a reference to 2004 Policy. He added that when a policy is launched in 11.06.2004 only, the licence fee part cannot be taken for special treatment in the circular dated 25.07.2006.

7. Per contra, the learned counsel for the respondents made the following submissions :

- It is true that the policy launched vide circular dated 12.10.2004 was



W.P.No.28814 of 2019

challenged before this Court by the petitioner, as well as by M/s.A.H.Wheeler & Co before the Allahabad High Court, both are confined to a challenge to Clause barring renewal. Therefore, licence fee was never a subject matter in any of these proceedings.

- The circular, dated 25.07.2006, which is now being questioned, was challenged before this Court by a few small time vendors in the railway stations in W.P.No.45095 of 2006 & batch of petitions. The learned Single Judge of this Court has held that fixation of licence fee is the prerogative of the Railways and it cannot be challenged under Article 226 of the Constitution.
- And when the licence fee in term of new policy was demanded, that came to be challenged by another set of vendors in a batch of writ petitions in W.P.28555 of 2017, and these petitions were disposed of vide order dated 02.03.2018, directing the petitioners to settle the arrears of licence fee in terms of the new policy dated 05.09.2017.

8. In reply, the learned counsel for the petitioner submitted that what was quashed by the Allahabad High Court was not part of the circular dated 25.07.2006, but the whole of it. Secondly, inasmuch as the petitioner was not



W.P.No.28814 of 2019

a party to W.P. No.45095 of 2006 & batch etc., the said order cannot bind the petitioner.

9. This Court does not consider that the petitioner has established a case for interference with the demand notice dated 24.09.2019 received from the third respondent, and the reasons are :

- a) The said demand notice is based on the Commercial Circular 25.07.2006, by which the Railways has rationalised the licence fee payable by all categories of vendors in all the railway stations across the country at 12% of the turnover per annum. This circular has been challenged in W.P.No.45095 of 2006 batch of petitions, vide its order dated 22.10.2008, this Court dismissed the plea of the petitioners and held that the fixation of licence fee was within the purview of the authorities concerned and therefore, increase in the licence fee, cannot warrant any interference under Article 226 of the Constitution of India, This Order has become final. Here the petitioner would contend that inasmuch as the petitioner is not a party in the said batch of petitions, the order passed in W.P.No.45095 of 2006, this order will not bind it. Nothing can be more fallacious than this statement as what is upheld is



W.P.No.28814 of 2019

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the validity and legitimacy of the circular, and its effects are circular centric, and not that of its challengers.

- b) The petitioner contends that in the earliest Commercial Circular dated 11.06.2004, the petitioner along with M/s.A.H.Wheeler & Co., were given preference in the matter of granting licence for running the book stall in the railway stations, and, hence it is entitled to have a similar preference now. What it overlooks is that commercial licences which the governments grant within the scheme of our Constitution are not largesse that the state can discriminate between citizens without a rational basis. The State is bound by the equality doctrine, and it is for the State to decide if any class of citizens or activity required to be given any preference as an aspect of compensatory discrimination. And, none has any vested right to claim any preferential treatment in the exploitation of commercial activity of the State, as it will be plainly discriminatory, and the State cannot be insisted to embrace discrimination when it is Constitutionally bound to adopt equality. If any citizen considers that it deserves to be treated differently from others, then it should approach the Government and in this case the IRCTC, and this Court cannot instruct the Government or the IRCTC



W.P.No.28814 of 2019

on their policy decisions.

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c) The petitioner's other contention is that even the Railways has not given any importance to Commercial Circular dated 25.07.2006, as it was not reflected either in the Order of the Supreme Court in Civil Appeal No.2919 of 2006 (the case filed by M/s.A.H.Wheeler & Co.,) or by this Court in W.P.No.13550 of 2005, the one which the petitioner has filed. This argument also is not impressive as these Orders have to be understood contextually. In those two cases, the challenge was to the withdrawal of a renewal clause in the Commercial Circular No.38 dated 12.10.2004, and they have little to do with the rationalised fees structure introduced vide the Commercial Circular dated 25.07.2006. Secondly, consistent with this circular, the respondent has been continuously raising demands based on it, which implies that the respondent had not ignored the Circular dated 25.07.2006.

To conclude, this Court does not find any merit in the contentions of the petitioner and hence this petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2023



W.P.No.28814 of 2019

Index : Yes / No

Speaking order / Non-speaking order

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W.P.No.28814 of 2019

To:

- 1.The Secretary
Union of India
Ministry of Railways
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- 2.The Chairman
Railway Board
Rail Bhavan, New Delhi.
- 3.The Principal Chief Commercial Manager
Southern Railway - Commercial Branch
Catering Section, Chennai - 600 003.



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W.P.No.28814 of 2019

N.SESHASAYEE.J.,

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Pre-delivery order in
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10.07.2023