IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.4391/2000
Vijay Kumar Chowrasiya & Ors.
Vs.
Union of India & Ors.

S.B. Civil Writ Petition No.4734/2000
Anil Goyal Vs. Union of India & Ors.

S.B. Civil Writ Petition No.4799/01
Munna Lal Goyal & Ors. Vs. Union of India & Ors.

Date of Order :: April, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R.C. Joshi)
Shri G.S. Bapna) for petitioners.
Shri Manish Bhandari for respondents.

REPORTABLE

Aforesaid three writ petitions have been filed by trolley / stall holders selling eatables under licence from the Railways at different railway stations falling in the erstwhile Western Railways prior to reorganization of the Zones. They are aggrieved by the increase in the

amount of licence fee and consequential recovery thereof and have therefore approached this Court by filing these writ petitions. While Writ Petition No.4391/00 has been jointly filed by as many as seventeen petitioners and there are ninety nine petitioners in Writ Petition No.4799/2001 but the Writ Petition No.4734/2000 has been filed by the petitioner Anil Goyal alone. Since the grievance raised in these petitions was founded on similar facts and redressal of which has been sought for by raising similar arguments of law, they were heard together and are now being decided by this common judgment.

Before the rival arguments raised by the respective counsels in the cases are taken up for consideration, I deem it appropriate to first deal with the factual

scenario giving raise to filing of these petitions.

Vijay Kumar Chowrasiya and sixteen others have filed the Writ Petition No.4391/2000 inter alia on the premise that the licence fee payable by the stall / trolley holders on the railway platforms is regulated by instructions / directions issued by the Railway Board from time to time. As per the original policy of the Board, licence fee was determined on fixed rate basis but in between it was sought to be determined on the basis of sales turnover. However finally it was decided that licence fee should be charged only on fixed rate basis. A decision was taken by the Railway Board on 22.10.86 which was circulated by the Chief Commercial Superintendent (Catering) of the Western Railway in his

Circular dated 11.11.86 according to which it was decided that existing licence fee should be revised by 25% to 50% after a proper study at the time of renewal. Consequently, the Divisional Manager, Railways issued a directive on 8.9.1987 that the licence fee shall be increased by 25% to 50% as directed by the Railway Board. Various vendors thereupon submitted representations to the Chief Commercial Superintendent (Catering), who by his letter dated 30.8.88 decided that licence fee for Pan Bidi stalls and trolleys/trays be increased only by 25% instead of 50%. In spite of this however the respondents started revising the licence fee arbitrarily. The vendors at Jaipur Railway Station were therefore compelled to file S.B. Civil Writ Petition No.4123/91 titled National Federation of Railway Porters,

Vendors and Bearers Vs. UOI. This writ petition was decided on 11.12.1992 with the direction that licence fee can be revised only in accordance with the decision of the Railway Board dated 22.10.86 as contained in the Circular of the Chief Commercial Superintendent dated 11.11.87. The respondents have however served a notice on the petitioners dated 2.8.2000 whereby certain outstanding dues have been shown against the petitioners. The petitioners have been directed to deposit the arrears of licence fee from 1.4.85 to 31.12.1999. This according to the petitioners was not in conformity with the Railway Board decision dated 22.10.86 in as much as no prior notice was served upon the petitioners. Moreover, the licence fee cannot be increased retrospectively by the impugned notice

dated 2.8.2000 in relation to past 15 years.

Munna Lal Goyal and ninety eight others have filed the Writ Petition No.4799/01 who were all licensees of the railways to sale eatable etc. on their platforms at different places in Jaipur Division of Western Railways. They also relied on the aforesaid judgment of the co-ordinate bench of this Court dated 11.12.1992. Challenge has been made to the demand notice dated 31.7.01 served upon them demanding the increased licence fee w.e.f. 1.4.1990 to 30.6.1999. They have also impugned this levy on the ground that the same was not in conformity with the Railway Board decision dated 22.10.86 and was contrary to the aforesaid judgment of the learned Single Judge and further that licence fee could not have been increased

retrospectively for past nine years.

