

LALA RAM (D) BY L.R. & ORS.

v.

UNION OF INDIA & ANR.

(Civil Appeal Nos. 243-247 of 2003)

JANUARY 24, 2013

[DR. B.S. CHAUHAN AND V. GOPALA GOWDA, JJ.]

Fee – Licence fee – Shops situated in a busy market of Old Delhi – Notice dated 7-8-1980 issued by the Railways Authorities enhancing licence fee in respect of the said shops from Rs.21 per sq yards to Rs.270 per sq yards per annum – Representations thereagainst by the shop licencees (appellants) – Railway Administration, after considering the case of the appellants, passed order dated 25-5-1987 enhancing the license fee @ Rs.270 per sq. yards with retrospective effect from 1-11-1980 – Writ petitions filed by the appellants – Dismissed by the High Court – On appeal, held: The enhanced license fee being 13 times, seems excessive, and though such observation was also made by the Railway Minister, but the enhanced license fee would be illusory when compared with the prevailing license fee in the said market as applicable to private shops – A State instrumentality must serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others – Merely because the appellants (shop licencees) have been occupying the shops in question for a prolonged period of time, they cannot claim any special privilege – The enhanced license fee cannot be held to be unreasonable or arbitrary, and as warranting any interference by a court of equity – However, finding of the High Court that the notice dated 7-8-1980 remained unchallenged and therefore, application of order dated 25-5-1987 with retrospective effect was justified, not factually correct inasmuch as after receipt of notice dated 7-8-1980, appellants had made representations before the respondents-authorities

- A *raising all their grievances and certain interim relief was also granted pursuant to certain observations made by the Railway Minister – Thus, order dated 25-5-1987 should not be applied retrospectively – Enhanced license fee may be recovered from the appellants from the said date in accordance with law*
- B *– Interim order passed earlier vacated.*

Constitution of India, 1950 – Articles 38 and 39 – Welfare state – Meaning, features and obligations of – Discussed – Maxims – “Salus Populi Suprema lex”.

- C The appellants were licensee of shops situated in a busy market of Old Delhi which were in their occupation since pre-independence. They were regularly paying license fee to the Railways. In 1977, the said licence fee was increased to Rs.21 per sq. yards per annum. The
- D appellants received a notice dated 7.8.1980 from the respondents-Railways Authorities, about increase in the licence fee from Rs.21 per sq. yards to Rs.270 per sq. yards per annum. Representations made by the appellants’ association were considered by the Railway
- E Minister who observed that the auction of the said shops was not reasonable and also stated that the revision in license fee was excessive and expressed his opinion with respect to reconsidering the whole case and increasing the license fee by 5% to 10%. The Railway
- F Administration, after considering the case of the appellants, passed order dated 25.5.1987 to enhance the license fee @ Rs.270 per sq. yards with retrospective effect from 1.11.1980. Aggrieved with the notice dated 25.5.1987 and also the letter dated 29.7.1987, terminating
- G licences to operate the shops in question and to vacate the premises for failing to deposit outstanding dues on account of non-payment of licence fee, the appellants filed writ petitions before the High Court. The High Court dismissed the writ petitions and therefore the instant
- H appeals.

The appellants submitted that once the enhanced license fee had been disapproved by the Railway Minister and the matter was reconsidered in light of the observation made by the said Minister stating that the said enhancement was excessive and that the license fee could be enhanced by 5% to 10%, the notice impugned was unreasonable and arbitrary. It was further submitted that being a welfare state, it is the duty of the State to provide shops at nominal license fee.

Disposing of the appeals, the Court

HELD: 1. In the case at hand, the enhanced license fee cannot be held to be unreasonable or arbitrary, and as warranting any interference by a court of equity. Undoubtedly, the enhanced license fee being 13 times, seems excessive, and such an observation was also made by the Hon'ble Railway Minister in order dated 11.4.1981, but the enhanced license fee would be illusory if the same is compared with the prevailing license fee in the said market as applicable to private shops. [Para 7, 8] [585-E-G]

2.1. A welfare state denotes a concept of government, in which the State plays a key role in the protection and promotion of the economic and social well-being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to "Greatest good of greatest number and the benefit of all and the happiness of all". It is important that public weal be the commitment of the State, where the state is a welfare state. A welfare state is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a Welfare state is social insurance. Anti-poverty

- A programmes and a system of personal taxation are examples of certain aspects of a Welfare state. A Welfare state provides State sponsored aid for individuals from the cradle to the grave. However, a welfare state faces basic problems as regards what should be the desirable
- B level of provision of such welfare services by the state, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare state is one, which seeks to ensure maximum happiness
- C of maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of
- D the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in
- E society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives to achieve the same.
- F [Para 9] [586-C-H; 587-A-B]

- 2.2. A welfare state must serve larger public interest. "*Salus Populi Suprema lex*", means that the welfare of the people is the supreme law. A State instrumentality must
- G serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own
- H resources, as it cannot serve such higher purpose while

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in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the absence of any proof of violation of their rights, such concession cannot be granted to them. [Para 8] [585-G-H; 586-A-B]

Dantuluri Ram Raja & Ors. v. State of Andhra Pradesh & Anr. AIR 1972 SC 828: 1972 (2) SCR 900; *N. Nagendra Rao & Company v. State of Andhra Pradesh* AIR 1994 SC 2663: 1994 (3) Suppl. SCR 144 and *N.D. Jayal & Anr. Union of India & Ors.* AIR 2004 SC 867: 2003 (3) Suppl. SCR 152 – relied on.

