

\$~29 &

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

+ **LPA 461/2015**

SAI NATH ENTERPRISES

..... Appellant

Represented by: Mr.B.L.Wali, Advocate with
Ms.Deepti Gupta, Advocate

versus

**SOUTH DELHI MUNICIPAL
CORPORATION & ANR**

..... Respondents

Represented by: Mr.Ajay Arora, Advocate with
Mr.Kapil Dutta, Advocate

W.P.(C) 5554/2015

SAI NATH ENTERPRISES

..... Appellant

Represented by: Mr.B.L.Wali, Advocate with
Ms.Deepti Gupta, Advocate

versus

**SOUTH DELHI MUNICIPAL
CORPORATION & ANR**

..... Respondents

Represented by: Mr.Ajay Arora, Advocate with
Mr.Kapil Dutta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

21.07.2015

CM No.12650/2015

Allowed subject to just exceptions.

4

LPA No.461/2015

1. Though the appeal is listed for preliminary hearing, since counsel as above appears for the respondents on advance copy of the appeal being served, we have heard learned counsel for the parties in the appeal.
2. As we heard arguments in the appeal, it transpired that the writ petition filed by the appellant could be disposed of. Therefore, with consent of learned counsel for the respondents and the appellant, WP(C) 5554/2015 has been summoned in the Court with a direction to the Registry that it be listed for hearing today and the date July 31, 2015 fixed for hearing of the writ petition be cancelled.
3. We have accordingly heard parties in the writ petition itself.
4. Challenge in the writ petition was to a demand raised upon the appellant by the respondents vide letter dated March 28, 2015. The demand was the stated arrears of licence fee payable by the appellant for four parking sites taken by the appellant under a licence. Simultaneously, under the letter the appellant was blacklisted. It was pleaded in the writ petition that after the parking sites were allotted to the writ petitioner it faced problems because of local issues raised concerning the area which could be utilized at the four parking sites.
5. It was pleaded that the licence fee was increased unilaterally. It was pleaded that the impugned order conveyed in the letter dated March 28, 2015 was without a notice. It was pleaded that principle of natural justice was violated. It was specifically pleaded in the writ petition, and for which copy of the order dated May 18, 2015 disposing of WP(C) 4825/2015 was annexed, that in similar circumstances, qua demand raised upon the writ petitioner of WP(C) 4825/2015, the learned Single Judge had disposed of

the writ petition by passing an order as under:-

"CM No.8722/2015

*Allowed, subject to all just exceptions.
The application stands disposed of.*

W.P.(C) 4825/2015 & CM No.8721/2015

Issue notice.

The learned counsel for the respondent accepts notice.

The petitioner impugns an order dated 28.03.2015, inter alia, calling upon the petitioner to pay a sum of ₹2,62,58,318/-, which is stated to be on account of outstanding Monthly Licence Fees. By the said order, the petitioner has also been blacklisted from the panel of registered parking contractors in SDMC. Briefly stated, the facts are that the respondent had invited tenders for parking sites at South Extension, Part-II and M-Block Market, G.K.-I. The petitioner tendered for the said sites and was awarded the parking contracts in respect of the aforesaid sites for a period of 3 years w.e.f. 05.10.2013 at a monthly licence fee of ₹2,87,500/- + TCS for the parking site at South Extension Part-II and ₹3,45,000/- + TCS for the parking site at M-Block Market, G.K.-I. Although the petitioner entered into the contracts, it subsequently, sent several letters and representations to the respondent stating that the actual area of the parking sites was less than area tendered for, as part of the parking sites were occupied by taxi stands. According to the petitioner, the area of parking site at South Extension-II was further reduced as DMRC had put barricades for the works being carried out near South Extension-II. The petitioner states that in addition to the above, the area of aforesaid parking site at South Extension-II was also reduced in compliance with the order passed by the National Green Tribunal allowing parking only on one side of the road. The petitioner further states that during the term of the contract, the respondent enhanced the Monthly Licence Fees to about 6 times the contracted amount.

The learned counsel appearing for the respondent submits that the aforesaid restrictions were known to the

petitioner at the time of tendering for the sites. It is further stated that although the Monthly Licence Fees had been enhanced, the respondent had increased the parking charges also; therefore, the petitioner could not have any grievance in this regard.

I have heard the learned counsel for the parties.

It is seen that although several representations have been made with regard to various issues, the respondent has not passed any order either rejecting or accepting the said claims. It further appears that a mutual agreement had been arrived at with regard to the increase in the Monthly Licence Fees and the parking contractors had agreed to pay 1.5 times the amount of the contracted Monthly Licence Fees.

It is apparent from the above that there are several contentious issues which have not been considered by the respondent. I do not consider it appropriate to examine the same for the first time in these proceedings. In the circumstances, the learned counsel for the respondent states that the averments made in the present petition would be considered as a representation and a speaking order would be passed thereon.

In view of the aforesaid statement, the impugned order dated 28.03.2015 is set aside. The respondent shall consider the averments made in the petition and pass a speaking order after affording the petitioner an opportunity to be heard. In the first instance, the representative of the petitioner shall appear before the concerned officer/Assistant Commissioner, R.P. Cell on 04.06.2015 at 2:30 PM.

The petition is disposed of with the aforesaid directions.

Dasti under the signatures of the Court Master."

6. The grievance in the appeal is to the fact that a writ petition raising same issues of law was disposed of on the very preliminary hearing i.e. May 18, 2015, by the learned Single Judge, but as regards the appellant while

issuing notice to show cause in the writ petition notwithstanding counsel for the respondents appearing in the Court interim stay has been granted requiring 50% of the deposit to be made as a condition for stay of blacklisting.

7. We see no reason as to why writ petition filed by the appellant ought not to have been disposed of by the learned Single Judge passing an order pari-materia with the order dated May 18, 2015 disposing of WP(C) 4825/2015, for the reason a perusal of the said writ petition shows that same two issues which have been raised by the appellant were raised by the writ petitioner therein. The first concerned a parking site in respect of which the dispute was to the area offered by the respondents to be used as for parking and the actual area which could be used. The second was the unilateral increased in the licence fee.

8. Learned counsel for the respondents concedes that there is complete similarity in the factual and legal issues arising in the writ petition filed by the appellant and WP(C) 4825/2015. The only difference being the sites being different.

9. Under the circumstances, the appeal as also WP(C) 5554/2015 filed by the appellant are disposed of quashing the impugned order dated May 28, 2015. Pari-materia with the directions issued by the learned Single Judge in the order dated May 18, 2015 allowing WP(C) 4825/2015, we direct the respondents to consider the averments made in WP(C) 5554/2015 and pass a speaking order after affording the petitioner an opportunity to be heard.

10. We direct the representative of the appellant to appear before the concerned officer/Assistant Commissioner, RP Cell on August 03, 2015 at 2.30 P.M. The concerned officer/Assistant Commissioner shall pass a

speaking order which shall be conveyed to the appellant.

11. No costs.

12. DASTI.

CM No.12649/2015

Dismissed as infructuous.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

JULY 21, 2015

mamta