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

+ LPA 524/2017

VINOD PRAKASH KAPOOR

..... Appellant

Through: Mr. Shree Prakash Sinha, Mr. Rakesh
Mishra and Ms. Mahua Sinha,
Advocates

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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04.08.2017

CM APPL. 27812/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 27811/2017 (for condonation of delay)

Vide this application, the appellant seeks condonation of 51 days' delay in filing the present appeal.

For the reasons stated in the application, the same is allowed and 51 days' delay in filing the present appeal is hereby condoned.

Application stands disposed of.

LPA 524/2017 & CM No. 27813/2017 (for direction)

Vide this appeal, the appellant assails the judgment dated 02.05.2017

rendered by the learned Single Judge in W.P.(C) 3007/2017.

The appellant preferred the said writ petition to assail the tender condition contained in Clause 4.11(a)(ii) of the Notice Inviting Tender('NIT') issued by the respondents. The appellant participated in the said tender process without any demur and was declared successful. It was only after the petitioner was issued the letter of acceptance on 02.08.2016 and required to make the deposit of the advance licence fee and maintenance charges, and the appellant deposited the same and even took possession of the premised, he sought to raise a challenge to the tender condition.

The learned Single Judge has dismissed the writ petition on the premise that since the appellant has voluntarily participated in the tender process and submitted his bid without any demur; deposited the advance licence fee, maintenance charges, security deposit, and; taken over the possession, the appellant could not have assailed the tender condition subsequently. The appellant was aware of the tender condition even at the time of submitting his bid, and he did not raise any objection to any of the Clause of the NIT. Thus, the appellant was estopped from challenging the terms of the NIT after the tender process was over.

The first submission of learned counsel for the appellant is that the appellant failed to notice the aforesaid tender condition.

He submits that in the earlier tender processes this condition was not included, and it was included for the first time on this occasion. Therefore, the appellant failed to notice the same. This submission cannot be accepted. It was the responsibility of the appellant to read the NIT and tender document before submitting his bid. He cannot turn around subsequently and claim that he was not aware of the tender condition, even though the

same is clearly set out in the NIT. Such an argument if accepted, would enable any successful tenderer from reneging from his contract. The argument, if accepted, will hit the very foundation and sanctity of the tender process and contract.

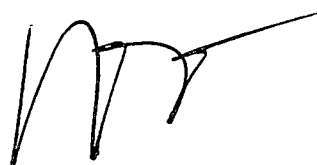
The next submission of learned counsel for the appellant is that Clause 4.11(a)(ii) is arbitrary. He submits that the rights of termination of the contract are not equally conferred on the parties. Whereas, the respondent can terminate the contract on one month notice, the appellant has no right of early termination. He submits that the fundamental right of the appellant to assail the arbitrary term cannot be taken away even by a contract since the appellant cannot be said to have waived the said right. In support of his submission, he places reliance on **Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another**, (1986) 3 SCC 156, **Kumari Shrilekha Vidyarthi and Others Vs. State of U.P and Others**, (1991) 1 SCC 212, **OLGA Tellis & Ors. Vs. Bombay Municipal Corporation & Ors. Etc.**, (1985) Supp.2 S.C.R and **Kailash Chand Sharma Vs. State of Rajasthan**, AIR 2002 S.C. 2877. We do not find any merit in this submission for the reason that tender condition, which is assailed by the appellant, does not appear to us to be arbitrary or unreasonable. The said tender condition reads as follows:-

“4.11.(a)(ii) The licence/Selected tenderer shall have no option to terminate the Agreement at any time before its expiry. In case, he surrenders licence of the shops before expiry of full licence period, his Security Deposit/advance licence fee etc., shall be forfeited by Licensor. However, the licence shall also remained under obligation to pay usages charges upto the date of discharge by DTIDC.”

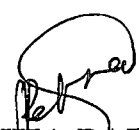
The aforesaid tender condition merely stipulates that the selected

tenderer cannot terminate the contract at any time before its expiry, and that in case he surrenders the licence of the shops before expiry of full licence period, his Security Deposit/advance licence fee etc., shall be forfeited by the Licensor. It further provides that the licensee shall also remain under obligation to pay usage charges upto the date of discharge by DTIDC. There is nothing arbitrary or unreasonable about the aforesaid Clause. Merely because the respondent has retained the right to terminate the licence by giving one month's notice, while it has bound the successful tenderer with a lock-in Clause for the entire three years period, the Clause does not become arbitrary or unreasonable. It is not necessary that the same rights qua termination of a contract should inhere in both the contracting parties. It is upto the parties as to how they work out their respective rights in this regard. The parties have the freedom to enter into a contract and to agree to the terms and conditions on their own. If the appellant had any issues with the said clause, he should have either not participated in the tender process, or assailed the condition before participation in the tender process. He did neither.

In these circumstances, we do not find any merit in the appeal and the same is accordingly dismissed. All pending applications also stand disposed of.



VIPIN SANGHI, J



REKHA PALLI, J

AUGUST 04, 2017/nn