

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

Date of decision: 14th September, 2011

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CONT.CAS(C) 616/2010

HIMALAYAN ADVERTISING Petitioner/Relator
Through: Mr. Gautam Das & Mr. Santosh
Bebarta, Adv.

Versus

YOGESH KAPUR, M.D., D.T.C Respondent
Through: Ms. Latika Chaudhary for Ms.
Avnish Ahlawat, Adv. for DTC.

AND

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W.P.(C) 4874/2010

HIMALAYAN ADVERTISING Petitioner
Through: Mr. Gautam Das & Mr. Santosh
Bebarta, Adv.

Versus

DELHI TRANSPORT CORPORATION & ANR Respondents
Through: Ms. Latika Chaudhary for Ms.
Avnish Ahlawat, Adv. for DTC.
Mr. Rajnish Gautam, Adv. for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The counsel for the petitioner/relator seeks time to file rejoinder. The counsels for the respondents oppose contending that the petitioner/relator is enjoying an interim stay.

2. The counsel for the petitioner/relator states that though interim protection was granted to the petitioner but the petitioner has not had any benefit thereof inasmuch as the respondents have constructed parallel bus shelters and violated the order. He expresses inability to argue today.

3. In the circumstances, since the petitioner is not having any benefit of the stay, the interim order is vacated. Rejoinder be filed within eight weeks.

4. At this stage, the counsel for the petitioner states that he will argue the writ petition as well as contempt petition today itself. The counsel for the respondent no.1 DTC states that the reply filed in the contempt case may be read in response to the writ petition also. Rather the counter affidavit filed by the respondent no.2 Delhi Integrated Multi Modal Transit

System Ltd. (DIMTS) is also in the contempt filed. The counsels have been heard.

5. The writ petition was filed to restrain the respondent no.1 DTC from dismantling the Bus Queue Shelters/Time Keeping Booths (BQs/TKBs) with respect where to the respondent no.1 DTC had entered into a contract with the petitioner, valid from 10th March, 2010 to 9th March, 2012.

6. Notice of the petition was issued. Thereafter vide order dated 26th July, 2010 *status quo* was directed to be maintained. The said order has continued till now. On 5th August, 2010, on request of the counsel for the petitioner, DIMTS was impleaded as respondent no.2. There is no formal order extending the interim relief to the respondent no.2 DIMTS.

7. Cont. Cas(C) 616/2010 was filed on or about 31st August, 2010 averring breach by the respondent no.1 DTC of the interim order.

8. The petitioner was, vide three separate but identical agreements, appointed as a contractor of the respondent no.1 DTC for display of Advertisement Boards on the BQs/TKBs of the respondent no.1 DTC in

the Civil Lines-I, Narela (R-1) & Rohini-II, Zones for the period aforesaid. It is the case of the petitioner in the petition that though he had been regularly making payments under the contracts as per the bills raised by the respondent no.1 DTC from time to time but the respondent no.1 DTC in the month of July, 2010 arbitrarily started dismantling the BQs in the area subject matter of the contracts, without prior notice or intimation to the petitioner. The petitioner pleads that he had already collected revenue from the advertisers and if the BQs were to be so demolished, he would suffer irreparable loss and injury and notwithstanding his representations, the demolition work was not stopped. Averting the work of demolition to be in violation of the principles of natural justice, the writ petition was filed.

9. The respondent no.1 DTC in its reply in the contempt filed, has stated that before awarding the contract to the petitioner, the petitioner had been informed that Govt. of NCT of Delhi had awarded the contract to DIMTS for modernization of 1050 BQs for Commonwealth Games-2010 (CWG-2010); that in the offer letter in pursuance to which respondent no.1

DTC entered into agreements with the petitioner also it was clearly mentioned that the BQS under the BOT Scheme shall be deleted from the BQS in the zones subject matter of agreement; that any new BQS constructed in the zone shall also be subject matter of the agreement with the petitioner. It is further pleaded that the petitioner prior to entering into the agreements with the respondent no.1 DTC had also submitted an affidavit giving no objection for withdrawal of 12 BQSs from the tender documents and that if any other BQSs are found to fall in the category of BQS to be constructed for the purpose of CWG-2010 then the same shall also be treated as withdrawn by DTC at any time; the petitioner in the said affidavit had also assured the respondent no.1 DTC that it will not take up any grievance in any forum regarding withdrawal of any BQS by the respondent no.1 DTC.

10. The counsels for the respondents also invite attention to Clause 11 of the agreements whereunder the respondent no.1 DTC had a right to have the BQSs demolished, dismantled or removed at any time during the period of the contract, without notice to the petitioner and for any reason

whatsoever. It was further a term of the said clause that the petitioner shall abide by the directions if any of the Government including through DIMTS. Attention is also invited to Clause 17 of the agreements whereunder the contract was terminable without assigning any reason by giving three months notice.

11. The agreement with respect to which the writ petition had been filed being not specifically enforceable and disputed questions of fact being involved, it has been enquired from the counsel for the petitioner as to how the writ remedy has been invoked. Attention in this regard is invited to *Kisan Sahkari Chini Mills Ltd. V. Vardan Linkers* AIR 2008 SC 2160 laying down that the writ remedy in a contractual matter is confined only to public law elements and not to contractual disputes. In the present instance in view of the express clauses in the agreements it will have to be adjudicated as to whether any BQs which the respondent no.1 DTC could not have demolished have been demolished. It may also be noticed that the averments in the petition are absolutely vague in this regard save for

generally stating that DTC had started demolition of BQs, no particulars whatsoever have been given.

12. The only response from the counsel for the petitioner is that the petitioner cannot be left remediless. As far as the argument of breach of natural justice is concerned, the contract having expressly provided for the right of the respondent no.1 DTC to demolish any BQ even without notice to the contractor, no grievance can be heard to be made thereof.

13. The petitioner has remedies before a Civil Court or in accordance with the arbitration clause in the agreement and thus cannot claim that he has been left remediless.

14. The counsel for the petitioner states that the clauses aforesaid in the agreement and/or the affidavit aforesaid are in the context of the CWG-2010 but zones with respect to which the agreement was entered with him were nowhere connected with the Commonwealth Games and thus the benefit of the clauses in the agreement and the affidavit could not have been taken.

15. The affidavit/agreement does not specify so. It thus cannot be said that the right of the respondent no.1 DTC to demolish any BQS in the zone subject matter of agreement with the petitioner was confined only to those zones relevant for the Commonwealth Games.

16. There is thus no merit in the petition the same is dismissed.

17. As far as the contempt case is concerned, except for making a general averment that inspite of the order of *status quo* dismantling continued, no particulars have been given of the BQSs which were demolished/dismantled after the interim order dated 26th July, 2010. The counsel for the petitioner refers to the letter dated 16th August, 2010 annexed to the letter which mentions four BQSs which had been dismantled. However the said letter also does not state as to when the same were dismantled. Similarly the photographs filed by the petitioner merely show sites wherefrom BQSs had been dismantled but cannot be said to show as to when the demolition took place.

18. Needless to state that the respondents in their replies have denied any violation of the interim order.

19. In the absence of any clear-cut case of violation of the order having been made out, no case of contempt also is made out. The writ petition and the contempt case are therefore dismissed. I refrain from imposing any costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 16 , 2011
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