

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 23326 of 2014 (M)

PETITIONER(S):

**LATHIKA, AGED 59 YEARS,
W/O.KISHORELAL, EKARNNAPARAMBATH,
NEAR C.H.FLY OVER, CALICUT,
REPRESENTED BY HER POWER OF ATTORNEY HOLDER K.M.MOHANDAS,
KALATHIL HOUSE, P.O.MANALUR, THRISSUR.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN**

RESPONDENT(S):

- 1. ASSISTANT GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED, SANCHAR BHAVAN,
THRISSUR-680 001.**
- 2. PRINCIPAL GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LIMITED, SANCHAR BHAVAN,
THRISSUR-680 001.**
- 3. CHIEF GENERAL MANAGER (TELECOM),
KERALA CIRCLE THIRUVANANTHAPURAM,
POST MASTER GENERAL JUNCTION,
THIRUVANANTHAPURAM-695 001.**

BY ADV. SRI.PREMJIT NAGENDRAN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE AGREEMENT EXECUTED DATED 1-7-2012 BETWEEN THE PETITIONER AND RESPONDENTS.

EXT.P2 - TRUE COPY OF THE REPRESENTATION DATED 14-8-2014 ALONG WITH THE CHART SHOWING THE PROGRESS MADE BY THE PETITIONER FROM JUNE 2013 TO JULY 2014.

EXT.P3 - TRUE COPY OF THE STATEMENT OF PERFORMANCE AND ACHIEVEMENT OF THE PETITIONER AS PREPARED BY THE RESPONDENTS.

EXT.P4 - TRUE COPY OF THE NOTICE DATED 11-8-2014 ISSUED BY THE BSNL.

EXT.P5 - TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 19-8-2014

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): A TRUE COPY OF THE AGREEMENT DATED 7.9.2005.

EXT.R1(b): A TRUE COPY OF THE S & D POLICY 2012 DATED 1.7.2012.

EXT.R1(c): A TRUE COPY OF THE AGREEMENT PRODUCED BY THE PETITIONER DATED 1.7.2012.

EXT.R1(d): A TRUE COPY OF TARGET CALCULATION & TARGET FIXED OF EACH FRANCHISEE DATED, JUNE 2013.

EXT.R1(e): A TRUE COPY OF THE PERIODIC MEETINGS ATTENDANCE REGISTER CONDUCTED BY THE RESPONDENT DATED JULY 2013 TO MAY 2014.

EXT.R1(f): A TRUE COPY OF THE LETTER SENT TO THE PETITIONER BY THE 1ST RESPONDENT 17.7.2013 TO 20.6.2014.

EXT.R1(g): A TRUE COPY OF THE JUDGMENT IN WP(C) 107/2014 DATED 3.2.2014.

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 23326 of 2014

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Dated, this the 13th day of January, 2015

JUDGMENT

The petitioner, who is a franchisee of BSNL for Kodungallur is before this Court apprehending coercive steps at the hands of the respondents in putting an end to the arrangements, because of the various reasons as stated in the writ petition. The prayers raised in the writ petition are in the following terms :

- "(i) To issue a writ of certiorari or any other appropriate writ or order or direction to quash Ext. P4 communication 11.08.2014 issued by the respondents.
- (ii) To issue a writ of mandamus or any other appropriate writ or order or direction directing the respondents to hold a bipartite discussion in terms of the agreement and hear the petitioner's objection before implementing the winding up order;
- (iii) To grant such other and further reliefs as are just, proper and necessary in the facts and circumstances of the case."

2. A counter affidavit has been filed by the 3rd respondent pointing out that the idea and understanding of the petitioner is

totally wrong and misconceived. It is stated that issue had come up for consideration before this Court earlier in respect of similar grievance projected from various franchisees in other districts like Thiruvananthapuram, Kollam etc. These matters were considered together and the writ petitions were disposed of as per Ext. R1 (g) judgment dated 03.02.2014. The learned standing counsel for the BSNL submits that same course could be pursued in this case as well and that there is absolutely no attempt on the part of the respondents to oust the petitioner.

