

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5706 of 2020

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Ram Naresh Rai Son of Dhupan Rai Resident of ashrafpur Supaul, P.S.-
Patori, District- Samastipur.

... .. Petitioner/s

Versus

1. Union of India through the Ministry of Railway, Eastern Central Railway, Sonpur.
2. The General Manager East Central Railway Sonpur.
3. The Commercial Manager Eastern Central Railway Sonpur.
4. The Engineer in Chief Commercial Eastern Central Railway Sonpur.
5. The Assistant Engineer Line Sonpur.
6. The Station Master Shahpur Patori Eastern Central Railway Sonpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Rajendra Narain, Sr. Advocate
Surendra Kishore Thakur, Advocate
For the Railways : M/s P.K.Verma, Sr. Advocate
Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 20/09/2021

Heard learned senior counsel appearing for the
petitioner and learned senior counsel for the Railways.

2. The petitioner has filed the instant writ
application for the following reliefs:

- “(i) For issuance of writ in appropriate nature for quash-
ing of the letter dated, 19 March 2020, issued under
the signature of Zonal Manager Eastern Central Rail-
way Sonpur, whereby and where under Tender agree-
ment Sonpur/w-5/1814 dated 6.11.2019 agreement
number/214/STALLAGE (TAHBAZARI) Has been
cancelled.



- (ii) For direction to the respondent authorities to allow the petitioner for holding stallage (TAHBAZARI), as the petitioner is the highest bidder and was allotted said tender, and has deposited earnest amount but without calling any show cause, the respondent authority's has cancelled the deed of agreement.
- (iii) For direction to the respondent authority's not to disturb in peaceful possession of the petitioner for holding/ and collecting rent, as the petitioner has licensee and invested huge amount but just after few months his agreement has been cancelled.
- (iv) For any other relief or reliefs for which this Hon'ble court deem fit and proper."

3. The case of the petitioner in brief is that a tender notice dated 5.8.2019 was issued under the signature of the Assistant Engineer Line, Sonpur inviting candidates to participate in an open tender for holding the Tahbazari fixing the date and place for open tender, for a period of two years. The petitioner being interested participated in the open tender and was declared the highest bidder. He was selected and directed to deposit the earnest amount. Accordingly the petitioner deposited the earnest amount and the deed of agreement was entered into



between the Railways and the petitioner. A letter dated 20.12.2019 was issued under the signature of the Assistant Zonal Engineer Line, Sonpur informing the Station Master concerned that the petitioner being the highest bidder with the bid amount of Rs.75,01,000/, an agreement has been entered into on 18.12.2019. Information was given to all that for the period from 1.1.2020 to 31.12.2022, the petitioner has the right for holding Tahbazari over the vacant land of the Railways as described therein in Shahpur Patoree. All concerned were directed to cooperate with the petitioner in his holding the Tahbazari over the land in question. It is the case of the petitioner that pursuant to the direction he deposited a sum of Rs.16.30 lacs, however, only a few months later a letter dated 19.3.2020 was issued under the signature of the Divisional Rail Manager (Engineering), Sonpur, cancelling the right of Tahbazari of the petitioner, the cancellation coming in effect w.e.f. 19.2.2020. It is against this order of cancellation of holding of Tahbazari by the petitioner which is under challenge in this writ application.

4. It is submitted by learned senior counsel appearing for the petitioner that from perusal of the order impugned herein as contained in letter dated 19.3.2020 cancelling the petitioner's right of holding Tahbazari, the only reason for cancella-



