

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : 14th December, 2009

+ **LPA No.969/2004**

VIJAY KUMAR (DECEASED)
THROUGH LRs Appellant
Through: Mr.Rishikesh, Adv. with
Mr.Rajiv Dava, Advocate

versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr.Saleem Ahmed, Advocate

LPA No.988/2004

MEERA SAINI Appellant
Through: Mr.K.C.Mittal, Adv. with
Mr.Sujeet Kumar Singh and
Mr. Love Dixit, Advocates

versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr.Saleem Ahmed, Advocate

LPA No.968/2004

SAUDAGAR SINGH Appellant
Through: Mr.Rishikesh, Adv. with
Mr.Rajiv Dava, Advocate

versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr.Saleem Ahmed, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

CM No.10621/2008, CM No.17358/2008 in LPA No.969/2004; CM No.12315/2008 in LPA No.988/2004 & CM No.9943/2008 in LPA No.968/2004

All the applications stand disposed of as infructuous since the appeals are being heard for disposal today itself.

LPA Nos.969/2004, 988/2004 & 968/2004

1. Appellant Vijay Kumar had filed W.P.(C) No.1641/2001. Appellant Meera Saini had filed W.P.(C) No.8555/2003 and appellant Saudagar Singh had filed W.P.(C) No.6054/2003. 6 other writ petitioners had also filed similar writ petitions, all of them have been dismissed vide impugned order dated 3.8.2004 challenged by the three appellants in the respective appeals filed by them. The order which is common

in all petitions, reads as under:-

“+WP(C) 1641/2001 & CM 2877/2001 and 12255/2002
WP(C) 6054/2003 & CM 10668/2003
WP(C) 6303/2003 & CM 11060/2003
WP(C) 6732/2003 & CM 11757/2003
WP(C) 8555/2003 & CM 13715/2003
WP(C) 9169/2004 & CM 6542/2004
WP(C) 6469/2003 & CM 11307/2003
WP(C) 6471/2003 & CM 11309/2003
WP(C) 6472/2003 & CM 11310/2003

The petitioners before this court are persons who are licensees of shops situated at different ISBTs. The allotments have been made on tender basis.

The grievance of the petitioners is that there are different rates of licence fee being charged from them as compared to other similarly situated persons. The pleadings filed show that there is no one category of allottees since there are some persons who have been given on tender basis while there may be other persons who may have been relocated by giving alternative sites. The blocks may also be different. It is also pointed out that the tender rates itself will vary since it depends from shop to shop. Agreements have been executed by the petitioners with the respondents for different periods of time. In my considered view, there can be no question of re-writing the agreements entered into between the parties and the petitioners are bound to pay the charges in terms thereof.

The petitioners are also in arrears of licence fee. The petitioners apprehend that now interest will be charged on the arrears of licence fee. Taking into consideration the facts and circumstances of these cases as also the fact that there were certain interim orders granted by this court, I am inclined to grant two months' time to the petitioners to clear their licence fee arrears. In case the arrears are paid within a period of two months from today, the petitioners will not be charged any interest.

Learned counsel for the petitioner further submits that there should be a policy made for occupants like the petitioners as was made in the year 1993. This is a matter to be examined by the respondents. I consider it appropriate to direct the respondents to consider whether there is any requirement of a policy to be made in this behalf so far as the allotment of shops is concerned and take a decision within two months.

The writ petitions stand disposed of in the aforesaid terms.

CMs are dismissed as not pressed.”

2. A perusal of the impugned decision shows (vide the first para of the decision) that the learned Single Judge has treated all the writ petitioners as allottees to whom shops were licensed on tender basis.

3. Thereafter, the learned Single Judge has noted that the claim of the petitioners was to be treated at par with such allottees to whom shops were licensed as alternative sites as they were evicted from said sites. The learned Single Judge has stated that those to whom shops were licensed pursuant to tenders cannot claim parity with said allottees. The learned Single Judge has also held that the Court cannot rewrite the license deeds.

