

**(2016) 05 PAT CK 0128**

**PATNA HIGH COURT**

**Case No:** Letters Patent Appeal No. 251 of 2015; (Arising out of Civil Writ Jurisdiction Case No. 16343 of 2013)

Union of India

APPELLANT

Vs

Sri Din Dayal Gupta

RESPONDENT

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**Date of Decision:** May 2, 2016

**Citation:** (2017) 1 BBCJ 27 : (2016) 4 PLJR 844

**Hon'ble Judges:** Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

**Bench:** Division Bench

**Advocate:** Mr. Anil Kumar Sinha, Advocate, for the Appellants; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

**Mr. Hemant Gupta, J.**(Oral) - Re.:I.A. No. 1136 of 2015 in L.P.A. No. 251 of 2015

The application is for condonation of delay of 210 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 210 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 1136 of 2015 is allowed and delay of 210 days in filing the Letters Patent Appeal is condoned.

Re.:I.A. No. 1304 of 2015 in L.P.A. No. 296 of 2015

4. The application is for condonation of delay of 44 days in filing the Letters Patent Appeal.

5. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 44 days in filing the present Letters Patent Appeal.

6. Consequently, Interlocutory Application No. 1304 of 2015 is allowed and delay of 44 days in filing the Letters Patent Appeal is condoned.

Re.:L.P.A. No. 251 of 2015 & L.P.A. No. 296 of 2015

7. L.P.A. No. 251 of 2015 is directed against an order dated 20th of June, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 16343 of 2013, whereby the writ application filed by the licensee of catering stalls at the Patna Sahib Railway Station was allowed.

8. L.P.A. No. 296 of 2015 is directed against an order dated 3rd of December, 2014 passed by the learned Single Bench of this Court in Civil Review No. 231 of 2014, whereby the Civil Review Application filed by the petitioner-appellants stood dismissed.

9. The writ petitioner, respondent herein, is a licensee holding three catering stalls at the Patna Sahib Railway Station, two within the Railway building and one outside the Railway building. The challenge in the writ application was to the assessment order revising the licence fee on 25th of June, 2013 after the Catering Policy, 2010 was enforced. As per the appellants, the policy which was prevalent at the time of grant of licence could be applicable, whereas the learned Single Bench has found that the licence has to be renewed in terms of Catering Policy, 2010. The relevant clause is 18.3, which reads as under:-

"18.3 At the time of renewal of licence, licence fee should be enhanced/reassessed based on actual sales turnover of the unit. Licence fee will be reassessed and revised at the time of each renewal subject to a minimum of 10% increase over the prevailing licence fee of the unit. To arrive at a realistic figure zonal railways will ensure that a fresh assessment of sales turnover/revenue is conducted during the peak period and lean period i.e. with the periodicity of three-three months in order to assess the actual sales turnover so as to fix the revised licence fee. Renewal will be done for the existing licensees only on withdrawal of court cases by the licensees, if any, against the railways and payment of railway dues and arrears."

10. The learned Single Bench found that the licence fee has been revised without adopting the procedure prescribed by the Catering Policy, 2010 framed by the appellants and consequently, set aside the assessment order and the allotment of another site in lieu of one of the stalls which was demolished.

11. Learned counsel for the appellants refers to an order passed in Civil Review Application wherein the appellants referred to a circular issued by the Railways on 29th of May, 2014. Vide the said circular, it was communicated on the basis of a legal opinion expressed by the Additional Solicitor General that Catering Policy, 2010 would be applicable to the allotment made under the said policy and not to the allotment made under the earlier catering policies. The said Review Application was dismissed.

12. We have heard learned counsel for the appellants and find no merit in the present Letters Patent Appeals.

13. Clause 18.3 of the Catering Policy, 2010 contemplates the basis of revision of licence fee. Therefore, the licence fee could be revised only in terms of the policy which is applicable from time to time. Admittedly, in the year 2013 the Catering Policy, 2010 was operational, therefore, the licence fee could be revised only on the basis of survey conducted during peak period and lean period i.e. within the period of three months in order to assess the actual sales turnover so as to fix the revised licence fee. Such policy is applicable to the existing licensee as well when the policy contemplates that renewal will be done for the existing licensees only on withdrawal of court cases.

14. Since the procedure adopted in the Catering Policy, 2010 has not been followed, therefore, there is no error in the order passed by the learned Single Bench.

15. In view of above, the present Letters Patent Appeals are dismissed. However, it shall be open to the appellants to revise licence fee in accordance with the Catering Policy, 2010 in accordance with law.