3. After hearing both the sides and after going through Ext. R1(g) judgment, this Court finds that there is no reason to have a deviation from the course ordered to be pursued by this Court as per the said verdict. The nature of contention raised from both the sides and the directions given are discernible from paragraphs 11, 13, 14, 17 and 18 which are extracted below for convenience for reference :

11. With reference to the specific pleadings in the Counter Affidavit, the learned counsel points out that the B.S.N.L. has not blacklisted the petitioners herein nor have they terminated the 'Franchisee Agreement' with the petitioners. The present situation

is only by virtue of expiry of the tenure, as mentioned herein before. It is asserted in paragraph 12 of the Counter Affidavit that the petitioners can very well appear for the new process of selection, on inviting E.O.I. (Expression of Interest) and submit their bids for evaluation. The learned counsel submits that, by virtue of the advantage/experience gained by the petitioners, they are entitled to have 'weightage' as per the relevant norms and their credentials will be appreciated in the course of fresh selection, as pointed out in paragraph 13.

12. *****

13.. After hearing both the sides, this Court finds that the rights and liberties of the B.S.N.L to appoint a franchisee are not liable to be intercepted or substituted by the opinion of this Court. The only question to be looked into, is whether the present arrangement should be put an end to, till a fresh selection is made for the area concerned, by entrusting the business to the nearby franchisee or whether the petitioners could be permitted to continue till the final selection is made, as a stop gap arrangement.

14. The learned counsel for the petitioners submits that, they are willing to take part in the new selection process, in tune with Ext.R1(a) policy; provided

they are given due 'weightage' as per norms and as stated in the Counter Affidavit. They also seek for an opportunity to continue the existing arrangement, in view of the huge investment made by them to set up the premises, installing A/C and such other infrastructure and to satisfy the due amount to the financiers from whom the requisite time extentention has been borrowed. The learned counsel for the petitioners also submits that they do not intend to pursue the challenge with regard to the course being followed by the respondent B.S.N.L. as to the steps for appointing fresh franchisee area.

15. *****

16. *****

17. Coming to the case of the petitioners, there is no case for the respondent that there is any such instance of delinquency on the part of the petitioners and as pointed out in the Counter Affidavit and as asserted across the bar, the termination of the arrangement only by virtue of the reflects of time, that by expiry of the period covered by agreement/contract and nothing more. This being the position, there cannot be any insinuation against the petitioners or as to the rights of the petitioners to be considered for the stopgap arrangement and as such this Court finds that

the grievance of the petitioners can be redressed to a substantial extent by permitting them to continue the operation, till the selection process are finalised by the respondent B.S.N.L.

18. In the above circumstances, all these writ petitions are disposed of, declaring that the B.S.N.L. is at liberty to proceed with the selection process inviting expression of interest from the general public in terms of Ext.R1(a) policy for appointment of franchisee for the area concerned. It is open for the petitioner to participate in the said selection by submitting their bid and satisfying the norms, upon which, their bid shall be considered with reference to the weightage to be given in accordance with the norms fixed in this regard. Once the process is finalised and if the petitioners get selected, it is open for them to continue subject to execution of fresh agreement with B.S.N.L. as aforesaid. If any of the petitioners lose the battle, it goes without saying that they can surrender or redressed that all the relevant stock is to be reinstated to the respondent without raising any dispute. In view of the submission made by the learned counsel for the B.S.N.L. that looking after orders have already been passed, the respondents are directed to give effect to the stopgap arrangement as ordered by this Court by

recalling such looking after orders, if passed already and by passing fresh orders to the above limited extent.

The writ petition is disposed of.

It is made clear that this verdict has been based on the particular facts and circumstances of the case. More so when, the issue has to be agitated before this Court by filing the writ petition from January, 2014 and the matter could not be heard or finalised earlier."

In the said circumstances, this Court finds that the petitioner is also entitled to have similar relief. The writ petition is disposed of, in terms of Ext. R1(g) verdict and continuation of the petitioner shall be subject to finalization of the fresh selection process in accordance with relevant norms prescribed for awarding the franchiseeship.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd