IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT No. 545 of 2022

With

CAN 1 of 2022
CAN 3 of 2024

Ram Dour Barui @ Ram Deo Barui & Others.

Vs.

Union of India & Others.

For the Appellants	:	Mr. Pratik Dhar, Sr. Adv. Mr. M. A. Sardar, Adv. Mr. Ritwik Pattanayak, Adv.
For the Respondents	:	Mr. Sanajit Kumar Ghosh, Adv.
Heard on	:	November 12, 2024
Judgment on	:	November 22, 2024

Md. Shabbar Rashidi, J.:-

1. CAN 2 of 2022 is an application for recalling of the order dated September 04, 2024 by which the instant appeal being MAT 545 of 2022 along with connected applications were dismissed for default.
2. Causes shown in the petition of CAN 3 of 2024 to the effect that learned advocate for the appellants missed to see the matter in the cause list which was listed on the said date are accepted as sufficient.
3. Accordingly, CAN 3 of 2024 is allowed. Order dated September 04, 2024 is recalled. MAT 545 of 2022 is restored to its original file and number.
4. The appeal is in assailment of Judgment and Order dated February 22, 2022 passed in WPA 2938 of 2022. By the impugned Judgment and Order, the writ petition filed on behalf of the appellants herein was dismissed.
5. The factual background of the case is that the appellants were licensed platform vendors at Sealdah Railway Station owning Dalla/stall vending different articles like toys, chocolates, confectioneries, food etc. The appellants were running their

business under due permission from the railway authorities. The Senior Divisional Commercial Superintendent was supposed to execute an agreement with each vendor.

6. In the year 2000, Railway Board introduced a new catering policy. The appellants used to deposit the license fee and arrears thereof. In the year 2005, the railway authorities again introduced a new catering policy under which category A, B and C railway stations were transferred to Indian Railway Catering and Tourism Corporation Ltd. (IRCTC). Whereas category D and F railway stations continued under the control of south-eastern Railway till IRCTC was agreed to take over the units.

7. The appellants also submitted that the respondent authorities never executed any agreement for vending license with the petty vendors as was executed earlier save and except issuing food safety licences. Even the platform vending cards in favour of the appellants were not issued. However, the respondent authorities used to conduct medical examination of the writ petitioners every year and medical cards were issued in their favour. It was further submitted that the appellants were allowed to continue with their

business by the respondent authorities by accepting the license fee on and from October 2005.

8. By a writing dated February 28, 2006, the respondent issued several directions. In pursuance of such directions, the appellants supplied the license fee details deposited by each appellant.

9. The appellants also submitted in their writ application that in the year 2010 Railway introduced a new policy known as catering policy, 2010. Under such policy, contract of existing major and minor catering units were to be awarded by and managed by the zonal railways. IRCTC was left with running the food plaza, food court and fast food units. By a writing dated March 21, 2011, respondent No. 6 directed the appellants to clear of the outstanding dues towards license fee which was complied with by the appellants. By another writing dated August 16, 2013 the appellants were directed to clear off the dues on account of license of miscellaneous trolleys/stall holders at Sealdah Railway Station by paying a sum of ₹ 943/– per month. In the end of 2017, the respondent authorities directed the appellants to furnish affidavits in the prescribed format which was also complied by the appellants.

10. The appellants also submitted that all the appellants cleared of all their dues towards license fee payable up till 2020. They were also asked by the respondents to come under the purview of GST and submit an affidavit which was complied with by the appellants. However, by a letter dated May 2, 2017, the appellants were asked to opt for multipurpose stalls (MPS). The appellants did not exercise such option, though, they furnished the name of the helper under an affidavit. It was further contended on behalf of the appellants/writ petitioners that they received a notice from the respondents whereby, on the basis of commercial circular No. 22 of 2017, the respondents claimed a hefty amount in excess of ₹ 11,00,000/- as arrears of occupational charges on and from 2017 to 2020 which included the license fee at the rate in excess of ₹ 3,29,000/- per annum and GST on such amount.

11. The appellants also came up with the case that with the outspread of COVID 19, there was huge decline in the passenger flow and demand of articles. The appellants did not earn from their business of vending stalls. As such, demand of a hefty amount as license fee for the said period is arbitrary on the part of the respondent authorities. The appellants also stated that the entire management

was transferred to IRCTC and the railway authorities have had no control over IRCTC. There was no complaint against the appellants. The catering policy of 2010 dated July 21, 2010 was discriminatory and liable to be struck down. The respondent authorities were not justified in not renewing the vending licences of the appellants following the said policy.

