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

Date of Decision: 2nd December, 2021

\+ **W.P.(C) 5456/2019 & CM APPL. 12770/2021**

INDRAPRASTHA LOGISTICSS PRIVATE LIMITED ..... Petitioner
Through: Mr. Rishi Sood, Mr. Tushar Rathi and Mr. Vivek Joon, Advocates. (M:9650133112)

versus

GOVERNMENT OF NCT OF DELHI ..... Respondent
Through: Mr. Shadan Farasat, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition has been filed by the Petitioner – Indraprastha Logistics Private Limited, which claims to be a Cluster Bus Operator, that had entered into a Concessionaire Agreement for a period of 10 years with the GNCTD, w.e.f. 12th January, 2011. The said Agreement, which was initially for a period of 10 years, is stated to have been extended by the GNCTD till 2023. The grievance of the Petitioner is that the minimum wages formulae of employees was modified by the GNCTD from time to time, and accordingly the Petitioner had been forced to pay the revised minimum wages. The question was therefore of reimbursement of the enhanced minimum wages paid by the Cluster Bus Owners including the Petitioner, by the GNCTD.

3. Writ petitions were filed before this High Court by Cluster Bus Operators in 2017, which came to be decided vide judgment dated 6th December, 2017 passed by the ld. Division Bench. The said decision relied upon clause 4.8 of the Concessionaire Agreement and held that the change in the minimum wages would be a change in law, which required to be effectuated by amendments in the Concessionaire Agreement. The observations of the Division Bench in ***A.B Grain Spirits Pvt. Ltd. and Anr. v. GNCTD (WP(C) 4104/2017, decided on 6th December 2017)*** are as under:

> *"10. In support of' the contentions of the petitioners that the respondents are liable to make good the increase in the cost of the concessionaire on account of enhancement of the minimum wages, reliance is placed on the following clause besides other contained in the Concessionaire Agreement:*
>
> *"**4.8. CYF Variation for Change in Law***
>
> *(a) Where, a **Change in Law condition leads to proven increase in cost to the Concessionaire** that:*
>
> *(i) could not have been foreseen at the time when this Agreement was being negotiated;*
>
> *(ii) could not reasonably have been avoided by good management practice; and*
>
> *(iii) is not expressly or by implication accommodated by the way in which the CYF is constructed,*
>
> ***the Concessionaire is entitled to have the CYF amended to recoup its reasonable compliance costs**. The adjustment in CYF shall not exceed the increase in cost that was proved by the*

Concessionaire to the satisfaction of DoT.

(b) Where a Change in Law condition leading to proven decrease in cost to the Concessionaire that;

(i) could not have been foreseen at the time when this Agreement, was being negotiated; and

(ii) is not expressly or by implication accommodated by the way in which the YF is constructed,

DoT is entitled to have the CYF amended so as to reduce it by an amount by which the Concessionaire's costs of providing the services ought reasonably to be reduced.

(c) CYF variation due to Change in Law'set out in 4.8(a) and 4.8 (b) shall be considered only where the impact is at least 2% of the CYF"

(Emphasis by us)

11. The respondents cannot treat the agencies, who provide the services of the conductors, differently from the treatment which is being given to the petitioners who are providing the services of staff drivers and other ancillary staff.

12. The petitioners complain that minimum wages had remained static since the year 1994 and have been suddenly enhanced by the respondents using a different formula. The submission is that this is a change in law which has resulted in a substantial and unforeseeable increase in costs to the concessionaire. It is further complained by the petitioner that consequent to the enhancement, the formula for calculation of *consolidated yearly fare has not been changed by the respondents.*

13. We may note that efforts to resolve the matter with the Chief Secretary of the GNCTD by the petitioners were unsuccessful.

14. In view of the above, without prejudice to the rights and contentions of the parties in any pending litigation, the respondents shall effectuate necessary amendments in the formula envisaged in the Concessionaire Agreement regarding the amount payable taking adjustments and enhanced minimum wage, in terms of the notifications dated 15th September, 2016 and 3rd March, 2017 into consideration and consequently increase the wages with effect from the date when the said notifications took effect, for giving due benefit to the petitioners in their monthly billing.

15. The petitioners shall calculate the amount payable in terms of the above directions. The copy of the calculation sheet be served upon the respondents within two weeks from today. The respondents shall effect payment of the amount in terms thereof within a period of four weeks thereafter.

