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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 9182/2017, CM Nos. 37546-37547/2017**  
**ANKUR GARG** ..... Petitioner  
Through: Mr. Avadh Kaushik, Adv.  
versus

**DELHI DEVELOPMENT AUTHORITY AND ORS**  
..... Respondents  
Through: Mr. Ajay Verma, Sr. Standing  
Counsel with  
Mr. Anupam Sharma, Adv. for DDA

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**  
**10.05.2018**

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**CM No. 37546/2017**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**W.P.(C) 9182/2017**

1. The present petition has been filed by the petitioner with the following prayers:

*“It is, therefore, most respectfully prayed that the Hon’ble Court may graciously be pleased to issue:-*

- (i) A writ of certiorari or any other writ, order or direction calling for the records of the matter and peruse the same;*
- (ii) A writ of certiorari or any other writ, order or direction thereby quashing and setting aside the letter dated 04.10.2017 (ANNEXURE-P-17) passed by the respondents communicated through respondent No.3 whereby petitioner’s agreement / contract dated 24.07.2017 executed with the respondents for running a Pro-shop at Dwarka Sports Complex (DSC), DDA has been terminated;*

- (iii) *A writ of mandamus or any other writ, order or direction thereby restoring the petitioner's contract dated 24.07.2017 on the same terms and conditions and directing the respondents to de-seal and unlock the Pro-Shop area awarded to him and allow him to complete the on going renovation work and thereafter, to allow him to start and run his Pro-Shop in Dwarka Sports Complex in terms and conditions of the agreement;*
- (iv) *Any other relief, order or directions which this Hon'ble Court considers just and fit in the circumstances of the case, may also be passed in the interest of justice."*

2. In substance, the challenge in this petition is to the communication dated October 4, 2017 by which the agreement dated July 24, 2017 executed by the respondent/DDA with the petitioner, has been terminated.

3. It is the case of the petitioner, that on February 27, 2017, the respondents had invited online tenders for running a Pro Shop at the Dwarka Sports Complex for a period of one year on payment of monthly licence fee. The petitioner participated in the said tender vide his financial bid dated April 10, 2017 and being the highest bidder, he was awarded the said contract for a period of one year vide contract award letter dated April 26, 2017. It is averred that on May 9, 2017, the respondents withdrew the said award letter and re-invited the same tender on the very same day.

4. It is the case of the petitioner that on retendering, the petitioner also participated and was again found as the highest bidder and thus, he was awarded the contract for running the Pro Shop vide letter dated July 15,

2017, and pursuant thereto an agreement was executed between the petitioner and the respondent / DDA on July 24, 2017. Thereafter, the petitioner started the renovation work by removing a partition wall to which DDA raised some questions, which were duly answered. It is averred, despite the fact that the renovation work was underway and was being carried out under the supervision of the DDA authorities, the DDA, on September 4, 2017 sealed and locked the Pro Shop area without assigning any reason whatsoever and even without giving any advance intimation to the petitioner. The petitioner submitted a representation dated September 5, 2017 raising objection on the conduct of the DDA. It is averred, despite various representations from the petitioner, the DDA has not acceded to his request to de-seal the shop. Finally on October 4, 2017, the respondents terminated the contract.

5. It is the submission of Mr. Avadh Kaushik that the DDA had awarded the contract of the Pro Shop, consisting of two portions, both separated by a wall i.e the front and the back portions. It is his submission that the front portion had an access to the back portion through a door. He also states, even the previous contract was awarded to both the portions i.e front and back portion. According to him, it is not the case where the petitioner has

encroached the back portion. He states, the wall was demolished as the same was in a dilapidated condition and required re-construction as it was to be used for hanging selves to stack the goods. In the last, it is his submission that the termination of the contract is in violation of principles of natural justice as no show cause notice was issued. He would rely upon the judgment of this Court reported as **243 (2017) Delhi Law Times 487 (DB) Raghav Paswan Vs. Delhi Development Authority and Anr.**, wherein, it has been held that in the absence of show cause notice and hearing granted to the petitioner, in that case, the communication withdrawing the permission granted to the petitioner, to sell vegetables and fruits, was quashed.

