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

+ **LPA 31/2018 & CM APPL. 2773/2018**

SEEMA TIWARI

..... Appellant

Through Mr. Kamal Mohan Gupta, Ms. Ritu
Puri, Mr. Ajay Gupta, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondent

Through Mr. Gautam Narayan, ASC (GNCTD)
with Ms. Shivani Jij, Advocates.
Mr. P.K. Mishra, LA Officer
(DITDC)

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **23.07.2019**

1. The appellant/petitioner is aggrieved by a common order dated 04.12.2017, passed by the learned Single Judge, disposing of two writ petitions filed by her.
2. The first writ petition was filed by the appellant/petitioner along with three other namely Anita Aghi, Sudesh Kumar Arroa and Mukesh Singh on 21.07.2016 and was registered as W.P.(C) No.6335/16. The reliefs prayed for in the said petition were as follows : -

“a. issue a writ of certiorari or any other appropriate writ order or direction quashing the letters dated 18th July 2016 and 19th July 2016 issued by respondent no.2

b. issue a writ of mandamus or any other appropriate writ, order or directions directing respondents to frame comprehensive policy pertaining to grant of licence / extension / renewal of shops, kiosk, booth etc. to physically challenged person at interstate bus terminal in Delhi which would include the terms of license fee to be paid and permissible trade activity

to be conducted.

c. issue a writ of mandamus or any other appropriate writ, order or directions directing respondents to grant temporary extension of respective license of petitioner at concessions rates till framing of policy as stated above.

d. pass any other or further order(s) which this Hon'ble Court may deem just and proper in the facts and circumstances of the case in favour of the petitioner."

3. On 24.12.2016, a second writ petition registered as W.P.(C)12247/16 was filed by the petitioner and three others, who were co-petitioner in the previous petition seeking the following reliefs : -

a. Issue a writ of certiorari or any other appropriate writ, order or direction, quashing the Office Memorandum dated 01.08.2016 issued by respondent no. 2 being unconstitutional, and/or.

b. Issue a writ of mandamus or any other appropriate writ, order or directions directing respondents to frame comprehensive policy pertaining to grant of license/extension/renewal of shops, Kiosk, booth etc. to physically challenged person at interstate bus terminal in Delhi which would include the terms of license fee to be paid and permissible trade activity to be conducted.

c. Issue a writ mandamus or any other appropriate writ, order or directions directing respondents to grant temporary extension of respective license of petitioner at concessions rates till framing of policy as stated above.

d. Pass any other or further order(s) which this Hon'ble Court may deem just and proper in the facts and circumstances of the case in favour of petitioner."

4. As noticed in the captioned writ petitions, the petitioner had approached the Court for relief along with other co-petitioners. One of the co-petitioners was Anita Aghi, who was arrayed as petitioner no.2 in both the writ petitions (W.P.(C) 6335/16 and 12297/2016). The captioned petitions were dismissed by the impugned order dated 04.12.2017 whereunder, the learned Single Judge observed that the term of the licence was for a fixed period of three years reckoned from the date of taking over possession of the shop from the respondent no. 2/DTIDC and once the said term had expired, the petitioners did not have any right to continue occupying the licenced premises. As a result, the Court declined to interfere with the communications dated 18.07.2016 and 19.07.2016 addressed by the respondent no. 2/DTIDC to the petitioners calling upon them to hand over possession of the subject shops.

5. As for the contention raised on behalf of the petitioners including the appellant herein that the respondent no. 2/DTIDC be called upon to frame a comprehensive policy pertaining to the grant of license/extension/renewal of shops/kiosks/booths etc. to physically challenged persons at the Inter-State Bus Terminals (ISBTs) in Delhi, it was observed in the impugned order that the respondent no. 2/DTIDC had framed a policy and provided *inter alia*, for preferential allotment of shops in favour of persons with disabilities as 5% of the said shops are earmarked for being allocated to such persons. It was observed that the extent of the reservation of 5% was in conformity with the provisions of Section 37 of the Right of Persons with Disabilities Act, 2016.

6. Coming to the plea that the petitioners were entitled to concessional rates, the learned Single Judge observed that the very fact that persons with disabilities are not expected to bid for the reserved shops to the extent of 5%

against persons in the general category itself goes to show that the respondent no. 2/DTIDC had inbuilt the concessional rate in its licensing policy by confining the *inter se* bids for the 5% reserved shops only to those persons who qualified as persons suffering with disabilities, as contemplated under the Act. It was also noted that the fact that the *inter se* bidding would result in the highest bidder from amongst persons with disabilities to qualify for allocation of a shop, amply demonstrates that the Department was providing concessional rates and not a fixed licence fee for the said shops. With these observations, W.P.(C) No. 6335/2016 and W.P.(C) No. 12247/2016 were dismissed.

