

Date of judgment: 01.04.2009

+ W.P.(C) 7950/2009, C.M. No. 4399/2009

B.C.PANDEY

..... Petitioner

Through : Mr. N.L. Bareja, Advocate.

versus

THE COMMISSIONER (TRANSPORT) NCT OF DELHI & ORS

..... Respondents

Through : Mr. V.K. Tandon, Advocate.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be
reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner is aggrieved by a policy decision dated 16.09.2004 whereby a "Slab" formulated for enhancement of License Fee of shops, kiosks, counters, stalls, vending machines located at I.S.B.T. Kashmere Gate were announced by the respondents, Govt. of NCT of Delhi.
2. The petitioner had applied and was allotted a shop/kiosk in 1998 in the I.S.B.T. complex. The existing policy obliged him to pay License Fee of Rs.60,000/- per month with the condition that it would be enhanced by 10% each year. Apparently, the licensee was aggrieved by the 10% increase condition and complained that it was onerous. It was contended that different license

rates were charged from the allottees who had been given stalls at various points of time. This Court in a batch of proceedings in W.P. 1641/2001 and connected cases directed re-examination of the issue by the respondents, on 03.08.2004. Consequently, on 16.09.2004, the respondents issued a fresh policy in the following terms:

"F.12(31)/2004/ISBT/444

Dated: 16/09/04

ORDER

In compliance of the orders of the Hon'ble High Court dated 3/8/2004 in civil writ petition No.6772/2003 & C.M. No.11310/03 in the matter of Dayawati versus Govt. of NCT of Delhi & Others and similar other cases writ petitions, the department has examined and reviewed the allotment policy of shops/kiosks/counters/stalls/Vending Machine only issued on 10th November 1993 on the subject.

- 1. This policy has not been modified under the approval of the competent authority. Henceforth the license of shops/kiosks/counters/stalls/Vending Machine only will be extended/renewed on payment of additional license fee every year as per the four slabs of license fee as indicated below:-*

<i>S.No.</i>	<i>Category of license/Month</i>	<i>Rate of increase in the License fee per annum</i>
<i>1.</i>	<i>Rs. 1/- to Rs. 25000/-</i>	<i>10% of the existing license fee</i>
<i>2.</i>	<i>Rs.25000/- to Rs.50000/-</i>	<i>5% of the existing license fee</i>
<i>3.</i>	<i>Rs. 50001/- to Rs.75000/-</i>	<i>3% of the existing license fee</i>
<i>4.</i>	<i>Rs. 75001/- to above</i>	<i>2% of the existing license fee</i>

- 2. The renewal of license of the licensee/shopkeepers who are already covered under the category of old evictee and compassionate ground allotments will continue at the existing of 5% increase per annum even in the slab of Rs.1/- to Rs. 25000/- per month however the next slabs same rate of increase as above shall be applicable.*
- 3. Allotees shall have to give their written requests for extension/renewal of license 30 days in advance before the expiry of the license failing which a penalty at the rate of Rs.50/- per day shall be charged.*
- 4. This policy will not apply in the case of rooms/spaces being allotted for office purpose.*

5. *This policy will not apply in the case of rooms/spaces being allotted for office purpose.*

This policy has been made applicable with immediate effect.

*(Superintendent ISBT)
Kashmere Gate: Delhi”*

3. Since he fell in the highest bracket where the license fee was to be increased by 2% annually, the petitioner approached this Court by filing W.P. 13895/2004, complaining that the increase was onerous. The petitioner had, in the meanwhile, approached this Court complaining about the onerousness of the existing pre-16.09.2004 policy which, according to him resulted in having to pay higher license fee. That writ petition was disposed of on 20.08.2004 in the following terms:

“In my considered view, the matter in issue is purely one of contract between the petitioner and the respondents and in case the petitioner wants renewal of license, the petitioner has to adhere to the terms of the license in respect of renewal read with what was agreed upon before the Division Bench. Insofar as the claim of the petitioner for reduction of licence fee is concerned, in view of the aforesaid grievance it is for the respondents to consider whether they would like to reduce the licence fee in view of what has been stated in the writ petition.

In view of the aforesaid I am of the considered view that the only direction to be passed is that a decision be taken in pursuance to the various representations made by the petitioner which have been annexed to the petition and the decision be communicated to the petitioner within a maximum period of two months from today.”