Anil Goyal, the sole petitioner in Writ Petition No.4734/2000 has also raised the same grievance on the similar grounds challenging the demand notice dated 2.8.2000 whereby the enhanced licence fee w.e.f. 1.4.1985 to 31.12.1999 has been demanded from him. He has the licence to run the stall and refreshment room and on Railway Station Marwar Junction in Ajmer Division of the Western Railways. He claims to have deposited the entire licence fee in the sum of Rs.22,052/- upto 31.12.1996. His grievance is that the respondents by order dated 26.12.1996 revised the licence fee retrospectively and now are requiring him to pay a sum of Rs.29,618/- instead. He claims to have deposited the sum of Rs.21,728/- for refreshment room and another sum of

Rs.7890/- for stall as licence fee for the period from 1.1.97 to 31.12.2000. His case is that there was no outstanding dues against him upto 31.12.2000. Now suddenly by the impugned demand notice dated 2.8.2000 he has been called upon to deposit the sum of Rs.1,24,177/- as arrears of licence fee for refreshment room and a sum of Rs.32,045/- for stall. These writ petitions have thus been filed against the backdrop of the facts enumerated above.

I have heard Shri G.S. Bapna, the learned counsel for the petitioners in the first two writ petitions and Shri R.C. Joshi, the learned counsel for the petitioner in the third writ petition and Shri Manish Bhandari, the learned counsel for the respondents in all three writ petitions.

Shri G.S. Bapna, the learned counsel for the petitioners argued that the increase in the licence fee retrospectively by impugned demand notice was wholly unsustainable in law as the same was contrary to the Railways Board's decision dated 22.10.86. Relying on the judgment of this Court in National Federation,supra, Shri Bapna argued that the controversy has been settled at rest by this Court in the said judgment in which no notice was given to the petitioners prior to respective increase in the amount of licence fee in relation to past 15 years and it was held that the authority at the divisional headquarters or any other subordinate authority cannot take a decision contrary to the decision taken by the Railway Board. It was argued that the licence fee at any rate cannot be

increased retrospectively. This Court in the said judgment has authoritatively held that the licence fee cannot be increased by more than 25% to 50% whereas the proposed increase in the impugned notice is to the extent of even 3,000%. Referring to the chart enclosed with the writ petition as Schedule A, Shri Bapna explained that the petitioners have been regularly making payment of the licence fee right from 1985 to 1989 as demanded and now suddenly after 15 years, the amount of licence fee has been enormously raised making such increase effective from 1st April, 1985. The petitioners who are only small time entrepreneurs are earning their livelihood by selling eatables on the platforms and they can ill afford such a multifold increase in the amount of licence fee and that too after such a long

span of time.

Shri R.C. Joshi, the learned counsel for the petitioner in the third petition referred to the allotment order dated 31.7.91 under which the licence was given to the petitioners to run the refreshment room and stall at the railway platform for a period of five years. In this order, the amount of licence fee, complete rent, water and electricity charges and cess was indicated with the stipulation that they are provisional. It is submitted that the Assistant Commercial Manager of the office of the D.R.M. later clarified that the amount of licence fee was inclusive of the amount of rent therefore the rent was not to be charged separately. However the respondents by order dated 26.12.96 finalized the amount of licence fee which was earlier fixed on provisional basis,

thus exercised the option available with them to finalise the provisional rate of licence fee by impugned order dated 2.8.00 and revised the licence fee w.e.f. 1.4.85 till 31.12.99 retrospectively which was wholly unsustainable in law as no retrospective increase in the amount of licence fee could be made. The impugned demand notice dated 2.8.2000 is bad in law also because it was issued in utter violation of the principles of natural justice in as much as no opportunity of hearing was given to the petitioners prior to passing the said order. Shri R.C. Joshi argued that action of the respondents not only in making the respective increase in the licence fee but also demanding such increased licence fee from the petitioner w.e.f. 1.4.85 suffers from total non application of mind because the allotment