3. The High Court observed that the letter/notice dated 7.8.1980, enhancing the rate of license fee remains unchallenged, and therefore, the application of notice dated 25.5.1987, with retrospective effect is justified. This finding is not factually correct. Notice dated 7.8.1980, enhancing the license fee was received by the appellants, and representations were filed by them through their Association, raising all their grievances to the effect that during a period of 30 years, the license fee paid by them had been enhanced about 15 to 20 times, without any justification and hence, they demanded justice. The same were considered by the then Railway Minister, and orders dated 26.9.1980 and 11.4.1981 were passed by him, observing that the license fee may be revised after every 5 years on the basis of justice and equity. Certain interim relief was also granted. Thus, the aforesaid demands should not have been made to apply with retrospective effect from the year 7-8-1980. The notice dated 25.5.1987 must not be applied retrospectively, i.e., w.e.f. 7-8-1980. However, the enhanced license fee may be recovered from the appellants from the said date in accordance with law. The interim order passed earlier stands vacated. [Para 10] [587-D-H; 588-A]

A Case Law Reference:

1972 (2) SCR 900 relied on Para 9

1994 (3) Suppl. SCR 144 relied on Para 9

B 2003 (3) Suppl. SCR 152 relied on Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 243-247 of 2003.

C From the Judgment & Order dated 13.08.2001 of the High Court of Delhi at New Delhi in Civil Writ Petition No. 349, 2812-2814 and 2822 of 1989.

WITH

C.A. Nos. 268-279, 263-266 & 248-262 of 2003.

D Altaf Ahmad, P.H. Parekh, Anil Makhija, Lalit Chauhan Pallavi Sharma, Faisal Sherwani (for Parekh & Co.) for the Appellants.

E Chandra Bhusan Prasad, Vikas Bansal, Shreekant N. Terdal, Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

F DR. B. S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 13.8.2001, passed by the High Court of Delhi at New Delhi in Writ Petition Nos.349, 2812-2814 and 2822 of 1989 by way of which, the High Court dismissed the said writ petitions challenging the notice dated 25.5.1987, issued by the Divisional Railway Manager, Northern Railway, calling upon the appellants to pay the licence fee for the railway property in their use, at the enhanced rate, and also letter dated 29.7.1987 terminating licences to operate the shops in question and to vacate the premises for failing to deposit outstanding dues on account of non-payment of licence fee.

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2. Facts and circumstances giving rise to these appeals are that: A

Each of the appellants is a licensee of the shops in dispute admeasuring 4.22 sq. yards upto 100 sq. yards situated at Qutub Road, Sadar Bazar, Delhi which have been in their occupation since pre-independence. As per the appellants, there has been previous litigation in respect of this very land and the same became evacuee property under the Administration of Evacuee Property Act, 1950 and was taken over by the Custodian. The appellants, being licensees of the shops, have regularly been paying the license fee to the Railways, at rates which were mutually agreed upon and have also been increased in the past. In 1977, the said licence fee was increased to Rs.21 per sq. yards per annum, while earlier, it was fixed at only Rs.18 per sq. yards per annum. The appellants received a notice dated 7.8.1980 from the respondents-Railways Authorities, about increase in the licence fee from Rs.21 per sq. yards to Rs.270 per sq. yards per annum. Representations made by the appellants' association were considered by the Hon'ble Railway Minister and order dated 26.9.1980 was passed, staying the auction thereof, with a further direction to examine their grievances. The Hon'ble Railway Minister further considered the representation of the appellants' Association and observed that the auction of the said shops was not reasonable. He also stated that the revision in license fee was excessive and expressed his opinion with respect to reconsidering the whole case and increasing the license fee by 5% to 10%. The Railway Administration, after considering the case of the appellants, again passed an order dated 25.5.1987 to enhance the license fee @ Rs.270 per sq. yards with retrospective effect from 1.11.1980. The appellants' Association had been making representations since receiving the aforementioned notice for enhancement dated 25.5.1987, and ultimately filed writ petitions before the High Court which have been dismissed. Hence, these appeals.

H

- A 3. Shri Altaf Ahmed, learned Senior counsel appearing for the appellants has submitted that once the enhanced license fee had been disapproved by the Hon'ble Railway Minister and the matter was reconsidered in light of the observation made by the Hon'ble Minister stating that the said enhancement was
 B excessive and that the license fee could be enhanced by 5% to 10%, the notice impugned was unreasonable and arbitrary.