tion of the concluded contract given there is the restriction imposed for allotment of Tahbazari vide Railway Board letter no. 2005/LML/18 dated 10.2.2005. It is submitted that from the contents of the counter affidavit filed on behalf of the Railways it transpires that there was some complaint submitted by the villagers and an enquiry was conducted by the Railways. It is submitted that the petitioner was not given any information with respect to the complaint and the so-called enquiry was conducted behind his back. Not having found anything lacking on part of the petitioner nor anything adverse having transpired in the enquiry conducted, the respondent Railways were now relying on the restriction imposed for allotment of Tahbazari as far back as in February, 2005, inspite of the fact that the Tahbazari in question has been given after following all the procedures like notice inviting tender, participation by the applicants including the petitioner herein, opening of the tenders, petitioner being selected being the highest tenderer and an agreement in writing having been entered into on 18.12.2019 between the Railways and the petitioner. It is submitted that the Railways having followed the complete procedure as laid down in law which ended with a concluded contract having been entered into between the parties on 18.12.2019, now the Railways could not be permitted to go



back from the agreement on account of a 15 years old decision. Learned senior counsel for the petitioner in support of his contention relies on the Full Bench judgment in the case of M/s Pancham Singh vs State of Bihar [AIR 1991 Pat 168 (FB)].

5. A counter affidavit as also a supplementary counter affidavit has been filed on behalf of the Railways. The case of the Railways is that the Assistant Engineer (Line), Sonpur, published a notice inviting offer for Tahbazari at Shahpur Patoree Railway Station vide Auction notice no. 03/2019 dated 5.8.2019 after taking approval of the competent authority for the purpose to control the encroachment over the plot in question as well as to earn revenue for Railways at the same time. As per the said notice the successful bidder was allowed to collect rent from the small shopkeepers and from temporary and moveable shops in the vacant railway land near the Railway Station for the period from 1.1.2020 to 31.12.2022. The petitioner participated in the said auction and having been found to be the highest bidder, entered into an agreement with the railway administration vide agreement dated 18.12.2019. He started to collect rent from the shopkeepers from 1.1.2020. Some of the villagers filed a written complaint on 12.2.2020 alleging that the petitioner was committing irregularities, spreading dust and littering the sur-



rounding area. An enquiry was conducted and a report submitted on 27.2.2020. As per the report the complainant denied to have made such a complaint. However, along with the letter dated 28.2.2020 the report was submitted to the Principal Chief Engineer, ECR, Hajipur, seeking instructions as to whether the Tahbazari (stallage) be continued or terminated. In response to the said communication a letter dated 5.3.2020 was received directing the divisional authority to follow the instructions contained in Railway Board letter dated 10.2.2005 and para 821L of the Indian Railway Work Manual according to which no new plots of railways' land was to be added for Tahbazari/licensing. As the land allotted to the petitioner on license fee was a new allotment at Shahpur Patoree, it was decided by the competent authority to cancel the said allotment. However, the allotment of land for Tahbazari at Sahdei Buzurg Station were continued in view of the fact that such licensee was not new but was continuing from the past.

6. It is submitted by learned senior counsel appearing for the Railways that in view of the complaint of the villagers and subsequent direction of the East Central Railway Headquarters the license was decided to be cancelled. As per clause 5 of the agreement dated 18.12.2019, the petitioner was



served with one month notice on 19.3.2020 issued under the signature of the Divisional Railway Manager for cancellation of the license w.e.f. 19.4.2020. The license for Tahbazari allotted to the petitioner was cancelled w.e.f. from 19.4.2020. It was submitted by learned senior counsel that there being a decision of the Railway Board, the land in question cannot be given for collection of Tahbazari, no one was competent to give the same and a proceeding has been initiated against the erring official of the Railways. It is submitted that there is no illegality in the order impugned, the petitioner has not made out a case for interference by this Court and the application be dismissed.

7. Heard Sri Rajendra Narain, learned senior counsel for the petitioner and Sri P.K.Verma learned senior counsel for the Railways.