7. Aggrieved by the said order, three of the four petitioners in the captioned petition namely, Anita Aghi, Sudesh Kumar Arora and Mukesh Singh (arrayed as petitioners No. 2 to 4) filed an Intra Court Appeal registered as LPA No. 793/17 which was disposed of by the Division bench vide order dated 15.12.2017, on the following terms : -

“1. The present appeal has been placed before us at 5.00 PM on an urgent mentioning being allowed.

2. The three appellants herein, occupants of shops No. 53, 26 and 52, situated at ISBT Kashmiri Gate) are aggrieved by the common judgment dated 04.12.2017 passed by the learned Single Judge in two connected petitions [W.P.(C) Nos. 6335/2016 and 12247/2016] whereunder, a challenge was laid by them to the communications dated 18.7.2016 and 19.7.2016, issued by the respondent No.2/DTIDC, calling upon them to vacate the said shops/kiosks.

3. Arguments on merits have been addressed by the learned counsel for the appellants for some time. We have indicated to her that we are not inclined to interfere in the impugned judgment, as it appears to be well reasoned and is based on a

policy for allotment of space to persons with disability, as framed by the respondent No.2. Simply because the appellants, who are also persons with disability were allotted the subject kiosks in the year 1992-1994 and 2000 on a concessional licence fee, cannot be a ground for them to remain in occupation to the exclusion of others, for all times to come.

4. At this stage, learned counsel for the appellants states that instead of pressing the present appeal on merits, the appellants may be granted a reasonable time of three months to vacate the shops in question. She clarifies that upto date licence fee in respect of the said shops have been deposited with the respondent No.2. She undertakes that the appellants shall deposit the licence fee payable for the said period, on the 7th day of every month.

5. We are however of the view that a period of one month shall be sufficient for the appellants to make alternate arrangements. Accordingly, it is directed that subject to the appellants filing their affidavits within three working days from today, undertaking inter alia that they shall hand over the vacant and peaceful possession of the shops in question to the respondents and pay the licence fee till the date of handing over possession, they are granted time upto 31.1.2018 to vacate the subject shops. It is made clear that no request for extension of time shall be entertained.

6. In view of the fact that the learned counsel states that there is an urgency in the matter as the respondents have already arrived at the shops to evict the appellants, a copy of this order be given to her DASTI, under the signatures of the Court Master.”

8. Aggrieved by the order dated 15.12.2017, the appellants in the captioned appeal approached the Supreme Court by filing SLP (C) 2190/2018, which was dismissed as meritless vide order dated 29.01.2018. However, the said appellants/petitioners therein were granted an extension

of six months to vacate the shops subject to their furnishing undertakings within four weeks.

9. Learned counsel for the respondents states that a petition asking for similar relief was filed by Shri Daya Swaroop, a person suffering from disabilities, as contemplated under the Act (W.P.(C)No.1802/2018), which came to be dismissed by the learned Single Judge vide order dated 20.11.2018. Aggrieved by the dismissal order, Shri Daya Swaroop had preferred an Intra Court Appeal (LPA No.98/2019) which was also dismissed as meritless by the Division Bench while adverting to the order dated 15.12.2017, passed in LPA No.793/17.

10. The reasons that prevailed with the Coordinate Bench for rejecting LPA No. 98/19, may be set out here-in-below for ready reference: -

“6. In our considered view, the provisions of the statute and the scheme of the policy is to grant benefit to all disabled persons and, therefore, the license is granted, as per the policy, for a fixed period of time, namely, 3 or 5 years and after expiry of the said license, it is renewed by giving chance to another disabled person to avail of the benefit. Thereby the number of persons who can avail of the benefit are increased. If the contention of the petitioner is accepted, that is, once an allotment is made in favour of a person with disability, it would continue to remain in his name for all times to come and the right of other similarly situated disabled persons to reap the benefit of the statutory provision and get advantage of the State’s largeness would be adversely affected. This could never be the intention of the law makers or the statutory provision.

7. In our considered view, the policy makes out a proper scheme meeting the requirements of law for providing reservation to persons with disability in accordance with the statutory requirement and the learned writ Court in dismissing the writ petition on such consideration has not committed any

error.

