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

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Date of Decision : 13.01.2025+ **LPA 20/2025 & CM APPL. 1529-30/2025**

VINEET KUMAR SHARMA

.....Appellant

Through: Ms.Aayushi Jain and Mr.Mohit
Jangra, Advocates

versus

NORTHERN RAILWAYS AND ORS

.....Respondents

Through: Mr.Vivek Sharma, SPC with
Ms.Prunaa Singh and Mr.Kapil Dev
Yadav (GP), Advocates for R-1 & 2.**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE GIRISH KATHPALIA****VIBHU BAKHRU, ACJ. (ORAL)****INTRODUCTION**

1. The appellant has filed the present appeal, *inter alia*, impugning an order dated 19.09.2024 (hereafter *the impugned order*), passed by the learned Single Judge of this court in W.P.(C) 5604/2024 captioned *Vineet Kumar Sharma v. Northern Railway and Ors.*

2. The appellant has filed the aforementioned writ petition [W.P.(C) 5604/2024], *inter alia*, impugning an order dated 11.08.2023 issued by respondent no.2, whereby the appellant's representation for restoration of Amul Milk Stall at Shakur Basti Railway Station, Delhi, was rejected.



3. The appellant also prayed that the directions be issued to the Railways to allot an alternative space to the appellant or restore its Amul Milk Stall at Shakur Basti Railway Station or any other Railway Station in Delhi. Additionally, the appellant also prayed that directions be issued to the respondents to compensate the appellant for his pecuniary losses and damages, quantified at ₹29.00 lacs.

4. The appellant's representation for restoration of the Amul Milk Stall allotted to him was rejected on the ground that there was no precedence or policy guidelines for such regularisation.

5. The learned Single Judge has briefly examined the controversy and had found that the same entail disputed question of facts. Accordingly, the court had declined to entertain the petition filed by the appellant on the ground that it would not be apposite to consider the disputed questions of fact, which would require a party to lead evidence, in the proceedings under Article 226 of the Constitution of India. The court had further granted the liberty to the appellant to institute appropriate proceedings in accordance with law for restoration of his unit or for claiming damages.

FACTUAL CONTEXT

6. On 19.04.2005, the Ministry of Railways, Government of India had issued a letter to all the General Managers of all zones to allot milk stall/parlor licenses at railway stations.

7. On 05.09.2012, the Ministry of Railways sent a letter to the Gujrat Co-operative Milk Marketing Federation Limited (hereafter *the GCMMF*)



communicating its decision to offer licences for setting up and management of Milk Stalls (10 X 6 Feet each) at various locations (seventeen in numbers) as specified in the letter, for a period of three years, on usual terms and conditions. GCMMF was required to construct the Milk Stalls at each locations as per the specifications, as stipulated in the letter dated 09.09.2011 which was annexed to the letter dated 05.09.2012. It was also specified that licence fee would be charged at the rate of 7% of the sales turn over or ₹60,000/- per annum, whichever is higher. GCMMF was required to provide a security in the form of a fixed deposit receipt for the sum of ₹10,000/- for each location in compliance with the said letter, failing which the allotment could be withdrawn.

8. Apparently, eight locations were thereafter made available to GCMMF for setting up Milk Stalls. Although a Milk Stall at Shakur Basti Railway Station was allotted to GCMMF, but the site was not handed over at the material time. The appellant has placed on record a letter dated 19.02.2014 sent by GCMMF, which indicates that eight sites were allotted to it. Out of which, six have been made operational at the material time. The communications placed on record also indicate that there were some issues regarding setting up of the Stall at the circulating area at Shakur Basti Railway Station. The site at the Shakur Basti Railway Station was finally offered to GCMMF on 17.03.2017 and it was accepted by GCMMF by the letter dated 23.03.2017. GCMMF also forwarded the documents, that is, a) evidencing payment of license fee; b) non-judicial stamp paper for execution of the tripartite agreement; and c) photographs of the appellant (sub-licensee), under the cover of said letter dated 23.03.2017.



9. On 25.09.2017, the Railways, GCMMF and the appellant entered into the Tripartite License Agreement (hereafter *the TLA*) for setting up the operation of the Milk Stall at Shakur Basti Railway Station. Whereas GCMMF entered into the TLA as licensee, the appellant had executed the same as sub-licensee.

10. The appellant has averred that he had started the Amul Milk Stall at Shakur Basti Railway Station on 25.09.2017. It also paid annual licensee fee at the rate of ₹60,000/- for the period commencing from 25.09.2017 to 24.09.2018. Thereafter, the appellant also deposited the license fee for the period from 01.10.2018 to 30.09.2019.