8. The relevant facts not in dispute are that the respondent Railways came out with a notice dated 5.8.2020 inviting desirous candidates to participate in the open tender for collection of Tahbazari at Shahpur Patoree Railway Station vide auction notice no.03/2019 dated 5.8.2019. This as per the affidavit of the Railway was done 'after taking approval of competent authority' for the dual purpose of control of encroachment over the plot in question and at the same time to earn revenue



for the Railways. Pursuant to the notice for auction the petitioner participated along with other bidders and the petitioner being the successful bidder, an agreement was entered into being Agreement no. W/214/Nilami/ Tahbazari/ADEN(line) Sonpur/W – 5 dated 18.12.2019. A copy of the agreement has been brought on record as Annexure-4 to the supplementary affidavit filed on behalf of the petitioner. Pursuant to the said agreement the petitioner started to collect rent from the shopkeepers from 1.1.2020.

9. It transpires that a written complaint was filed by some of the villagers on 12.2.2020 making allegations that the petitioner was committing irregularity spreading dust and littering the surrounding area. An enquiry was conducted there on and a report submitted on 27.2.2020. A copy of the report was sent along with letter dated 28.2.2020 to the Principal Chief Engineer, ECR Hajipur, seeking instructions as to whether the Tahbazari (stallage) be continued or terminated. In response to the said communication, a letter dated 5.3.2020 was written directing the divisional authority to follow the instructions contained Railway Board letter no. 2005/LML/18 dated 10.2.2005 and para 821L of the Indian Railway Work Manual. It would be relevant to take note of contents of the letter dated 27/28.2.2020,



whereby the Senior Divisional Engineer, Sonpur sought instructions from The Principal Chief Engineer, EC Railway, Hajipur with respect to the Tahbazari in question as also the enquiry report which was conducted without any information to the petitioner. The same are quoted herein below for ready reference:-

“ East Central Railway

*Office of the
Divi. Rly. Manager (Engg.)
Sonpur
dt: 27.02.2020
28*

No. W/214/Tahbazari/SPP/W-5/558

*Principle Chief Engineer
E.C.Rly. Hajipur*

Sub:- Granting of permission for Tahbazari at vacant land near LC 24 and LC 25 at Shahpur Patoree at Sonpur Division on East Central Railway.

*Ref: – Railway Board letter no. 2020/LML-II/13/7 new Delhi.
dt. 25.02.2020*

Vide letter under reference, a enquiry conducted by Sr. DEN/I/ SEE & DSC/RPF/ SEE is enclosed herewith regarding complain received for Tahbazari at Shahpur Patoree. As per enquiry report it is clear that the complain is totally forged and the allegations are baseless. It is only highlighted due to two local groups with vested interest.

However, as far as policy is concern, it is totally tried on experimental basis to restrict the encroachment around the station area as well as earn some money to railway for unused land. Unexpectedly on purely temporary basis with no erection of permanent structures, we have received Rs.75,01,000/- royalty for small piece of land, which is already encroached by a small shops of Sabjimandi/Thela



shop for a period of three years.

It is here to mentioned that this helps not only increase our sundry earning but also restrict to develop the hard encroachments over the small piece of land. The complains received vide above letter is totally forged and baseless and initiated only by rivalry party of highest bidder who collecting the money before this Tahbazari unauthorisedly.

In view of above, it is requested to issue the instruction regarding this tahbazari should be either continue or terminated

Sd/-

27.2.20

Sr. Divl. Engineer/Co.Ord.

Sonpur

DA: As above.

Enquiry report conducted by Sr. DEN/I/SEE & DSC/RPF/SEE regarding Tahbazari at Shahpur Patoree in C/W GM/Vigilance letter dt. 20.02.2020.

As per the instructions we the undersigned visited Tahbazari site at Shahpur Patoree on dt. 27.02.2020. We have gone through the complaint received regarding Tahbazari at Shahpur Patoree vide GM/vigilance letter dt. 20.02.2020 in which it is requested that:

- 1. To demark the area for Tahbazari*
- 2. to inform the rate collected to retail sellers,.*
- 3. To close the chicken shop.*

During the course of enquiry the following persons who signed on the representation were randomly enquired and recorded their statements.

