(2015) 11 KL CK 0077

In the High Court Of Kerala

Case No : W.P. (C) No. 30876 of 2007 (A)

M.R. Ramakrishnan APPELLANT

Vs

The Ministry of Railways and Others RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 KL CK 0077

Hon'ble Judges : S.P. Chaly, J.

Bench : Single Bench

Advocate : D. Sreekumar, for the Appellant; James Kurian, SC, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Chaly, J.—This writ petition is filed by the petitioner seeking to issue appropriate writ, order or direction commanding Respondents to re-fix the licence fee of petitioner''s CFT Stall at Wadakkanchery Railway station and for other related reliefs.

2. Brief facts required for the disposal of the writ petition are as follows:

3. Petitioner is a licensee of Combined Fruit and Tea Stall (for short, CFT Stall) at Wadakkanchery Railway station. The CFT Stall at Wadakkanchery is reserved to economically backward community viz. OBC. As the petitioner belongs to Ezhuthassan community, he is eligible for the said reservation benefit. The licence was awarded to the petitioner in September, 1989. The CFT Stall was constructed at the petitioner''s expense and in accordance with the specification and directions of the Railway. Initially, the licence was on contract basis on the basis of annual rent to be remitted in advance. The annual rent was only Rs. 1,500/- and apart from the same, for using water and electricity, petitioner had to make payments against the actuals.

4. It is contended by the petitioner that initially the licence was for a period of

five years and there used to be a printed standard format of licence unilaterally issued by the Respondents. Petitioner, his wife, three children and two servants are engaged in the conduct of the CFT Stall and the same is the sole livelihood of the petitioner and his family.

5. It is also contended that Wadakkanchery Railway station is in "B" Class category. It is a Taluk Head Quarters and as it situates in between two important Railway Stations viz. Thrissur and Shoranur, there is no progress or development either on the ground of commercial or territorial importance. It is also contended that a very few Express Train stops at Wadakkanchery and that too at odd time and hence the sales turnover was hardly less than Rs. 1,500/- per day.

6. The initial licence fee, contends the petitioner, was enhanced up to Rs. 11,000/- in September, 1994 and thus the petitioner executed the licence for a five year period ending in August, 1999. It is the contention of the petitioner that thereafter no licence was executed and the petitioner continued his licence on temporary extension basis. It is also contended that consequent to the introduction of new Catering Policy, 2000, the practice of fixing licence fee on the basis of rental was given a go-by and a new scheme was introduced whereby 12% of the annual sales turnover was fixed as licence fee. This led to several litigations and the matter was finally decided by the Apex Court. Anyhow, the Apex Court confirmed the action of the Respondents by fixing the licence fee on the basis of 12% annual sales turnover. Therefore, petitioner contended that in accordance with the said policy, the annual sales turnover of petitioner''s CFT Stall by taking the average of three days sale proceeds in August, 2003 was found to be an amount of Rs. 5,950/- on such scrutiny. Therefore, petitioner contended that 12% annual sales turnover would come to only Rs. 1,810/- per day. Instead, Respondent Railway has erroneously enhanced the licence fee of the petitioner to Rs. 1,32,700/- for the period April, 2000.

7. Since the licence fee so fixed was not in accordance with law, petitioner has challenged the same before this Court by filing W.P.(C) No. 22381 of 2005 and this Court by Ext. P3 judgment disposed of the same directing the Railway to consider the representation of the petitioner favourably and allow him to remit the amount due in instalments. It is also the contention of the petitioner that in the said writ petition, Respondent has filed Ext. P4 counter affidavit stating that the licence fee would be re-fixed on the basis of the re-assessment conducted. Thereafter, the Respondent issued an order dated 09.02.2006 permitting the petitioner to re-open the CFT Stall. It is also contended that though instalment facility was ordered by this Court in Ext. P3 judgment, same was not complied with by the Respondent. It is also the case of the petitioner that he had remitted the fee claimed in various instalments and thus altogether remitted an amount of Rs. 5,85,000/-, which according to the petitioner, is far in excess of the legally due licence fee calculated on the basis of 12% of the annual sales turnover.

8. Therefore, petitioner contended that the Respondent is arbitrarily and illegally demanding Rs. 1,45,970/- as annual licence fee from the petitioner, as per Ext.

P6 communication. Petitioner contends that Ext. P6 is patently wrong and the same was issued in absolute violation of Catering Policy 2000, Ext. P3 judgment and the admission in Ext. P4 counter affidavit of the Respondents. It is thus aggrieved by Ext. P6 order, petitioner has filed this writ petition.

