

14.02.2025

Court No. 2

Item No. 52

Sc/AB

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 2937 OF 2025

Continental Advertising Services

Vs.

The State of West Bengal & Ors.

Mr. Ranajit Roy
Mr. Sumon Mukhopadhyay
.... For the petitioner

Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee
.... For the State

Mr. Mahendra Prasad Gupta
Mr. Abhishek Sikdar
.... For respondent No. 5

Affidavit-of-service, filed in Court today, is
taken on record.

Mr. Ranajit Roy, learned counsel appears for
the petitioner.

Mr. Soumitra Bandyopadhyay, learned Senior
State Counsel with Ms. Suchana Banerjee, learned
counsel appears for respondent no.1, the State.

Mr. Mahendra Prasad Gupta, learned counsel
appears for respondent nos. 2 to 4.

The petitioner has obtained a Short Term
Lease of an industrial plot by virtue of a lease
executed in or about **2018** by the respondent no. 2.
The lease was granted on the basis of the then

Industrial Policy. The averments made in the **paragraphs 6 to 8** to the writ petition show that the Short Term Lease was converted into a Long Term Lease in favour of the petitioner on or about **December 8, 2021**. The petitioner complied all the necessary stipulations for such conversion and necessary payments were also made by the petitioner within time.

Subsequently, on **August 25, 2022** a circular was issued by the respondent No. 2, **Annexure - P6 at page 35** to the writ petition. One of the stipulations in the said circular is **that 20% rebate will be given against the earlier rate (Rs.5 Lakh per Katha) fixed for one short payment i.e. Rs.4,00,000/- per Katha subject to the condition that the facility will be applicable for 90 days from the date of issuance of revised circular for option – B.**

Learned counsel for the petitioner submits that, on the basis of the said stipulation in the said subsequent circular dated **August 25, 2022**, the petitioner has applied for refund as because the petitioner obtained the land at a higher sum when his lease was converted into a Long Term Lease in **December 2021**. The authority by its communication dated **March 15, 2023, Annexure - P7 at page 38** to the writ petition has rejected the claim of the

petitioner on the ground that the said circular dated **August 25, 2022** would not have any retrospective effect. Though the said decision of the authority dated **March 15, 2023** is not under challenge in the instant writ petition but the prayers in the writ petition are there claiming the refund.

Learned counsel appearing for the respondent nos. 2 to 4 submits that the said circular dated **August 25, 2022** cannot have any retrospective operation. Initially, the petitioner has obtained a Short Term Lease in the year **2018** and then the same was converted into a Long Term Lease in **December 2021** under the then existing policy/circular. The petitioner has acted thereupon and paid the necessary amount. Upon compliance of all the formalities the lease of the petitioner was converted into a Long Term Lease in **2021**. Thus, there is no question of applying the same subsequent circular dated **August 25, 2022** in the case of the petitioner made out in the writ petition.

After considering the rival contentions of the parties and upon perusal of the materials on records, it appears to this Court that, the sole issue calls for a decision is, ***whether the said circular dated August 25, 2022 would operate with retrospective effect or not.***

The facts are admitted that in **2018** the petitioner was granted a Short Term Lease which was converted into a Long Term Lease in **December 2021** under the then prevailing policy of the respondent nos. 2 to 4 and/or the prevailing circular at the relevant point of time. Accepting the relevant provisions, the petitioner accepted the conversion from Short Term to Long Term Lease without any objection and paid all the necessary amounts.

On a plain reading and close scrutiny of the said subsequent circular dated **August 25, 2022**, it appears to this Court that, it is an independent circular without reserving any provisions for reduction of lease rate in respect of any Long Term Lease, granted under any previous circular or policy of the respondent no. 2. It is illusory to have a retrospective effect of the said subsequent circular dated **August 25, 2022** because if retrospective effect is to be accepted of the said circular, then all time to come pre circular whatever lease was converted into a Long Term Lease, in all those cases the refund has to be made which cannot be the true and proper construction and understanding of the said circular.

The subsequent circular does not spell of any retrospective effect. In absence of mentioning of any retrospective effect such administrative circulars should have to be read with a prospective effect.

Accordingly, the said subsequent circular dated **August 25, 2022** should be read with prospective effect and the same shall apply in respect of the conversion or granting of Long Term Lease only after the said circular was effected.

Learned counsel for the petitioner referring to his representation dated **June 27, 2023, Annexure-P10** at **page 41** to the writ petition submits that some of the lessees, who are similarly placed as that of the petitioner, have been provided with the refund on the basis of the said subsequent circular of **2022**. However, no particulars have been disclosed either in the representation or in the writ petition. Inasmuch as, whether the said subsequent circular would operate with a retrospective effect or prospective effect, that depends on its nature, purport, content and reading.

As stated above, on a close scrutiny of the said subsequent circular, this Court is of the firm view that the circular will operate with prospective effect. Hence, even if some benefits, granted to any person in an erroneous application and misconstruction of the said circular, such an error cannot be allowed to be continued all time to come. An illegality or irregularity cannot be allowed to be perpetuated.

The principle of equality or inequality does not operate against an act, which is *ex facie* illegal and irregular.

In view of the foregoing discussions and reasons this Court is of the firm view that, this writ petition is devoid of any merit.

Thus, the decision of the respondent no. 2 dated **March 15, 2023** is not interfered with and stands ***affirmed***.

Accordingly, this writ petition, **WPA 2937 of 2025** stands ***dismissed***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)