

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.08.2014

+ **W.P.(C) 6720/2013 & CM Nos.14579/2013 & 15490/2013**

MADAN LAL KAPUR

..... Petitioner

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Bajaj.

For the Respondent : Ms Shipra Shukla.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed this petition impugning a letter dated 15.10.2013, whereby the respondent has terminated the concession granted to the petitioner for distribution of milk in the specified area.

2. The petitioner was a concessionaire of the Government of India under the Delhi Milk Scheme (DMS) and was allotted booth no. 29-30 to carry on the business of distribution of milk under the DMS. It is stated that at the time when the petitioner applied for allotment, he was 58 years of age. Subsequently, an agreement dated 22.10.2003 was entered into between the petitioner and the respondent and he has been operating the said booth since then.

3. The learned counsel appearing for the petitioner submits that the letter cancelling the allotment of the booth (the impugned letter), on

account of the petitioner attaining the age of 68 years, is arbitrary and unreasonable as there is no term in the agreement entered into by the petitioner which postulates that the concession would come to an end on the petitioner attaining the age of 68 years. He further states that no Show Cause Notice had been issued to him in this regard and the respondent cannot *suo moto* take an action as contemplated in the impugned letter dated 15.10.2013.

4. The learned counsel for the respondent states that as per its Policy, the concessionaire was allowed to work the concession upto the age of 68 years, and on termination of the concession, the same was allotted to another person, who is differently abled. He further submits that the respondent has been unable to take possession of the booth on account of the restraint order passed by this Court on 25.10.2013.

5. The learned counsel for the petitioner has disputed the applicability of the Policy as referred to by the learned counsel for the respondent and has submitted that according to the said Policy the minimum age to apply for concession is 18 years and the maximum age is 58 years. He has argued that since the petitioner was allotted the concession when he was 58 years of age, the Policy would have no application to the petitioner.

6. I have heard the learned counsel for the parties.

7. It is not disputed that the petitioner was allotted the concession and is bound by the terms of the agreement dated 22.10.2003 entered into between the petitioner and the respondent. Clause 3.4 of the said agreement provides

that the agreement would be valid for a period of one year from 22.10.2003 to 21.10.2004. Clause 3.4 of the agreement reads as under:-

“3.4 That the agreement shall be valid for a period for one year from 22-10.2003 to 21.10.2004 unless terminated earlier by the DMS/Concessionaire as per the provisions of this agreement. This agreement shall automatically come to an end. Immediately on the expiry of the shall of the shall period of one year and no separate notice shall be required by the DMS to the Concessionaire in this regard.”

8. In terms of Clause 10 of the said agreement, the respondent would have the right to take over the charge of the booth from the concessionaire and/or from the representative of the concessionaire on termination of the Agreement. The said Clause reads as under:-

“10. That either on the termination of the agreement or on the expiration of the terms of the agreement, the DMS has the right to take over the charge of the milk booth either from the Concessionaire and /or from the representative of the Concessionaire as the case may be. In case either the Concessionaire or his representative, who is supposed to be present in the milk booth at the time of taking over the charge of the milk booth or refuse to hand over the charge, the DMS shall take over the charge of the milk booth. The inventory of items prepared in the absence of Concessionaire or his representative shall be final and binding on the Concessionaire and no claim whatsoever about the items shall be entertained by the DMS under any circumstances whatsoever.”

9. It is apparent from the terms of the agreement that the petitioner has no vested right to continue with the concession after the expiry of the term of the agreement, which indisputably has come to an end. Although the

petitioner has been permitted to continue with the concession, the same would not denude the right of the respondent to terminate the same in accordance with the agreed terms.

10. It is also expedient to refer to the clause 7 and clause 7(B) of the said agreement which read as under:

“7. Either party shall have the right to terminate this agreement anytime during the currency of the agreement by giving ten days notice

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.”

11. Thus, in terms of the agreement, the respondent would be entitled to terminate the same by giving 10 days notice. It is thus apparent that the agreement did not envisage creation of any continuing right in favour of the petitioner.

12. I also find the contention of the petitioner that the Policy of the respondent is not applicable to the petitioner because the concession was granted to him beyond the permissible age, wholly devoid of any merit. The Policy of the respondent has been formulated for its functioning and in order to ensure that its actions are not arbitrary and/or discriminatory. The policy is to serve as a guideline for the officials of the respondents to take decisions in matters concerning the DMS. In terms of the booth allotment Policy, the maximum age permissible for an concessionaire was 68 years. Although, this has been revised to 62 years by a decision taken by the management committee, DMS on 27.11.2012, the same has not been

applied in the case of the petitioner. The impugned letter dated 15.10.2013 is undeniably in conformity with this Policy and reads as under:-

“As your concessionaire ship of Depot No.29-30 has been cancelled, after completing the age of 68 years. You are requested to vacate the said depot and hand over the possession to DMS. In case the depot is not vacated by you, within three days of issue of this letter, the possession of the depot will be taken along with materials lying in the depot by DMS. DMS will not be responsible for any loss of any type arising out of this action.

This issues with the approval of the Competent Authority.”

13. The respondent has filed counter affidavit, which indicates that several Show Cause Notices were issued to the petitioner. The allegations against the petitioner were that he was selling “roughage” and other material from the booth which was contrary to the Policy of the respondent. Photographs annexed to the counter affidavit indicate that the petitioner was also using booth for the purposes of carrying on the business of a property dealer/consultant. The petitioner disputes having receipt of any of the Show Cause Notices. In my view, the issues whether the petitioner had received the show cause notices or whether the allegations made therein were true or not, is not material for the purposes of the present petition. This is so because the termination of the concession in question is not on account of any of the aforesaid allegations against the petitioner or in furtherance of any of the Show Cause Notices that had allegedly been issued, but because the petitioner had completed 68 years in age. In my view, the impugned order is neither arbitrary nor unreasonable.

14. It is seen that the petitioner had been enjoying the protection of the interim order since 25.10.2013. In this view, he is directed to vacate the premises within two weeks from today. Ordered accordingly.

15. The petition and all the pending applications are dismissed with the aforesaid directions.

16. It is needless to mention that any amount deposited by the petitioner would be refunded to him within the period as agreed under the agreement.

AUGUST 06, 2014
MK

VIBHU BAKHRU, J

