

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

+ **W.P.(C) 3673/2007**

PARMA NAND

W.P.(C) 3674/2007

KISHORE BROTHERS

W.P.(C) 7390/2009

RAM KUMAR

W.P.(C) 4988/2008

SHRI L.K.JAIN

W.P.(C) 7597/2008

KISHOR BROTHERS

W.P.(C) 7623/2008

PRAHLAD SINGH

W.P.(C) 7624/2008

GOBIND RAM GROVER

W.P.(C) 7625/2008

GROVER BHUTANI & ASSOCIATES

W.P.(C) 7626/2008

PARMANAND

W.P.(C) 7627/2008

UDAIPUR CEMENT WORKS

..... Petitioners

Through Mr. K. Sunil, Advocate.

versus

UOI & ANR

..... Respondent

Through Ms. Geetanjali Mohan, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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20.10.2009

1. This common order will dispose of the aforesaid writ petitions filed by the petitioners, who were allotted space for telephone booth under different allotment letters at the cement sliding at Shakur Basti. In all cases allotments

were made in 1979, except in one case where allotment was made in 1988. The allotment letters are brief and merely state that the specified area was allotted on license basis as per plan enclosed. It is further stated that only temporary structure and no permanent structure could be constructed.

2. The allotment of telephone booths in Shakur Basti cement sliding in the year 1979-88 is understandable as at that time only fixed line telephones were available and the cement sliding was located at a distance. It is a well known fact that the mobile phones have changed the face of telecommunications in India. Further, Shakur Basti, today is a well connected and an integral part of the main city.

3. By the impugned letters, the respondent, Northern Railways has cancelled the license, inter alia, on the ground that the petitioners have failed to maintain yard stick of 140 bags per month and the volume of cement handled was much less. The impugned letters have been issued on different dates in 2007-08.

4. Counsel for the petitioner submitted that the cancellation orders are contrary to the policy decision of the Railway Board dated 29th August, 1995, which in paragraph-2.3 records as under:-

“2.3 Licences of existing licencees, even if not connected with the railway working 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.”

5. It is submitted that the respondent Railways cannot fix minimum yard stick and cancel the license for failure of the petitioners to meet the said requirement.

It is further submitted by them that the respondent Railways are duty bound to continue with the license and not cancel the license as long as the lands are not required by the Railways for their own purpose.

6. It is not possible to accept the contention of the petitioners. The respondents Railways along with the counter affidavit have filed letter dated 7th June, 1988 for review of cases of allotment of telephone booths. The said letter reads as under:-

“As desired by the CCs all the cases of allotment of Telephone Booth at SSB were reviewed and the value of traffic was being handled by each party was sent to Hd. Qr’s Officer.

It was suggested to Hd. Qr. that Telephone Booths may be allotted to the parties whose minimum level of traffic, is two racks or 140 wagon per months of 1600 wagons per year. Hd. Qr. Vide Conddl. Letter No.EC-18/1-G/742-AC/10/86/DLI dated 2.6.88 accepted the proposal and has instructed to review all the cases accordingly, report may be sent to CCS(G).

Divisional Traffic Supdt.
New Delhi”

7. In the aforesaid letter, the Railway Headquarters had examined the issue of

allotment of telephone booths at Shakur Basti cement sliding and reviewed the allotments. It was accepted that the allottees of telephone booths should generate minimum level of traffic of two racks or 140 wagons per month or 1600 wagons per year. The said condition has been now uniformly applied and followed in all cases without any exception.

8. It is for the Railways to decide the terms and conditions on which the allotment of telephone booths should be continued. The Railways are entitled to determine and fix standards or minimum volume required for continuation of the license. This Court cannot substitute its own judgment and fix a different criteria or volume figure. Power of judicial review is limited to decision making process and not the final decision itself. The respondents in their decision have fixed the minimum yard stick. The yard sticks fixed, is not per se arbitrary, irrational or discriminatory.