of the refreshment room and the stall was made to the petitioner by order dated 31.4.91 w.e.f. 1.9.91 and therefore the licence fee w.e.f. 1.4.85 could not be demanded from them in any circumstances. Shri R.C. Joshi argued that as against the demand notice amount of Rs.2,71,499/- as licence fee, the petitioner has deposited Rs.2,88,346.75 paise. Thus he has deposited a sum of Rs.16,323.75 in excess of what according to respondents was recoverable which amount is required to be refunded by the respondents. After filing the writ petition, the petitioner Anil Goyal harassed as he was with the enormous increse in the amount of licence fee, wrote a letter dated 1.7.2001 for termination of the contract and the contract was actually terminated on 31.7.2001. He therefore prayed that the

respondents be required not only to refund the amount paid in excess as aforesaid but the amount as may be found refundable consequent upon the increase in the licence fee being declared illegal.

The learned counsel for the petitioners have therefore prayed that the impugned orders increasing the amount of licence fee be declared illegal and unconstitutional and therefore be quashed and set aside.

On the other hand, Shri Manish Bhandari, the learned counsel for the respondents opposed the writ petition. He raised the objection about the maintainability of the writ petitions on the ground that the agreement was executed between the parties to these petitions which contains the stipulation to the effect that in the event of any dispute

between them the matter shall be required to be referred to arbitration. The petitioners cannot be permitted to directly approach this Court by filing writ petition without first availing the remedy of arbitration. In any case, the enhancement in the rate of licence fee cannot be made subject matter of examination by this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India. Arguing on the merits of the case, Shri Manish Bhandari referred to agreement, copy of which has been placed on record and submitted that according to clause (1) of the agreement, the amount of licence fee was liable to revision and when the petitioners agreed to the revision by the administration at any time later, they cannot question the authority of the Railways to do so. He

denied that the licence fee has been increased contrary to the decision of the Railway Board. In fact, the revised instructions were issued by the Railway Board and were thereafter circulated vide order dated 21.4.1984 and 2.1.1987. Such Circulars, according to him, were recirculated by the respondents vide order dated 12.10.89, 6.12.90 and 12.8.91. Copies of some of these Circulars have been placed on record. It was argued that some of the petitioners have accepted the increase in the amount of the licence fee and they in fact made payment also without any protest. As regards the circular of the Chief Commercial Superintendent (Catering) dated 11.11.86, it was explained that the revision of the licence fee has been made according to instructions and directives made by the

Circular dated 21.4.1984 and it is only in that context that the reminders were issued and the meeting referred to therein was held in that regard at Delhi on 29/30.9.1986 but this meeting never reversed the main policy decision of the Railway Board dated 21.4.84 which provided for the revision of the licence fee based on 3 to 5% of sales turnover and rent at the rate of 11% of the capital cost of land per annum. The assessment of the licence fee based on such factors cannot be questioned by the petitioners. It was argued that even if any authority or the official at the division level has earlier passed an order fixing licence fee at a lower rate, such fixation cannot be allowed in law if it is contrary to the policy decision taken by the Railway Board. Explaining his contention about the

judgment of this Court in National Federation (supra) Shri Bhandari submitted that the aforesaid judgment was passed by learned Single Judge under the presumption that the Railway Board circular dated 21.4.1984 stood withdrawn on 2.1.87 whereas that was not correct. While construing the Circular dated 2.1.87 the Court has misread the word “supervision” as “supersession”. The original Railway Board Circular dated 21.4.1984 having not been withdrawn, would still hold field. Writ petition filed by the National Federation was not correctly decided. In fact, according to him, a subsequent petition filed on the same subject matter by M/s Indian Railway Catering Cooperative Society Limited was rejected. The judgment of the learned Single Judge in National Federation in any case however has been

challenged before the Division Bench. It was denied that there was any violation of principles of natural justice as the demand notice dated 2.8.2000 was in itself a notice to the petitioner with the clear stipulation that they can satisfy the Railways with the relevant documents pertaining to the arrears especially if they have already paid the required amount. Shri Bhandari submits that the Chief Commercial Superintendent (Catering) in issuing the Circular dated 11.11.86 has acted in excess of the authority and outside his jurisdiction while stating in para 3 thereof that “to start with, the existing licence fee should be revised by 25 to 50% after a proper study at the time of renewal.” According to him there was no such decision of the Board and therefore it was plainly a misstatement on his part.