9. Respondents filed a counter affidavit refuting the statements, claims, demands and allegations of the petitioner. It is also contended that petitioner has gross dues of Rs. 2,65,400/- towards payment of licence fee for the period 2005-06 and 2006-07, apart from other dues of Rs. 53,509/- towards arrears of licence fee consequent to revision of licence fee from 5% to 12% of estimated annual sales turnover, as per the Catering Policy, 2000. It is also contended by the Railway that the 12% increase of the licence fee was finally upheld by the Apex Court and therefore petitioner is bound to pay the licence fee at the said rate. Anyhow, it is also contended by the Respondents that as per Clause 16.4 of the Catering Policy, 2005 of Ministry of Railways, the renewal for all licences at ''D'', ''E'' and ''F'' category stations or fresh allotment for the unit, licence fee was to be enhanced on actual sales turnover of the unit subject to a minimum of 10% increase on the prevailing licence fee of the unit and for all other categories including reserved category, it is 12% of the annual sales turnover.

10. It is also contended that for the contract period up to the year 2007, the licence fee payable was Rs. 1,32,700/- per annum, as per duly conducted assessment and if the petitioner opted for renewal of the licence fee payable for the contract period 2007-2012, it will be a minimum of Rs. 1,45,970/- per annum as per the above Policy. The Respondents have also given the details of about 24 long distance Express Trains stopping at Wadakkanchery station and apart from the same, it is contended that several special trains are operated during the festival occasions to clear rush of passengers and further there are several passenger trains which have scheduled stop at Wadakkanchery. It is also contended that the fixation of combined annual licence fee of Rs. 1,32,700/- has already been examined by this Court as per Ext. P3 judgment and therefore it is contended that the claim of the petitioner cannot be sustained in any manner. It is further contended by the Respondents that the licence fee calculated by the petitioner taking the three days sale proceeds at Rs. 5,950/-, if taken as correct, the licence fee payable would have been Rs. 2,60,610/-. It is thereupon contended that the fixation of licence fee was as per extant provisions in the Catering Policy and moreover, petitioner had also willingly remitted two of the annual instalments for the licence periods 2003-04 and 2004-05 at the rate of Rs. 1,32,700/- each. It is also contended that thereafter the petitioner has failed to pay the licence fees. It is also contended that pursuant to Ext. P3 judgment, petitioner has only remitted Rs. 85,000/- in nine instalments and huge amount towards licence fee is due from the petitioner. Apart from the same, it is contended that again periodically the licence fee was enhanced in accordance with the Catering Policy and therefore petitioner is liable to pay the licence fee taking into account the said periodical revisions also.

11. Petitioner has filed a reply affidavit refuting the contentions raised in the counter affidavit and further contended that the payment made by the petitioner at the rate of Rs. 1,32,700/- towards the licence fee is entitled to be adjusted based on the assessment made by the Railway in terms of the Policy. Along with the reply affidavit, petitioner has also produced Ext. P9, the counter affidavit filed in the writ petition pertaining to Ext. P3 judgment wherein it is contended that the Railway has agreed to make adjustment of the payments made by the petitioner against the future period.

12. Respondents have filed an additional counter affidavit and has produced the agreement entered into by the petitioner with the Respondents dated 05.08.2003 whereby the petitioner has agreed to comply with the terms and conditions of the policy issued by the Railway. Respondent has also produced the Catering Policy, 2005 and as per paragraph 12.5, the nature of application of new policy to existing licensees is mentioned. Paragraph 16.4 speaks about the Licence Fee. Further, in paragraph 12.3, an arbitration clause is included whereby contractors are allowed to raise their disputes/difference arising under the conditions of contract by resorting the same to an Arbitration Tribunal or the person appointed to be the sole Arbitrator appointed by the General Manager of the concerned Zonal Railway etc. etc.

13. In the additional counter affidavit filed on 20.05.2013, it is contended by the Respondents that altogether an amount of Rs. 7,74,860/- is remaining due from the petitioner.

14. Heard learned counsel for the petitioner, Sri. D. Sreekumar and learned Standing Counsel for the Respondents, Sri. James Kurian.