4. The petitioner’s appeal to the Division Bench was permitted to be withdrawn enabling him to seek recourse to alternative remedies, if available, in accordance with law. He submits having made a detailed representation on 15.06.2007 offering alternative methods of calculating license fee and also its increase. According to the petitioner, similar spaces were allotted to other licensees at different points of time for which authorities charged license fee. This, it was

contended, leads to imbalance and inequities. The petitioner proposed that a system of averaging license fee should be adopted while uniformly recovering similar rates from all licensees; he also suggested an alternative mode.

5. The petitioner felt aggrieved by what he thought was the inaction of the respondents in regard to his proposals and he approached this Court yet again by filing W.P. 6395/2008. That writ petition too was disposed of on 02.09.2008. Reliance is placed on the following observations of the Court while disposing of the petition:

“Learned counsel for the petitioner submits that consequent to the above order passed, the petitioner had again made a representation on 15.6.2007, however, the representation of the petitioner has not been considered nor any decision has been communicated to him. Learned counsel also submits that, at this stage, a direction be issued to respondents to consider the representation dated 15.6.2008, as expeditiously as possible. Learned counsel further submits that inaction on the part of the respondents is contemptuous, however, he has not filed a contempt petition, but at this stage, only seeks direction from this Court. The stand taken by the petitioner is fair and just. Even otherwise, respondents seem to have flouted the direction passed by the learned Single Judge in his order of 20.8.2004.

In view of above, respondents are directed to treat the present writ petition of the petitioner as a representation and dispose of the same positively within a period of six weeks from today.

Dasti.”

6. The petitioner is now aggrieved by a letter dated 07.01.2009 turning down his request. The communication stated that the competent authority rejected the proposals on administrative and financial grounds.

7. The petitioner submits that the method adopted, for calculating the license fee, is arbitrary as it does not take into consideration the fact that similar area has been occupied by allottees though at different points of time. This dissimilarity in the license fee is without rationale and is wholly dependent on what was agreed to be paid at the particular point of time

when the allottee occupied possession. Learned counsel contended that the respondents should charge uniform rates or base their rates on uniform criteria.

8. The Court has considered the petitioner's submissions. The order dated 20.08.2004 had, in fact, turned down petitioner's challenge to the then existing policy on the ground that the matter was purely one of contract between the petitioner and the respondents. After all, the petitioner had applied for license consciously; the terms were made known to him. At that point of time, the terms were that the license fee was Rs.60,000/- per month with enhancement of 10% annually. The petitioner's grievance as well as those of others ultimately led to the policy revision of 16.09.2004. The respondents nuanced their approach and introduced slab system; those in the highest bracket where the license fee was in excess of Rs.75,000/- per month were to increase their license fee by 2% annually. The petitioner approached this Court on two occasions saying that his grievance was on account of the new policy which had not been considered. Now the authorities by the order dated 07.01.2009 rejected his submissions.

9. What the petitioner is doing essentially is calling upon this Court today, while complaining of arbitrariness and discrimination, to make a policy choice. He consciously entered into a contract, accepted the terms and was awarded the license. The terms of the license were agreed upon by both the parties and the petitioner has been functioning for more than 11 years. The question of annual increase of license fee is ultimately a matter of executive policy which lies within the exclusive domain of the respondents. Though the petitioner is free to suggest an alternative mode which may appear more attractive to the Court, be it averaging or some other reasonable method, the fact remains that eventually the respondents have to decide the feasibility of accepting such proposals. In case like the present one, various other factors need to be considered apart from the area allotted; for instance, use of the allotted space, the time when the

allotment took place and so on. The adoption of a single point criteria as suggested by the petitioner could be one factor to be considered undoubtedly; but the Court cannot thrust the same or any other method which it considers wise, upon the respondents.

10. It is now established that judicial review extends to considering reasonableness of a policy and procedural fairness of public authorities, not wisdom of the measure. The Court does not don the hat of an appellate authority to adjudge the feasibility or correctness of a policy otherwise falling within the exclusive jurisdiction of the administrative sphere unless it is established that the policy is arbitrary or illegal/unreasonable and that no reasonable person can decide in the manner complained against. This Court is satisfied that none of these can be said to be attracted by the impugned policy or order.

11. The writ petition and the accompanying application are accordingly dismissed.

**S. RAVINDRA BHAT
JUDGE**

**APRIL 01, 2009
'ajk'**