6. On the other hand, Mr. Ajay Verma, learned Senior Standing counsel appearing for the respondent/DDA would justify the impugned action inasmuch as the contract which was awarded to the petitioner was for running a Pro Shop only, which is the front portion. He has drawn my attention to the lay out plan (at page 91 of the paper book) in support of his contention that the Pro shop (front portion) awarded, was separated from the DDA store (back portion) by a wall. It is his case that the petitioner had removed the wall for the purpose of encroaching upon the DDA store as

well. He denies the submission made by Mr. Kaushik that earlier contract awarded included the Pro Shop (front portion) and the DDA store (back portion). According to him, there is no access from Pro Shop area (front portion) to the DDA store (back portion). Mr. Verma, would submit that no-where in the pleadings, the petitioner had stated that there was an access from Pro Shop area to the DDA store through a door. Mr. Verma relies on the judgment of the Supreme Court reported as *(2015) 8 SCC 519 Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others* in support of his submission that, in the given facts, which are conclusive, no purpose shall be achieved in remanding the matter back to the authorities.

7. I have heard the learned counsel for the parties. The only issue which arises for consideration is, whether the petitioner was awarded the contract of the Pro Shop area (front portion) including the DDA store (back portion). At the outset, I may state here, the contract does not stipulate the size of the Pro Shop nor any plan is attached to the contract to signify the area. It has to be ascertained from the pleadings and documents on record. As can be seen from the lay out plan at page 91 of the paper book that there was a continuous wall, which separated the Pro Shop with the DDA store. I agree

with the submission of Mr. Verma that the petitioner, in the writ petition, has not stated that the DDA store (back portion) can be accessed through a door, from the Pro Shop (front portion). In other words, in the absence of a door, there was no access to the store (back portion), which signify that both the portions are independent/separate portions having no connection. This shall also signify that as the tender was for Pro Shop, it was for the front portion. Mr. Kaushik has relied upon the communication dated August 21, 2017, purported to be a reply to the communication dated August 11, 2017 of the DDA, wherein, the petitioner has stated as under:

*“3) .....It is also a matter of fact that the same is not a load bearing wall and it is just a partition wall in the pro-shop area itself which would not make any structural change in the Pro-shop area and the same shall be reconstructed and restored in the same shape with same gates/entry provision to excess in the both the Pro-shop areas/portions.”*

8. But Mr. Verma denies the receipt to the said letter till September 20, 2017 or even thereafter till date, as the same is not found in the records of DDA. In the absence of the same having been received by the DDA, no credence could be given to the same. Even the reliance placed by Mr. Kaushik on the photograph (at page 102 of the paper book) to say, the photograph( at the bottom), does reflect that there was an access/door to the Store area (back portion) is misplaced, in the absence of any pleadings in the

writ petition or in the rejoinder and even in the representations. The issue raised now, during the arguments show the same is an afterthought and also a disputed question of fact. The petitioner is not entitled to the relief as prayed i.e for the quashing of the cancellation of the contract.

9. Insofar as the reliance placed by Mr. Kaushik on the judgment of the Division Bench in the case of ***Raghav Paswan (supra)*** is concerned, there is no dispute on the said proposition of law but in the present case, in view of my above conclusion, I am of the view that no purpose would be achieved in remanding the matter back to the authorities to enable them to issue a show cause notice and by eliciting a reply, take a decision. I agree with the reliance placed by Mr. Verma, on the judgment of the Supreme Court in the case of ***Dharampal Satyapal Limited (supra)***, wherein, in para 39, it was held as under:

*“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the*

*ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation, who said that:*

*'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority that:*

*'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.'*

10. In view of my above discussion, I do not see any merit in the petition.

The same is dismissed.

**CM No. 37547/2017**

In view of the order passed in the writ petition, the application for stay is dismissed as infructuous.

**V. KAMESWAR RAO, J**

**MAY 10, 2018/akb**