IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-28776-2018 (O&M)
Date of decision: 01.05.2024

Gurjit Singh Walia

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Harsh Manocha, Advocate for the petitioner.

Ms. Niharika Sharma, AAG Punjab.

Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel, for the respondent No.3/UOI.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the notice dated 26.09.2018 as well as to Clause 6 (i) and (ii) of the Policy No.11/40/06-4HBIII/917 dated 18.02.2008 (Annexure P-7) issued by the Government of Punjab on the ground of the same being non-applicable to the lease agreement with the petitioner.

2. Learned counsel for the petitioner contends that respondent No.2-Rajindra Hospital had issued an advertisement/auction notice for the allotment of refreshment booth of size 8x8 feet in the Hospital premises to the physically handicapped persons suffering more than 40 per cent disability. The minimum monthly rent was fixed @ Rs.160 per sq. ft. (Rs. 10,240/- per month). The petitioner participated in the auction process and

was the highest bidder @Rs38,200/- per month. A letter of allotment was issued in favour of the petitioner on 23.09.2015 and an agreement was also signed in this regard. It is contended by the counsel that the petitioner has since then been in possession of the said booth and he has been carrying on his occupation from the said premises. He submits that an assurance was given to the petitioner that the lease shall be extended regularly. It is contended that the rent agreement was to expire initially in September-2018 whereupon the petitioner submitted an application to the respondents for extension of the lease agreement after increasing the rent as per the Govt. Policy. It is submitted that the respondents however started pressurizing the petitioner to vacate the refreshment booth and to shift all goods, fixtures, fridge etc. from the said booth to some other place. When the petitioner resisted, he was informed by the respondents that as per the Policy, the petitioner had to pay a rent which was 10 times the existing rent in case he wanted to retain possession of the booth. Due to the threat being extended by the respondents, a Civil Suit was filed by the petitioner, however, as the respondents referred to the Policy, the civil suit was withdrawn on the very next date i.e. 29.09.2018 to avail the alternative remedies. Hence the present petition was filed.

3. Learned counsel for the petitioner has argued that the respondents actually wanted to dispossess the petitioner and arbitrarily re-determined the rent which was 10 times the existing rent as fetched from the auction, which is bad and liable to set aside *inter alia* on the following grounds:-

(i) That there was no mention in the lease agreement about the lease being valid only for a period of three years and that it also did not stipulate that the rent was to increase by 10 times on expiry of the lease period.

(ii) It is contended that it was a one sided agreement on which the petitioner was required to sign along dotted lines and that he cannot be put to prejudice on account of any unilateral and arbitrary terms incorporated in the agreement by the respondent-Government.

(iii) The agreement stipulated that in the event of the allottee not vacating the premises after expiry of the period of lease, he shall be liable to pay rent at double the rate already agreed between the parties and as such, the re-fixation of the rent at 10 times of the rent originally agreed between the parties is arbitrary and illogical.

(iv) It is also submitted that the Policy dated 18.02.2008 (Annexure P-7) was already in force as on the date when the lease agreement dated 23.09.2015 was executed between the parties but there is no reference of the above said Policy in the rent agreement with relation to governing increase of rent. Even the said policy stipulates a rent increase @ 15% per annum. Notwithstanding that the Policy would not apply to the petitioner since the same was not in specific reference to disabled persons and was for general applicant. Only the allotments prior to May 2006 call for an increase by 10 times.

(v) It is also contended by him that the respondent-State is bound to make appropriate rehabilitatory welfare schemes for the disabled persons and the act of the respondent-State in seeking the vacation of the premises only to be allotted to some other person for a higher rent is contrary to the object of The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995.

4. He further submits that the petitioner had always been ready and willing to make the payment of legitimate dues, however, the same was not being accepted by the respondents for a price less than 10 times the earlier rent. It was on account of such non-acceptance of the rent by the respondents that he was unable to pay the same.

5. Learned counsel for the respondent-State on the other hand submits that the arguments advanced by the petitioner are misconceived. The agreement in question was executed between the parties on 23.09.2015 which specifically stated that the license was valid for a period of three years commencing from 23.09.2015 and ending on 22.09.2018 and subject to the terms and conditions prescribed therein. She submits that the petitioner duly signed the said agreement and thus cannot claim that he was unaware of the terms and conditions. Further, he never raised a challenge to the said agreement or conditions imposed therein at any point of time prior to the period of expiry of said agreement and that having availed all the benefits

under the agreement, the petitioner at this stage cannot contend that the terms of the agreement were unilateral and arbitrarily in favour of the respondent-State.

