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

+ LPA 76/2018

KUSH KALRA

..... Appellant

Through: Mr. Chinmoy Pradip Sharma, Mr. Kush Sharma and Mr. Amitosh Kant Ojha, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Prasanta Varma, Senior Central Government Counsel with Mr. Amrit Singh Khalsa and Ms. Hiteshi Kakkar, Advocates for R-1 and R-4/UOI.

Mr. Tarun Johri and Mr. Ankur Gupta, Advocates for R-3/DMRC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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08.01.2020

1. The appellant/petitioner is aggrieved by the judgment dated 21.08.2017, passed by the learned Single Judge whereby, the relief of issuing a writ of mandamus to the respondent No.3/DMRC for providing clean drinking water and toilet facilities, at all Metro Stations, has been turned down.

2. We may note that on the aspect of providing clean drinking water, the learned Single Judge had observed as follows:-

“6. Insofar as the matter of providing drinking water is concerned, it is not material whether the water is available inside the metro station or immediately outside the metro station; so long as drinking water is available conveniently in

and around the station, the petitioner can have no grievance. Since it is stated that DMRC is taking the necessary steps for also providing clean drinking water at all the metro stations, no further orders are required to be passed in this regard.”

3. As for making available toilet facilities, this is what the learned Single Judge had to say:-

“9. Concededly, toilet facilities are not available in certain metro stations, however, according to DMRC, it is open for passengers to use the staff facilities at those stations. In this regard, it would be necessary for DMRC to put up appropriate signage for the benefit of the commuters. It is so directed.”

4. Mr. Chinmoy Pradip Sharma, learned counsel for the appellant/petitioner submits that free drinking water is being provided by several Metro Rail companies across India including Chennai Metro Rail Ltd., Jaipur Metro Rail Corporation Ltd., Kochi Metro Rail Corporation Ltd. and Lucknow Metro Rail Corporation Ltd. where the respondent No.3/DMRC has put a system in place where commuters can take drinking water only on payment basis. He states that the respondent No.3/DMRC has in fact contradicted itself while filing an additional affidavit in the appeal, which is contrary to the stand that was taken by it in the affidavit originally filed by it in the writ petition.

5. We may note that in the counter affidavit filed by the respondent No.3/DMRC in the present appeal on 05.05.2018, the following averments were made:-

“1.It is further submitted that the answering Respondent has provided water facility at almost all the metro stations by way of Water ATM (@Rs.2 per Glass), Kiosks and Builtup shops, through which the metro commuters can take drinking water on payment basis. It is submitted that some of the station

where drinking water facility is not available, installation of water ATM is in process, however the commuters can ask for the drinking water from the staff members of the answering Respondent, which shall be provided free of cost to the commuters.”

6. Thereafter, on the directions of this court, the respondent No.3/DMRC filed an additional affidavit dated 09.10.2018, reiterating *inter alia* the submissions made in its counter affidavit dated 05.05.2018 and clarifying as follows:-

“4. I hereby clarify and respectfully submit that the drinking water facility @ Rs.2 per glass is available at almost all the Metro Stations and where the said facility is not available at any of the metro station, then the commuters can ask for the drinking water from the staff members available at such Metro Station, who would provide water to such commuters without any costs and for which purposes appropriate signage would be provided.

5. I say that the answering Respondent had already given requisite instructions to its staff working at the Metro Stations for providing free drinking water to the commuters, if demanded, in case of non availability of the paid drinking water facility at the metro station.

A copy of the Note dated 01.07.2014 issued by the Respondent is attached hereto and marked as Annexure R-1.

6. I say that the answering Respondent has been regularly interacting with the commuters travelling on its network for the purposes of getting their feedback on the aspects which requires any improvement or special emphasis, however, there were no complaints been received by DMRC for providing free drinking water facility during the last so many years.

7. I say that the answering Respondent is having no source of providing drinking water facility of its own and is dependent upon Delhi Jal Board and other agencies for providing the same. Even for staff members, DMRC regularly purchases portable drinking water from third party vendors on payment

basis.”

