

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
12.06.2018

Delivered on
28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.318 of 2017
and MP Nos.4791 & 4792 of 2017

C.Raghu

... Appellant

versus

1. The General Manager,
Southern Railway
Park Town, Chennai 600 003.
 2. The Senior Divisional Commercial Manager,
Commercial Branch, Southern Railway,
Park Town, Chennai 600 003.
 3. The Railway Board,
Rep by its Secretary,
Railbhavan, New Delhi.
- Respondents

Appeal filed against the order passed by this Court dated 23.01.2017 passed in W.P.No.548 of 2017.

W.P.No.548 of 2017:

Writ Petition filed under Article 226 of the constitution of India for issuance of a Writ of certiorarified Mandamus to call for the records pertaining to the order passed in No.M/C.14/ Telephone PCO/ STD/ MAS dated 15.11.2016 by the 2nd respondent quashing the same and further direct the respondents to allot the Telephone booth at Platform No.3 in Madras Central Railway station to the petitioner.

For appellant : Mr.T.Saravanan
For Respondents : Mr.P.T.Ram Kumar

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the dismissal of his Writ Petition in WP No.548 of 2017. The relief sought for in the Writ Petition is for issuance of a Writ of Certiorarified

Mandamus to quash the order of the 2nd respondent dated 15.11.2016, in and by which, the 2nd respondent had demanded the details of commission charges received by the appellant from the BSNL for the period between 11.12.2015 and 31.10.2016.

2. The appellant was allotted a space for establishment of a Public Call office (PCO) with STD/ISD/FAX/INTERNET Telephone facilities for a period of 5 years from 18.09.2003 to 17.09.2008 and the agreement dated 04.08.2005 came to be made pursuant to a tender process adopted by the respondents for allotment of such facilities to handicapped persons. Pursuant to the said allotment an agreement was entered into between the appellant and the respondents on 04.08.2005. The fee payable by the appellant to the respondents for such allotment was fixed at Rs. 14,940/- per annum, which was to be increased at 10% every subsequent year plus (+) 19% of the commission earned by the appellant from BSNL. The appellant occupied the said premises and erected a Telephone Booth. Since the appellant was not regular in payment of the charges, he was forced to approach this Court on several occasions. Earlier even in the year 2009, the appellant had filed the Writ Petition in WP No.4143 of 2009, challenging the notice issued by the respondents dated 06.03.2009.

3. The said Writ Petition was disposed of by this Court on 08.11.2013 with a direction to the Railway Board to frame a scheme for the welfare of physically challenged persons. Further direction was also issued to the appellant herein to clear the arrears at the rate of 25% as ordered by this Court on 20.03.2009 within a period of three months from the date of receipt of a copy of the order. A direction to the respondents to consider the renewal of the lease since the original lease period had already expired was also made. Complaining noncompliance of the above orders, the appellant had filed Contempt Petition No.296 of 2015 and the same came to be disposed of by this Court on 19.06.2015 reiterating the earlier direction to frame a scheme. Pursuant to the same, the Railways permitted the appellant to operate the STD booth situate at Platform No.3 and the Railways also advised the appellant to pay a sum of Rs.28,337/- towards license fee and Rs.4,169/- towards security deposit. The appellant had remitted the said sum on 12.12.2015 stating that it is the license fee for the STD Booth at Madras Central Station for a period from 11.12.2015 to 10.12.2016. The security deposit was also remitted as claimed on the said date. While things stood thus, since there was a provision for payment of 19% of the Commission received from BSNL to the Railways as license fee, the Railways issued the impugned notice dated 15.11.2016 requiring the appellant to

furnish the details of the commission charges received by him from BSNL.

4. Claiming that the Writ Petitioner is liable to pay only 25% of the annual license fee and security deposit and he is not liable to pay any amount beyond that and the Railways was therefore not entitled to seek the details of commission from the appellant, the appellant sought for quashing the impugned notice. The learned Single Judge, who heard the Writ Petition dismissed the same holding that the petitioner (appellant herein) had not come to Court with clean hands and had indulged in fabrication of records. The learned Single Judge also concluded that the appellant himself is not himself operating the PCO (Public Call Office) from the records produced by the Railways. The learned Single Judge found that the appellant had been engaging others to operate the Public Call Office and he also issued passes to them. Taking a serious note of the action of the appellant in issuing identity cards to M/s.Fathima Bee and Ashraf Babaparith which contained the signatures of the appellant, the learned Single Judge imposed a cost of Rs.5,000/- on the appellant, while dismissing the Writ Petition.

5. Challenging the same the appellant is before us by way of this intra Court Appeal.

6. We have heard T.Saravanan, learned counsel appearing for the appellant and Mr.P.T.Ramkumar, learned Standing Counsel appearing for the respondents.

7. Since the Writ Petition came to be dismissed at the admission stage itself, the respondents Railways were permitted to file a counter affidavit in this Writ Appeal. In the counter affidavit, it is stated that the license fee was fixed at Rs.14,940/- per annum on 18.09.2003 and an agreement was executed between the parties, a copy of which has been produced before us, which provided for 10% annual increase in the license fee and also for payment of 19% of the commission earned by the licensee from BSNL. The senior Divisional Commercial Manager of Southern Railway, who had sworn to the counter affidavit has averred that if 10% increase per annum is adopted from 18.09.2003, the license fee payable for the period from 18.09.2012 to 17.09.2013 would be in the range of Rs.60,349/- and in the year 2015 the license fee would be Rs.1,13,346/- per annum. Even on 13.02.2015, the Railway Administration had extended the contract for a period of one year, subject to payment of license fee of Rs.1,13,346/- and Security charges of Rs.56,673/-. The appellant raised the said issue in the

contempt application filed by him in Contempt Petition No.296 of 2015.