11. According to the appellant, the operation of the Milk Stall at the given site became unviable as the ticket window, which was near to the site, was shifted to another location. The appellant complained that since the ticket window had been shifted, fewer passengers were visiting the area and his sales had drastically reduced. GCMMF sent a letter dated 09.08.2019 to the Railways articulating the appellant's grievance and requesting for relocation of the site.

12. The appellant also avers that it deposited advance annual fee for the period of six months from 01.10.2019 to 31.03.2020. The appellant request for reallocation of the site was rejected by the Railways. Thereafter, by a letter dated 09.01.2020, at the instance of the appellant, GCMMF surrendered the site to the Railways. The letter dated 09.01.2020, which has been placed on record, states that the Stall was closed since September 2019 on account of decrease in the footfall leading to a gradual decrease in the



sales. It was stated that the operation of the stall at the current location is commercially unviable and the appellant would not be able to operate it any further. GCMMF (at the instance of the appellant) requested the Railway to accept the surrender of the Stall and refund of the security. It also expressed its agreement to pay the license fee till 31.12.2019.

13. The appellant claims that respondent no.3 created undue pressure on him to immediately demolish the Stall. He had also caused a site at the said Railway Station to be allocated to one Akshay Kalra, who is his son, for installation of the Milk Stall.

14. The appellant has placed on record a letter dated 12.09.2020 addressed to respondent no.3, who was at the material time Commercial Inspector, Shakur Basti Railway Station, in regard to the removal of Amul Milk Stall located at Shakur Basti Railway Station. The said letter indicates that the appellant had vacated the said structure along with the fittings and fixtures on 11.09.2020 and its stall had been removed.

15. Thereafter, the appellant sent a letter dated 12.12.2020 alleging harassment and financial loss caused by respondent no.3. The appellant also made a complaint to the Central Vigilance Commission (hereafter *the CVC*) on 23.12.2021 regarding the alleged misconduct and abuse of official powers by respondent no.3.

16. The appellant states that the CVC has recommended a major penalty against respondent no.3.

17. On 09.07.2023, the appellant made a representation to the Railways to



consider his request for restoration of its stall and also for pecuniary loss allegedly suffered by the appellant including – a) cost of structure; b) loss of earning for 33 months; c) cost of mental harassment; and d) loss of reputation, quantified at ₹29.00 lacs.

REASONS AND CONCLUSION

18. We have heard the learned counsel for the appellant.

19. The appellant's grievance is articulated in the letter dated 12.12.2020 addressed to respondent no.3. He claims that respondent no.3 had started creating problems in smooth functioning of Amul Milk Stall, thus causing financial loss to him. Respondent no.3 had also caused a stall allotted in the name of his son at a different location at the same railway station by misusing the powers of his office. According to the appellant, the passage in front of his stall was closed and thereby, the number of passengers passing in front of his stall reduced drastically and at the same time, the customers at respondent no.3's son stall increased.

20. It is also relevant to refer to the appellant's complaint made to CVC against respondent no.3. The appellant had complained that respondent no.3 had (i) misused his powers to have a Milk Stall allocated in the name of his son; (ii) misused the powers of his office to sabotage the appellant's business and in order to increase business of his son; (iii) pressurised and compelled the appellant to demolish the stall without approval of the competent authority due to vendetta and personal gain; and (iv) shown blatant disregard of his superiors.



21. According to the appellant, his complaint has been sustained by the CVC and, therefore, he is entitled to consequential benefit of the restoration of his Milk Stall.

22. We are unable to accept that the relief as sought for by the appellant can be granted in the proceedings under Article 226 of the Constitution of India. First of all, it is admitted that the term of license granted to GCMMF in respect of the Amul Milk Stall at the given site had expired. As stated above, the TLA was entered into on 25.09.2017 and its term was thus, valid till 24.09.2020. This period has since expired. Thus, we are unable to accept that any directions can be issued to the Railways to restore the site to the appellant.

23. Second, it is important to note that the appellant had surrendered the site on 09.01.2020. The first compliant made by the appellant, which is on record, stating that he was compelled to surrender the same was made on 12.12.2020, that is, much after the term of the TLA had expired.

24. In so far as the prayer for compensation and damages is concerned, no such relief can be granted as the appellant would have to clearly establish that (a) the Railway had breached its obligations; (b) that he had suffered loss or damages as a direct consequence of such failure on the part of the Railways to perform their obligations; and (c) establish the quantum of damages/loss suffered.

25. Given the nature of the disputes that are sought to be raised, we find no infirmity with the decision of the learned Single Judge in holding that the controversy involves disputed question of facts and, therefore, it would not



be apposite to entertain the same in the writ petition filed under Article 226 of the Constitution of India.

26. The appeal is unmerited and is, accordingly, dismissed. Pending applications are also disposed of.

VIBHU BAKHRU, ACJ

GIRISH KATHPALIA, J

JANUARY 13, 2025

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Click here to check corrigendum, if any