
(2015) 03 JH CK 0054
In the Jharkhand High Court
Case No : Writ Petition(C) No. 6543 of 2014

Dipti Dey

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 3 AJR 427 : (2015) 2 JLJR 273

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Manoj Tandon and Yogesh Modi, for the Appellant; Mahesh Tiwari and Rahul Dev, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has, inter alia, prayed for quashing letter dated 13.06.2013 (Annexure 4) issued by the Senior Divisional Commercial Manager, South Eastern Railway, Chakradharpur Division (Respondent No. 4) whereby the license fees of the catering units of the petitioner has been determined @ Rs. 20,38,890/- per annum and the same has been imposed with retrospective effect and the petitioner has been asked to deposit the same, which has been enhanced and determined without following the due process. Petitioner has further prayed for quashing letter dated 19.11.2013 (Annexure 7) whereby the contract of the petitioner has been terminated and for quashing of the formula for fixation of license fee for the catering units under the Catering Policy, 2010 issued vide Commercial Circular No. 35/2010 dated 21.07.2010 (Annexure 5) and for issuance of writ of mandamus upon the respondents to determine the license fee, as per the Catering Policy, 2010 and also for restraining the respondents to implement the operation of letter dated 13.06.2013 (Annexure 4) and letter dated 19.11.2013 (Annexure 7). In alternative, it has been prayed to refer the matter to the arbitrator with the terms and conditions, as directed by this Court in L.P.A. No. 372 of 2014 and analogous cases.

2. The factual exposition, as described in the writ petition, is that the petitioner is a licensee from the railway authority with regard to various stalls at Chakradharpur Railway Station since September, 1998 and the license fee of the said stalls was Rs. 29,730/- per annum. The petitioner's unit is General Minor Unit (GMU) and Chakradharpur Railway Station has been categorised as "B" Category Station and the petitioner has been paying license fee to the railway authority as and when demanded by them. The Government of India, Ministry of Railways formulated a new catering policy, namely, Catering Policy, 2010-Follow up Action and the same has been circulated, as per Annexure 1 to the writ application and the said policy came into effect from the date of its issuance itself i.e. 09.08.2010. It is stated that from 06.01.2011 to 08.01.2011, the railway authorities conducted sale assessment of the stall of the petitioner and on the basis of sale of the stall of the petitioner, the license fee was proposed to be Rs. 1,96,794/- per annum, as per Annexure 2 of the writ application, but Annexure 2 was never implemented by the railway authorities nor any other sale assessment was made by the railway authorities. The license fee of the petitioner was enhanced to Rs. 71,350/- (approximately) per annum in the year 2011 and the petitioner duly paid the enhanced license fee to the railway authority till January, 2012, as per Annexure 3 to the writ application. But, suddenly the petitioner received letter dated 13.06.2013, issued by respondent No. 4, intimating the determined license fee of the petitioner amounting to Rs. 20,38,890/- per annum and making the demand retrospectively in complete violation of the terms of the catering policy, 2010, as per Annexure 4 to the writ application. On query about letter dated 13.06.2013 from the railway authorities, the petitioner was provided the formula for fixation of license fee. Thereafter, the petitioner filed representation before the railway authorities and without giving any heed to the representation of the petitioner, the petitioner was intimated that her contract has been terminated and she has been directed to vacate the catering unit, as per Annexure 7 to the writ application. It has been averred in the writ application that the license fee of the petitioner has been enhanced 30 times from the last license fee paid by the petitioner, which is extremely exorbitant. It has further been contended in the writ application that the respondents have failed to adhere to the terms of policy in fixation of license fee as contained in provision 18 of the Catering Policy, 2010. It has been further contended in the writ application that same and similar issue has been decided by the Division Bench of this Court vide order dated 03.11.2014 in L.P.A. No. 372 of 2014 and other analogous cases (Annexure 8) and the case of the petitioner stands on similar footing. With the aforesaid averments, the instant writ application has been filed for redressal of the grievance of the petitioner.

3. Per Contra, the respondents have filed counter affidavit repelling the assertions made in the writ applications. Apart from raising the question of maintainability on the ground of locus of the petitioner, the respondents have stated in the counter affidavit that the decisions rendered by this Court in L.P.A. No. 372 of 2014 and other analogous cases have no applicability in the

petitioner's case as the petitioner is not a bona fide licensee. It has also been stated in the counter affidavit that after the death of husband of the petitioner, Late R.N. Dey, no agreement existed between the Railway administration and the petitioner, therefore, the petitioner has got no locus standi to reap the benefit of the judgment rendered in the aforesaid Letters Patent Appeals.

4. Learned counsel for the petitioner has filed a rejoinder to the counter affidavit wherein it has been stated and submitted that after the death of the husband of the petitioner, the petitioner requested to transfer the license in her favour, which was taken care of by the railway authorities and vide letter dated 19.12.2002 the petitioner was directed to submit legal heir and death certificate and the same was duly submitted by the petitioner and after the death of the husband of the petitioner, she was allowed to operate the catering units till date, as revealed from Annexure 9, 10 and 11 to the rejoinder to counter affidavit of respondents. It has further been stated in the rejoinder that from the aforesaid Annexures, it is apparent that railways authorities have themselves allowed the petitioner to continue catering units, demanded license fee from the petitioner and accepted the amount paid by the petitioner in lieu of catering units run by her on the license of her late husband. It has further been stated that the respondents have expressly accepted the petitioner as a licensee to run the catering units at the concerned railway station. Learned counsel for the petitioner strenuously urged before this Court that the petitioner was accepted as a licensee after the death of her husband, which is evident from various communications between the petitioner and respondents and the respondents cannot be allowed to turn around or resile from their stand, therefore, they may be estopped to raise the issue of locus for the first time in the writ petition by way of filing counter affidavit.

5. Heard Mr. Manoj Tandon learned counsel for the petitioner and Mr. Mahesh Tiwari, learned counsel for the respondents-Railway.

6. After giving my anxious consideration to the documents on record and the rivalised submissions, I am of the view that the case of the petitioner stands on the same footing like that of L.P.A. No. 372 of 2014 and analogous cases and since the case of the petitioner is squarely covered by the aforesaid judgment, the petitioner is entitled to the same relief as has been extended to other licensee in L.P.A. No. 372 of 2014 and other analogous cases.

7. In view of the limited submissions made by learned counsel for both the sides and since the parties to the writ application are ready and willing to go before the learned Arbitrator to resolve their disputes, as per the clause of agreement, the matter is referred to the Arbitrator. Meanwhile, till the application for interim relief is heard by the learned Arbitrator, the existing license fee shall be paid by the petitioner to the respondents for her catering units, which are installed at Chakradhar Railway Station. The electricity and water connection shall also be continued during this period and the petitioner is allowed to operate her catering units till her application for interim relief is disposed of by the learned Arbitrator.

Since the similar matter has been referred to learned Arbitrator in L.P.A. No. 372 of 2014 and analogous cases, the said Arbitrator shall also decide the disputes between the parties referred to in the writ application preferably within a period of six months from the date of commencement of arbitration proceedings. If any application is preferred by the petitioner for interim relief, the same shall also be decided at the earliest, in accordance with law, rules, regulations, government policy and on the basis of evidence on record. Both the parties to this litigation have assured this Court to cooperate the hearing before the learned Arbitrator and not to seek for any unnecessary adjournments.

8. With the aforesaid observations and directions, this writ application is disposed of.