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

+ **FAO(OS) NO. 389/2009 and CM No. 12519/2009**

Reserved on : September 16, 2009

Date of decision : October 13, 2009

Kamal Kishore

..... Appellant

Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.
Mr. Manjit Singh Ahluwalia for
Mangalam Jan Kalyan Samiti.

versus

Municipal Corporation of Delhi and Another Respondents

Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

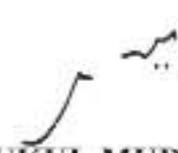
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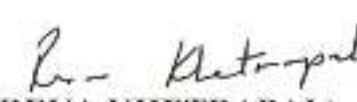
JUDGMENT

13-10-2009

MUKUL MUDGAL, J.

For orders see, FAO(OS) No. 387/2009.


(MUKUL MUDGAL)
JUDGE


(REVA KHETRAPAL)
JUDGE

October 13, 2009

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Signature Not Verified

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Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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

+ **FAO(OS) NO. 387/2009 and CM No. 12513/2009**

Reserved on : September 16, 2009
Date of decision : October 13, 2009

Dr. Mukherjee Nagar Resident Welfare Club Appellant
Through : Mr.V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 399/2009 and CM No. 12829/2009

K.L. Arora Appellant
Through : Mr.V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 386/2009 and CM No. 12510/2009

Bharat Mahana Appellant
Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 388/2009 and CM No. 12516/2009

Kamal Kishore Appellant
Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.
Mr. Manjit Singh Ahluwalia for
Mangalam Jan Kalyan Samiti.

versus

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Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 389/2009 and CM No. 12519/2009

Kamal Kishore Appellant
Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.
Mr. Manjit Singh Ahluwalia for
Mangalam Jan Kalyan Samiti.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 390/2009 and CM No. 12527/2009

Veena Verma Appellant
Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
respondent-MCD.

AND

FAO(OS) NO. 394/2009 and CM No. 12731-12732/2009

Ravinder Kumar Dua Appellant
Through : Mr. V.P. Singh, Sr. Advocate and
Mr. Raju Ramachandran, Sr. Advocate,
with Mr. Arvind K. Gupta, Mr. Rakesh
Garg, Mr. Mohit Garg, Mr. M.I.
Choudhary, Advocates.

versus

Municipal Corporation of Delhi and Another Respondents
Through : Mr. H.S. Phoolka, Sr. Advocate, with
Ms. Mini Pushkarna, Advocate, for the
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CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

%

JUDGMENT
13-10-2009

MUKUL MUDGAL, J.

1. By this judgment we propose to dispose of a batch of connected first
appeals against common order dated 25th August, 2009 passed by the learned

Single Judge of this court disposing of the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') filed by the appellants herein.

2. The petitioners had entered into licences with the MCD, the respondent herein, to use community halls, belonging to the respondent for a period of five years each, subject to terms and conditions contained in their licence deeds. These licenses which were executed in August-September, 2004 have since then, either expired or are going to expire shortly. The petitioners had, on the basis of the renewal clause contained in the Licence Deed requested the respondent to renew the licence for a further period of five years which request was turned down. Aggrieved by the said decision of the respondents, the petitioners approached the learned Single Judge with a petition under Section 9 of the Act.

3. The relevant necessary clauses arising for consideration in this appeal are as under: -

"1. That in consideration of the payment of Rs.1,27,278/- as security deposit received vide Receipt No. dated In the form of adjusted from EMD, being equivalent to six months licence fee quoted by the licensee for due and proper performance of these presents and also willingness of the licensee to pay Rs.21,213/- only per mensem for _____. The licensors grants unto the licensee and authorizes it to use the said Community Hall as detailed here above subject to the conditions hereinafter appearing for a period of five years commencing from the date of

these presents renewable for another term of five years, ten years in all from the date of entering into the licensee deed for the first time in the year 2003.

(a) In the default to pay the license fee of Rs.21,213/- per month as agreed together before the 10th day of the month to which it relates the licensee shall pay interest which will form part of Licence @ 24% per annum on the arrears of the Licence Fee from the first day of the month i.e. from the month in respect of which the default in payment takes place till the prior to the effective date of determination of license. In case the license fee remains unpaid for three months, the license will be cancelled. The interest @ 7 ½% per month over and above the existing License fee, and interest due before the effective date of determination of License fee, and interest due before the effective date of determination of License shall be payable by the Licensee till the date of payment.

The Commissioner, MCD may, however, on receipt of request and clearance of all the dues mentioned above, restore the license on the existing license fee or on such condition as may be fixed by the Commissioner at his absolute discretion.