Explaining his stand with regard to increase in the amount of licence fee w.e.f. 1.4.85, Shri Bhandari argued that the licence fee even though revised w.e.f. 1.4.85, but was made effective from 1.9.91. In Anil Goyal’s case it was argued that in any case he deposited without protest the current installment of lump sum licence fee w.e.f. 1.7.98 and thereafter when it was again revised w.e.f. 1.4.95 as per the Railway Board's policy issued on 21.8.98. The petitioner therefore cannot be allowed to challenge it now.

Shri Bhandari in support of his arguments placed reliance on the judgment of the Hon'ble Supreme Court in N.B. Krishna Kurur VS. UOI & Ors., Civil Appeal No.4897/02 and other seven matters decided on 29.3.2005, the Division Bench judgment

of this Court in Indian Railway Catering Cooperative Society Vs. UOI, D.B. Civil Special Appeal (W) No.752/04 and other sixteen connected appeals decided on 26.7.2005 and a single bench judgment of this Court in S.B. Civil Writ Petition No.2465/04, Nihchal Dass and Company & Ors. Vs. UOI & Ors. and other connected matters decided by judgment dated 11.10.2004. He therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

Perusal of the judgment dated 11.12.1992 passed by co-ordinate bench of this Court in National Federation (supra) reveals that it was held in that case that the Railway Board having decided to

increase the existing licence fee only by 25 to 50%, no functionary of the Railways subordinate to the Board could take a contrary decision, therefore, the demand of the increased amount of licence fee in contravention of the Circular dated 11.11.86 was held to be illegal and direction was issued that such demand shall not be acted upon and given effect to against the petitioners in that case. Examination of the Circular dated 11.11.86 further reveals that this Circular was issued by Chief Commercial Superintendent (Catering) of the Western Railways. In the said circular, reference has been made to the order dated 21.4.84 issued by the Board, wherein the policy was laid down with regard to revision of licence fee and meant for various catering / vending contractors that their licence fee should

be fixed on the basis of sales turnover. It was stated that issue in regard to licence fee of catering rent contracts was discussed in the meeting of CCSs / CMS's held with Members Traffic of the Railway Board on 29th and 30.9.1986. Para 3(1) of the minutes of this meeting which was circulated under Railway’s letter No.86/TGT/154/1 dated 22.10.86 was reproduced in the said Circular and it would be befitting to again quote the said extracts as reproduced therein:-

> “Licence fees of catering / vending contracts:
>
> At present the licence fee has been fixed as a %age of sales turnover varying between 3 to 5. There is no proper means of checking the sales turnover. Therefore, there is a need for change in the system of fixation of licence fees. The consensus of the opinion was that the Railways

> should fix a lumpsum licence fee for each stall/trolley depending on the importance of the stations, location of the unit, items permitted to be sold etc. To start with, the existing licence fees should be revised by 25 to 50% after a proper study at the time of renewal. As new contract is signed at the time of renewal, it is upto the outgoing contractor to accept it or leave it."

On the authority of that Railway Board letter dated 22.10.86, the Chief Commercial Superintendent (Catering) in para 3 of the said Circular clearly stated that "the Board have now desired that the existing licence fees should be revised by 25 to 50% after proper study of the time of renewal." It was therefore required that immediate action be taken to revise existing licence fee of catering vending contract by 25 to 50% on the basis laid

down by the Railway Board after proper study. In the concluding para of the Circular again a reference was made to the meeting of the Members traffic and it was directed that progress made with regard to increase in the existing licence fee to be fixed on the basis of adhoc increase as decided in that meeting should be advised. The Railway Board issued its policy notice letter dated 21.4.1984. In that also it was decided that rent be fixed and recovery at the rate of 11% of the capital cost of rent per annum and however the licence fee should be linked with the assessed sales turnover of tea stall and levied between 3 to 5% of the assessed sales turnover depending upon the local conditions such as passenger traffic, quantum of sales and profitability of the catering / vending units. It was further

