

(2021) 11 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2751, 6959 Of 2020

Sumit Kumar & Ors

APPELLANT

Vs

General Manager East Central Railway

RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 PAT CK 0025

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Prashant Kumar, Manaur Alam, Anil Singh, Sanjeev Kumar Jha, Ramadhar Shekhar

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

In C.W.J.C. No. 6959 of 2020 petitioner has prayed for the following relief(s):-

"(i) For issuance of writ in the nature of CERTIORARI or any other appropriate writ, order/orders for setting aside the notice dated 07.01.2020 and 08.01.2020 issued under the signature of Senior Section Engineer (Works division), East Central Railway, Narkatiaganj (Respondent No.7) by which illegal demands have been made to each and every petitioners as Areas of Licence fee as well as G.S.T. with retrospective effect i.e. since 01.04.1995 to 31.03.2020 as they have been directed to deposit the same till 20.01.2020 otherwise the license of their shops shall be cancelled.

(ii) For issuance of a writ in the nature of certiorari or any other appropriate writ, order/orders for setting aside the misquoted calculation sheet enclosed with illegal demand notice dated 07.01.2020 and 08.01.2020 respectively, which are beyond the previous agreement executed between the parties from time to time with regard to running of their shops situated over the Railway premises.

(iii) For issuance of a writ in the nature of mandamus commanding and directing

the Respondent authority disturb the petitioners from running their shops/business for their livelihood.

(iv) For issuance of a writ in the nature of mandamus commanding and directing the respondent authority to consider their previous agreement made between the parties with regard to continuance of the license of the petitioners on the basis of lease fees deposited by the petitioners till the year 2019-2020.

(v) For any other relief/reliefs for which the petitioners are entitled to."

In CWJC No. 2751 of 2020 petitioner has prayed for the following relief(s):-

"1.That the present writ application is being filed on behalf of the above named Petitioners before this Hon'ble Court for issuance of writ in the nature certiorari or any other writ/writs, order/orders, direction/directions commanding the Respondents authorities for following relief/reliefs :

i) For setting aside the flagrant notice dated

10.01.2020 issued by the Respondent no.7 as Annexure-2 of this petition by which direction has been given to the each and every Petitioners to deposit the so called arrear amount Rs. 1,70,837/- for the period of 01.04.1995 to 31.03.2020 till the date of 20.01.2020, without considering the previous deposited amounts of the Petitioners since year 2019-2020, disclosing the facts that failing which license of Petitioners shall be cancelled.

ii) For issuance of direction to the authorities concerned to abstain from such any atrocious conduct by which the legal rights of the Petitioner for running of his/their business for their livelihood shall be effected.

iii) For issuance of direction to the authorities concern to consider the fair and transparent previous business conduct of the Petitioner with respect to the railway since year of 1973 to till now in a prospective way for the ends of justice.

iv) For issuance of direction to the authorities concern to consider his/their previous agreement made between the Petitioners with regard to continuance of the license of the Petitioners on the basis of tease fees deposited by the Petitioners till the year 2019-2020.

v) For setting aside the misquoted calculation sheet dated 10.01 2020 with regards to the Petitioner beyond the previous agreement made amongst the parties from time to time with regard to running of their shops.

vi) For any other relief/reliefs, direction/directions for which the Petitioner is entitled."

Learned counsel for the petitioners prays that the matters be disposed of in terms of the order dated 04.11.2019 passed by different Benches of this Court in C.W.J.C. No. 18109 of 2018 titled as Vijay Sah Vs. The Union of India & Ors.; order dated 06.11.2020 in CWJC No.8604 of 2020 titled as Bharat Kumar Agarwal @ Bharat Kumar Vs. The Union of India & Ors. and other connected writ

petitions; order dated 01.03.2021 in CWJC No.2807 of 2020 titled as Arun Kumar Singh Versus The Union of India and others and other connected writ petitions.

However, we are of the considered view that the matters have to be decided in the light of the judgment rendered by Hon'ble the Apex Court in Central Organisation for Railway Electrification Versus ECI-SPIC-SMO-MCML (JV) a Joint Venture Company, (2020) 14 SCC 712.

Learned counsel for the parties state that they have no objection to the matters being disposed of in terms of the ratio laid down in Central Organisation for Railway Electrification (Supra). However, with vehemence, learned counsel for the petitioners states that till such time the arbitrator is appointed, respondent should not take any coercive action against petitioners, including initiating proceedings for eviction and realization of arrears of licence fee.

Well, we have no difficulty in accepting such prayer, more so, when the parties are ad idiom of taking recourse to the Mechanism provided under the agreement, and the matter adjudicated in the light of the principles laid down by the Hon'ble the Apex Court in Central Organisation for Railway Electrification (supra).

As such, the writ petitions are disposed of in the following mutually agreeable terms:-

(a) The petitioners shall approach the respondents, invoking the arbitration clause and the respondents shall act in terms of the law down by Hon'ble the Apex Court in Central Organisation for Railway Electrification (Supra).

(b) Till such time the arbitrator is appointed, no coercive action shall be taken against the petitioners, either for their eviction or realization of any amount towards arrears of license fee.

(c) With the appointment of the arbitrator, it shall be open for the parties to seek extension of the order during the period of the arbitration proceedings.

(d) The petitioners shall continue to pay the amount in term of the original agreement (pre existing rate of the license fee).

Interlocutory Application(s), if any, shall stand disposed of.