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Court : Allahabad

Decided On : Sep-28-2000

Reported in : 2000(4)AWC3417

Judge : Shyamal Kumar Sen, C.J. and ;G.P. Mathur, J.

Appeal No. : C.M.W.P. No. 34342 of 2000

Appellant : Ganesh Chandra

Respondent : Union of India and Others

Advocate for Def. : S.C., ;S.N. Srivastava and ;Lalji Sinha, Advs.

Advocate for Pet/Ap. : O.P. Singh, Adv.

Judgement :

Shyamal Kumar Sen, C.J. andG.P. Mathur, J.

1. The petitioner was granted a licence to set up a tea stall at the platform of Chauraha railway station. Central Railways on 26.10.1998 on a licence fee of Rs. 2,500 per annum. By the letter dated 25.1.2000, sent from the office of the Divisional Railway Manager (for short the DRM), Jhansi, the licence fee wasenhanced to Rs. 7,175, w.e.f. 1.4.1999, and the petitioner was directed to deposit balance of the enhanced licence fee and also the licence fee upto 30.9.2000. The present writ petition has been filed for quashing of the

communication sent by the DRM regarding enhancement of the licence fee and also the demand made upto 30.9.2000.

2. Sri O.P. Singh, learned counsel for the petitioner, hascontended that a small area of 8 ft. x 8 ft. in dimension was allotted to the petitioner on the platform of Chauraha railway station by the letter dated 15.9.1998 sent by the office of the DRM, Jhansi, and in the said letter, the licence fee was fixed at Rs. 2,500 per annum. Learned counsel has submitted that Chauraha is a very small railway station on Kanpur-Jhansi route and only passenger trains have stoppage at the said railway station. The total income of the petitioner, according to the learned counsel was about Rs. 30 per day on an average basis and the sudden enhancement of licence fee to nearly three times within one year and four months of the initial allotment was wholly unjustified.

3. Sri Lal Ji Sinha, learned counsel for the respondents, has submitted that the enhancement in licence fee has been done in terms of a circular of the Railway Board dated 24.6.1999. He has further submitted that the annual sales turnover of the petitioner had been determined on the basis of sale assessment done by the Commercial Inspector and on its basis, the licence fee had been enhanced.

4. The case of the petitioner that Chauraha is a small railway station on which only passenger trains have their stoppage, is not disputed in the counter-affidavit filed by the respondents. A copy of the circular of the Railway Board dated 24.6.1999 has been filed as Annexure-CA2 to the counter-affidavit, and paragraph 5 thereof which has a bearing on the controversy involved, is being reproduced below :

'That in reply to paragraph 3 of the writ petition, it is submitted that the petitioner was granted a licence to run a tea stall at Railway Station Chauraha for five years from 26.10.1998 to 25.10.2003 vide letter dated 15.9.1998, a copy of the letter is being attached as Annexure-1 to the affidavit. A perusal of clause 1 of the letter dated 15.9.1998 would show that the petitioner was bound to pay the revised licence fee from the date of allotment of the licence as and when it was revised.'

5. The circular provides that the licence fee should be revised to 15 per cent in case of pantry cars and 12 per cent of sales turnover in case of refreshment rooms

being managed by the licencees. The revision of the licence fee was also to be done with regard to static units, stalls and trolley selling, etc. It is averred in the writ petition that the stall of the petitioner was inspected by the Chief Commercial Inspector on 6.9.1999 and a copy of the report submitted by him has been annexed as Annexure-1. The report clearly mentions that only passenger trains stop at the said railway station. At the time of the inspection, the Inspector found that samosa and bhujia were kept for the purpose of sale, besides tea. It, therefore, shows that not many items were being sold by the petitioner, presumably, because it is a small railway station where the sale of eatables is very limited. The report of the Inspector is absolutely silent with regard to the quantum of sale. The inspector has also noted in the report that the licence fee was Rs. 2,500 per year. There is no indication at all in the report either to show that the sales were substantial or that the petitioner was having good business. In the counter-affidavit, which has been filed by Sri D.K. Singh, Sr. Divisional Commercial Manager Central Railways, Jhansi, it is not averred that apart from the report of the Commercial Inspector, they had considered any other material on the basis of which it was found that the petitioner was having heavy sales which necessitated revision in thelicence fee. In paragraph 9 of the counter-affidavit, it is averred that the licence fee has been revised reasonably keeping in view the rate of items sold by the petitioner, and the same was not arbitrary. This has again been reiterated in paragraph 12 of the counter-affidavit, wherein it is averred that the annual sale turnover of the petitioner has been determined on the basis of sale assessment done by the concerned Commercial Inspector. A reading of the counter-affidavit shows that the sole basis for revision of the rates is the report of the Commercial Inspector. As mentioned earlier, the report of the Commercial Inspector, which has been filed as Annexure-1 to the writ petition, does not at all mention anything about the sales turnover. On the contrary, the report lends support to the plea of the petitioner that being a small railway station, only passenger trains had their stoppage, and his total sale was very small.

6. The circular of the Railway Board dated 24.6.1999 (Annexure-2 to the counter-affidavit) lays emphasis on sales turnover for the purpose of revision of rates. The facts of the case do not show that any proper assessment of the sales turnover of the petitioner had been done before taking the decision to revise the licence fee. It

may be noted that the revision from Rs. 2,500 to Rs. 7,175 is almost three times. The site was allotted to the petitioner on 15.9.1998 and he has been asked to pay enhanced fee w.e.f. 1.4.1999, that is within 6 months of the initial allotment. The three times enhancement within a short span of 6 months and, that too, without any proper assessment or any other material does not appear to be justified. The revision has been done without following the procedure prescribed in the circular of the Railway Board. In these circumstances, we are of the opinion that the impugned order dated 25.1.2000 revising the licence fee w.e.f. 1.4.1999 deserves to be set aside.

7. In the result, the present writ petition succeeds and is hereby allowed. The impugned order dated 25.1.2000 of the DRM (Commerce], Jhansi (Annexure-2 to the writ petition) is quashed. It is, however, made clear that it will be open to the respondents to make a fresh revision of the licence fee of the petitioner's stall after following the procedure prescribed in the circular of the Railway Board and after affording an opportunity of hearing to him.