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

+ LPA 553/2014

MADAN LAL KAPUR ..... Appellant

Through: Mr. Vipin Kumar Anand, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mrs. Abha Malhotra, Adv.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **25.08.2014**

**CM No.13758/2014 (for exemption)**

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This intra-court appeal impugns the judgment dated 06.08.2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.6720/2013 preferred by the appellant.

4. We have finally heard the counsel for the appellant and the counsel for the respondent appearing on advance notice, at the stage of admission only.

5. The appellant was vide letter dated 16<sup>th</sup> October, 2003 of the Delhi Milk Scheme (DMS) allotted for a period of one year, DMS Booth / Depot

No.29-30 at Sat Nagar, Karol Bagh, New Delhi for distribution of Milk marketed under the 'Delhi Milk Scheme'. It is the case of the appellant that an Agreement dated 22<sup>nd</sup> October, 2003 was also executed by him and on behalf of the Delhi Milk Scheme. The appellant contends that he was at the time of allotment told that the said allotment is valid for the lifetime of the appellant and / or till the appellant was able to distribute milk therefrom and the Agreement, though for a period of one year was renewable annually. It is further the case of the appellant that he so continued to run the depot / booth till he was served with a letter dated 15<sup>th</sup> October, 2013, cancelling his concessionaireship of the said depot on account of the appellant having completed the age of 68 years. The appellant was accordingly asked to handover the possession of the said depot.

6. Aggrieved therefrom, the writ petition from which this appeal arises was filed contending that at the time of allotment in the year 2003 to the appellant, there was no such policy of the allottee being entitled to run / operate the depot till the age of 68 years only and the said policy which was subsequently introduced under the Delhi Milk Scheme prescribing the maximum age of 68 years for such concessionaireship was / is not applicable to the appellant.

7. The writ petition was entertained and interim stay against taking over possession of the depot from the appellant granted.

8. The learned Single Judge has, vide the impugned order, dismissed the writ petition, finding/observing/holding:

- (a) that the Agreement dated 22<sup>nd</sup> October, 2003 (supra) was for a period of one year only and terminable even prior thereto and though provided that it was renewable on year to year basis but further provided that the renewal could be denied without assigning any reason; the learned Single Judge from the said Clauses concluded that the appellant had no right to the depot;
- (b) that the policy aforesaid under the Delhi Milk Scheme has been formulated to ensure that the actions of the respondent were not arbitrary and / or discriminatory and to serve as guideline for the officials of the Delhi Milk Scheme;
- (c) that there was no merit in the contention of the appellant / writ petition of having not been given any opportunity of hearing inasmuch as several notices were pleaded in the counter affidavit to have been given.

9. The counsel for the appellant has before us also urged the same argument on which writ petition was filed i.e. that the appellant was at the time of allotment in the year 2003 58 years of age and the policy subsequently introduced of allowing the allotment of DMS Booths / Depots till the age of 68 years is not applicable to him.

10. We are entirely in agreement with the learned Single Judge. The appellant has utterly failed to disclose any right to continue to run / operate the booth / depot. The plea of the appellant, of having been told / assured that the said allotment was till his lifetime is contrary to the express terms of the Agreement which the appellant admittedly signed at the time of the allotment. Further, though the Agreement was for one year only and provided for renewal, that too was in the sole discretion of the respondent DMS. It is also not the plea of the appellant that the Agreement was renewed after the expiry of one year in the year 2004. On our asking about the same from the counsel for the appellant, the only thing he could state was that it was deemed to have been renewed from time to time. Even if that be so, such renewal from time to time would be for a period of one year only and during which time also the Agreement as per its terms was terminable.

11. It cannot be lost sight of that the appellant was / is at best a licensee

with respect to the said depot / booth and has no right thereunder. The Supreme Court in *Corporation of Calicut Vs. K. Sreenivasan* (2002) 5 SCC 361 and this Court in *Gesture Hotels & Food Pvt. Ltd. Vs. NDMC* 210 (2014) DLT 359 has held that the remedy against the wrongful non-renewal / cancellation of a licence, is of compensation only and not of injunction / resumption of occupation.

12. We are also not in agreement with the contention of the counsel for the appellant that the policy permitting the allotment to be renewed up to the age of 68 years only of the allottee is not applicable to the appellant. Though the appellant has before us not produced the Agreement dated 22<sup>nd</sup> October, 2003 but the relevant Clause 7(B) thereof set out in the impugned judgment is as under:

*“B) On the request of concessionaire DMS can renew its agreement year to year basis by its rule accordingly. However DMS can deny to renew the agreement without assigning any reason.”*

It is thus clear that even as per the Agreement, the renewal was to be on the basis of “rule” of DMS i.e. the policy of DMS.

13. Even otherwise the challenge to the said policy is incomprehensible when all employments in Government have an age of retirement, the

provision for maximum age in governmental schemes for grant of licences / concessions cannot be held to be arbitrary. Rather, if it was to be held that an allotment once made is for the lifetime of the allottee, it would be arbitrary vis-a-vis the new generations who would be deprived of getting any such concessions / licences under the governmental schemes. A Division Bench of this Court in *Niranjan Lal Vs. UOI* MANU/DE/6282/2012 and we have recently in *Roshan Lal Vs. UOI* MANU/DE/1648/2014 rejected such an argument of the caterers of the railways who were also claiming to be entitled to continuation of their contracts to provide catering services at the railway stations till their lifetime.

14. There is thus no merit in the appeal which is dismissed.

**CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J**

**AUGUST 25, 2014**  
'gsr'..