12. It was further contended on behalf of the appellant that the respondent authorities were also not justified in not taking into consideration the rate of license fee prevailing prior to the inception of the policy of 2010. The respondents have arbitrarily fixed a license fee which is arbitrary and beyond the financial competence of the appellants, considering the nature and extent of their business. They have also not disclosed the basis of such fixation. Such fixation of license fee is completely arbitrary and violative of the fundamental rights of the appellants.

13. The appellants also submitted that catering policy of 2010 mooted by the Railway authorities are discriminatory to the marginalized sections and small vendors for which the same is liable to be struck down.

14. In support of their contentions, the appellants relied upon ***(2016) 3 Supreme Court Cases 582 (Senior Divisional Commercial Manager, South Central Railways and Others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Another)***, ***(2021) 13 Supreme Court Cases 794 (Ram Chandra Prasad Singh vs. Sharad Yadav)*** *and* ***(2019) 13Supreme Court Cases 363 (Hukum Chandra vs. Nemi Chand Jain and Others)***.

15. On the other hand, it was contended on behalf of the respondents that there was no illegality in the demand notices issued on their part as against the appellants. It was their submission that the appellants were running Dallas on the Railway platform. Owing to change in the catering policy, the appellants were requested to opt for multipurpose stalls (MPS) which they did not. The new policy did not allow renewal of previous licence rather, it provisioned for fresh licence on the basis of e-tender.

16. Learned advocate for the respondent also submitted that the appellants have, though challenged, but staked their claim on the basis of catering policy of 2010 but the said policy is no longer in existence. The catering policy of 2010 has been replaced by new

catering policy of 2017. It was also contended that although in the new policy there is no provision for renewal of old vending licence, nevertheless, the appellants continued to run their business even after coming into force of the new catering policy of 2017 which has resulted in the demand for arrears of licence fees as against the appellants. The authorities have duly considered the nature of the business, area occupied, category of station etc. in determining the arrears.

17. Not only that, the lowest bid received for the similar business establishments at similar category of stations with other similar parameters were also considered by the respondent authorities in determining the licence fee demanded from the appellants. It was submitted on behalf of the respondents that for the aforesaid reasons no arbitrariness or discrimination can be attributed to their actions. It was based on well-defined parameters as set forth by the catering policy of 2017 which was duly published and made known to all concerned.

18. Learned advocate for the respondents relied upon a writing dated December 11, 2020 issued by the Sr. Divisional Commercial Manager, Eastern Railway, Sealdah. In support of such proposition,

learned advocate for the respondent relied upon an order passed by a co-ordinate Bench of this Court delivered in ***MAT 603 of 2017 (Bindu Devi vs. General Manager, Eastern Railways & Ors)***.

19. Learned advocate for the respondents also relied upon a Joint Note dated November 10, 2022 and submitted that all the appellants have already been duly evicted from their Dallas on Sealdah platform. As such, no question of renewal of their licence does arise. They are however liable to pay the arrears of licence fee determined in accordance with the catering policy of 2017.

20. Having considered the rival contentions, it is evident that the appellants were licenced vendors at Sealdah Railway Station and have been running Dallas/stalls by paying licence fees prevailing at the relevant time. It also transpires from the materials placed before us that following the promulgation of the catering policy of 2017, the appellants were requested to opt for Multipurpose stalls but the appellants did not put in their option. For such reason, eviction notices were served upon them and ultimately, they were evicted from their allotted space on the platform on November 10, 2022.

21. The appellants have refuted the claim of the respondent authorities of the arrears of licence fee on the ground of it being exorbitant. The catering policy of 2010 was alleged by the appellants to be discriminatory, violative of fundamental rights and against the public policy. It is to be taken note of that the catering policy of 2010 no longer exists. It has been replaced by a new catering policy of 2017.

22. In ***Senior Divisional Manager*** (supra) laid down that,

> *"28. This Court being entrusted with the task of being the counter majoritarian institution, is duty-bound to ensure that the rights of the downtrodden minorities and the members of the weaker sections of the society are not trampled upon."*

23. In the instant case, as it transpires that the arrears of the licence fee were calculated on the basis of new catering policy of 2017. The case of the appellants is that such calculation was arbitrary having not taken into consideration the amount of licence fee being paid by the appellants prior to such fixation. However, the materials placed before us discloses that the calculation was made on the basis of well defined policy duly published and known to the appellants. The aforesaid policy provided for classification of Railway Stations

and fixation was made taking into account such fact together with the area under occupation. Not only that, the lowest tenders received against e-tender for allocation of stalls in similarly placed Stations were also taken into account while calculating the rate of licence fee.