stated that revision of rent and licence fee should be carried out once at 5 years which was the tenure preferably coinciding with the length of contracts. Subsequently, the Railway Board vide their letter dated 2.1.87 directed that the element of rent and licence fee should be combined and a lump sum licence fees covering the element of rent as licence fee fixed on 1.4.85 should be recovered from the contractors. Perusal of the Railway Board letter dated 2.1.87 reveals that such lump sum fee was required to be determined by a Committee of three officers not below the rank of Senior Scale. In para 4 of the letter those factors which the Committee should take into account while fixing such lump sum fee were enumerated which included existing rent and licence fee, number of vendors / holders, importance of the

station from the point of view of passenger traffic and demand of items sold location of the stall on that station, size of the stall / refreshment room etc. Based on the instructions issued by the Railway Board, the Western Railways through its Chief Commercial Superintendent (Catering) circulated a letter dated 12.10.89 to all their divisions requiring them to give effect to the Railway Board policy letter dated 2.1.87. The Western Railway through letter dated 6.10.92 again circulated a letter to the divisions impressing upon them to assess the sales turnover of the stall / vendors and fix the licence fee between 3 to 5% of the total turnover w.e.f. 1.4.85 and rent at the rate of 11% and recover the same along with licence fee w.e.f. 1.4.85. The Chief Commissioner

Superintendent (Catering) again thereafter addressed a letter to the DRM, Bombay Central copy of which was endorsed to all the vendors to explain the doubt whether rent at the rate of 11% of the capital cost of the land was also recoverable from catering / vending contractors because the Bombay Division has revised the licence fee by 20% increase on pro rata basis w.e.f. 1.1.91 provisionally. Attention was invited to para 3 of the letter dated 6.12.90 earlier addressed to all the DRM's and it was clarified that revision of licence fee w.e.f. 1.1.91 on Bombay Division and w.e.f. 1.4.90 on rest of the division by 20% is of the lump sum fee.

Considering all these Circulars issued by the Railway Board and consequential letters sent by Western Railway Headquarters to all their divisions would

thus reveal that while in the initial policy circular of the Railway Board dated 21.4.1984, the decision was taken to fix and realize the rent at the rate of 11% of the rent cost. It was also intended to link the licence fee with the assessed sales turnover upto a maximum of 5% depending upon the local conditions and other factors like passenger, traffic, quantum of sales and profit etc. Wherever the licence fee was below 3%, it was decided to be increased upto 3%. Subsequent to the promulgation of the earlier catering policy of the Railways as contained in the Railway Board letter dated 21.4.84, various Zonal railways faced difficulties in its implementation, specially in working out rent and the licence fee. The Railway Board thereupon obtained report from all other Zonal

Railways. The issue was discussed in the meeting with Additional C.C.Es / Dy. C.C.Ss in the Western Railway on 9.2.87 and 10.2.84. The Railway thereafter again promulgated a new catering policy in its letter dated 2.1.87 in which it directed that “normally the lump sum licence fee should be determined at the time of contract or at the time of length of the contract” and further that “recovery of licence fee and rent as per existing rule may continue till such time renewal is due.” It was further decided that Railways should fix the lump sum licence fee even from the contractors during existing contract which should include element of rent as well as licence fee. Thus the two elements were merged into one. The whole dispute is with regard to fact whether the earlier Railway letter dated 21.4.84 was

superseded at any time either by this letter dated 2.1.87 or by the decision taken by the Railway Board in meeting with the Members Traffic referred to in the Circular dated 11.11.86. The learned counsel for the respondent has urged that the letter dated 2.1.87 has used the words “supervision” and not the “supersession” while providing the guidelines for fixation of rent and licence fee for catering contract and that the learned Single Judge in the judgment has misread the words “supervision” as “supersession” and therefore has wrongly taken para 1 of the letter of the Board dated 21.4.84 to have been superseded. According to him, therefore, the licence fee could be levied to 3 to 5% of the assessed sales turnover and therefore there can no such ceiling that their licence fee could be revised to