8. The writ Court having already considered the provision in Seema Tiwari (supra) and having rejected it, we see no reason to take a different view in the matter. It may be taken note of that in the order passed on 15th December, 2017 in the case of Anita Aghi (supra), the observations and the findings recorded by the Division Bench in para-2 goes to show that when similar arguments were made and the Court was not inclined to accept the same a prayer was made for granting certain time for making alternate arrangements and only time was granted and when the matter travelled to the Supreme Court in SLP(C) No.2189/2018, finding no merit in the petition, the SLP was also dismissed by granting some time to vacate the premises.

9. Taking note of all these factors, we see no reason to make any indulgence into the matter, the appeal is accordingly dismissed.”

11. In the aforesaid background, we have enquired from learned counsel for the appellant if there is any other ground that remains for arguments beyond what has been observed in the captioned decisions.

12. Faced with the above orders, learned counsel for the appellant has sought to urge that the order dated 15.12.2017, passed in LPA No.793/17 was a consent order and it must be assumed that the appeal preferred by the appellants therein before the Supreme Court, was confined to the relief of extension of time for vacating the shops occupied by them and was not argued on merits. The said submission could only have been substantiated by drawing our attention to the pleadings in SLP(C) No.2190/2017, but they are not on record. In any event, on a bare perusal of the order dated 29.01.2018, passed by the Supreme Court, it is apparent that the court had gone into merits of the appeal. When the appellants could not persuade the

court to interfere, they had requested for some time to vacate the shops. While dismissing the appeal, they were granted six month's time to vacate the shops. In view of the above, learned counsel for the appellant/petitioner cannot be heard to state that the order dated 15.12.2017, passed by the Division Bench was a consent order and while passing the order dated 29.01.2018, the Supreme Court had not examined the merits of the case. The said submission is also controverted by the observations made in para-2 of the order dated 15.12.2017 passed in LPA No. 793/17 as reproduced hereinabove, where it was specifically noted by the Division Bench of which one of us (Hima Kohli, J.) was a member, that the court was not inclined to interfere with the judgment dated 04.12.2017 that has been impugned in the present appeal, as it appeared to be a well reasoned one and based on the policy for allotment of space to persons with disability, framed by the respondent no. 2/DTIDC and that the appellants/petitioners could not be allowed to occupy the shops for all times to come.

13. The next submission made by learned counsel for the appellant is that the learned Single Judge failed to appreciate that the appellant/petitioner who suffers from 100% loss of vision, had been granted a licence to occupy the shop in question ever since the year 1993 and she ought not to have been displaced by the respondents vide order dated 01.08.2016, by declining to renew the license of the existing shopkeepers at all three ISBTs, on a specious plea that an effort was being made to curb the creation of monopolistic practices. In support of his submission that the policy of 2016 is contrary to the Statute, learned counsel refers to Section 37 of the Act, that mandates the appropriate government and local authorities to make schemes in favour of persons with benchmark disability and provide for,

amongst others, 5% reservation in allotment of land on concessional rate where such land is to be used for the purposes of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres. It is argued that once the Statute itself postulates 5% reservation, the respondent no. 2/DTIDC could not have displaced the appellant/petitioner who even as on date, qualifies as a person with disability.

14. We are afraid, the aforesaid submission cannot be of any avail to the appellant/petitioner. It is not as if the appellant was granted a license to run the shop in question in perpetuity. Accepting such a plea would fly in the face of the object of the enactment that postulates that the advantage of 5% reservation assigned to persons with disabilities, should be extended across the board to all such persons and not just be confined to a handful.

15. In any event, the appellant/petitioner cannot be permitted to challenge the policy of the respondent no. 2/DTIDC, as she had executed an agreement dated 21.12.2012 in respect of the subject shop wherein the terms of the validity of the license were clearly stated as three years reckoned from 23.07.2013. The appellant/petitioner was well aware of the fact that the period of the licence would have expired on 22.07.2016. Having entered into such an agreement, the appellant/petitioner was all along aware of the fact that the license granted to her was for a fixed tenure. It was only after exhausting the entire period under the agreement that the appellant/petitioner approached the court for seeking extension of license. Even otherwise, the appellant/petitioner cannot be permitted to renege from the terms of the agreement executed with the respondent no. 2/DTIDC.

16. For the aforesaid reasons, we do not find any merit in the present

appeal. The impugned judgment is upheld and the appeal is dismissed while leaving the parties to bear their own costs.

HIMA KOHLI, J

ASHA MENON, J

JULY 23, 2019/sg/mk