

Madras High Court

Baby Sundari Ammal vs The Union Of India Owning Southern ... on 31 January, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2011

Coram

THE HON BLE MR. JUSTICE VINOD K.SHARMA

W.P.Nos.30280 to 30300 of 2008

and W.P.Nos.30542 and 30766 of 2008

and

M.P.Nos.1 to 1 2008 and M.P.Nos.2 & 2 of 2008

W.P.No.30280 of 2008

Baby Sundari Ammal

.. Petitioner

.. Vs ..

1. The Union of India owning Southern Railway,
Represented by its
Divisional Railway Manager (Commercial),
Southern Railway Manager's Office,
Commercial Branch,
Chennai Division, Chennai 600 003.

2. The Indian Railway Catering and Tourism
Corporation Ltd.,
represented by its Regional Director,
6A, The Rain Tree Place,
No.9, Mc Nicols Road,
Chennai 600 031.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent relating to the communication dated 04.12.2008 bearing No.2008/IRCTC/SZ/Chennai II issued by the second respondent demanding a sum of Rs.6,03,525/- from the petitioner and quash the said order and to forbear the second respondent from levying and/or collecting the said sum of Rs.6,03,525/- or such other amount.

For Petitioner : Mr.B.T.Seshadri For R-1 : Mr.V.Haribabu For R-2 : Mr.V.G.Suresh Kumar

COMMON ORDER This order shall dispose of the following writ petitions, viz., Sl. Nos.

Case Nos.

Name of the Petitioner W.P.No.30280 of 2008 Baby Sundari Ammal W.P.No.30281 of 2008 P.Thyagarajan W.P.No.30282 of 2008 P.Venkataramana Pajethaya W.P.No.30283 of 2008 J.Chandrika W.P.No.30284 of 2008 J.Chandrika W.P.No.30285 of 2008 N.Radhakrishnan W.P.No.30286 of 2008 P.N.Krishna Rao W.P.No.30287 of 2008 Y.Devendra Prasad W.P.No.30288 of 2008 V.Radha W.P.No.30289 of 2008 K.Madhavachar & Sons W.P.No.30290 of 2008 D.Subramaniam & Sons W.P.No.30291 of 2008 S.Ramalingam W.P.No.30292 of 2008 D.Subramaniam & Sons W.P.No.30293 of 2008 R.Seetha W.P.No.30294 of 2008 T.V.Mohammed Ali W.P.No.30295 of 2008 T.V.Mohammed Ali W.P.No.30296 of 2008 Shaik Bahadur W.P.No.30297 of 2008 C.R.Hariharan W.P.No.30298 of 2008 M/s.Titanium Equipments and A.Node Manufacturing Company Limited W.P.No.30299 of 2008 T.V.Mohammed Ali W.P.No.30300 of 2008 A.Saradammal W.P.No.30542 of 2008 D.S.Sasikala W.P.No.30766 of 2008 S.Jayapalan

2. As common question of law and facts are involved in all these writ petitions, for the sake of brevity, the facts are being taken from W.P.No.30288 of 2008.

3. The petitioner was granted a licence to run a stall at Platform Nos.12 and 13 in the Central Railway Station, Chennai and Moore Market to sell fresh fruit juice from 1981 on annual licence fee. As per the terms of the licence deed, the licence fee was fixed by the first respondent, on the basis of the sales effected for two working days and one non-working day. Two officers of the Union of India of Southern Railway were permitted to oversee the sales and fix the licence fee on the basis of sales turnover, which was to be effective for a period of five years.

4. Similar licence were granted to the petitioners in the other writ petitions also. The petitioners in all these writ petitions continued running the stalls for number of years by strictly following the rules and regulations of the first respondent and by paying the licence fee regularly to the first respondent as fixed, none of the petitioners is in arrears as on date.

5. On 05.11.2005, the petitioner (in W.P.No.30288 of 2008) received a communication from the Divisional Railway Manager, Southern Railway, pointing out that the stall in possession of the petitioner at the Central Railway Station and Moore Market will be handed over to the Indian Railway Catering & Tourism Corporation Limited. The petitioner challenged the communication by filing W.P.No.36266 of 2005 on various grounds.

6. Similar notices were also served on various stall owners who all also challenged the order by filing separate writ petitions.

7. The writ petition filed by the petitioner (in W.P.No.30288 of 2008) was disposed of by this Court by order dated 08.12.2005, by recording an undertaking dated 07.12.2005, to the effect that the petitioner and other similarly situated persons agree to hand over the stalls on 31.12.2005 or on the date for which the second respondent confirms the successful tenderer to take over the stalls, whichever was later.