15. Having heard the rival submissions and perusal of the entire records, the question to be considered is whether the petitioner is liable to pay the periodical licence fee enhanced by the Respondents Railway. Learned counsel for the petitioner contended that the station in which the petitioner conducts the Stall is a very small station where only a few trains are stopping and therefore the petitioner is unable to pay the licence fee enhanced by the Railway periodically overlooking the terms and conditions of the agreement and the stand adopted by the Railway in Ext. P9 counter affidavit filed, before this Court pertaining to Ext. P3 judgment. Learned counsel also contended that petitioner was paying the licence fee during the pendency of the writ petition and therefore there are no dues payable by the petitioner to the Respondents. On the other hand, learned Standing Counsel for the Respondents contended that as on today, after the payments made by the petitioner from 1999 onwards, there is an outstanding due of Rs. 14,77,464/-, calculated in terms of the periodical enhancement made by the Railway based on the Policy issued. Petitioner disputes the said figure and contended that the said calculation is made on the basis of incorrect calculation made by the Respondents pursuant to the enhancement of licence fee to Rs. 1,32,700/- and therefore without calculating the amounts prior to the said increase, the balance said to be due is not acceptable to the petitioner.

Therefore, learned counsel for the petitioner submitted that the writ petition is to be allowed and a direction is to be issued to the Respondents to re-quantify the licence fee in accordance with the claim raised by the petitioner in this writ petition.

16. The said submission is strongly opposed by the learned Standing Counsel for the Railways and he contended that the issue pertaining to enhancement of licence fee pending agreements based on the policy issued by the Railway was considered by this Court in ''Venkateswaran v. Government of India'' [2002 KHC 209]. I have perused the judgment and it is understood that the same was also concerning similar issues and the Division Bench of this Court had found that the action of the Railway by enhancing the licence fee by issuing new Catering Policy was in order. By the said judgment, the Division Bench of this Court upheld the judgment of the learned Single Judge, by which the parties were relegated to the arbitration provided under the Policy.

17. Having considered the rival submissions, I am of the considered opinion that the issue raised by the petitioner in this writ petition is purely based on a contract entered into by the petitioner with the Respondent Railways. The petitioner cannot contend that licence fee fixed by the Railway should remain static. Consequent to inflation and other economic situations, the prices of consumer products have gone up, the charges of food items sold by the petitioner was enhanced in various multiples, establishment cost of the Railway has increased, facilities of the travelling public was increased in the Trains as well as in Platforms etc. etc. and therefore it is only just and proper that the licence fee is re-fixed for providing more and more better facilities to the travelling public and also taking into account the Policy issued by the Railway from time to time. Anyhow, the contentions raised by the parties will reveal that the question raised in this writ petition is a disputed question of fact based on the Policy. Petitioner alleges error in the calculation made by the Railway and therefore by exercising the power under Article 226 of the Constitution of India, I may not be able decide the same especially due to the fact that factual evidence is required to meet with the contentions raised by the petitioner and the Respondents. The subject matter of the dispute is purely within the realm of contract and therefore the disputes will have to be settled by the parties by resorting to Alternative Disputes Resolution mechanism provided under Clause 12.3 of Ext. R3 Catering Policy, 2005.

18. But, learned Standing Counsel for the Railway submitted that since huge amounts are due from the petitioner, a direction may be issued to the petitioner to remit the admitted amount. It is stoutly opposed by the learned counsel for the petitioner. Anyhow, even if the dispute is taken into account, petitioner may be liable to pay enhanced licence fee pursuant to the enhancement periodically made by the Respondents. Therefore, in my view, the parties can be relegated to seek recourse to the Arbitration clause contained in Ext. R3. But, in view of the contentions raised by the Railway and also taking into account the fact that

licence fee was enhanced by the Railway periodically, it is only fair, just and proper that the 4th Respondent is directed to issue a fresh statement of accounts taking into account the enhancement from the date prior to fixation of licence fee of Rs. 1,32,700/-. If the petitioner has any dispute with regard to the statement of accounts so issued by the 4th Respondent, petitioner will be at liberty to proceed for arbitration after payment of the said licence fee fixed by the 4th Respondent.

19. Therefore, taking into account the entire factual and legal situations, this writ petition is disposed of directing the 4th Respondent to issue a fresh statement of accounts to the petitioner calculating the same prior to the date of fixing of the licence fee at Rs. 1,32,700/- and continuously thereafter taking into account the periodical enhancements, within 45 days from the date of receipt of a copy of this judgment. Thereupon, the petitioner is directed to remit the same within a further period of 30 days, and if he has any dispute with regard to the fixation of the same, with regard to the enhancement made by the Respondents, the petitioner is at liberty to raise the same by invoking the Arbitration clause provided under Ext. R3 Catering Policy, 2005.

The writ petition is disposed of accordingly.

