IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.12.2017

\+ **W.P.(C) 6335/2016 and CM Nos. 25978/2016, 26641/2016 & 40668/2017**

SEEMA TIWARI & ORS ..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondents

Advocates who appeared in these cases:

For the Petitioners : Mr Naresh Thanai, Ms Khushboo Singh, Ms Bharti.

For the Respondents : Mr Devesh Singh, ASC, GNCTD with Ms Neelam Kholiya R-1 & 2.

AND

\+ **W.P.(C) 12247/2016 and CM Nos. 48311/2016 & 41234/2017**

SEEMA TIWARI & ORS ..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Advocates who appeared in these cases:

For the Petitioners : Mr Naresh Thanai, Ms Khushboo Singh, Ms Bharti.

For the Respondents : Mr Gautam Narayan, ASC with Mr R.A. Iyer, for R-1.
Mr Prem Mishra, LA, DTIDC.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petitions, *inter alia*, impugning the communications dated 18.07.2016 and 19.07.2016 (hereafter 'the impugned communications') issued by respondent no.2 (hereafter

'DTIDC') calling upon the petitioners to vacate the premises allotted at Inter State Bus Terminus (hereafter 'ISBT').

2. The petitioners have also impugned the Office Memorandum dated 01.08.2016 issued by DTIDC. The said office memorandum contains the policy for issuance of licenses for spaces including policy for preferential allotment of spaces in favour of persons with disabilities.

3. The petitioners are persons with disabilities: petitioner nos. 1 and 2 are disabled to the extent of 100%; petitioner no.3 is disabled to the extent of 45%; and petitioner no.4 is disabled to the extent of 90%.

4. The petitioners were allotted PCO/STD Booths during the year 1992-1994 and 2000 at concessional license fee. The petitioners were also put in possession of the licensed premises.

5. In order to prepare for the Common wealth Games, 2010, respondents decided to modernise/renovate the ISBT and the petitioners as well as other licensees were called upon to vacate the premises. After renovation of the ISBT at Kashmere Gate, newly constructed shops at the departure block of ISBT, Kashmere Gate were allotted to the petitioners; petitioner no.1 was allotted shop no.61, petitioner no.2 was allotted shop no.53, petitioner no.3 was allotted shop no. 52 and petitioner no.4 was allotted shop no.26. The said shops were allotted by draw of lots.

6. The term of the licenses was for a period of three years and the allotment letter dated 06.11.2012 issued to each of the petitioners expressly stated that *the term of the license of the shop would be for a period of three years (unless terminated by DTIDC Ltd.) from the date of taking over*

possession of the shop. The petitioners were also required to execute the license deed/agreement containing the terms and conditions of the license.

7. The petitioners contend that they requested DTIDC for renewal/ extension of their respective shops; however, the same was declined. Thereafter, by the impugned communications, the petitioners were called upon to vacate the premises allotted to them. Aggrieved by the same, the petitioners have preferred the present petitions.

8. Mr Thanai, learned counsel appearing for the petitioners contended that in terms of Section 37 of the Rights of Persons with Disabilities Act, 2016 - which is *pari materia* to Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - the respondents were required to frame a policy to ensure preferential treatment for allotment of land to persons with disabilities at concessional rates. He also referred to the decision of the Division Bench of this Court in ***Shyamlal and Ors. v. State of NCT and Ors: LPA 863/2011, decided on 09.11.2011***, wherein the Court had directed respondents to frame a policy pertaining to grant of licenses to physically challenged persons at ISBT in Delhi. The Court had further directed that the policy would include terms of the license fee to be paid and permissible trade activities to be conducted. On the strength of the said decision, he contended that it was necessary for the respondents to frame a policy not only for reserving shops for allotment to persons with disabilities but also provide for concessional rates. He emphatically contended that the persons with disabilities could not be expected to compete with fully able persons in an open bidding.

9. Mr Gautam Narain, learned counsel appearing for the respondents contended that respondents had already framed a policy expressly providing that 5% shops would be reserved for "persons with disabilities" as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter 'the 1995 Act'). He stated that in terms of the policy, DTIDC had invited bids for allotment of spaces at ISBT and the shops allotted to the petitioners had been allotted to other persons who also qualified for such reservation.

10. I have heard the learned counsel for the parties.

11. The undisputed fact is that the license granted to the petitioners in respect of the premises in question has, admittedly expired. Thus, plainly, the petitioners have no right to continue to occupy the premises allotted to them earlier. A licensee has only a permissive use of the space licensed to him and has no title or interest in the property in question (See: ***Thomas Cook (India) Limited v. Hotel Imperial and Ors: 127 (2006) DLT 431***). Thus, once the license is terminated the licensees would have no right to occupy the premises. In view of the above, this Court finds no reason to set aside the impugned communications.

