

(2014) 08 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 7411 of 2013

Devendra Kumar Ray

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : (2015) 1 AJR 604

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : C.C. Sinha and Yogesh Modi, Advocate for the Appellant; Ram Nivas Roy and Mahesh Tiwari, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Seeking quashing of letter dated 23.05.2013 whereby the licence fee for the general minor unit allotted to the petitioner at Chakardharpur Railway Station has been determined at Rs. 1,67,580/- per annum and for quashing letter dated 19.11.2013 whereby the contract of the petitioner has been terminated and a direction has been issued for handing over the vacant space of the catering unit, the petitioner has approached this Court by filing the present writ petition. Further prayer for quashing the formula for fixing the licence fee for the catering unit under the Catering Policy, 2010 issued vide Commercial Circular No. 35/2010 dated 21.07.2010 had also been made in the writ petition.

2. The brief facts of the case are that, the petitioner is a licensee for a tea stall at platform No. 2 & 3, at Chakardharpur Railway Station since July, 2001. The licence fee for the unit was fixed at Rs. 12,000/- per annum. This allotment was made for a period of 5 years and after the expiry of the said period it was renewed for another 5 years. The petitioner paid an amount of Rs. 12,040/- on 31.05.2011 for a period of 6 months and further an amount of Rs. 7,260/- on 12.09.2011 for the period till January, 2012. The licence fee was regularly paid by the petitioner upon demand letters issued by the Railway Authority. In the meantime, the Ministry of Railway formulated a new catering policy being

Catering Policy, 2010 which came into effect from 09.08.2010. Between the period 10.01.2011 and 12.01.2011 sale assessment of the tea stall of the petitioner at Chakardharpur Railway Station which is "B Category Railway Station" was conducted and it was found that the average sale per day was Rs. 386/- and accordingly, the licence fee @ 12% on yearly sales was fixed at Rs. 16,907/-. However, by the subsequent communication dated 23.05.2013 the licence fee has been determined at Rs. 1,67,580/- and it has been made effective from a retrospective date i.e., w.e.f. 22.01.2012. Vide letter dated 19.11.2013 the contract was terminated and therefore, the petitioner has approached this Court by filing the writ petition.

3. The respondent-Railways has filed a counter-affidavit taking a stand that under Section 2 of the Railway Board Act, 1905 the Railway Board has been conferred with all powers to frame policy guidelines and rules for the management of the Indian Railways. The Catering Policy, 2010 dated 21.07.2010 was formulated under which parameters for fixing the licence fee has been mentioned and a formula was thus revolved for fixing the licence fee. Different parameters for fixing the fee are enumerated in clause 18.1 of Commercial Circular No. 35/2010. It is stated that licence fee for the stall allotted to the petitioner was fixed on the basis of SAG Committee formula and the petitioner is liable to pay the revised licence fee. The petitioner cannot take a plea that the licence fee which was fixed 10 years back must be continued and it should not be enhanced. Policy guidelines of the Railway Board circulated through Commercial Circular No. 35/2010 has got mandatory force and it has superseded all other previous circulars. The SAG Committee comprised of CCM (Catg. & PS), FA & CAO and CPDE of South Eastern Railway. The points calculated for various stalls at Chakardharpur Station has been given in a chart which is reproduced below:

4. It is stated that the fast food stall at platform No. 1 of the Chakardharpur Station was given 63 points which was multiplied by Rs. 2660 to ascertain annual licence fee which comes at Rs. 1,67,580/-.

5. Heard learned counsel appearing for the parties and perused the documents on records.

6. The learned counsel appearing for the petitioner submitted that the Chakardharpur Railway Station has been categorised "B Category Station" and the unit allotted to the petitioner is categorised as general minor unit. Referring to Clause 18 of the Catering Policy, 2010, the learned counsel appearing for the petitioner submitted that minimum licence fee/minimum reserve price should be fixed realistically in order to have a fair, just and equitable fixation of the licence fee without adversely affecting the quality of service. The minimum licence fee is to be fixed at 12% of estimated sales turnover for static unit and at the time of renewal of licence, licence fee should be enhanced or reassessed on the basis of the actual turnover of the unit. Referring to the formula for fixing of licence fee, a copy of which has been annexed as annexure 5, the learned counsel appearing for the petitioner has submitted that "B Category Station" for which annual

passenger earning is between Rs. 3 crore - 6 crore has been assigned 15 points. The "A Category Station" for which earning ranges between Rs. 6 crore - Rs. 50 crores has been assigned 25 marks. It is thus contended that the wide gap between the points assigned to various categories of station is without any rationale. Again, the points assigned on the basis of number of originating passengers indicates 20 times variations between the maximum point and the point assigned to Chakardharpur Railway Station. The learned counsel appearing for the petitioner has similarly assailed the weightage calculated for different platform and points assigned on the basis of number of trains stopping, duration of stoppage, location of the units at station etc.