7. Learned counsel for the respondent No.3/DMRC also draws our attention to the orders passed by the Division Bench in PILs filed against the DMRC wherein, directions were sought for providing drinking water facilities, toilet facilities, sitting arrangements etc. to the public. On 18.7.2007, the following order was passed by the Division Bench in **W.P.(C) 1521/2007** entitled Mahender Kumar Ahuja vs. DMRC:-

“We have heard the learned counsel appearing for the parties on this petition praying for a direction to the respondents to make toilet facilities available at all Delhi Metro railway stations. It is stated in the petition that no proper and sufficient toilet facilities are available in the metro stations located at various place in Delhi.

In reply to the contentions raised in the petition, a counter affidavit as also an additional affidavit have been filed by the Delhi Metro Rail Corporation Limited. It is pointed out in the said affidavits that out of the total 58 stations, toilet facilities are available in 45 stations and only 13 stations do not have toilets. We are of the opinion that it is not for this court to decide where toilets in the metro stations should be located and whether toilets should be in paid area or outside turnstiles. These are matters for Delhi Metro Rail Corporation to decide keeping in mind hygiene, cleanliness, public convenience and other aspects. This Court should not interfere and issue directions in this regard. It is further stated that out of the said 13 stations, the Corporation has taken a conscious decision and has drawn up a plan for having toilet facilities in the following stations, namely, Shastri Park, Pul Bangash, Pratap Nagar, Shastri Nagar, Kanhyia Nagar, Kashmiri Gate (MC), Rajiv Chowk, Patel Chowk and Pragati Maidan. So far as the remaining four stations, namely, Vidhan Sabha, Civil Lines, Chawri Bazar and Mandi House, are concerned, it is stated that due to space constraint it would not be possible to have any toilet facility in these stations. But it is stated that

even in these stations, staff toilets are available within the station area/concourse level and in case of emergency, the said toilets are available for use by the commuters.

We accept the aforesaid statement. We observe and hold that toilet facilities in the aforesaid nine stations shall be constructed and made available to commuters as early as possible. So far as other four stations where such toilet facilities are not available, Metro authorities shall, in case of emergency, allow commuters to use staff toilets. In terms of the aforesaid order, the writ petition stands disposed of.”

8. Subsequently, on 21.01.2009 in **W.P.(C) 363/2009** entitled Voice of India Thr. Chairman vs. DMRC Ltd. and Ors., the Division Bench had passed the following order:-

“The question with regard to toilet facilities in Delhi Metro Rail Corporation (hereinafter referred to as DMRC, for short) stations was raised in Writ Petition (Civil) No. 1521/2007 titled Mahinder Kumar Ahuja versus Delhi Metro Rail Corporation. The said petition was disposed of on 18th July, 2008 on the basis of counter affidavit and additional affidavit filed by DMRC. The Division Bench had observed that it is not for the Courts to decide where the toilets in the metro stations will be located and whether toilets should be erected in paid area or outside turnstiles. It was held that these are matters for DMRC to decide keeping in view hygiene, cleanliness, public convenience and other aspects. DMRC had also stated that in some stations due to space constraints, it was not possible to provide toilet facilities to the commuters but staff toilets within the station area/concourse level are available and can be used by commuters in case of emergency.

2. As regards the other contention raised in the petition with regard to drinking water facility, shortage of coin/petty cash, sitting arrangements, etc. is concerned, it is open to the petitioner to point out specific instances to DMRC. We may note that as per information supplied by DMRC in their letter dated 25.7.2008 it has been mentioned that drinking water facilities

are available on all stations on payment basis. They have stated that 556 number of counter/windows are installed in metro stations for which services of 665 clerks have been engaged. DMRC has clarified that first aid facility is being provided free of cost at all stations. DMRC has also stated that they have installed one or two metal detectors in each metro station, keeping in view the flow of passenger traffic and all the metal detectors are working properly.

3. We find no merit in the present Petition which is stated to have been filed as a Public Interest Litigation. Dismissed.”

9. Further, in **W.P.(C) 6539/2011** entitled Satish Kumar Sharma vs. DMRC and Ors., the Division Bench passed an order on 07.09.2011, stating as follows:-

Heard Mr.Atulesh Kumar, learned counsel for the petitioner, Mr. B.L.Wali, learned counsel for the respondent No.1 Ms.Shobhana Takiar, learned counsel for the respondent No.2 and Mr.M.P.Singh, learned counsel for the respondent No.3 respectively.

