2025:DHC:692

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 31st January, 2025*

\+ W.P.(C) 12142/2019

HIND TERMINALS PVT LTD THROUGH ITS DIRECTOR .....Petitioner

Through: Mr. Piyush Sharma, Mr. Rahul Khosla, Mr. Pankaj Prakash, Mr. Sarang Rastogi, Ms. Shweta Singh and Mr. Ramit Jain, Advocates.

versus

UNION OF INDIA & ANR .....Respondents

Through: Ms. Arunima Dwivedi, Ms. Kritika Sharma and Ms. Pinky Pawar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India for a direction to Respondent No.2/Northern Railways to refund an amount of Rs.90 Lacs to the Petitioner along with interest @ 12% per annum from 10.04.2015.

2. Case of the Petitioner as averred in the writ petition is that on 31.05.2011, Respondent No.1 issued Freight Marketing Circular No.14 of 2010 introducing policy guidelines on Private Freight Terminal (‘PFT’). On 23.04.2012, Respondent No.2 issued the Revised PFT Scheme in supersession of Circular No.14 of 2010 and Freight Marketing Circular No.05 of 2012 was notified stipulating guidelines for regulating PFT, a

terminal set up on private land through private investments for handling all types of traffic.

3. It is averred that being a private container operator, Petitioner applied for requisite consents and approval for a Greenfield PFT served by Palwal Railway Station on Tughlakabad-Palwal Section over Delhi Division, in accordance with PFT Policy 2012. In compliance with para 9.1 of the PFT Policy 2012, Petitioner remitted a sum of Rs.1 Crore on 19.06.2012 towards application fee. By letter dated 17.09.2012, Respondent No.2 granted an in-principle approval to the application of the Petitioner and approved the Detailed Project Report on 29.04.2014. Further approvals such as those for land licensing and detailed estimate were also granted in 2014/2015.

4. It is stated that with a view to consolidate all subsequent amendments to PFT Policy 2012, Respondent No.1 issued Revised Private Freight Terminals (PFT) Scheme dated 02.01.2015 ('PFT Policy 2015') which was by way of consolidated policy guidelines. Para 1.4 of the PFT Policy 2015 provided that proposals for setting up a PFT under process in terms of earlier PFT Policy and not notified as a PFT on the date of issue of PFT Policy 2015, will be processed in terms of this policy. In para 9.1, it was provided that applicants of both Greenfield and Brownfield PFTs will be required to deposit Rs.1 crore as application fee at the time of applying for setting up a PFT. On 10.04.2015, Respondent No.1 issued an amendment to PFT Policy 2015, which included amendment to para 9.1 whereby application fee was reduced to Rs.10 Lakhs. Changes in the policy were to come into force with immediate effect.

5. It is averred in the writ petition that on 31.05.2016, Petitioner was notified for opening as a Greenfield PFT to deal with Railway traffic

including parcel traffic and containers for an initial period of 30 years. The notification was through Circular No.03 of 2016 and the circular under which Petitioner was notified had a reference to the amendment and therefore, case of the Petitioner was governed under PFT Policy 2015 read with amendment dated 10.04.2015. Petitioner accordingly sent a communication to Respondent No.2 on 17.10.2016 seeking reimbursement of application fee in light of the reduction from Rs.1 Crore to Rs.10 Lakhs followed by letters dated 28.02.2018 and 23.07.2018. In response to the communications, Respondent No.2 informed the Petitioner vide letter dated 06.08.2018 that PFT Policy 2015 was not applicable retrospectively and hence, no refund could be granted. Petitioner wrote to Member Traffic, Railway Board on 27.09.2018 and 10.12.2018, but there was no response.

6. Learned counsel for the Petitioner argues that Petitioner had deposited Rs.1 Crore under PFT Policy 2012 as per para 9.1 of the said policy. However, on 02.01.2015, a revised policy was formulated superseding PFT Policy 2012 in which amendment was brought about on 10.04.2015 amending para 9.1 and reducing the application fee from Rs.1 Crore to Rs.10 Lakhs. In para 1.4 of PFT Policy 2015, it was provided that proposals for setting up a PFT under process in terms of earlier PFT Policy and not notified as a PFT on the date of issue of this policy will be processed in terms of PFT Policy 2015. Petitioner was notified on 31.05.2016 and was clearly governed by para 1.4 and was thus liable to pay only Rs.10 Lakhs towards application fees. Therefore, Petitioner rightly sought refund of Rs.90 Lakhs, which has been illegally denied.

7. It is also argued that the decision of Respondent No.2 to deny the refund to the Petitioner is based on some internal clarifications sought by the

Zonal Railways but subsequent clarification given by the Railway Board on 01.09.2015 cannot override the PFT Policy 2015 read with the amendment thereto. Impugned action of Respondent No.2 is even otherwise arbitrary inasmuch as with respect to refund of application fee and security deposit, the stand is that paras 9 and 10 of PFT Policy 2015 cannot be given retrospective effect whereas with respect to revenue sharing, Railways is claiming its share as due for the period prior to 05.06.2015. Two yardsticks cannot be adopted with respect to applicability of the same Policy.