6. It is also additionally argued that the increase of the license fee/rent has been done in accordance with the Policy and that the petitioner is liable to make payment of the rent in terms thereof. She further submits that the petitioner has in fact been abusing the premises which was leased out originally for the refreshment purposes and the petitioner had been serving liquor on which such account FIR No.219 dated 15.10.2022 had been registered under the Excise Act. It is also submitted by the learned counsel for the respondent-State that the petitioner is not carrying on his business in the said premises and he sublet the same to a third party.

7. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the present petition.

8. I am of the considered opinion that the issue is only with respect to the rate of rent to which the petitioner would be liable for his continued occupation and possession of the premises in question. Even though the respondents have alleged that there is a violation of the terms and conditions of the license/agreement by the petitioner on two counts i.e. for having sublet the premises and (ii) for having served liquor at the said premises qua which FIR No.219 dated 15.10.2022 has already been registered against the petitioner, however, the above said factual aspects are not pleaded by the respondents in their written statement. Further, the said aspects are later events and there is no proof advanced by the respondent-

State for corroboration of the said allegation. Still further, even though the FIR may have been registered, however, the learned State counsel is not in a position to respond as to what was the recovery effected by the police consequent to the registration of the FIR. It is thus yet to be determined as to whether the petitioner was engaged in selling of liquor or it was only an incidental case where a person consumed liquor after obtaining certain refreshment from the booth in question. However, the said question need not be delved into any further as the same is not a pleaded case of respondents. In any case, the terms and conditions of the lease-license agreement dated 23.09.2015 specifically stipulate in various Clauses where action may be taken by the respondent-authorities in the event of violation of any of the stipulated conditions prescribed thereunder. Hence, the petition is being examined with respect to the scope that has been brought before this Court and without prejudice to the rights of the respondent-hospital, if any, to take appropriate action against the petitioner for violation of any specific terms and conditions of the lease-agreement dated 23.09.2015 executed between the parties.

9. The same next leads to the question as to whether the demand of rent @ 10 times the original rent fixed in the auction is justified or not. In this regard reliance is placed by the respondents on the Policy dated 18.02.2008 (Annexure P-7). The relevant Clause of the same reads thus:

> "***6 The shops/booths/space in the area of state government Medical/Dental/Ayruvedic colleges and attached Hospitals which have already been allotted to the private parties that***

shops/booths/space shall be continued to be possessed by them on the terms of the Policy dated 12.05.2006 which includes:-

i). An increase of ten times of the present rent being paid by them should be made and agreement at the local level should be made with them with immediate effect.

ii). A clause that there will be an increase of 15 % in rent PA from 1st april of every year should be included in new agreement.".

10. A bare perusal of the aforesaid Policy clearly shows that the Clause would not be applicable to the petitioner since the same empowers the determination of rent/license fee in relation to the allotments that had already been made as on the date of coming into force of the said Policy. In the present case, as the auction was held in the year 2015 and the agreement was executed much after the Policy having been issued, the said Clause would not be applicable and the determination of rent has to be done on the basis of a different criteria. The aforesaid view is also supported by the fact that terms and conditions of the agreement executed between the parties stipulate the rent at twice the agreed rate in the event of an occupant not vacating the premises after the determination of the lease-agreement, hence, there would be no logical reason as to why any person would agree to an increase of rent by 10 times instead of being an unauthorized occupant of the premises. The stand adopted by the respondents about redetermination of rent @ 10 times the rate already fixed is thus fallacious and is not born out from any meaningful reading of the Policy in question and from the terms of the agreement executed between the parties.

11. Insofar as the contention of the learned counsel for the petitioner that the Policy is not applicable to the petitioner and is floated for general persons/category only, I do not find that the said argument has much merit. The auction was a restricted auction prescribed only for the physically disabled persons. Hence, the rent would even otherwise be on the lower part since only persons with more than 40% disability were the participants in the auction proceedings. The general Policy, by its very nature is applicable to all persons and that if any special provision is required to be made, the same has to be notified in terms of Section 37 of The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995. A general Policy is applicable to all and sundry and is always subject to any special Policy that may be notified for a special category of persons and special statutes.

12. The Hon'ble Delhi High Court had held in the matter of **Sanjay Kumar Jha Vs. AIIMS and another**' decided on **14.03.2008**, that Government is duty bound to take affirmative action and frame scheme in favour of persons with disabilities for preferential allotment, relevant extract of the said judgment reads as under:-

> ***"14. In so far as the first contention is concerned, we express our disability to agree with the same. Section 43 falls in Chapter VII of the Disability Act under the caption 'Affirmative Action'. Thus, there is a duty cast on the appropriate Government and local authorities to frame schemes in favor of persons with disabilities for preferential allotment. It is, thus, the bounden duty of the appropriate***

