



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

Judgment reserved on: 22.08.2022

% **Judgment delivered on: 06.10.2022**

+ **LPA 389/2021 & CM APPLs. 37695-97/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

P[Through: Ms. Beenashaw N. Soni, Standing
Counsel with Ms. Mansi Bhatia,
Advocate.

versus

**PIONEER PUBLICITY CORPORATION
PRIVATE LIMITED**

..... Respondent

Through: Mr. Prosenjeet Banerjee & Mr. Tarang
Gupta, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The parties in this appeal entered into a contract for the allotment of a unipole for the display of advertisements against the payment of a licence fee. The said unipole could not be used for the assigned purpose and the Respondent sought a refund of its licence fee, along with interest for the time period during which the fee was being duly paid and advertisements could not be displayed. The Appellant SDMC declined to refund the same.



That is the sum and substance of the small issue that arises for our consideration in this appeal.

2. Let us briefly explain the factual matrix of the case. On 06.11.2017, the Appellant SDMC, vide a tender notice bearing no. CO/Tender-12/Advtt./SDMC/2017/NIT/D-1342 (Tender Notice/Contract Document), invited bids for operating a unipole falling under its jurisdiction and for allotment of advertisement rights through the same. On 04.01.2018, the Appellant issued an allotment letter to the Respondent granting advertisement rights to it for Cluster no. 10 for an initial period of three years. Thereafter, on 18.04.2019, the Public Works Department (PWD) issued a letter to the Respondent stating that the hoarding of "*CREDAI Youth Icon-19*" displayed at Bhairon Marg T- Junction R/S towards Purana Qila Road was required to be dismantled/shifted in light of the ongoing work of the Integrated Transit Corridor Development Plan in and around Pragati Maidan. Thereafter, the unipole stood dismantled on 02.05.2019. Meanwhile, the Respondent communicated the contents of the letter sent by PWD to the Appellant and requested it to suspend the licence fee of the unipole w.e.f. 03.05.2019 (the day after dismantling).

3. In accordance with the contract document, the Respondent was entitled to be offered an alternative site for operating the unipole. Accordingly, on 08.06.2019, a joint inspection was conducted by both the parties for the identification of an alternative site. During this visit, none of the sites was found to be commercially viable by the Respondent. Thereafter, on 05.10.2019, another inspection was carried out by the parties wherein a new location was identified as feasible. However, no formal



allotment of the new site was made by the Appellant. Be that as it may, the Respondent then requested the Appellant to permit it to install the dismantled unipole at the newly identified site vide inspection report dated 05.10.2019. The Respondent also requested for the remission of the licence fee till reinstallation of the unipole at the new site. The same request was recommunicated on multiple occasions, i.e. on 03.02.2020, 03.03.2020, 19.03.2020, 08.05.2020, 08.06.2020, 01.07.2020 and lastly on 08.07.2020. Finally, vide letter dated 17.07.2020, the alternate site was formally allotted to the Respondent.

4. However, upon inspection of the new site for installation of the unipole, it was not found to be feasible as it had electrical cables running underneath it. The Appellant was informed about the same on 28.07.2020 through a letter. Thereafter, both the parties conducted a joint inspection of the new site and concurred regarding the presence of electrical cables/lines underneath the new site. The same can be substantiated from the joint inspection report dated 31.07.2020 which recorded the presence of heavy electrical cables. Thereafter, on 15.09.2020, a meeting was held between the parties for reconciliation of accounts. In this meeting, it was represented that advance against the licence fee had been duly paid by the Respondent. On 16.09.2020, the next day, the Respondent communicated a surrender notice to the Appellant, in terms of Clause 25 of the contract document, for surrendering the cluster allotted to it due to the prevalent pandemic situation coupled with market forces. In terms of the contract document, the Respondent gave an advance notice period of 90 days along with the submission of advance licence fee for 90 days in lieu of the same.



Accordingly, the contract stood surrendered on 15.12.2020 upon the completion of three months. At this stage, the Appellant was again requested for the remission of licence fee.

5. In response to multiple requests made by the Respondent for remission of licence fee, the Appellant granted remission to the Respondent only for the period from 03.05.2019 to 07.06.2019 vide impugned notice dated 17.07.2020 whereby the alternate site was allotted. Aggrieved therewith, the Respondent filed a writ petition being W.P. (C) No. 3429/2021 before this Court for the remission of licence fee for the period from 03.05.2019 to 15.12.2020. Thus, the Respondent sought remission for the entire period during which the licence fee was paid and advertisement activity could be carried out on the unipole, i.e. for the entire period of non-display. Bifurcating this period, the Respondent sought remission of fee from 03.05.2019 to 17.07.2020 for non-display at the original site, and from 18.07.2020 to 15.12.2020 for non-display at the alternate site.

6. The learned Single Judge has allowed the writ petition and the operative paragraphs of the Order passed by the learned Single Judge read as under:

“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 licence 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 extent that it grants remission in licence 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 licence 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.”

7. The Ld. Single Judge observed that no formal allotment of the alternative site was made by the Appellant SDMC till 17.07.2020. Various inspections were conducted before that date, however, no allotment was made and the same can be discerned from the inspection reports on record. The Court further observed that the crux of the matter was that the Respondent was deprived of its right to advertise on the allotted unipole in accordance with the contract due to removal of the same and non-allotment of a commercially feasible alternate site. Thus, the Ld. Single Judge decided for the Respondent and granted the prayer for remission of the licence fee along with interest.



