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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1936/2016 & C.M. Nos.8315/2016 & 44518/2016

PAWAN KUMAR

..... Petitioner

Through Mr. Nimesh, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through Ms. Mini Pushkarna, Standing
Counsel with Ms. Vasundhara
Nayyar, Ms. Anushruti and Ms.
Namrata Mukin, Advs. for the
NDMC.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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06.12.2016

The petitioner is aggrieved by the action of the authorities; his submission is that the contract license granted to him to operate a parking site had been illegally cancelled on 24.02.2016. His submission that he could not operate the parking site fully was substantiated by the two inspection reports of the Department which have not been considered by the Department itself; the adjustments of his amount which was due from the petitioner has not been passed on to him. Accordingly, this petition was filed.

Reply/response has been filed. Learned counsel for the respondent submits that all benefits which could not have been granted to the petitioner including remissions have already been availed of by the petitioner and this is clear from the order dated

10.02.2016 passed by the Additional Deputy Commissioner, R.P. Cell, NDMC. This order has also noted that the tender documents clearly specified that the local conditions of the parking site would not be a ground for remission and if the petitioner has any grievance on this count, he could not be compensated; the parking site had been handed over to the petitioner on an as is where is basis.

Record has been perused. Record shows that the petitioner had been granted a license to operate a parking site at Shiva Market, Pitam Pura, Civil Lines Zone, New Delhi on 02.02.2015. This was initially for a period of one year. This period has expired on 02.02.2016. It was not renewed. Statutory dues were payable by the petitioner and as such the contract did not stand renewed after its termination by efflux of time on 02.02.2016. The parking site was taken over by the Department on 26.02.2016. In the course of these proceedings, on the complaint made by the petitioner that his parking site was not fully operational, two inspections had been carried out by the Department. The first inspection report is dated 30.03.2015. This reflects that the inspection was carried out at the parking site and during inspection it was found that the portion of parking (mentioned as A & B in the attached map) was affected by the construction of elevated roads by the PWD; the portion 'C' of the parking site was interfered with by the members of the market association of Shiva Market who stated that they will park their vehicles without paying any parking charges. The second inspection report is dated 30.12.2015 (Annexure P-20). It had noted that there is a footpath made by the PWD in the parking site shown as "B" in the attached

map; it had also noted that there is 7.3 meters road width available out of 11 meters for parking site which is not sufficient for parking due to congestion as also due to the covered area by footpath made by the PWD on the parking site as shown 'C' in the attached map. Local residences were parking their vehicles in the parking site without paying parking charges to the contractor which was depicted as portion 'D'; portion 'E' was local market shopkeepers who were also parking their vehicles without paying any parking charges to the contractor.

These inspection reports clearly show that not only was there an interference by the local shopkeepers who were parking their vehicles on this site without payment to the contractor/petitioner, the PWD had also made certain constructions which had made a portion of the parking site un-operational.

The impugned order dated 10.02.2016 has to be viewed in this light. This impugned order had noted that the parking area has been reduced by the construction of footpath by the PWD and reduction in the width by the road as per the map; this area being 9% of the total parking area, a benefit of Rs.1,97,015/- plus TCS per month had been granted in favour of the petitioner. This related to the area mentioned as 'B' and 'C' as appended on the map relating to the second inspection report dated 30.12.2015. There is no dispute to the proposition that the benefit of this construction of a footpath by the PWD has been granted to the petitioner. The petitioner is candid on this score. His grievance is that these two inspection reports had also noted that the shopkeepers were parking their vehicles in the local

shopping area without paying any parking charges to the contractor/petitioner and thus has not been considered as a ground for remission to the petitioner. In this context, the submission of the learned counsel for the respondent which is to the effect that the tendered documents do not provide such a remission has also been noted.

Nevertheless, this Court is of the view that since the order dated 10.02.2016 is silent on this aspect i.e. as to whether the petitioner could be granted any benefit of remission on account of the fact that the shopkeepers of the Shiva Market were parking their vehicles in this parking site without paying any parking charges and whether this would be extraneous to the tender conditions or would entitle the petitioner to avail of the benefit it may now be considered by the Department.

The order dated 10.02.2016 was followed by a subsequent demand notice dated 12.02.2016.

Learned counsel for the respondent informs this Court that the dues of the petitioner stand adjusted against the amount which he had already paid to the Department which included his security amount. No amount is now payable by the petitioner. The grievance of the petitioner is that he is entitled to a refund on account of the fact that he was not able to use his parking site fully because of the shopkeepers not paying the parking charges.

This aspect of the matter (i.e. whether the petitioner is entitled to any remission or a sympathetic consideration by the Department on the admitted position that the shopkeepers were parking their vehicles

in the parking site allotted to the petitioner without paying any parking charges) will be considered and answered by the Department. The Department will pass a speaking order in this context within a outer limit of eight weeks from today.

Petition disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 06, 2016

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