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

+ W.P.(C) 1354/2016 & CM No.5875/2016

LALIT NAUTIYAL

..... Petitioner

Through: Mr. R.K. Saini & Mr. Varun Nagrath,
Advocates

versus

THE DISTRICT & SESSIONS JUDGE AND ORS..... Respondents

Through: Mr. Saurabh Chaddha & Mr. Ishan
Kashyap, Advocates for respondent
No.1

Mr. Nitish Chaudhary, Advocate for
Mr. Viraj R. Datar, Advocate for
DHC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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26.05.2016

On the last date of hearing, i.e., on 18th May, 2016, learned counsel for the petitioner, Mr. Lalit Nautiyal, had stated that the petitioner has no objection in case the kiosk in question is put to auction, restricted to differently-abled category persons. We had asked learned counsel for the respondents to obtain instructions. Learned counsel for the respondents has placed before us a copy of the Minutes dated 19th April, 2016, wherein the respondents have agreed that the kiosk in question would be reserved for differently-abled persons and only the said category of persons will be permitted to participate in the re-auction/fresh tender proceedings. It is

observed that this will ensure equal and fair opportunity to others similarly placed to earn their livelihood.

2. Learned counsel for the petitioner today urges and submits re-auction/re-tendering is not acceptable. The petitioner has been in occupation of the kiosk in question for the last fourteen years. The license fee has been enhanced from time to time and presently it is about Rs.5,500/- per month. Under the interim orders, the petitioner is paying Rs.6,000/- per month as license fee. He submits that the petitioner wants to continue and should not be asked to participate in the fresh auction or tender in which other differently-abled candidates/persons can participate. In other words, the submission is that a kiosk should be treated as permanently licensed to the petitioner, though the license fee, it is submitted, can be increased or enhanced. The petitioner has drawn our attention to the judgment dated 14th March, 2008 passed in WP(C) No.14332/2004 titled ***Sanjay Kumar Jha v. AIIMS & Anr.***

We have considered the said contention but we feel that the kiosk in question should be put to fresh tender/auction where bids could be given by differently-abled or disabled persons as defined under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In other words, persons, like the petitioner, should be permitted and allowed to give bids. This would be fair and just. Others, who are in the same position as the petitioner, should be given an opportunity. One of the reasons is that this would ensure that the petitioner is not made and asked to pay unduly high license fee.

In the last order, dated 18th May, 2016, we had recorded that the bids received for the kiosk in Karkardooma Courts Complex vary from Rs.12,100/- per month to Rs.25,511/- per month. The petitioner had stated that he was not ready and willing to pay Rs.12,100/- per month as license fee as the amount was high, the said bids had been given by general category persons. We had agreed, though the respondents had submitted that the kiosk in question is located at the most favourable location and the highest bid of Rs.25,541/- would be the closest and the nearest bid. In these circumstances, the petitioner had agreed to fresh bids, restricted to differently-abled persons.

In view the present facts, we also do not think that the judgment in the case of *Sanjay Kumar Jha v. AIIMS & Anr.*(supra) would be applicable. The judgment records and refers to several facets, including the fact that the petitioner therein was treated as an unauthorised occupant and had faced proceedings under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in which eviction order was passed. The action of the respondents had compelled the Court to take strong action and pass the said order. The said order is not binding ratio, which would imply that whenever any kiosk is allotted or licensed to a differently-abled person, then, notwithstanding the period stipulated, the said allotment is to be treated as lifelong or as long as the person wants to use and utilise the said premises/kiosk. Often, orders are passed by the Courts in writ petitions in the facts of that particular case.

In the present case, the petitioner himself, on the last date of hearing, had agreed and accepted that the kiosk in question can be put to fresh

auction/tender in which only differently-abled candidates/persons can participate. This, we believe, is the right solution, which would be fair and just. The petitioner would be entitled to participate and the person who gives the highest bid amount would be entitled to use and occupy the kiosk and earn his livelihood.

We, accordingly, dispose of the present writ petition with the direction that the petitioner will continue to pay Rs.6,000/- per month as license fee till the aforesaid exercise is carried out. We hope and trust that the exercise of issue of fresh tenders would be initiated within a period of one month and will be completed within a month thereafter. The tender/auction would include appropriate terms and conditions to ensure that there is no proxy bidding and the differently-abled person is the actual and *de facto* user and beneficiary. We also clarify that in case the petitioner does not give the highest bid and is not entitled to use and occupy the premises, he will vacate the kiosk, without any demur or protest. CM No.5875/2016 is also disposed of.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 26, 2016

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