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

Date of decision: 12th November, 2018

+ W.P.(C) 6581/2017

SUMER SINGH

..... Petitioner

Through: Mr. Apurb Lal and Ms. Meenu
Pandey, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION AND ANR

..... Respondents

Through: Ms. Biji Rajesh for
Mr. Gaurang Kanth, Adv. for
R-1
Mr. Soumitra Chatterjee and
Ms. Sriparna Chatterjee, Advs.
for R-2 with Mr. Devesh
Kumar, AR

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

1. This writ petition ignores the fundamental principle that, sans any right, the law cannot provide for a remedy. *Ubi jus, as the adage goes, ibi remedium.*

2. The case of the petitioner is that he was a registered contractor, for lifting of dead animals from various zones of the Municipal Corporation of Delhi (MCD). In 2011, the MCD leased out the plant, set up for the said purpose at Gazipur, to Respondent No.2 (M/s Frigorifico Allora Ltd.). Aggrieved by the fact that he had not been

considered by Respondent No.2 for carrying out the work of lifting of dead animals, though he claims to have been doing the said work for the MCD for over 25 years, the petitioner moved this Court by way of WP(C) 2157/2011. This Court passed the following order, in the said proceedings on 30th March, 2011 :

“1. The petitioner claims to have been working as a Contractor of the respondent No.1 MCD for lifting of dead animals from the various zones of the MCD for which he was contracted and for rendering the same at the Plant at Gazipur, Delhi.

2. The respondent No.1 MCD was earlier operating the Plant at Gazipur, Delhi itself, has now leased out the same to the respondent No.3 M/s Frigorifico Allora Ltd. and it is the case of the respondent No.1 MCD that as per the said lease deed, the responsibility of collection of dead animals / caracasses is also now of the respondent No.3. The respondent No.3 for the said purpose has appointed only two out of approximately 16 persons who used to be contacted for the said purpose by the respondent No.1 MCD.

3. The case of the petitioner is that he has thereby been rendered jobless; that he and his family for generations have been carrying on the said work only.

4. The counsel for the respondent No.1 MCD appearing on advance notice under instructions from Dr. Mulchand, Veterinary Officer, Civil Zone, MCD has contended that respondent No.1 MCD having leased out the Rendering Plant to the respondent No.3 and which contract includes lifting of dead animals, the respondent No.1 MCD is now not concerned with the said work and is not responsible to provide work to the petitioner. It is thus contended that it is up to the respondent No.3 to appoint one or more contractors for the work of lifting dead animals from Delhi.

5. However, prima facie, I am of the view that the possibility of involving the petitioner and the others similarly placed as him in the work which they have been doing for generations, should be explored.

6. Issue notice. Notice is accepted by the counsel for the respondent Nos.1 and 2 MCD appearing on advance notice. The petitioner to serve the respondent No.3 by all modes including dasti, returnable on 4th May, 2011.”

3. It appears that, thereafter, the said writ petition was withdrawn by the petitioner on 3rd August, 2011.

4. Mr. Apurb Lal appearing for the petitioner submits that, during the proceedings in WP(C) 2157/2011 (*supra*), he had been re-engaged as a contractor for lifting of dead animals in 2011 and had continued the work with the respondent as such till 2017. However, after May, 2017, the said work has not been awarded to the petitioner. This, according to the petitioner, has resulted in erosion of the sole means of livelihood available to him and his family. It is in these circumstances, that the petitioner has filed this writ petition praying as follows:

“(I) direct the respondents to ensure that the petitioner and his family members should not be deprived from his livelihood.

(II) Pass any other and further order which may deem fit and proper in the facts and circumstances of the case.”

5. This writ petition is premised on the basis of clauses 4.1 and 4.2 of the General Conditions of the Lease Agreement between Respondent No.1 and Respondent No.2, i.e. between EDMC and M/s Frigorifico Allora Ltd., which read thus :

“4.1 The lessee shall make his own arrangements for the engagement of all the employees/labour, local or otherwise for the operations, management and maintenance of

the Plant Complex. He will collect the dead animals from the area of Delhi city either himself or through his sub-contractors. He will have a right on the final product of the Rendering Plant such as bone-meal, meat-meal, bone-chips, fat, skin, hides etc. of the Modern Carcass Utilization-cum-Rendering Plant Complex.

4.2 For the collection and transport of fallen/dead animals, the lessee may; employ the sub- contractors for their collection from the areas. In the event of the collection being done by the lessee himself, he may preferably use the workers who have been working with contractors for removal of dead animals, registered with Veterinary Services Department.”

6. The EDMC has filed a counter affidavit, to the writ petition, para 7 of which reads thus :

“7. That in view of the above clause, the Respondent No. 2 had continued with the petitioner from 20-11 till 2017 as he was initially working with the Respondent No.1 prior to the entering of the Lease Agreement dated 12.08.2010. However, it is the case of the Petitioner that the said work is no longer awarded to the Petitioner by the Respondent No. 2 w.e.f. May 2017. It is pertinent to mention that in this regard, the Respondent No.1 had made a query regarding the association of the Petitioner with the Respondent No.2. In response to the same, the Respondent No. 2 has replied vide their letter dated 16.08.2017 whereby they have indicated that the Petitioner was not efficient and was not completing his assignment in an effective and timely manner. Furthermore, in view of the Agreement dated 13.08.2010, the Respondent No.1 cannot compel the Respondent No.2 to continue with the services of the Petitioner. Copy of the said letter dated 16.08.2017 is hereby annexed as ANNEXURE-R 2.”

7. In view of the above, it is obvious that the petitioner has no enforceable right to be awarded the contract after 2017. Clauses 4.1

and 4.2 of the Lease Agreement, between the petitioner and the respondent-EDMC cannot come to his aid. Para 4.1 clearly states that Respondent No.2 would make its own arrangement for engagement of employees/labour, local or otherwise, for maintenance of the plant complex and would collect dead animals from the area of Delhi city either himself or through his sub-contractors. Para 4.2 allows the respondents to, for the said purpose, employ special contractors. No doubt, the said clause states that, in the event of a collection being done by Respondent No.2 itself, he “may preferably use the workers who have been working with contractors for removal of dead animals, registered with veterinary services department”. The said stipulation does not, however, confer on the petitioner any enforceable right to maintain a writ petition. In the first place, the said stipulation only suggests that Respondent No. 2 may preferably use workers who have been working with contractors for removal of dead animals who are registered with the Veterinary services department. It is obviously in the nature of an advisory, not a sacrosanct directive to be complied with at all costs. That apart, the said suggestion, too, would permit Respondent No.2 to employ any contractor, who is registered with the veterinary services department, and not necessarily the petitioner himself.

8. To reiterate, in the absence of any enforceable right, no remedy, by way of issuance of a writ of mandamus, can be sought.

9. The petitioner obviously has no enforceable right in his favour.

10. Accordingly, this writ petition, which is totally misconceived, is dismissed as such with no orders as to costs.

11. It is made clear, however, that this order shall not come in the way of the respondents employing the petitioner to carry out the work of lifting of dead animals, if they chose so choose to do.

C. HARI SHANKAR, J

NOVEMBER 12, 2018/kr



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