12. Insofar as the policy for allotment of spaces to persons with disabilities is concerned, DTIDC has issued an Office Memorandum dated 01.08.2016 (impugned herein), which includes its policy to reserve 5% of the shops to be allotted to persons with disabilities. The relevant extract of the said policy is set out below:-

> "**6. Reservation Quota**
>
> (a) 5% shops will be reserved for "**Persons With Disabilities**" as defined in The Persons With Disabilities

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(b) Remaining 95% shops will be under unreserved quota and will be offered to the general public.

Explanation:-

i. The 5% reservation quota for "**Persons with Disabilities**" as specified above shall be applicable on each ISBT independently. To illustrate, if there are 100 shops to be allotted at one ISBT, 5 shops will be allotted to Persons With Disabilities and remaining 95% will go to general public. Similarly, in case, if there are 50 shops, 3 shops (rounded off to the nearest digit) will be allotted to Persons With Disabilities and rest will go to general public.

ii. The shop(s) under the reserved quota will be allotted for a fixed period of licence of 03 (three) years only. In case of the construction activities to be undertaken by DTIDC/GNCTD at any ISBTs or in unforeseen circumstances, Managing Director, DTIDC is empowered to invite bids/tenders even for a shorter period of any term, as deemed fit in his opinion. However, the upper ceiling of allotment of licence will remain three (03) year in all cases.

iii. Except reservation, all other parameters, terms & conditions, method of selection and procedure etc with regard to allotment of Licence of shop to "**Person With Disabilities**" will remain same as in the case of unreserved category of bidder/applicant.

iv. Henceforth, the policy dated 27.01.2012 of DTIDC for allotment of shop to Physically Handicapped Persons is repeated / dispensed with for all purposes."

13. Mr Thanai had sought to challenge the aforesaid policy on the ground that it was not compliant with Section 43 of the 1995 Act,

inasmuch as it did not provide for preferential allotment of land at concessional rates.

14. First of all, it is necessary to observe that irrespective of the merits of the aforesaid contention, the petitioners cannot continue to occupy the licensed premises. Even if the aforesaid challenge to the policy is accepted - which this court does not - the respondents could be directed to frame a scheme in conformity with Section 43 of the 1995 Act; but, that would not confer any right on the petitioners to continue to occupy the premises allotted to them after the term of their license has ended. Thus, the challenge to the OM dated 01.08.2016 cannot be a foundation to challenge the impugned communications calling upon the petitioners to vacate the premises allotted to them.

15. Having stated the above, the court may now proceed to address the question whether the OM dated 01.08.2016 is non compliant with the provisions of Section 43 of the 1995 Act or Section 37 of the Right of Persons with Disabilities Act, 2016 (hereafter 'the 2016 Act') which has replaced the 1995 Act.

16. Section 43 of the 1995 Act reads as under:

> "43. The appropriate Governments and local authorities shall by notification frame schemes in favor of persons with disabilities, for the preferential allotment of land at concession] rates for-
> (a) House;
> (b) Setting up business;
> (c) Setting up of special recreation centers;
> (d) Establishment of special schools;
> (e) Establishment of research centers;
> (f) Establishment of factories by entrepreneurs with disabilities."

17. In terms of Section 43 of the 1995 Act, appropriate Governments and local authorities are required to frame schemes for *preferential allotment of land at concessional rates* in favour of persons with disabilities.

18. In the present case, there is no dispute that the policy framed by DTIDC provides for preferential allotment of shops in favour of persons with disabilities as 5% of the shops are earmarked for being allotted in favour of such persons. This is also in conformity with Section 37 of the 2016 Act, which reads as under:

> "37. The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—
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> (a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;
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> (b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;
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> (c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres."

19. Insofar as the issue of concessional rates is concerned, it is apparent that the same is inbuilt in the licensing process adopted by DTIDC. The persons with disabilities are not required to bid against the persons in the general category. Mr Narayan had clarified that bidding for 5% of the

shops reserved for persons with disabilities are licensed on the basis of *inter se* bids amongst disabled persons.

20. Plainly, if the bidding for shops reserved for allotment to persons with disabilities is restricted only amongst persons with disabilities, the question of providing further concession does not arise. The assumption being that the persons with disabilities would offer only such amounts that they can recover by working in the premises and this would take into account their disadvantage on account of their disabilities. The concession in the license fee, which translates to the disadvantage suffered by persons with disabilities, would inevitably be factored in the license fee offered by them. The question of providing concessional rates would arise only if there is a fixed license fee. In such cases, the benchmark would be the license fee charged from persons in the general category and a concessional rate could be fixed. However, in cases, such as in the present case, where persons with disabilities are not called upon to participate in an open bidding with persons in the general category, the concession in the license fee is inbuilt.

21. In view of the above, this Court finds no merits in the present petitions and the same are, accordingly, dismissed. All the pending applications are disposed of.

VIBHU BAKHRU, J

DECEMBER 04, 2017
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