8. Learned counsel for the Respondents, *per contra*, submits that pursuant to clarification sought by some Zonal Railways on applicability of various circulars pertaining to PFT, Railway Board vide letter dated 01.09.2015, clarified that requests for refund of application fee and security deposit may not be entertained since paras 9 and 10 revised by the PFT Policy 2015 will not have retrospective effect. On this basis, reply was sent to the Petitioner vide letters dated 15.03.2018 and 24.01.2019. It is for the Respondents to decide whether any Policy has to be given a retrospective or a prospective effect and Petitioner cannot claim benefit of a revised policy retrospectively as a matter of right.

9. Heard learned counsels for the parties and examined their rival submissions.

10. It is an undisputed fact that Petitioner applied for requisite consents and approvals for a Greenfield PFT under PFT Policy 2012 and remitted application fee to the tune of Rs.1 Crore on 19.06.2012 in compliance with para 9.1 of the policy. In-principle approval was granted by the Competent Authority to his application followed by approval of Project Report, Land Licensing and detailed estimate. However, before the Petitioner could be

notified, PFT Policy 2015 was issued in supersession of PFT Policy 2012, which was a consolidated policy on 'Revised Private Freight Terminals (PFT) Scheme'. Para 9.1 remained unchanged and the application fee was Rs.1 Crore. Amendment was brought to this policy on 10.04.2015 and para 9.1 was amended to read as follows:

> *"9.1 Applicants of both Greenfield and Brownfield PFT's will be required to deposit Rs.10 Lac as application fee at the time of applying for setting up a PFT. The fee is to be deposited as per the extant procedure."*

11. It is thus clear that under revised PFT Policy 2015, application fee was reduced from Rs.1 Crore to Rs.10 Lakhs. The question that arises for consideration is whether Petitioner was liable to pay Rs.1 Crore or Rs.10 Lakhs towards application fee after amendment to PFT Policy 2015 and the answer to the question clearly lies in para 1.4 of PFT Policy 2015, which reads as follows:

> *"Proposals for setting up a PFT under process in terms of the earlier PFT Policy and not notified as a PFT on the date of issue of this PFT Policy will be processed in terms of this PFT Policy."*

12. It is palpably clear from reading of the aforesaid paragraph that proposals for setting up a PFT, which were under process under the PFT Policy 2012 but were not notified as on the date PFT Policy 2015 was issued, were to be processed in terms of PFT Policy 2015 and therefore, there can be little doubt that Petitioner was only required to tender and remit Rs.10 Lakhs towards the application fee in terms of the amendment, since Petitioner was admittedly notified on 31.05.2016, i.e. after the revised policy and amendment thereto and thus Petitioner's claim for refund of Rs.90 Lakhs is justified w.e.f. 31.05.2016, when Petitioner was notified.

13. Respondent No.2 seeks to justify withholding a sum of Rs.90 Lakhs received from the Petitioner on the basis of clarification dated 01.09.2015, which is a misconceived defence. Refund of excess application fee is denied on the ground that paras 9 and 10 of PFT Policy 2015 cannot have retrospective application. In my view, Respondents have completely misdirected themselves in seeking and giving clarification and then predicating their case on this clarification to deny refund to the Petitioner. The stand of the Respondents in denying the refund, completely overlooks the crucial fact that the mother revised Policy dated 02.01.2015 incorporated para 1.4 which in no uncertain terms made it clear that those proposals which were under process when PFT Policy 2012 was in vogue but were not notified on the date when PFT Policy 2015 was introduced in supersession of PFT Policy 2012, will be processed in terms of PFT Policy 2015. Therefore, once the revised Policy was applicable by virtue of this para, amendment to para 9.1 in Amendment No. 1 dated 10.04.2015 will govern the field. Case of the Petitioner is preserved and protected by para 1.4 as Petitioner was admittedly notified on 31.05.2016 and the issue of retrospectivity is wholly irrelevant.

14. Having considered the respective submissions and having examined the policies in question, this Court is of the view that there is merit in the contention of the Petitioner that it is entitled to refund of Rs.90 Lakhs by virtue of the revised PFT Policy 2015, as Petitioner was notified on 31.05.2016. Accordingly, this writ petition is allowed directing Respondent No.2 to refund Rs.90 Lakhs to the Petitioner within a period of eight weeks from today. Respondent No.2 has illegally and unlawfully withheld the money of the Petitioner and therefore, Petitioner is also held entitled to

interest @ 6% per annum from 31.05.2016 when it was notified till the date of payment.

15. Writ petition stands disposed of.

JYOTI SINGH, J

JANUARY 31, 2025/KA/BSR/shivam