

\$~16 to 19

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

%

Date of decision : 6th December, 2017

+ W.P.(C) 4104/2017 and CM No.18000/2017

A B GRAIN SPIRITS PVT. LTD. & ANR. Petitioners

Through : Ms. Tanmaya Mehta, Adv.

versus

GOVERNMENT OF NCT OF DELHI Respondent

Through : Mr. Sanjoy Ghose, ASC for
GNCTD with Mr. Rishabh
Jetley and Ms. Urvi Mohan,
Advs.

**+ CM No.30128/2017 in
W.P.(C) 4263/2017**

M/S METRO TRANSIT PVT. LTD. Petitioner

Through : Mr. Sushil Dutt Salwan,
Mr. Aditya Garg, Ms. Sunanda
and Mr. Arjun, Adv.

versus

GOVT. OF NCT OF DELHI & ORS ... Respondents

Through : Mr. Sanjoy Ghose, ASC for
GNCTD with Mr. Rishabh
Jetley and Ms. Urvi Mohan,
Advs.

**+ CM Nos.18748/2017 & 29892/2017 in
W.P.(C) 4297/2017**

M/S ANTONY ROAD TRANSPORT
SOLUTIONS PVT. LTD. Petitioner

Through : Mr. Sushil Dutt Salwan,
Mr. Aditya Garg, Ms. Sunanda
and Mr. Arjun, Adv.

versus
GOVT. OF NCT OF DELHI & ORS ... Respondents
Through : Mr. Sanjoy Ghose, ASC for
GNCTD with Mr. Rishabh
Jetley and Ms. Urvi Mohan,
Advs.

+ **W.P.(C) 5484/2017 and CM No.23038/2017**

GOVERDHAN TRANSPORT CO PVT LTD Petitioner
Through : Mr. Sushil Dutt Salwan,
Mr. Aditya Garg, Ms. Sunanda
and Mr. Arjun, Advs.

versus
GOVT OF NCT OF DELHI AND ORS ... Respondents
Through : Mr. Devesh Singh, ASC(Civil)
for GNCTD with Ms. Neelam
Kholiya, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. These writ petitions have been filed by five companies who were successful bidders under the cluster scheme of the government on terms which were almost identical under Concessionaire Agreements, though entered on different dates and for different clusters.
2. The petitioners have filed the writ petitions complaining that by virtue of the notifications dated 15th September, 2016 and 3rd March, 2017, the minimum wages payable to the workers have been steeply enhanced. So far as the services of the other staff on the stage

carriages are concerned, it is pointed out that the respondents are making good the wage differential on account of the enhancement by compensating the agencies who have provided the services of such staff on the same vehicles. This position is not disputed. Therefore, the petitioners submit that the respondents are additionally liable to compensate the petitioners towards the increase in wages on account of the enhancement.

3. It is an admitted position that for the purpose of providing the services, the petitioners were providing stage carriages. The parties are also not in dispute that petitioners had to provide the services of drivers and other staff in relation to operation and maintenance of buses while the conductors, manning the buses were provided by the respondents through its agency. So far as the consideration under the Concession Agreement is concerned, the same envisaged particular wages payable to the staff of the petitioners whose services were being utilized for these vehicles.

4. These writ petitions are concerned with the liability of the respondents to compensate the petitioners/concessionaires towards wages which are payable to the staff engaged for operation of the stage carriage service being provided by the petitioners in terms of the Concessionaire Agreements consequent upon the enhancement of minimum wages pursuant to notifications dated 15th September, 2016 and 3rd November, 2017.

5. The parties are agreed that the expression "*Change in Law*" has been mentioned in Clause 4.8 of the Schedule (1) of the Concession Agreement. There is substance in the petitioner's contention that there

has been change in the law which has led to a differential treatment to the concessionaire.

6. It is submitted by the petitioners before us that the quantification of the amount on which the petitioners had submitted their tenders was premised on a particular minimum wage payable by them to the employees, who were to serve for the operation of stage carriage service. By the notifications dated 15th September, 2016 and 3rd March, 2017, issued by the Government of NCT of Delhi in exercise of powers under Section 5 of the Minimum Wages Act, the respondents have substantially enhanced the minimum wages.