25 to 50% only as held by the learned Single Judge in National Federation (supra). This argument however is not acceptable for the simple reasons that the Railway Board’s letter dated 21.4.84 had provided for certain method to be followed in assessing the rent and licence fee by giving separate guidelines for each of them and the letter dated 2.1.87 has also provided the guidelines for fixing the rent and the licence fee but with description as lump sum licence fee which would cover the elements of rent as well as licence fee. Both the guidelines are therefore mutually exclusive and it cannot be therefore accepted that they would co exist at the same time and would be applied together. Although the use of the word supervision could be a case of either inappropriate word or even a typographical

error but even if that is not accepted to be so, the intention of substituting the earlier instructions contained in the Board's letter dated 21.4.84 by the new instructions is clearly manifested on the wordings used in the opening of the letter dated 2.1.87 where it was stated "in supervision of the instructions contained in para 1 of the Board's letter under reference regarding fixation of rent and licence fee for catering contracts, Ministry of Railways have decided to give new guidelines.

Arguments of the respondents that the writ petition is not maintainable because their exists stipulation in the agreement to the effect that in case of dispute between the parties, the same shall be referred to arbitration cannot be accepted in view of the fact that their already exist a

judgment on the same subject matter and increase in the amount of licence fee has been made by the respondents retrospectively making the same effective in all cases w.e.f. 1.4.85 except in one and that too without any notice of hearing to the respondents, such increase was thus made in violation of principles of natural justice and this coupled with the fact that the writ petitions have remained pending before this Court for last more than six years, relegating to the petitioners to the remedy of arbitration at this stage would be too harsh upon them. This argument is therefore liable to be rejected. Apart from the fact that the licence fee has been increased much more than what was permissible in terms of the Railway Board Circular dated 22.10.86, no such increase could be made

retrospectively covering the period as far back as 1.4.95 onwards and 1.4.99 onwards i.e. covering period 15 years / 9 years anterior to the date of impugned demand notices and that too without any notice and opportunity of hearing to the licensee to retrospective increase the existing amount of licence fee. This therefore being arbitrary exercise of power is accordingly held illegal. This is however in addition to the principal view which I have taken that no increase in excess of what was allowable by the Railway Board dated 22.10.86 could be made by any authority inferior to the Railway Board.

Coming now to the other augments which the learned counsel for the respondents raised that apart from misreading the Railway Board letter dated 2.1.87 as aforesaid, the learned Single Judge was

not correct in solely relying on the Circular dated 11.11.87 because the Chief Commercial Superintendent (Catering) had misquoted the Board as having deciding that existing licence fee should be replaced by only 25 to 50% after proper study of the time of renewal. Having gone through the reply filed in all the three petitions, I have not been able to find any such assertion made in any of them to this effect as was sought to be argued by learned counsel in the course of arguments. When the Chief Commercial Superintendent (Catering) as referred to the Board's letter dated 22.10.86, has even reproduced a part of it wherein the decision taken in the Board meeting that Member's traffic was referred to the effect that the existing licence fee should be revised from 25 to 50% after

proper sty at the time of renewal and when this was the only decision which the Zonal Headquarters in the said Circular sought to convey to all the divisions falling within their control, such a spacious plea which would have the effect of rendering contents of the letter as incorrect and its meaning doubtful, cannot be accepted particularly when the respondents have not disputed about the Board having issued such Circular and the said decision in letter 86-JGT-154/1 dated 22.10.86 to the West General Headquarters. Not only having not denied the existence of such letter or its Circulation to various Zonal Headquarters, having not even produced the said letter which perhaps is the only material document withheld by them although all other relevant letters including other two

instructions dated 21.4.85 and 2.1.87 containing policy circulated by the Board have been placed on record. Apart from the fact that an adverse inference should arise against the respondents for withholding that letter, its contents as reproduced in the letter dated 11.11.86 should have to be accepted as correct. The catering policy of the Railways as originally promulgated in the Railway Board letter dated 21.4.84 shall have to be therefore read with the modification as brought about in the Railway Board subsequent letter dated 22.10.86 and 2.1.87 and according the Railway Board having deciding the fact increase in the amount of existing licence fee by only 25 to 50% after proper study at the time of renewal, no increase beyond what has been permitted by the Railway

Board can be made by any of the authority inferior to the Railway Board itself. The respondents are not brought on record any other decision taken by the Railway Board contrary to one contained in its letter dated 22.10.1986. I am therefore not inclined to uphold the argument that the National Federation, supra, was not correctly decided.