8. The second respondent failed to call for tenderers, but the licence granted to the stall owners including the petitioner were renewed from time to time. On 21.06.2006, certain information were called for from the petitioner, which they furnished, the petitioner was thereafter asked to deposit a sum of Rs.1,53,043/- towards licence fee for the period from 01.10.2006 to 31.03.2007. The demanded amount was paid by the petitioner and extension was granted. The petitioner, thereafter, received another letter dated 29.09.2008 from the first respondent intimating about the extension of the licence for a further period of three months from 01.10.2008 to 31.12.2008 or till the date of taking over by the second respondent whichever is earlier. The petitioner was also directed to pay a sum of Rs.76,525/- being the proportionate provisional licence fee. The demanded amount was also paid on 16.10.2008. The petitioner was thereafter informed on 13.11.2008 about the decision of the first respondent to hand over all catering establishments to the second respondent with effect from 15.11.2005, but, due to litigation the decision could not be implemented. The petitioner was allowed to continue by extending the licence for the period of six months at the time.

9. The extension letter issued from time to time to the petitioner (in W.P.No.30288 of 2008) reads as under:- "SOUTHERN RAILWAY No.M/C.79/S.M.U/A,B,C Caty. Stns. L.R.M.(C)'s Office, Chennai-3, Dt. 05.10.2006 To Smt. V.Radha, Lincensee/ Fruit Stall, Chennai Central Station.

Sub: Regularising of SMUS/Reserved Category Units) at A.B. & C. Category Station.

Ref: 1. Rly. Bd's letter.No.2005/TG III/600/5 of 09.03.06.

2. This office letter No.M/C.79/Genl. of 21.06.2006.

...

As per details submitted by you in response to this office letter cited above, your stall has been absorbed under O.B.C. (other backward class) category by the competent authority.

Consequent on this, your licence period which ended on 31.03.2006 and renewed on quarterly basis upto 30.09.2006 has been further extended upto 31.03.2007 provisionally and as per extant rules on payment of licence fee @ Rs.306086 per annum which is subject to revision at a later date on conducting sales assessment and according renewal.

Please acknowledge receipt and pay Rs.1,53,043/- towards licence fee for the period from 01.10.2006 to 31.03.2007 immediately.

/Divl. Railway Manager"

10. The petitioner (in W.P.No.30288 of 2008), thereafter, received the impugned communication calling upon her to pay the licence fee to the tune of Rs.7,24,517/- on or before 20.12.2008. The impugned order reads as under:- "Indian Railway Catering & Tourism Corporation Ltd (A Government of India Enterprise) Southern Zone 6A, The Rain Tree Place, No.9, Mc Nicols Road, Chennai 600031 Ph: 044 - 2836 3726, 3726 Fax : 2836 3453

No:2008/ IRCTC/ SZ/Chennai II

Date: 04.12.08 Smt. V.Radha Licensee: FJS at Chennai Central Railway Station No.2/11, Maria Manon Loco Scheme, I Cross, Jawahar Nagar, Chennai 600 082.

Sub: Management of catering units

payment of LF reg.

Ref: This office letter No.2008/ IRCTC/

MAS JPO dated

With reference to the above, the management of your unit was taken over by IRCTC w.e.f. 13.11.08 from Railways. The license fee has been revised on the basis of Railway Board Circular No.56 of 2006 dated 07.06.2006.

The License fee payable from 01.11.06 to 31.12.08 is enumerated in table below.

S.No Particular Amount (Rs) LF due for the period from 01.11.06 to 31.12.08 @ Rs.640000 p.a.
1388712/-

LF paid to Railways from 01.11.06 to 31.12.08 664195/-

Amount to be remitted (1-2) 724517/-

You are required to submit your consent to manage the unit at the revised license fee and remit the amount of Rs.724517/- on or before 20.12.08 failing which IRCTC will be constrained to take appropriate action.

This is without prejudice to the claim of other arrears/dues payable by you to Railways/IRCTC. This does not confer on you any legal right as decided by the Hon'ble Supreme Court in the Judgment of 29.03.05. IRCA Vs Union of India. However, being an existing licensee, you will be eligible to participate in the competitive bidding of your unit, subject to satisfactory performance for at least five years and clearance of dues and verification of antecedents. As per Policy you are not entitled for any automatic extension/renewal except, as specially approved by Competent Authority. Please acknowledge receipt of this letter.

(K.Ravikumar)

Deputy General Manager's

Copy to:

1. GGM/LCS For Kind information
2. Station Officers To ensure payments by the Licensee"

11. The impugned orders have been challenged, by the learned counsel for the petitioners, by contending that the demand raised is arbitrary and violative of Article 14 of the Constitution of India, inasmuch as it is not open to the respondents to claim harsh, licence fee, with effect from 01.11.2006 as it was not permissible to reopen the concluded contract between the parties nor can

respondent claim enhanced licence fee with retrospective effect.

12. The contention of the learned counsel for the petitioners is that the licence granted to the petitioners prior to 31.12.2008 was only for a period of six months. Therefore, it was not open to the respondents to revise the licence fee prior to the commencement of the licence period.

13. The writ petitions are opposed by the learned counsel appearing for the respondents. The contention of the learned counsel appearing on behalf of the respondents is that in the agreements executed with the petitioners, it was clearly stipulated that the licence fee is collected provisionally without prejudice to the rights of the Railway Administration to levy enhanced licence fee and such other rights of the Railway Administration.