Governments and the local authorities to frame such schemes and take such an affirmative action so that persons with disabilities are able to reap the benefit of the provisions like Section 43 of the Act. However, merely because such a positive action is not taken and scheme is not framed, would not mean that the respondents take advantage of their own inaction. As has been pointed out above, in so far as the present case is concerned, the petitioner was allotted the booth in question way back in the year 1994. This allotment was given to him even at that time, keeping in view the fact that he was visually impaired person. It is a matter of common knowledge that even before the enactment of the Disability Act such schemes for disabled persons were in vogue. If the petitioner was given the benefit thereof in the year 1994 and there is a statutory sanction behind such a move, now it would be travesty of justice to dislodge the petitioner by taking such an alibi that scheme has not been framed under Section 43 of the Act. At least, those persons who have got the benefit of preferential allotment in their favor should not be and cannot be dislodged by taking such an abysmal argument.

15. As far as second plea is concerned, no doubt, in cases where fresh allotments are made, opportunity need be given to such differently abled persons, who may form one class and would be entitled to equal treatment under the Disability Act. However, where, as in the instant case, a

person is already in occupation of said shop since 1994 and is suffering from total disability, that too visual in nature, it would not be an appropriate move to dislodge a rehabilitated disabled person in order to rehabilitate another disabled person. After all, what is the purpose for which the respondents want to do this? Obviously, to get more license fee. This objective with predominantly commercial purpose in mind should not govern the actions of the authorities having regard to the objectives with which the Disability Act has been enacted. In so far as the fixation of license fee is concerned, we are of the opinion that there may be various reasonable methodologies which can be adopted to work out an appropriate license fee."

13. Further the issue also arose in the matter of **<u>All India Institute of Medical Science</u>** Vs. **<u>The Chief Commissioner For Persons with Disabilities and Ors.</u>** decided on **<u>14.01.2008</u>**, in Writ Petition (C) No. 8926/2005, relevant extract whereof reads as under:-

"***12. It is a well settled rule of interpretation that while construing welfare legislations, a beneficial rule of construction should be adopted.(<u>State of Tamil Nadu v. K. Sabanayagam</u>, <u>(1998) 1 SCC 318 (sic)</u>; <u>Workmen v. Firestone Tyre and Rubber Co.Ltd</u>, <u>(1973) 1 SCC 813)</u>.The construction so placed must effectuate their objectives and also effectuate the rights conferred by the legislation to the disadvantaged. If that is so, rights of the disabled can be safeguarded only if the***

powers of the authorities created under the Disabilities Act are to be given their widest possible construction. Sections 58(c) and 59 (a) give ample power to the Chief Commissioner to take necessary action, in order to safeguard the rights and facilities made available to the disabled and to look into complaints regarding deprivation of their rights. The position of law in this regard has been summarized in <u>Dilbagh Singh v. Delhi Transport Corporation</u>, <u>2006 (1) LLJ 480 thus</u>:

> ***22. By virtue of Sections 59, that authority has fairly wide powers to make, inter alia, suo motu enquiry into instances of violations of provisions of the Act; including deprivation of rights of persons with disabilities. He also has the power to look into complaints, under Section 62. Rule 42 of the Rules framed in 1996 under the Act prescribes the procedure to be followed while investigating into complaints; the Chief Commissioner can decide the matter ex-parte, and decide, on merits, after hearing the parties (sub-rule 8). Powers of a civil court, in regard to matters specifically listed, inhere with the Chief Commissioner (Section 63(1)); proceedings before him are deemed to be judicial proceedings under Sections 193 and 228 of the Indian Penal Code (Section 63(2)). It can therefore, safely be concluded that the powers and duties of the***

> ***authority are akin to a quasi judicial tribunal, charged with deciding issues entrusted to it.***
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> ***23. The Act does not, expressly provide that the orders/ decisions of the authority bind the establishment/ government body concerned. However, the statutory provisions noted above give sufficient indication that its functions are not purely recommendatory; it decides the issue of entitlements of individuals. In such a situation, it must necessarily be inferred, in the absence of any provision to the contrary, that full and effectual adjudicatory powers were granted by the statute. To this end, the maxim ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) can be invoked.***

13. This court will exercise its power of judicial review only if it finds that the impugned order is illegal, irregular or irrational. It will have to be shown that order suffered some infirmity either in terms of jurisdiction, procedural irregularity, the consideration of irrelevant factors or the omission to consider relevant ones. From the foregoing discussion it is amply clear that the Chief Commissioner was cloaked with appropriate powers to take cognizance of the matter and pass suitable orders. A look at the impugned order

would indicate that the Chief Commissioner had provided both parties adequate notice, appreciated the relevant documents relating to the allotment of the booth including the scheme under which it was allotted, heard both parties and concluded that it was unreasonable on the part of the AIIMS after a period of 24 years, to contend that the claimant Petitioner was an unauthorized occupant, especially so when the PCO was his only source of livelihood.

