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

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Judgment delivered on: 27.07.2021

+ W.P.(C) 3429/2021

M/S PIONEER PUBLICITY CORPORATION PRIVATE LIMITED

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Manmeet Arora with Mr. Tarang Gupta and Mr. Harkirat Singh, Advocates.

For the Respondent: Mr. Sandeep Bajaj, Standing Counsel, SDMC with Ms. Aakanksha Nehra and Mr. Asav Rajan, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.20492/2021

1. For the reasons stated in the application, the delay is condoned.

Reply is taken on record.

2. Application is disposed of.

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1. The hearing was conducted through video conferencing.
2. Petitioner impugns notice dated 17.07.2020 to the limited extent that it grants remission to the petitioner, from payment of license fee only for the period 03.05.2019 to 07.06.2019 and not for the entire period from 03.05.2019 to 15.12.2020 during which the petitioner allegedly could not display the advertisements on one of the unipole sites allotted to the petitioner.
3. Petitioner was granted exclusive rights and license to construct, operate and display advertisements by the respondent pursuant to the tender notice dated 06.11.2017. One of the sites allotted to the petitioner for erecting the unipole was located at Bharion Marg T Junction R/S towards Purana Qila Road. Said site was allotted to the petitioner on 04.01.2018.
4. The unipole was removed on 02.05.2019 by the Public Works Department because of ongoing construction of the Integrated Transit Corridor Development Plan in and around Pragati Maidan.
5. In terms of the allotment petitioner was to be offered an alternative site for constructing, operating and displaying the advertisements on a unipole.
6. As per the petitioner first time the site was allotted to the petitioner was on 17.07.2020, however, when the petitioner

commenced the construction of the unipole, petitioner found that the said allotted site was also not physically feasible as there were heavy electrical wires under the allotted site.

7. As per the petitioner this was also acknowledged by the respondents and respondents thereafter opined that there was no further site available to be allotted to the petitioner. The contract of the petitioner in terms of the tender notice dated 06.11.2017 came to an end on 15.12.2020 by petitioner surrendering all the sites.

8. It is an admitted position that the petitioner has surrendered the cluster of advertisement sites, allotted to the petitioner pursuant to the said tender notice, on 15.12.2020.

9. Claim of the petitioner is that petitioner should be granted a remission from payment of license fee during the period 03.05.2019 (i.e. the date when the unipole at the said site was removed by PWD) till 15.12.2020 (i.e. the date when Petitioner surrendered all the sites). This petitioner contends is because he was not allotted an alternative site and the site that was allotted on 17.07.2020 was not feasible.

10. The contention of the respondent is that petitioner was, in a joint inspection, offered an alternative site on 08.06.2019, however, petitioner refused to accept the same on the ground that the same was not commercially feasible and thereafter on the request of petitioner further alternative sites were explored and ultimately on 17.07.2020

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an alternative site was allotted.

11. It is not in dispute that the site allotted on 17.07.2020 was not found to be feasible on account of heavy electrical cables running under the site.

12. It is not in dispute that the unipole constructed on one of the sites allotted to the petitioner was removed on 02.05.2019 by the workers of Public Works Department, on account of the construction of the Integrated Transit Corridor Development Plan.

13. Thereafter a joint inspection was carried out and on 08.06.2019 one site was identified. The inspection report dated 08.06.2019 records that during inspection few locations were observed as per Outdoor Advertisement Policy, 2017 but the petitioner was not agreeable to those locations for the reason that the sites were not commercially viable.

14. Said inspection report further records that petitioner desired the same location from where the unipole had been removed i.e. near/after Railway bridge and Bhairon Road Mandir, FTC Pragati Maidan to Noida.

15. The record further reveals that further inspection was carried out on 05.10.2019 to check the feasibility of new location in lieu of one unipole site which had been removed due to intervention of

Public Works Department in the night of 02.05.2019. The inspection report dated 05.10.2019 records that a new location was identified which was feasible.

16. Thereafter petitioner requested the respondents by its letter dated 12.12.2019 to grant remission till reinstallation as well as permit the petitioner to install the removed unipole at the proposed location identified on 05.10.2019.

17. Petitioner again repeated the request on 03.02.2020, 03.03.2020, 19.03.2020, 08.05.2020, 08.06.2020, 01.07.2020 and 08.07.2020.

18. It is only thereafter that on 17.07.2020 a formal allotment letter was issued to the petitioner allotting the alternative site which was identified on 05.10.2019.

19. It is not in dispute that even this site was subsequently found to be not feasible on account of heavy electrical cables passing underneath.

20. The admitted position is that the unipole was removed by the Public Works Department on 02.05.2019 and thereafter a formal allotment letter was issued of an alternative site only on 17.07.2020 which also could not be acted upon in view of the heavy electrical cables passing underneath.

21. Petitioner accordingly was deprived of displaying advertisements on one of the unipoles after 02.05.2019 till 15.12.2020.

22. The contention of the respondent that petitioner was offered a site on 08.06.2019 during the joint inspection and petitioner did not accept the same does not merit acceptance for the reason that there is no formal allotment letter issued to the petitioner after the inspection on 08.06.2019.

23. No doubt the inspection report records that several sites were inspected but the same were rejected by the petitioner being not commercially viable.

24. The question as to whether petitioner could have rejected those sites on the ground of commercially viability or not does not arise for consideration in this petition for the sole reason that no formal allotment letter was issued by the respondents till 17.07.2020.

25. Further the inspection carried out on 05.10.2019 fortifies the submission of learned counsel for the petitioner that the identification of site on 08.06.2019 was not final as the respondents had themselves carried out further inspection and identified an alternative site on 05.10.2019.

26. Record reveals that at the time of allotment of a particular site

the longitude and latitude of the site is specified in the allotment letter. The inspection report dated 08.06.2019 does not record any particular site having been identified by providing its latitude and longitude, however, the inspection report dated 05.10.2019 records the site along with its latitude and longitude which then culminated in an allotment letter on 17.07.2020.

27. Since the respondents did not formally offer or allot an alternative site to the petitioner so the question of petitioner rejecting the same on an untenable ground does not arise.

28. First time the allotment was made on 17.07.2020 and that also after repeated requests by the petitioner. Clearly respondents cannot charge the petitioner license fee for the period 03.05.2019 till 17.07.2020 as until the said date no formal offer or allotment was made. Thereafter also remission has to be granted to the petitioner because, admittedly, petitioner could not construct a unipole at the alternative allotted site on account of heavy power cables underneath. Thereafter, no further allotment of alternative site was made till Petitioner surrendered the cluster of sites on 15.12.2020.

29. In view of the above, the impugned letter dated 17.07.2020, to the limited extend that it grants remission in license fee only w.e.f. 03.05.2019 till 07.06.2019, is set aside. Petitioner is held entitled to remission in payment of the license fee for the period 03.05.2019 to

15.12.2020 i.e. the date when petitioner surrendered the cluster of sites.

30. Consequently, respondents are directed to refund the excess amount deposited by the petitioner with the respondents for the period aforesaid along with interest at the rate of 10% per annum.

31. Petition is disposed of in the above terms.

32. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J

JULY 27, 2021/rk

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