In this Public Interest Litigation, the petitioner has prayed for issue of a writ of mandamus to DMRC to provide drinking water and toilet facilities at each platform of Delhi Metro Station and pass such other further order/orders as this Hon?ble Court may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

Be it noted, such kind of a lis had travelled to this Court in WP(C) No.363/2009 in a Public Interest Litigation. The Division Bench of this Court on 21st January, 2009 had passed the following order:-

“The question with regard to toilet facilities in Delhi Metro Rail Corporation (hereinafter referred to as DMRC, for short) stations was raised in Writ Petition (Civil) No. 1521/2007 titled Mahinder Kumar Ahuja versus Delhi Metro Rail Corporation. The said petition was disposed of on 18th July, 2008 on the basis of counter affidavit and additional affidavit filed by

DMRC. The Division Bench had observed that it is not for the Courts to decide where the toilets in the metro stations will be located and whether toilets should be erected in paid area or outside turnstiles. It was held that these are matters for DMRC to decide keeping in view hygiene, cleanliness, public convenience and other aspects. DMRC had also stated that in some stations due to space constraints, it was not possible to provide toilet facilities to the commuters but staff toilets within the station area/concourse level are available and can be used by commuters in case of emergency.

2. As regards the other contention raised in the petition with regard to drinking water facility, shortage of coin/petty cash, sitting arrangements, etc. is concerned, it is open to the petitioner to point out specific instances to DMRC. We may note that as per information supplied by DMRC in their letter dated 25.7.2008 it has been mentioned that drinking water facilities are available on all stations on payment basis. They have stated that 556 number of counter/windows are installed

in metro stations for which services of 665 clerks have been engaged. DMRC has clarified that first aid facility is being provided free of cost at all stations. DMRC has also stated that they have installed one or two metal detectors in each metro station, keeping in view the flow of passenger traffic and all the metal detectors are working properly.

3. We find no merit in the present Petition which is stated to have been filed as a Public Interest Litigation. Dismissed.”

In view of the aforesaid, there is no justification or warrant to proceed with the matter any further.

Resultantly, the writ petition, being devoid of merit, stands dismissed without any order as to costs”.

10. Having regard to the fact that Coordinate Benches have successively been passing several orders holding that decisions of the respondent

No.3/DMRC regarding provision of free drinking water and toilet facilities being policy matters do not warrant interference in judicial review even in a Public Interest Litigation, we see no reason to take a different view. Even otherwise, while disposing of the writ petition filed by the petitioner, the learned Single Judge has rightly observed that once drinking water is available in and around the Metro Stations, the appellant/petitioner cannot raise a grievance that he must be provided free drinking water by the respondent No.3/DMRC.

11. As for the toilet facilities in Metro Stations, Mr. Johri, learned counsel for the respondent No.3/DMRC states that toilet facilities are available in all the Metro Stations through Sulabh International and another entity operating in the same field and both the said agencies have been entrusted to maintain the toilets and ensure cleanliness by charging a nominal amount from the commuters. Moreover, learned counsel for the respondent No.3/DMRC states that wherever toilet facilities are not available, the passengers can approach the staff for accessing the staff facilities at the Metro Stations.

12. The impugned order records that the respondent No.3/DMRC must put up appropriate signages for the benefit of the commuters in this regard and directions to do so were issued. On enquiring from learned counsel for the respondent No.3/DMRC as to whether signages have been put up by now in all the Metro Stations, wherever toilet facilities are not available, he states that complete compliance has not been made so far. He assures the Court that compliances shall be made soon.

13. For our satisfaction, the respondent No.3/DMRC is directed to file an affidavit within two weeks indicating *inter alia* the number of Metro Stations where toilet facilities have not been provided so far and if not

provided, the steps taken so far to comply with the directions issued in para 9 of the impugned order. If steps have not been taken, an explanation for non-compliance shall also be furnished by the respondent No.3/DMRC.

14. While dismissing the present appeal on merits, list on 04.03.2020 for awaiting the affidavit directed to be filed by the respondent No.3/DMRC.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 08, 2020

rkb/ap