14. Pursuant to the notice of this Court, the Mahanagar Telephone Nigam Limited (MTNL) was impleaded as a party respondent in WP(C) No. 8926/2005. In its return by way of affidavit, the MTNL admitted that the claimant Petitioner was indeed allotted the PCO under a scheme for the orthopedically disabled persons, evolved by it. It also states that the allotment, made in 1981 subsisted.

15. The Disabilities Act is a lex specialis; and therefore, in cases where the rights of the persons with disabilities are involved, it will take precedence over the provisions of the PP Act. Section 43 of the Disabilities Act, enjoins upon all public authorities the obligation to create opportunities for the full participation of the persons with disabilities, by evolving policies though which they can be ensured a decent standard of livelihood, including, though not limited to granting allotment of public spaces and office or commercial premises. Viewed from this perspective, the action of AIIMS,

notwithstanding the order of the Chief Commissioner, is indefensible. Having not disputed possession of the claimant petitioner for the past 25 years, and having being involved in the inauguration of the PCO booth, it would be highly iniquitous for the AIIMS to now contend that the claimant does not have documentary evidence to support his possession. Significantly, the claimant Petitioner does not claim any right, title or interest in the property but only demands that the status quo be maintained. To deny him of this opportunity to earn a decent livelihood would not only be iniquitous, but would run contrary to the spirit of the Disabilities Act and to many of the provisions enshrined in Part III and IV of the Constitution of India. Undoubtedly the authorities of AIIMS are clothed with power to evict unauthorized occupants under the PP Act. Yet, like all forms of power, these powers too are to be used taking into account relevant considerations, and towards securing public interest. Evicting a person with disability, who had been in undisputed occupation of premises to earn his livelihood, can hardly benefit the public weal. It may even run counter to the enactment by which AIIMS itself was brought into existence and owes its character as an institution of national importance.

16. Therefore, this Court is of opinion that even if for some reason the order of the Chief Commissioner is unsound, the

facts of this case do not disclose grounds on which that order should be set aside. During the pendency of these proceedings, the premises were directed to be de-sealed. In view of the conclusions recorded in this judgment, AIIMS is directed to hand over possession of the PCO, in operable condition, within one week, to the claimant petitioner (i.e Shri Dalip Kumar). The AIIMS shall, in case it becomes necessary to use the space occupied by him, for any reason, arrange for an alternative space to house his kiosk within the Hospital premises, in a manner which does not adversely affect the business interests of the said claimant petitioner, after giving him reasonable notice."

14. Undisputedly the booth in question is reserved for welfare of persons with Disabilities and it may not really serve any purpose by taking away a source of livelihood of one disabled, only to be re-assigned to a disabled after a fresh auction. Seemingly the intent being revenue maximization, such object would not always be prime when dealing with the persons with disabilities.

15. Learned counsel for the petitioner contends that he had himself referred to an annual increase of 10% of rent already offered by him, however, considering that Clause 6(ii) of the Policy dated 18.02.2008 stipulated 15% increase in rent per annum from 1st of April every year, learned counsel for the petitioner agrees to such an increase as well.

16. Taking into consideration the said circumstances, the present petition is allowed at this stage. The notice dated 26.09.2018 (Annexure P-6)

is set aside. The petitioner is held liable to pay rent with an annual increase @ 15% per annum every year, after the expiry of the period of lease-agreement on 22.09.2018, since the rate of rent @ auction price had already been agreed between the parties for the entire duration of the license-agreement.

17. It is also pointed out by the learned State counsel that the petitioner has not paid the rent since 2018 and has also not paid the electricity bills and other statutory charges.

18. The petitioner is thus directed to clear all the statutory arrears and electricity dues within a period of 06 months. He shall also clear the arrears of the outstanding rent as re-calculated on the basis of rent increased @ double within a period of one year in four equal quarterly installments.

19. In the event the arrears are not cleared by the petitioner within the aforesaid period he shall be liable to pay the interest @ 6% per annum on the delayed payment of the said amount.

20. Let the dues be conveyed by the respondents to the petitioner within a period of one month of the receipt of certified copy of this order whereafter the said dues shall be cleared within one year by the petitioner.

21. The observations made herein however shall not operate as a bar against the respondents to take action against the petitioner for any other violation of the terms and conditions of the agreement that may have been committed by the petitioner.

22. Allowed in above terms.

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In view of the aforesaid order, the instant as well as other civil misc. application(s), if any, stand(s) disposed of.

(VINOD S. BHARDWAJ)
01.05.2024 **JUDGE**
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No