So far as the judgment of division bench in Indian Railway Catering Cooperative Society, supra, that was a case in which challenge was made to the New Catering Policy, 2000, especially para 15.4 thereof relating to fixation of licence fee. The said para provided that licence fee would be 12% of estimated annual sales turnover for both general and reserve categories. Additionally the demand notice was also challenged on the

ground that it was retrospective. By impugned demand notice, the recovery of the licence fee was being sought to be made w.e.f. 1.7.99 to 31.12.2003. The division bench repealed the arguments holding that the New Catering Policy, 2000 is perfect and also rejected the argument that it was retrospective because the new catering policy was made effective from 1.7.99. The judgment of learned Single Judge in Nihcal Dass & Co., supra, was a case in which challenge was made to the New Catering Policy, 2000 on the same ground that licence fee their under was being sought to be recovered retrospectively w.e.f. 1.7.99. These judgments are distinguishable in so far as the present case is concerned and cannot be applied herein because the core of the dispute between the parties herein is that

as to what extent licence fee can be increased. So far as the case of N.B. Krishna Kupur, supra, is concerned, that was a case in which the bunch of appeals was decided. In one set of the case, the question raised was that the appellant filed writ petition in the high court challenging the fixation of licence fee for the period from 1.8.95 to 31.7.2000 on the ground that it had been increased retrospectively contrary to the terms of the agreement. The licence of the appellant was renewed for a period of 5 years w.e.f. 1.8.95 to 31.7.2000 and 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 such revised licence fee will be operative from the

commencement of the financial year in which the revision takes place. The division bench of the High Court rejected the argument of retrospectivity and the Hon’ble Supreme Court upheld the same holing that this did not amount to increase in licence fee with retrospective effect. In the present case however the dispute is not only confined to the increase in the licence fee retrospectively but also increase is being challenged on the ground that such increase is not in terms of the policy of the Railway Board as in force during the relevant period and, therefore, did not permit the respondents to increase the existing licence fee beyond 25 to 50% of the existing licence fee. No such case has been set up by the respondents that there was stipulation in the agreement between

the parties that as and when the Railway decides to increase the licence fee, such increase could be effected retrospectively covering even the period of past 10 or even 15 years and even beyond that so as to make it effective from the date of commencement of the contract.

Copy of the agreement has been placed in the C.W. No.4391/2000. Having gone through the agreement, I have not even able to locate any stipulation therein to the effect that the respondents Railways would be able to enhance the licence fee retrospectively going far beyond the period even the commencement of the renewal block of either three years or five years. Similar agreement has also been placed on record in 4799/01 in which also no such stipulation could be found. The respondents have not placed on record

any such order or direction issued at the time of renewal of agreement which provided for increase in the amount of licence fee on provisional basis, in the first instance, reserving their right to revise it finally later retrospectively from the date when such licence was renewed. It was only in the writ petition filed by Anil Goyal that when the respondents awarded the contract to him by order dated 31.7.1991, it was stated that the fee indicated in that order was provisional and was liable to be revised. But then, when the order of revision was issued on 26.12.1996 whereby it was revised w.e.f. 1.1.97 which falls within the period of 5 years for which the licence fee was issued to the petitioner. The respondents thus exhausted their right to revise the licence fee thereby

finalising the provisional licence fee and the respondent could not have again increase it. This however is clarified that except for the period covered in these cases, if the Railway Board itself at any point of time revise its catering policy contained in Circular dated 22.10.86, such revised policy would apply even to the petitioners.

Upshot of the aforesaid discussion is that all the three writ petitions are allowed and the impugned demand notice and consequential recoveries, if any are made from the petitioners increasing the licence fee in excess of the 50% of the existing licence fee is held to be illegal and the petitioners are held entitled to refund / adjustment of this amount. Compliance of the judgment be made within three months from the date of copy of this

judgment is produced before the respondents.

(Mohammad Rafiq),J.

RS/-