4. Learned counsel for the respondents concedes at the outset that the case of appellant Saudagar Singh and

Meera Saini cannot be treated at par with that of such allottees to whom shops were allotted after inviting tenders. Said two persons were allotted shops not pursuant to any tender. Saudagar Singh was allotted a shop at the ISBT complex as an alternative allotment being evicted from the old bus stand opposite Old Delhi Railway Station. Meera Saini, being physically handicapped was allotted the shop as she was a handicapped person and the allotment was under a policy to allot shops to handicapped persons.

5. Only appellant Vijay had participated pursuant to an invitation to offer, when he submitted the tender for allotment of shop No.53 Interstate Bus Terminal at Kashmiri Gate. Shop No.53 was allotted to him as his was the highest bid for the shop in question. He accepted the bid confirmation and took possession of the shop.

6. We note that appellant Vijay claims to be put at par with the person to whom the adjoining shop No.52 has been allotted at a much lesser license fee. The said person has been allotted the shop under a policy decision taken to rehabilitate the persons affected by the ongoing metro project. We note that such persons have been allotted shops in ISBT complex in lieu of the shops which were allotted to them at the

ISBT complex, but the place where said shops were constructed was required for the metro work in Delhi. These persons are old allottees and under the terms of their license, license fee was fixed at the time of the initial allotment with periodic increase. To put it simply, said allottees form a different category vis-à-vis those who participated when bids were invited.

7. It is settled law that the question of discrimination between unequals does not arise.

8. It is equally settled law that after a contract is entered between an individual and a State, the writ jurisdiction cannot be invoked to sort out a contractual dispute.

9. Since Vijay Kumar cannot claim any parity with such persons to whom shops were allotted under a policy decision to rehabilitate existing allottees to whom shops were allotted much earlier at the then prevailing existing rates, appeal filed by him has to be dismissed.

10. As regards Meera Saini and Saudagar Singh, we note that Saudagar Singh claims a right to be treated at par with such allottees to whom shops have been given on license basis after they were removed from the existing sites which they were occupying as licensees due to the ongoing metro

project, by urging that even he is an evictee; even he is an old allottee. Meera Saini claims that being a handicapped person she is entitled to be put at par with other rehabilitated allottees for the reason her business has suffered on account of the other allottees offering competitive rates for their products as their revenue expenses is less because they pay much lesser license fee.

11. We need not comment upon the merits of the pleas raised by Meera Saini and Saudagar Singh, lest we prejudice either party for the reason we note that the learned Single Judge has not dealt with the pleas urged by Meera Saini and Saudagar Singh. Needless to state, the learned Single Judge has erroneously treated the said two appellants as being allottees pursuant to the two submitting bids and participating in the tendering process. This is erroneous. The result is that the learned Single Judge has not given any opinion with respect to the pleas of the said two appellants. Justice requires that qua said appellants the matter be remanded for fresh adjudication by the learned Single Judge.

12. LPA No.969/2004 filed by Vijay Kumar is dismissed. Vijay Kumar has had the benefit of an interim stay in his favour on the condition he would pay Rs.1.5 lakhs pursuant to the LPA Nos.969/2004, 988/2004 & 968/2004

order dated 12.10.2004. We are informed that Vijay Kumar has not paid the said amount. His legal heirs are holding on to the shop as his legal representatives and have been brought on record to prosecute the appeal as appellants. Thus, they would be liable to pay the said amount to the respondent which shall be adjusted from the license fee payable. Rest can be recovered by the authorities as per law.

13. LPA No.968/2004 filed by Saudagar Singh and LPA No.988/2004 filed by Meera Saini are allowed. Impugned judgment and order dated 3.8.2004 dismissing the writ petitions filed by them are set aside. W.P.(C) No.8555/2003 filed by Meera Saini and W.P.(C) No.6054/2003 filed by Saudagar Singh are restored for fresh decision on merits.

14. The two writ petitions would be listed before the learned Single Judge for directions on 8.2.2010, for which date Meera Saini and Saudagar Singh have received notice to appear in Court today.

15. While deciding the two writ petitions, the learned Single Judge would take note of the contentions urged in the two writ petitions.

16. We leave it open to the learned Single Judge to pass such interim order as the learned Single Judge thinks fit

pertaining to the payment of license fee by said two persons,
till the writ petitions are decided.

17. LPA No.969/2004 is dismissed. LPA No.968/2004
and LPA No.988/2004 are allowed as aforenoted.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

DECEMBER 14, 2009
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