14. The learned counsel for the respondents also referred to Clause "C" of the agreements, which provides for the revision of the licence fee during the tenure of the licence. It was stipulated that the licence fee would be operative with retrospective effect from the commencement of the financial year, in which assessment of the sales turnover actually takes place, even when the revised licence fee is advised to the licensee at a later date.

15. The contention of the learned counsel for the respondents is that the enhancement of claim cannot be said to be retrospective as it is in terms of the agreements executed between the parties.

16. In support of this contention, the learned counsel for the respondents, placed reliance on the Judgment of the Hon'ble Supreme Court in Civil Appeal No.4897 of 2002 decided on 29.03.2005 (N.B.Krishna Kurup Vs. Union of India and others), wherein, the Hon'ble Supreme Court, while considering the question of retrospective enhancement, held as under:-

"Group A cases In Group A cases the only appeal which survives for consideration is Civil Appeal No.4897 of 2002. In this case, the appellant N.B.Krishna Kurup filed the writ petition in the High Court challenging the fixation of licence fee of refreshment rooms (VRR) being run by the appellant at Palghat. The fixation of licence fee for the period 1-8-1995 to 31-7-2000 had been challenged on the ground that the increase had been made retrospectively which was against the terms of the agreement. The Division Bench, by the impugned judgment, dismissed the writ petition by observing that there has been no retrospective enhancement of licence fee. The licence of the appellant was renewed for a period of five years w.e.f. 1-8-1995 to 31-7-2000 and the licence fee was fixed at Rs.47,000 per annum provisionally with the stipulation that the licence fee fixed provisionally would be subject to revision during the tenure of the contract and the revised licence fee will be operative with retrospective effect from the commencement of the financial year in which the revision takes place. The contention raised by the appellant is that since the rates were revised on 4-2-2000, the retrospective enhancement could be for the financial year starting from 1-4-1999 to 31-3-2000 only and not from 1-8-1995 till 31-3-2000 as has been done by the Indian Railways.

We do not find any substance in this submission. The appellant was the existing licensee as on 31-7-1995 and his licence was renewed with effect from 1-8-1995 for a period of five years i.e. 31-7-2000. The licence fee was fixed at Rs.47,000 per annum with the stipulation that the licence

fee fixed was provisional and would be subject to revision during the pendency of the contract and the revised licence fee shall come into operation with retrospective effect from the commencement of the financial year in which the revision takes place. License fee was fixed provisionally at the time of the renewal of the licence because assessment of the actual sales had not been made.

After assessing the quantum of sales made, the Indian Railways proposed the enhancement. Against this enhancement the appellant filed representations/appeals before the Railway Board. The Railway Board ordered status quo to be maintained during the pendency of the representations/appeals. The revised fee could not be charged because of the order of status quo passed by the Railway Board. Soon after the dismissal of the representations/appeal the enhanced licence fee came into operation with effect from the date of the renewal of the licence i.e. w.e.f. 1-8-1995. Enhancement has not been made with retrospective effect as has been argued before us. We agree with the view taken by the High Court. For the reasons stated above, we find no merit in this appeal and dismiss the same. Parties shall bear their own costs."

17. The prayer of the learned counsel for the respondents is that the writ petitions deserve to be dismissed being without merit.

18. On consideration, I find force in the contention raised by the learned counsel for the petitioners. The reliance on the agreements executed between the parties by the respondents is misplaced as admittedly the agreement came to an end on expiry of the period of licence. The contract was thereafter not renewed on the same terms and conditions but extension was granted to the petitioners only for a period of six months. A fresh contract was entered into every six months on the terms and conditions.

19. The respondents therefore under no circumstances could revise the licence fee qua concluded license agreement. The respondents, therefore, have no jurisdiction to revise the licence fee with effect from 01.11.2006, in the absence of any extending contract between the parties.

20. The Judgment of the Hon'ble Supreme Court would have no application to the facts of the present case, as in the said case the licence fee was revised during the pendency of licence, which provided for such revision. But in the case in hand, the licence period had come to an end, and the licence was extended on six monthly basis.

21. It is also well settled law that in the absence of a specific provision or right under the agreements between the parties, it is not open to any of the parties to contract on unilateral change the terms of licence agreement. In any case, licence fee can not be revised with retrospective effect. There is no dispute that now the petitioners are paying the licence fee at the enhanced rate. Consequently, by holding that the impugned orders are arbitrary and amount to colourable exercise of power, thus hit by Article 14 of the Constitution of India.

22. All the writ petitions are allowed, the impugned orders of demand are be set aside but with no order as to costs. Consequently, connected miscellaneous petitions are closed.

31.01.2011 Index : Yes Internet : Yes jrl VINOD K.SHARMA,J.

Jrl To

1. The Divisional Railway Manager (Commercial), The Union of India owning Southern Railway, Southern Railway Manager's Office, Commercial Branch, Chennai Division, Chennai 600 003.
2. The Regional Director, The Indian Railway Catering and Tourism Corporation Ltd., 6A, The Rain Tree Place, No.9, Mc Nicols Road, Chennai 600 031.

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