16. The petitioners shall place proof of payment to their employees, of the increased amount with the respondents.

17. These writ petitions are allowed in the above terms."

4. This judgment was challenged before the Supreme Court in ***SLP (Civil) Diary No.15731/2018*** titled ***Government of NCT of Delhi Chief Secretary v. M/s Antony Road Transport Solutions Pvt. Ltd. etc.,*** in which

vide order dated 5th July, 2018, the Supreme Court permitted the GNCTD to withdraw the SLP and approach the High Court by way of a review petition. The said order of the Supreme Court reads as under:

> "*After arguing the matter for some time, the learned Additional Solicitor General appearing for the petitioner seeks leave to withdraw these Special Leave Petitions so as to approach the High Court by way of a Review Petition, since it is submitted that certain points urged before the High Court have not been reflected in the impugned Judgment.*
>
> *Permission is granted.*
>
> *The Special leave Petitions are, accordingly, dismissed as withdrawn.* "

5. The review petition is stated to have been filed before the ld. Division Bench, which was rejected on 26th July, 2019. This order of rejection of the Review Petition was also challenged by the GNCTD before the Supreme Court. However, the said SLP was dismissed on the ground that no leave was sought in the first round when the SLP was withdrawn to approach the Division Bench by way of a review petition. The said order dated 7th February 2020 passed in ***SLP (Civil) Diary No. 3/2020*** titled ***GNCTD v. A.B. Grain Spirits Pvt. Ltd. and ors.,*** reads as under:

> *"In terms of the order dated 5.7.2018, of this Court, while entertaining the Special Leave Petition(s) against the substantive order, the matter was heard for some time whereafter the Additional Solicitor General sought leave to withdraw the Special Leave Petitions so as to approach the High Court by way of a review petition since he submitted that certain points urged had not been reflected in the*

> *impugned judgment. Permission was granted for the same but no leave was granted to approach this Court again. The tenor of the order also makes it clear that the Bench (of which one of us, Sanjay Kishan Kaul, J. was a Member) was not impressed with the submissions urged on that date, but granted an opportunity to the petitioner to urge some plea which, according to them, had been urged and had not been reflected in the order. The review petition has been subsequently dismissed. In the absence of any leave granted, the present Special Leave Petitions are not maintainable in view of the judgments of this Court in Vinod Kapoor v. State of Goa & Ors. (2012) 12 SCC 378; Sudhakar Baburao Nangnure v. Noreshwar Raghunathrao Shende & Ors. -2019 (4) SCALE 417. Needless to say, review by itself cannot be impugned in view of the judgment of this Court in Municipal Corporation of Delhi v. Yashwant Singh Negi- 2013 (2) SCR 550.The Special Leave Petitions are dismissed."*

6. In view of this, the case of the Petitioner is that it cannot be treated differently from other Cluster Bus Owners and a similar adjustment of the minimum wages according to the formulae under the Concessionaire Agreement ought to be provided to the Petitioner as well.

7. Ld. counsel for the Petitioner relies upon the judgment of the ld. Division Bench and submits that the only reason why the said formulae has not been extended to the Petitioner is because the Petitioner was not one of the parties that had approached the Court.

8. Mr. Farasat, ld. counsel for the GNCTD submits that the issue as to whether the change in minimum wages is a *'change in law'* or *'change*

under law' has not been adjudicated finally by the Supreme Court. Thus, the GNCTD would wish to assail the said issue on merits before the Supreme Court. He however submits that insofar as the fact of the Petitioner being similarly placed to the parties to the judgment of the Division Bench, extracted above, is concerned, the same is not disputed.

9. Considering the fact that it is conceded that the Petitioner is a concessionaire under the Concessionaire Agreement and is similarly placed to other Cluster Bus Owners, whose matters were decided by the Division bench of this Court vide judgment dated 6th December, 2017 in ***A.B Grain Spirits Pvt. Ltd. (supra)***, it is directed that the benefit of the said judgment shall be, *mutatis mutandis*, extended to the Petitioner as well.

10. The present petition is disposed of in the above terms. No furthers orders are called for.

PRATHIBA M. SINGH
JUDGE

DECEMBER 2, 2021/*dk/Ak*