- 1. Manoj Sahani S/o Prabhu sahani*
- 2. Amar Chowdary, S/o Syambabu Chowdary*
- 3. Ramdayal Shah @ Nanki shah S/o Ramashraya shah*



4. *Rekha Devi W/o Dularchand Ram*

5. *Manju Devi W/o Birju Sahani*

All the above persons stated that they never signed or submitted any representation regarding Tahbazari at Shahpur Patoree. Except sl no 3 all are illiterates and unable to sign.

As regards to demarcating of Tahbazari, On 10.01.2020 the area of Tahbazari ie., 3911 Sqft was demarcated and handed over to the bidder after removal of unauthorized encroachments. During visit it is found that the Tahbazari is being conducted as per the demarcation made by the Railway.

The rate collected from retail shopkeepers is not in the scope of terms and condition of Tahbazari. However, the contractor has been advised to display the rate collected per Sqft at prominent location to bring transparency of royalty collected from different shopkeepers.

Further, running of Chicken shop is also not in the scope of terms and condition of Tahbazari. However, the licensee has been instructed to keep the allotted area clean and not to sell chicken in open place.

During visit, it is also seen that the way to the shops of local villagers situated abutting to railway land are obstructed due to Tahbazari as there is no gap between the Railway land and private land. It is also learnt from the locals that due to rivalry between successful bidder of Tahbazari and one local person by name Atul Trivedi, he is instigating the local shopkeepers and vendors to make complaint against the successful bidder of Shahpur Patoree Tahbazari. Shri Atul Trivedi who runs his own market just adjacent to Railway Tahbazari is objecting Tahbazari from the begging and making complaints with vested interest to uphold his influence/ command on the market.

It is also cleared from on-spot enquiry conducted that signatures made on the representation or forged signatures. The statements taken from the villagers, who signatures appear on the representation, are enclosed.



Hence it is proved that the signatures on the complaint vide above letter are ----- and allegations are baseless ----- group with vested interests.

Sd/ 27/2/020

DSC/RPF/SEE

Sd/ 27/2/2020

Sr.DEN/1/SEE”

10. From the materials on record as also the contentions of the parties, it is clear that a written agreement had been entered into on 18.12.2019 between the petitioner and the Railways for holding of Tahbazari for the period from 1.1.2020 to 31.12.2022. It was a concluded contract. The same was done by the Railways after taking approval of the competent authority. The complaint filed against the petitioner and which was enquired into in detail and report of which has been reproduced herein above clearly found the allegation to be baseless and having been made due to rivalry between the successful bidder and one local person named in the report who was instigating the local shopkeepers and vendors.

11. So far as the letter dated 5.3.2020 of the Deputy Chief Engineer, East Central Railway is concerned wherein direction has been given that instructions contained in the letter dated 10.2.2005 and para 821 of the Indian Rail Work Manual is concerned, it may be stated here that the said letter dated 10.2.2005 of the of the Railway Board has been brought on record as Annexure-D to the counter affidavit filed on behalf of



the respondent Railway. Clause 2.0 of the said letter dated 10.2.2005 is being quoted here in below for ready reference:

“2.0 General

2.1. Leasing of land is not permitted except in cases where it is specifically approved by the Railway Board. Lands for the purpose of commercial use should be given on licensing basis only. In this connection, Board's letter No. 82/W2/LM/18/116 dt. 22.11.1982 may please be referred to.

2.2 Temporary licensing of railway land to private individuals for the purpose of setting up shops, commercial offices, vending stalls, clinics etc. not connected with the Railway working was stopped in terms of Board's letter No. 80/W2/18/0/A dt. 7.6.1984. This ban will continue. In exceptional cases, where such licensing may have to be done with the prior approval of the Board, licence fee must be fixed by resorting to public auction/ open tenders for getting the maximum revenue.