9. The contention of the petitioners that the letter dated 7th June, 1988 is contrary to Railway Board's letter dated 29th August, 1995, is without merit. Clause-2.3 of Railway Board's letter dated 29th August, 1995, is a general clause, which states that existing licenses will be renewed from time to time if the land is not required by the Railways for its own purpose. This does not mean that the Railways could not impose any terms and conditions fixing minimum yard stick or

minimum level of traffic. The Railway Headquarters vide letter dated 7th June, 1988, in this regard does stand superseded and over-written by clause-2.3 of the Railway Board's letter dated 29th August, 1995. A perusal of Railway Board's letter dated 29th August, 1995, shows that the same was issued as difficulties were reported in implementation of Railway Board's guidelines, which had resulted in inordinate delays in obtaining the market value of land from revenue authorities and had led to adoption of unrealistic land values. This is clear from clause-1 of the Railway Board's letter dated 29th August, 1995, which reads as under:-

“Certain difficulties have been reported during the course of implementation of the Board's Guidelines referred to above, which includes instances of steep rise in license fees, inordinate delay in obtaining the market value of land from Revenue Authorities and adoption of unrealistic land values which do not have any relation with the actual land use. As licensing of commercial plots is essentially linked to traffic offered to Railways, a high license fee has also acted as a disincentive to rail users. With a view to rectifying the above lacunae, the extant policy on the subject has been reviewed in consultation with the Commercial Directorate and the following revised instructions are now laid down, in supersession of the letters of 17.9.85 and 3.10.87 referred to above.”

10. A perusal of the said guidelines/circular dated 29th August, 1995, reveals that the same were issued with the purpose of streamlining the process of fixing the license fee, rather than prescribing terms and conditions, on which the license

has to be granted or continued.

11. Before the impugned orders were passed, the Railways had carried inspection of Shakur Basti, cement sliding. It was found that out of 44 telephone booths, files of 37 booths were traceable and files of 7 booths could not be traced as they were very old. Out of the said 44 booths, 14 booths/licensees were meeting the minimum yard stick prescribed in respect of volume of traffic. It was also noticed that several licensees were not giving any business to the Railways, but were occupying the Railway land in the cement sliding. This is apparent from the chart enclosed with the inspection noted dated 20th October, 2006. It was noticed that in cases of Udaipur Cement, Kishore Brothers, Govind Ram Grover, Parmanand, Prahlad Singh they had nil turnover during October, 2005 to September, 2006, in four wheelers. In case of L.K. Jain, the turnover was 684 wagons during the period October, 2005 to September, 2006. The summarized detail of traffic in cement sliding for the booths concerned, during the period 10/05- 09/06 in four wheelers, are as below:

Name of the Party	Area Allotted	Area found occupied	Traffic figures from 10/05-9/06 in 4 wheelers

M/s Udaipur Cements	7'*7'=4.552 sq mtrs	4.02'*2.24'=9.004 sq mtrs	Nil
Kishore Brothers	10'*10'=9.29 sq mtrs	4.97*3.01=14.959 sq mtrs	Nil
Govind Ram Grover	10'*10'=9.29 sq mtrs	5.0*3.01=15.05 sq mtrs	Nil
Parmanand		4.97*2.43=12.077 sq mtrs	Nil
Prahlad Singh	8'*10'=7.432 sq mtrs	4.51*2.26= 10.19 sq mtrs	Nil

12. In several cases, the allottees were found to be occupying substantially larger area than was originally allotted to them. Accordingly, notices were issued to the petitioners in October, 2007, and they were allowed to continue for a period of six months to meet the volume figures and thereafter, review had to be conducted. The aforesaid letters/notices were issued after three petitioners had made representations and had stated that the actual work undertaken by them might not get reflected in the Railway records register and in fact they were handling much higher quantity.

13. The matter was re-examined after six months and it was found that the petitioners did not meet the minimum yard stick and by the impugned letters their licenses were cancelled.

14. The respondents have also stated in the counter affidavit that some of the land, which is presently occupied by the petitioners, is coming in the alignment of the new proposed coaching terminal work and, therefore, some of the telephone booths and cement dealer workshops are required to be removed. The said statement has been made in view of the subsequent development, which has transpired after cancellation of licenses. In view of the said development, lands on which some of the telephone booths are situated are required for the proposed coaching terminal work.

15. In view of the above, I do not find any merit in the writ petitions and the same are accordingly dismissed. In the facts and circumstances of the present case, there will be no order as to costs. Interim order granted in favour of the petitioners stands vacated.

SANJIV KHANNA, J.

OCTOBER 20, 2009
NA