7. The learned counsel appearing for the petitioner has further submitted that the conversion of points accrued into money value as disclosed in para 5.1 of the circular dated 01.09.2011 is manifestly arbitrary as the money value has been achieved by taking into consideration the highest turn over at "A Category Station" whereas, the fast food stall of the petitioner is situated at "B Category Station." On these grounds, the learned counsel appearing for the petitioner has submitted that the Catering Policy, 2010 is arbitrary, unworkable and manifestly discriminatory and therefore, it is liable to be struck down.

8. The learned counsel appearing for the respondent referring to various clauses in Catering Policy, 2010 submitted that the formula was evolved on the recommendation of SAG Committee which comprised of 3 senior most officials of the department. The said policy has been made applicable all over the country and therefore, the petitioner cannot raise plea of discrimination. It is further submitted that in the policy matters the Courts are reluctant to interfere unless it is shown that the decision making process was itself faulty. It is further submitted that there is an arbitration clause in the agreement which provides that in case of any dispute the matter should be resolved through arbitration and since the petitioner has alternative remedy, the present writ petition may not be entertained by the Court.

9. The learned counsel appearing for the petitioner has relied on judgment of Hon'ble Supreme Court in GRIDCO Limited and Another Vs. Sri Sadananda Doloi and Others, , wherein it has been held that a writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract.

10. I have carefully considered the submissions of the learned counsel appearing for the parties and perused the documents on records.

11. A perusal of the Catering Policy, 2010 indicates that it is mandated that the minimum licence fee/minimum reserve price should be fixed considering the following facts:

(i) Category of station

- (ii) Type of licence
- (iii) Number of originating passengers
- (iv) Number of trains stopping (day and night)
- (v) Duration of stoppages
- (vi) Location of the unit at the station
- (vii) Approximate license fees of a similar type of unit at a similar category of station in proximity.
- (viii) In case of units on "A1" and "A" Category stations of Metro cities and "C" category stations having high purchasing power, the fixation of minimum license fees will apart from all other factors take into account the Circle rates notified by the Competent authority of the State Government affixed from time to time.

12. From the formula for fixing of licence fee, it appears that adequate reasons have been assigned for allotting points for different parameters. For example, for category of station it is stated that assigning points to various categories of station in which wide range of 1-30 would ensure the rightful weightage given to points proposed to be assigned for different categories of station. Referring to contention of the learned counsel for the petitioner that the money value arrived at is manifestly arbitrary and irrational on the ground that the highest turnover of the one catering unit at "A Class Station" has been taken into consideration, I find that money value has been arrived at by dividing the 12% of the turnover by the maximum point earned by a station which is 140. The details of conversion of points accrued into money value are given in para. 5.1 which is extracted below:

5.1 a) The maximum points that can be earned by a station therefore comes to 140.

b) The committee now proposes to relate the marks obtainable to the Minimum License fee/Reserve Price to be fixed and convert the same to Monetary Values.

c) During the physical verification of sales of the catering units at different stations, it has been found that based on average sales, the highest turnover of one catering unit could be to the tune of approximately Rs. 31,02,500/- per annum at "A Class Station".

d) Considering that the Board has stipulated that the License fees should not be less than 12% of the turnover, the Minimum in the highest turnover scenario should come to 12% of Rs. 31,02,500 = Rs. 3,72,300/-.

e) These two, therefore, may now be co-related to arrive at a base figure, calculation reveals: Rs. 3,72,300/140 points = Rs. 2659 per point i.e. Rs. 2660 by rounding off.

f) In order to validate this figure, the following is verified:

(1) Maximum license fees:

(i) The maximum points that can be earned by a station is 140.

(ii) Considering Reserve License Fees @ Rs. 2660 per point, the Annual L/Fee would be = $140 \times \text{Rs. } 2660 = \text{Rs. } 3,72,400$ translating to Rs. 31,033 per month which is reasonable for a highest class of station.

The above value per point is to be multiplied by the points allotted to a given catering unit. Resultant figure will be the minimum license fee/minimum reserve price for that particular unit.

13. From the aforesaid, I do not find any irrationality in determining the money value rather, there is a sound logic behind the same. The base value has been arrived at by dividing the 12% of the highest turnover of one catering Station at "A Class Station" by maximum points earned by a station that is, 140. I do not find any irrationality in arriving at the money value.

14. It is well settled that while examining a policy, the scope of judicial review is very limited and a policy cannot be struck down on the ground that it is erroneous. When a Division Bench of Orissa High Court interfered with the Catering Policy of 2005 in respect of reservations, the Hon'ble Supreme Court in *Indian Railway Catering and Tourism Corpn. Ltd. Vs. Indian Railway Major and Minor Caterers Association and Others*, allowed the appeal preferred by the Indian Railway Catering and Tourism Corporation Limited. In *Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*, , the Hon'ble Supreme Court has observed as under:

16. "The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review...."

15. The petitioner has not been able to demonstrate that Catering Policy of 2010 is arbitrary or contrary to any statutory provision. I do not find any irrationality or arbitrariness in the Catering Policy, 2010 and therefore, the challenge of the petitioner to the Catering Policy, 2010 fails. Since the petitioner has failed to pay the licence fee, his agreement has been cancelled. I do not find any reason to interfere with the order of cancellation. In the result, the writ petition is dismissed.