(b) If the license fee hereby reserved or any part thereof shall at any time be in arrears or remain unpaid after the due date or if the licensee at any time fails or neglects to perform or observe any of the terms and conditions and covenants herein contained and on his part to be observed and performed and in any such case the Corporation may, without prejudice to its other rights, giving 30 days' notice, in writing, to the licensee determine the license and re-enter upon the said premises or in part thereof. The Licensee shall upon such determination peacefully stop use of the said premises without any right to compensation whatsoever and thereupon this license shall be absolutely determined without prejudice to any antecedents breach of terms and conditions and covenants on the part of licensee. The license shall stand ipso facto terminated without any right to compensation.

(c) Remission in license fee on any extraneous conditions shall not considered by the Licensor.

35. That the licensor shall have the right to terminate the licence after giving one month's notice without assigning any reasons thereof.

37. That in case of any dispute arising between the licensor and the licensee in respect of the interpretation or performance of any terms or conditions of this licence, the same shall be referred to the sole arbitration of the Commissioner, MCD whose decision thereon shall be final and binding on both the parties. The licensee shall not object to the Commissioner, MCD acting as sole arbitrator on the ground that he had dealt with the case or has at some stage expressed opinion in any matter connected therewith."

4. The learned Single Judge held that the renewal clause of the licence deed was not solely dependent on the exercise of mere option of renewal by the licensee, but also required the consent of the licensor. The learned Single Judge also found that the clause 35 of the Licence Deed conferred upon the licensor the right to terminate the licence by giving one month's prior notice without assigning any reason therefor. The learned Single Judge, therefore, prima facie, found that there was no obligation upon the respondent to renew the licence for another period of five years and therefore the interim injunction sought for could not be granted.

5. The order of the learned Single Judge has been assailed by the appellant mainly on two grounds: -

- a. That on account of the money spent by the appellants in development of the said community centres and the renewal clause, they have a legitimate expectation that the licence shall be renewed for a further period of five years.

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- b. That the decision not to renew the licences has been taken without any basis and without giving them any opportunity of being heard.

6. Elaborating the above grounds, Mr. V.P. Singh, the learned senior counsel for the appellant also strenuously urged that the license itself provided that it has been granted for a period of five years extendable for a further period of five years. The extension was natural, unless there was violation of the terms and conditions of the license. No such violation had ever been brought to the notice of the appellant-licensee by the respondents-licensor and, therefore, the action of the respondents in unilaterally cancelling the license without hearing the appellant or providing any opportunity whatsoever to the appellant to present their case for renewal was in utter violation of the well established principles of natural justice. The breaches, if any (now sought to be urged), of the agreement were never brought to the notice of the appellant nor as a matter of fact the respondents were basing their case on any breach of the agreement by the appellant. Though there were no grounds with the respondents not to renew the license, nevertheless the impugned order had been passed. Bookings had been made upto February, 2010, regarding which the documents had been placed on record. Such bookings were On-line bookings made by the respondents

themselves as was evident from the documents on record. The learned senior counsel also invited our attention to the minutes of the meeting of the Municipal Corporation and in particular to Proposal No.982, which read as under:

"Copy of sitting of Municipal Corporation/Samiti Body for proposal no./issue no.982 dated 12.2.09.

Proposal No.66:

Following proposal were made by Shri Anesh Kumar Jain and Parvesh Vahi and supported by Sh.Vijender Gupta.

Proposal No.982:

Because Corporation for the marriage and other functions construct the community centres and provide them to the people on rent.

Because some of the community centres have been handed over to the contractors for their upkeep and running.

Because the contractors of such community centres are working as per their whims and wishes due to which people are required to pay higher rate.

Because the period of lease of these community centres of giving to the contractors are expiring or likely to expire in near future. Therefore, in order to save the people from the exploitation of the contractors, their license may not be renewed.

Therefore, this samiti of the Corporation solemnly resolved that those community centres which have been given on the license to the contractor their license may

not be renewed after expiry of the period.

Proposal is passed with full consent.

*sd/-
Superintendent
Office of Secretary
Municipal Corporation of Delhi"*

7. Interpreting the word 'renewable' in Clause 1 of the License Deed, Mr. Raju Ramchandran submitted that the word 'renewable' must be interpreted in the light of the preceding clause whereunder the licensee had given its willingness **"to make adequate arrangements for developing, managing and operating a Community Hall"**. He contended that the doctrine of legitimate expectation was attracted in the instant case as the investments made by the appellants were with the obvious legitimate expectation of renewal of the License Deed. Not only the respondents failed to renew the License Deed, no individual communication was sent by the respondents to the appellant refusing to renew the license nor was any cause made out for cancellation of the license. Until and unless the right of the appellant was adjudicated upon by the Adjudicatory Forum under the arbitration clause (Clause 37 of the agreement), the appellant in the circumstances deserved to be protected, more so, as the Community Halls had been booked well in advance for weddings and other functions.