2.3 Licensing of ordinary commercial plots connected with Railway working, as indicated in para – 3 below will be done with the personal approval of General Manager in consultation with FA&CAO. The periodical review may, however, be approved by DRM on the recommendation of Committee of Divisional Heads of Engineering, Commercial and Finance Departments.

2.4 Licenses of existing licencees, not connected with the Railway working as mentioned in Para 3(f) below may,



however, be renewed from time to time so long as the land is not required by Railway for its own purpose but on new terms and conditions indicated in this letter.

2.5 In each case of licensing, proper agreement must be executed between the Railway Administration and the licencees before the licensee is given possession of the land/plot. This must be strictly followed and for any violation of these instructions, the official handing over land before the execution of agreement, shall be held personally responsible by the Railway Administration.”

12. From the relevant part of the letter dated 10.2.2005 quoted herein above it would be evident that the provisions contained in the said letter are also not worded in such a manner, so as to create an absolute bar on the leasing and renewal of Railway land.

13. Learned Senior Counsel for the petitioner relied on the full bench judgment of this Court in the case of M/s. Pancham Singh vs The State of Bihar and others [AIR 1991 Pat 168(FB)]. In paragraph hno.19 of the judgment, the Court held:

“ I have already pointed out above, that there will be difference, where the cancellation is because of the breach of any of the terms of the contract and where cancellation of the contract, is on a ground de hors the terms of the contract. In my view, where an



agreement executed in accordance with Article 299 of the Constitution is cancelled on a ground which is not referable to any of the terms of the contract, and is per se violative of Article 14 of the Constitution, this Court can exercise the jurisdiction under Article 226 of the Constitution. ...”

14. So far as the facts of the instant case is concerned, as narrated herein above, the respondent Railways do not allege any violation or breach of any of the terms of the contract. Thus the next question would be as to whether the action of the respondents satisfies the test of reasonableness.

15. In the above case of M/s. Pancham Singh (supra) this Court in paragraph no.15 held:

“15. Recently in the case of Mahabir Auto Stores v. Indian Oil Corporation, (AIR 1990 SC 1031) the same question was considered. In that case the petitioners’ firm was carrying on business of sale and distribution of lubricants for 18 years on the basis of supply being made by Indian Oil Corporation. Abruptly the supply of lubricants was stopped to the firm by the Indian Oil Corporation without any notice or intimation. In that connection it was pointed out as follows:



“In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Government action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumen-



tality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.”

16. In the instant case, the case of the Railways is that ‘after taking approval of competent authority’ for the dual purpose of control of encroachment over the plot in question and at the same time to earn revenue for the Railways, they proceeded with the auction. The Railways came out with an advertisement wherein the petitioner also participated and being the highest bidder an agreement in writing was entered into between the Railways and the petitioner on 18.12.2019. Thus the existence of a concluded contract is not in dispute. Also not in dispute is the fact that there is no breach of any of the terms of the agreement, by the petitioner. The petitioner started to act in terms of the contract w.e.f 1.1.2020. At this stage a complaint is



made against the petitioner, which the Railway authorities get inquired, without any notice to the petitioner. In the enquiry report, the Railway authorities come to the conclusion that there is no merit in the complaint against the petitioner and the complaint was made at the instance of a local person who was himself running a market adjacent to the land of the Railways settled for collection of Tahbazari with the petitioner. At this stage the Railways decides to pass the order impugned dated 19.3.2020 in view of the letter dated 10.2.2005, relevant portion of which is quoted above, and that too without any show cause notice having been issued.

17. Thus in view of these facts, neither the action of the respondents nor the order impugned herein can be said to be reasonable. The same being unreasonable, arbitrary and in violation of the principles of the natural justice, it is unsustainable in law and the same is set aside.

18. The writ application stands allowed.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	23.03.2021
Uploading Date	21.09.2021
Transmission Date	

