July 30, 2024
Sl. No.1
Court No.9
s.biswas

WPA 17693 of 2024

*Rampurhat PSC Sleepers Ltd. and another*
*vs.*
*Union of India and others*

Mr. Kumarjit Banerjee
Ms. Sanchari Chakraborty
Ms. Tanishka Khandelwel
Mr. Abhishek Chouhan
... for the petitioner
Mr. Ashok Kr. Chakraborty, ld. ASG
Ms. Amrita Pandey
... for the respondents

1. The writ petitioner No.1 is a limited company. The petitioner no.1 is engaged in the business of manufacture and supply of mono-block pre-stressed concrete sleepers. For the first time in 2003, such work was allotted to the petitioner through a tendering process. It is submitted that according to the terms and conditions of the contract, railway land could be licensed for setting up of factories or for stacking up of sleeper cars. The land licensed to the contractor would remain in its possession during the currency/extended currency of the contract.
2. The petitioners contend that as an existing licensee, whose licence had been renewed from time to time and upon revision of the licence fee, the licence fee claimed at the market rate under clause 4 of the policy for Management of Railways Land was not applicable in case of the petitioner.

The land measuring 4.31 acres in the railway premises at Rampurhat mouza under the district Birbhum had been allotted to the petitioners, by a proper licence.

3. It is further contended that even in 2024, there is a subsisting contract with the railways. As per the terms of the contract, and as per the policy of the railways, the petitioners are entitled to continue to possess such land upon payment of the licence fee as an existing licensee who has been granted further purchase orders.
4. It is contended that the marketing policy which had been relied upon by the railways, contains a clause which deals with Migration of existing lease/licences way leave permissions etc.
5. Learned Additional Solicitor General submits that the questions whether the petitioner was an existing licensee or was entitled to retain land till the subsistence of the last purchase order of 2024, are matters of enquiry. The contention of the petitioners that they would not be covered by the demand made under the new policy, should be determined by the authority under the dispute resolution clause.
6. It is further submitted that the parties entered into a commercial transaction. The petitioner and the railways enjoyed a contractual relationship.

The writ court should be slow to entertain the allegations made by the petitioner. The demand notice cannot be set aside by the writ court as there is an alternative remedy.

7. It is further submitted that the demand notice of 2022, has now been challenged in the writ petition in 2024. The other letters which have been annexed to the writ petition were only reminders to the petitioner to pay up the money as per the demand notice towards lease rent.

8. Heard the parties.

9. Clause 7.5.1 is quoted below:

**7.5.1** Existing lease/license holders of Terminals/Private Sidings/Private Freight Terminals (PFTs): All entities currently using railway land for cargo activities will continue to be governed by railway's extant policies, i.e. annual lease/license charges @ 6% of MVL with annual escalation of 7% for the remaining lease/license period or 35 years or period as mutually decided whichever is earlier. The existing entities shall be given option to migrate to the new policy regime on transparent competitive biding process as applicable for new cargo terminals provided there are no outstanding dues. In such cases, the right of first refusal shall be with the existing licensee/lessee. For Terminals/Private Sidings/PFTs dedicated to one customer and where competition is not possible or existing entities who do not want to avail the option as above, the annual lease charges shall remain unchanged i.e. annual lease/license charges @ 6% of MVL with annual escalation of 7%.

10. Clauses 8 and 9 are also quoted below:

**8.Dispute Resolution:**

In case of any dispute arising in interpretation of the policy, land rates, land area, etc., a standing committee of three JAS/SG officers of Engineering, Finance and user department of concerned railway division shall examine all the issues and submit recommendations to the DRM whose decision shall be final and binding on all the parties.

11. It is true that the writ court cannot entertain a dispute when there is an alternative remedy in terms of the contract and also in terms of the policy which the petitioner also places reliance upon. Clause 7.5.1 deals with the charges payable by existing licenses. Whether the petitioner could be treated as an existing licensee, is a matter of evidence. The dispute resolution clause states that in case of dispute arising out of interpretation of policy, land rents, etc. the standing committee would examine the issue and submit recommendation to the DRM, whose decision would be final and binding on the parties.

12. Under such circumstances, as the petitioner has already raised a dispute and other dispute before the Division Railway Manager, Eastern Railways,

Howrah Divison on May 2, 2024, the writ petition is disposed of by directing the authorities to proceed on the basis of Clasue 8 of the policy which has been quoted hereinabove. In the instant case, the petitioners claim to have paid the licence fees up to 2022-23, but thereafter the authorities allegedly refused to accept the fees.

13. The competent authority shall decide the dispute in terms of Clause 8. Whether Clause 7.5 will be applicable in the case of the petitioners, whether the petitioners should be allowed to continue to enjoy the property in terms of the contract on the ground that up to 2024 the petitioners had received purchase orders from the railways, are matters of evidence and to be decided by the appropriate authority in the manner provided in the policy. The Division Railway Manager, Howrah shall be served with a copy of the writ petition and server copy of this order. The authority shall proceed on the basis of the dispute resolution clause. Hearing shall be given to the petitioner and to those authorities who had allegedly issued purchase orders to the petitioner and allowed the petitioner to enjoy the land of the railways at Rampurhat mouza. The advocate-on-record for the respondents will forward this order to the DRM, Howrah for further coordination and

compliance. If the petitioner's licence had been renewed upto 2022-23 and the petitioner was an existing contractor on the basis of purchase order of 2024, the license shall not be terminated, till the decision is taken by the authority.

14. As no affidavits have been called for, the allegation against the railways are deemed to be denied.

15. The writ petition is accordingly disposed of.

16. All the parties are directed to act on the basis of the server copy of the order.

**(Shampa Sarkar, J.)**