8. This Court while disposing of the Contempt Petition had directed the appellant to pay 25% of the annual license fee and 25% of the security deposit and the Railways was also directed to allot the booth, in which the appellant was carrying on business. In compliance with the said order, the Railway Administration collected 25% of the annual license fee, viz. Rs.28,337/- and 25% of the security deposit viz. Rs.4,169/- and permitted the appellant to operate the STD Booth for a period of one year from 11.12.2015 onwards. Inasmuch as the appellant had not paid the commission earned by him and thus effectively prevented the Railways from collecting the 19% commission earned by him towards license fee, the impugned letter was issued requiring the appellant to submit the bills and pay the commission charges. It is stated that during the pendency of the writ petition, on 09.01.2017, the learned Single Judge had required the appellant to file an affidavit to the effect that the STD Booth will be conducted by the appellant himself or any one of his principal family members, viz. wife, children, father or mother. It is also stated that the appellant did not file such an affidavit as required by this Court. Therefore, taking note of the fact that the appellant is not running the telephone booth himself or through his family members, but he has employed outsiders without the permission of the Railways, the learned single Judge dismissed the Writ Petition imposing costs.

9. After the dismissal of the Writ Petition, the STD booth of the appellant was closed on 25.01.2017, thereafter, the appellant on 21.02.2018 approached the Railways accepting the closure and seeking allotment of a place in an alternate location and also for return of the articles. Though, he had agreed to pay the Commission charges, he did not come forward to pay. It is also contended by the Railways that the place in which the appellant was running the STD booth has been allotted to another person who was operating a similar facility in a different location under the Prime Minister's Scheme of the year 1982.

10. At the time of hearing the Writ Appeal, this Court had directed the Railways to examine the possibility of providing an alternative site to the appellant and the Railways have proposed two alternative places in the Central Railway Station itself, one in between platform Nos.6 & 7 and the other in between platform Nos.8 and 9. The appellant was not prepared to accept the said locations. On the direction from the Division Bench, the Senior Divisional Commercial Manager, Southern Railways had

filed an affidavit along with the plan showing the location of the alternative sites offered by the Railways. The said affidavit also lists out certain conditions imposed by the Railways for allotment of a facility for the appellant.

11. The learned counsel for the appellant would raise various objections to the conditions laid down and claim that the Railways can only demand whatever was the amount that is being paid by Gopalakrishnan, the other allottee and the appellant is unwilling to pay the charges claimed by the Railways. This claim of the appellant is contrary to the agreement executed between the Railways and the appellant as far back as on 04.08.2005. The learned counsel would also raise objections to the location of the booth and therefore, we had no option but to proceed to hear the Appeal on merits. We heard the counsel on both sides on merits.

12. The challenge in the Writ Petition is only to a communication by the Railways seeking details of the commission earned by the appellant from BSNL for a particular period so as to enable the Railways to determine and collect 19% of the same that is to be paid to the Railways even as per the agreement between the parties. The appellant cannot but honour his commitments under the agreement. The agreement very clearly provides for payment of fixed sum as license fee apart from 19% of the commission earned from BSNL as compensation to the Railways. By not providing the bills, the appellant cannot avoid payment of the commission. From the manner in which the proceedings have been conducted by the appellant before the learned Single Judge as well as before us, we are satisfied that the appellant's actual grievance is not the impugned proceedings. The object of the appellant is to treat the impugned proceedings as a tool to continue to run the facility without payment of the charges agreed to by him as per the agreement dated 04.08.2005. The appellant seeks to draw an analogy with Gopalakrishnan who was allotted similar facility in the year 1982 under the then prevalent scheme. The appellant having obtained the facility under a tender process is bound by the agreement between him and the Railways. He cannot seek the concessions that were offered to the allottee under a different scheme. The fact remains that the contract period had expired, the appellant has no legal right to continue and he has also been dislodged from the premises.

14. For the foregoing reasons, we do not see any reason to interfere with the order of the learned Single Judge. The intra Court Appeal is therefore dismissed. Though, the appellant adopted a very unreasonable attitude and has been found guilty

of misuse of the very allotment, we desist from imposing cost on him taking into account the fact that he is a physically challenged person, though, we concur with the view of the learned Single Judge that the attempt of the appellant is to misuse the concession granted to such physically challenged persons. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

jv

To

1. The General Manager,
Southern Railway
Park Town, Chennai 600 003.
 2. The Senior Divisional Commercial Manager,
Commercial Branch, Southern Railway,
Park Town, Chennai 600 003.
 3. The Secretary,
Railway Board,
Railbhavan, New Delhi.
- +1 CC to Mr.P.T. Ramkumar, advocate sr 41512
- +1 CC to Mr.T.Saravanan, advocate sr 41717(25/07/2018)

W.A.No.318 of 2017
and MP Nos.4791 & 4792 of 2017

RSK(CO)
SP(09/07/2018)

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