8. In appeal before us, the SDMC contends that the impugned order was passed in the teeth of several disputed questions of fact raised by it and on the basis of certain incorrect presumptions. It further submits that no remission of licence fee was warranted as the new site had been identified vide inspection report dated 08.06.2019 and it was the Respondent that had failed to take steps for clarification regarding the same. It is urged that the Respondent arbitrarily refused the alternative site and the obligations of the Appellant had been duly discharged as it had identified and offered an alternative site. Furthermore, the Appellant submits that the Ld. Single Judge erred in deciding questions of purely contractual nature with disputed facts in the exercise of writ jurisdiction.

9. The Respondent, on the other hand, submits that no alternative site was allotted to it prior to 17.07.2020 and thus, the Appellant's submission that remission was rejected due to the failure of the Respondent in not accepting the alternative site is wrong. It is submitted that despite several requests, no alternative site had been allotted by the Appellant and, thus, the Respondent could not derive any monetary benefit through advertising on the unipole. Furthermore, it is urged that being an instrumentality of the State, the Appellant SDMC was bound to follow the mandate of Article 14 of the Constitution, specifically the principles of natural justice and fair play, in denying the grant of remission for the entire period, as claimed.

10. We have heard the submissions of the parties at length and have carefully perused the record.



11. The short question that arises in this appeal is whether the Ld. Single Judge was correct in directing the Appellant to remit the monthly licence fee to the Respondent for the period between 03.05.2019 to 15.12.2020.

12. In laws governing contractual relationships, the prevention of unjust enrichment is embedded as a fundamental principle. Invariably, it runs as a golden thread connecting all such relationships. The principle of prevention of unjust enrichment prohibits a party to the contract from deriving any undue benefit out of the contractual relationship by way of jeopardizing the interests of the other party. The principle is aimed at ensuring fair play in contractual relationships.

13. As per the contract entered into between the parties, the Respondent had been allotted a unipole at the mutually agreed site for advertisement purposes. Soon after the allotment, the PWD informed the Respondent of the Integrated Transit Corridor Project that was to be executed in and around Pragati Maidan. Resultantly, the unipole allotted to the Respondent became obsolete for the purpose of advertisement. This development was communicated to the Appellant vide letter dated 24.04.2019. Subsequently, suspension of licence fee was sought by the Respondent at various stages for the time during which reinstallation of the unipole was being done at an alternative site. The parties made efforts to identify a suitable and commercially viable alternative site. A joint inspection was conducted on 08.06.2019, however, no site could be identified as commercially viable by the Respondent. The inspection report dated 08.06.2019 records the same. Thereafter, on 05.10.2019, another joint inspection was conducted, and a site was identified to be suitable. In pursuance of this inspection, the Respondent



sought permission of the Appellant for reinstallation of the unipole at the new site and also requested the Appellant for remission of licence fee. The same request was recommunicated at various stages until 17.07.2020, when a formal allotment letter for the alternative site was issued by the Appellant.

14. Thus, an alternative site was allotted to the Respondent for the first time on 17.07.2020, as can be ascertained from the allotment letter of the same date. It is beyond dispute that before this date, no formal allotment of an alternative site was made by the Appellant, despite continuous persuasion by the Respondent. Ld. Single Judge has categorically noted that the letter dated 17.07.2020 is the only formal record of the allotment of an alternative site.

15. Be that as it may, even after the allotment of the alternative site, the unipole could not be reinstalled as the Respondent discovered electrical cables passing underneath the new site. Upon communication of this information to the Respondent on 28.07.2020, a joint inspection of the new site was conducted by the parties. The joint inspection report dated 31.07.2020 records that during the digging work of the new site, heavy electrical cables were discovered and a major portion of the stretch was affected by the PWD work of the Integrated Transit Corridor. Thus, the new site was also found to be unsuitable and the same has been duly recorded in the joint inspection report.

16. The factual scenario that emerges from the perusal of the joint inspection reports and communication exchanged between the parties from time to time reveals that the Respondent was deprived of a suitable site for



installation of the unipole and display of advertisements thereon, as agreed under the contract. The essence of the contractual relationship between the parties was installation of a unipole at a site suitable for advertisement purposes, against the payment of a licence fee. The deliverables from the side of the Appellant were not fulfilled, whereas the licence fee payable by the Respondent was duly paid from time to time. The Appellant's averment that the default is attributable to the Respondent as it failed to select an alternative site despite offer does not find any support from the facts on record. It is the admitted position that the first formal allotment of an alternative site was not made before 17.07.2020 and more so, it is also admitted that even the alternative site was later found to be unsuitable for the purpose contemplated in the contract. A contractual relationship is premised on the prospect of mutual benefit and the Respondent could not be faulted for not accepting a site which was not commercially viable. Moreover, it is not the case of the Appellant that the alternative site was commercially viable. The joint inspection report indicates that the new site was unsuitable.

17. It is pertinent to note that our conclusion is not to be seen as a determination of breach of contract on the part of the Appellant. Our sole concern is the fact that the Respondent could not derive any gain through advertising, using the unipole for which it paid the licence fee. The principle of unjust enrichment demands that the licence fee be remitted by the Appellant as no advertising activity could be carried out by the Respondent. The Appellant cannot set up a legitimate claim over money which was received as a consideration for services that were never delivered by it.



18. Accordingly, we dismiss this appeal and uphold the direction of Ld. Single Judge to the Appellant to remit the entire licence fee received for the period from 03.05.2019 to 15.12.2020, along with interest, as specified in the impugned Order.

19. This appeal stands disposed of as dismissed with no order as to costs. Interim applications, if any, shall also stand disposed of in the aforesaid terms.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCOTBER 06, 2022