- C The Ministry of Urban Development issued guidelines dated 14.1.1992 as how the license fee could periodically be revised. Therein, it was provided that the standard license fee should be determined as per the provisions of the Rent Control Act applicable to a State. In the instant case, the Delhi Rent Control Act is applicable, and therefore, the standard license fee as provided therein ought to have been calculated. The
 D Delhi Rent Control Act was amended in 1963, making it applicable to the premises belonging to the Government as well.

- E The respondents have filed an affidavit before this Court on 5.9.2002, giving a particular mode of calculation and even if the same is applied, the enhanced license fee would not be enhanced to this extent, and the High Court has erred in not deciding any issue raised by the appellants and in dismissing the writ petitions in a cursory manner. Thus, the said appeals deserve to be allowed. Being a welfare state, it is the duty of
 F the State to provide shops at nominal license fee.

- G 4. Per contra, Shri Chandra Bhushan Prasad, learned counsel appearing for the respondents, has submitted that the appellants have been enjoying the said property at nominal license fee. The property is situated in a very busy market of old Delhi. The area of the shops varies from 4.22 sq. yards to 100 sq. yards. Therefore, considering the geographical situation of the shops, alongwith the other facilities provided to the appellants, such enhanced license fee is, in fact, nominal. The High Court has rightly dismissed their writ petitions and no
 H interference is called for.

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5. We have considered the rival submissions made by A
learned counsel for the parties and perused the record.

6. The High Court has taken judicial notice of the facts and
surrounding circumstances, considered the geographical
situation of the suit properties and held as under: B

"For a similarly situated shop if it was owned by a private
persons, the rental/licence fee would have been much
more. The mere fact that the Railway is a State Enterprise
does not mean that on the premises in
occupation of the petitioner and other persons. State C
enterprise must not look elsewhere for funds. It must
generate funds through the activities which are undertaken
by it for providing services to the public at large. It cannot
be expected to run in deficit..... Since the action of the
first respondent is reasonable, we decline to interfere with D
the aforesaid enhancement."

7. We are of the considered opinion that no fault can be
found with the aforesaid observations and no interference is
required. The enhanced license fee cannot be held to be E
unreasonable or arbitrary, and as warranting any interference
by a court of equity.

8. Undoubtedly, the enhanced license fee being 13 times,
the earlier license fee amount seems excessive, and such an
observation was also made by the Hon'ble Railway Minister in F
order dated 11.4.1981, but the enhanced license fee would be
illusory if the same is compared with the prevailing license fee
in the said market as applicable to private shops. A welfare
state must serve larger public interest. "*Salus Populi Suprema*
lex", means that the welfare of the people is the supreme law. G
A state instrumentality must serve the society as a whole, and
must not grant unwarranted favour(s) to a particular class of
people without any justification, at the cost of others. However,
in order to serve larger public interest, the State instrumentality
must be able to generate its own resources, as it cannot serve H

A such higher purpose while in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the absence of any proof of violation of their rights, such concession cannot be granted to them.

B **Welfare State means:**

9. A welfare state denotes a concept of government, in which the State plays a key role in the protection and promotion of the economic and social well-being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to "Greatest good of greatest number and the benefit of all and the happiness of all". It is important that public weal be the commitment of the State, where the state is a welfare state. A welfare state is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a Welfare state is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a Welfare state. A Welfare state provides State sponsored aid for individuals from the cradle to the grave. However, a welfare state faces basic problems as regards what should be the desirable level of provision of such welfare services by the state, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare state is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and political rights.

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These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives to achieve the same. (See also: *Dantuluri Ram Raja & Ors. v. State of Andhra Pradesh & Anr.*, AIR 1972 SC 828; *N. Nagendra Rao & Company v. State of Andhra Pradesh*, AIR 1994 SC 2663; and *N.D. Jayal & Anr. Union of India & Ors.*, AIR 2004 SC 867).

10. The High Court has observed that the letter/notice dated 7.8.1980, enhancing the rate of license fee remains unchallenged, and therefore, the application of notice dated 25.5.1987, with retrospective effect is justified. This finding is not factually correct.

Notice dated 7.8.1980, enhancing the license fee was received by the appellants, and representations were filed by them through their Association, raising all their grievances to the effect that during a period of 30 years, the license fee paid by them had been enhanced about 15 to 20 times, without any justification and hence, they demanded justice. The same were considered by the then Railway Minister, and orders dated 26.9.1980 and 11.4.1981 were passed by him, observing that the license fee may be revised after every 5 years on the basis of justice and equity. Certain interim relief was also granted. Thus, in view of the above, we are of the opinion that the aforesaid demands should not have been made to apply with retrospective effect from the year 7-8-1980.

In view of the above, the appeals succeed and are allowed partly, to the extent that notice dated 25.5.1987 must not be applied retrospectively, i.e., w.e.f. 7-8-1980. However, the enhanced license fee may be recovered from the appellants from the said date in accordance with law.

- A With these observations, the appeals stand disposed of.
Interim order passed earlier stands vacated.

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- B The abovesaid Civil Appeals stand disposed of in terms
of the judgment passed in Civil Appeal Nos.243-247 of 2003.

B.B.B.

Appeals disposed of.