24. Mere issuance of licences to the appellants for a considerable prior period and the quantum of such past licence fee cannot be the lone driving factor. Non-consideration of such factors cannot be said to be arbitrary or discriminatory action. The actions of the respondents are apparently based on well defined policy and applied equally to all concerned without discrimination. Moreover, if such consideration is directed to be taken into account, it will surely have hostile effect on State exchequer and would be against public policy. If the policy requires allocation of stalls on the basis of e-tender, the appellants are free to participate in the tender process. Such view was expressed by a Coordinate Bench of this Court in ***Bindu Devi*** (supra). Therefore, at no stretch of imagination, the actions of the respondents can be termed as arbitrary, illegal, oppressive or violative of the fundamental rights of

individual appellants or even against the interest of downtrodden sections of society.

25. It has been brought to our notice that the appellants were lawfully evicted by the respondents from their allocated space on Sealdah Railway Station on November 10, 2022. It was alleged on the part of the respondents that in the circumstances, no relief can be granted to the appellants as they have already been evicted.

26. In ***Hukum Chandra*** (supra) the Hon'ble Supreme Court observed in following terms that is to say: -

> *"15. Rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. Observing that the court may permit subsequent event being introduced into the pleadings by way of amendment as it would be necessary to do so for the performance of determining the rule in controversy for the parties provided certain conditions are being satisfied, in Om Prakash Gupta v. Ranbir B. Goyal [Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256], it was held as under: (SCC pp. 262-63, para 11)*
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>> *"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement*

of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders [Pasupuleti Venkateswarlu v. Motor & General Traders, (1975) 1 SCC 770], this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or

justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

16. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. Whenever, there is subsequent events of fact or law, which have a material barring on the rights of the parties to relief or on the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognizance of the subsequent changes of fact and law to mould the relief (vide Ramesh Kumar v. Kesho Ram [Ramesh Kumar v. Kesho Ram, 1992 Supp (2) SCC 623])".

27. Similarly, in ***Ram Chandra Prasad Singh*** (supra) the Supreme Court laid down that,

"17. In a writ petition under Article 226 subsequent events can be taken note of for varied purposes. We are reminded of the weighty observation of V.R. Krishna Iyer, J. in Pasupuleti Venkateswarlu v. Motor & General Traders [Pasupuleti Venkateswarlu v. Motor & General Traders, (1975) 1 SCC 770], where following was observed : (SCC pp. 772-73, para 4)

"4. … It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to

> *court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."*

28. On the basis of ratio laid down in the aforesaid cases, there can be no doubt that subsequent events may be taken note of by the Court while adjudicating a lis. However, the Supreme Court observed in ***Hukum Chandra*** (supra) to the effect that "*the court may permit subsequent event being introduced into the pleadings by way of*

amendment as it would be necessary to do so for the performance of determining the rule in controversy for the parties provided certain conditions are being satisfied." Similarly, in ***Ram Chandra Prasad Singh*** (supra) the Supreme Court noted that "*We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."*

29. The present lis was initiated with a writ petition being WPA 2938 of 2022. The impugned order was passed on February 22, 2022. Following such order the instant appeal was filed. The alleged act of eviction of the appellants took place on November 10, 2022. Therefore, a challenge to the eviction drive was available since such date. The appellants, in their averments in the Writ Petition had pleaded that the respondents were threatening to evict them which was subsequently carried out.

30. In any case, even taking into consideration the subsequent event i.e. the action on the part of respondents in evicting the appellants,

the appellants have not been able to make out a case that such eviction was arbitrary, illegal and devoid of any legal sanction. The appellants refused to opt for Multipurpose Stall (MPS) as per the new catering policy of 2017. They are free to participate in the e-tendering process for allocation of stalls under the new policy, if they are so advised.

31. In the light of the discussions made hereinbefore, we find no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

32. Consequently, the instant appeal being **MAT No. 545 of 2022** is hereby dismissed, however, without any order as to costs. In view of the disposal of the appeal, connected application, if any, shall also stand disposed of.

33. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

34. I agree.

[DEBANGSU BASAK, J.]