7. Certainly, it cannot be held that the petitioners could have foreseen this change or enhancement in the minimum wages at the time when the agreement was negotiated especially given the fact that minimum wages had not been changed since the year 1994 despite the statutory amendment. In any case, the Concessionaires could not have foreseen the extent by which the minimum wages would have been revised. The petitioners could not have foreseen or avoided the consequences of the enhancement of the minimum wages.

8. It is noteworthy that the petitioners have raised a challenge to the constitutional validity of these notifications. However, given the view that this court is taking on the liability of the respondents in respect of the payment of the enhanced minimum wages, it is not necessary for this court to examine the challenge to the enhancement of the minimum wages laid in these petitions. We therefore, desist from examining this challenge.

9. The petitioners have also complained that after upward revision

in the minimum wages by way of impugned notifications, the respondents have effectuated such increase and are making payment in terms of these notifications to the staff deployed by them on the stage carriages but are denying the compensation for the increase in respect of the staff of the petitioners, who are also serving under the said Concessionaire Agreement and in relation to the operations thereunder. The petitioners have prayed for directions to the respondents to make additional payment to them to the extent of the increase in the minimum wages. It is urged that these minimum wages have been enhanced by the respondents pursuant to exercise of statutory powers under the Minimum Wages Act. As such the increase is on account of variation or change in the law.

10. In support of the contention of the petitioners that the respondents are liable to make good the increase in the cost of the concessionaire on account of enhancement of the minimum wage, reliance is placed on the following clause besides others contained in the Concessionaire Agreement :

“4.8. CYF Variation for Change in Law

(a) Where, a Change in Law condition leads to proven increase in cost to the Concessionaire that :

- (i) could not have been foreseen at the time when this Agreement was being negotiated;***
- (ii) could not reasonably have been avoided by good management practice; and***
- (iii) is not expressly or by implication accommodated by the way in which the CYF is constructed,***

the Concessionaire is entitled to have the CYF amended to recoup its reasonable compliance costs. The adjustment in CYF shall not exceed

the increase in cost that was proved by the Concessionaire to the satisfaction of DoT.

(b) Where, a Change in Law condition leading to proven decrease in cost to the Concessionaire that ;

(i) could not have been foreseen at the time when this Agreement was being negotiated; and

(ii) is not expressly or by implication accommodated by the way in which the YF is constructed,

DoT is entitled to have the CYF amended so as to reduce it by an amount by which the Concessionaire's costs of providing the services ought reasonably to be reduced.

(c) CYF variation due to Change in Law set out in 4.8(a) and 4.8 (b) shall be considered only where the impact is at least 2% of the CYF. ”

(Emphasis by us)

11. The respondents cannot treat the agencies, who provide the services of the conductors, differentially from the treatment which is being given to the petitioners, who are providing the services of staff drivers and other ancillary staff.

12. The petitioners complain that minimum wages had remained static since the year 1994 and have been suddenly enhanced by the respondents using a different formula. The submission is that this is a change in law which has resulted in a substantial and unforeseeable increase in costs to the concessionaire. It is further complained by the petitioner that consequent to the enhancement, the formula for calculation of consolidated yearly fare has not been changed by the respondents.

13. We may note that efforts to resolve the matter with the Chief

Secretary of the GNCTD by the petitioners were unsuccessful.

14. In view of the above, without prejudice to the rights and contentions of the parties in any pending litigation, the respondents shall effectuate necessary amendments in the formula envisaged in the Concessionaire Agreement regarding the amount payable taking adjustments and enhanced minimum wage, in terms of the notifications dated 15th September, 2016 and 3rd March, 2017 into consideration and consequently increase the wages with effect from the date when the said notifications took effect, for giving due benefit to the petitioners in their monthly billing.

15. The petitioners shall calculate the amount payable in terms of the above directions. The copy of the calculation sheet be served upon the respondents within two weeks from today. The respondents shall effect payment of the amount in terms thereof within a period of four weeks thereafter.

16. The petitioners shall place proof of the payment to their employees, of the increased amount, with the respondents.

17. These writ petitions are allowed in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 06, 2017

mk