8. During the course of the arguments, the learned Senior Counsel Sh. V.P. Singh, appearing on behalf of some of the appellants, submitted that the decision taken by the Standing Committee not to renew any of the nine licences in question was taken without any material or complaints against the appellants being placed before the said Committee and requested this Court to summon the record of the Standing Committee..

9. The learned counsel for the respondent was consequently asked to place the relevant records pertaining to the decision of the Standing Committee before this Court. The learned counsel for the respondent took us through the records which showed several complaints against the appellants and show cause notices issued to the appellants consequent thereto. It was also pointed by the counsel for the respondent that the appellants had raised permanent structures even though they were specifically directed not to raise such structures, which was also a contractual term and they cannot have any legitimate claim to be considered for renewal on that basis.

10. It was contended by the learned Senior Counsel for the respondent, Sh. Phoolka, that the respondent has taken the policy decision not to renew the contracts upon their expiry in the normal course of 5 years in view of the complaints against the appellants.

11. Prima facie, we are satisfied that the decision not to renew the licence

is based on the relevant material placed before the deciding authority. We are also satisfied that the decision seems to have been taken keeping in view the numerous complaints made against the appellants. The doctrine of legitimate expectation is only an aspect of Article 14 of the Constitution which does not give rise to an enforceable right but only provides that the action taken by the authority while dealing with the citizens is not arbitrary. The doctrine of legitimate expectation must yield, wherever required, to larger public interest in appropriate cases. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the case of Sethi Auto Service Station and Another vs. Delhi Development Authority and Ors. (2009) 1 Supreme Court Cases 180 wherein it was held as under: -

"32. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of

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power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide *Hindustan Development Corporation* (supra)]”

In the light of the material placed before us it cannot at this stage be stated that the action not to renew the licences for another term of 5 years is so arbitrary or unreasonable so as to be covered by the position of law laid down in the above judgment. However, this is subject to the decision of the Arbitrator in case recourse to arbitration is taken.

12. Even otherwise, raising of permanent structures which was otherwise not permissible under the licence cannot be said to give rise to any legitimate expectation. Prima facie, we are satisfied, therefore that not to renew the licence was a policy decision which cannot be termed as arbitrary and unreasonable. In matters affecting policy requiring technical expertise, Court would leave the matters for decision of those who are qualified to address the issue, unless such action is arbitrary, irrational and unconstitutional. In this regard, reference can also be made to *Federation of Railway Officers*

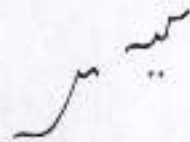
Association and Ors. versus Union of India (UOI) AIR 2003 SC 1344.

13. The Counsel for the Appellant stated that as per the arbitration clause all appellants would present their case jointly before the arbitrator and would not take more than half an hour to do so, which will be set out in a claim petition not exceeding 3 pages with only 3 citations. We direct that in case recourse to arbitration is taken by the appellant as per the arbitration clause, the MCD would also follow the above time table to enable an expeditious award within 30 days of the submission of the statement of claim. The counsel for the appellant submitted that several advance bookings for the venues had been made by the licencees. The respondents' counsel stated that such bookings will be honoured.

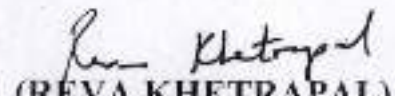
14. In this view of the matter, we are not inclined to interfere with the learned Single Judge's order declining to grant the interim relief of injunction prayed for by the appellants. However, in case the arbitration is invoked as per the conditions set out in para 10 above and the Arbitrator decides in favour of the appellants herein to hold that licenses were liable to be renewed, the respondents shall reinstate their licenses within one week of the passing of the award. We also make it clear that since we were told by the counsel for the MCD that the bookings already made shall be honoured, the appellants would be permitted to supply services only to such pre-booked

events at the rates fixed by the respondents. However, such rendering of services shall not be construed to confer any other right on the appellant, save and except, any right which may accrue to them in case the Arbitrator holds in their favour. Needless to say that the observations made hereinabove, being only prima facie, shall not be binding or otherwise on the Arbitrator who shall be at liberty to take his own view depending on the record of the case.

15. In light of the above, there is no infirmity in the impugned judgment of the learned Single Judge. Consequently, there is no merit in the appeals. The same are dismissed. Parties to bear their own costs.



(MUKUL MUDGAL)
JUDGE


(REVA KHETRAPAL)
JUDGE

October 13, 2009
sk