(2010) 11 DEL CK 0153

In the Delhi High Court

Case No : LPA 285 of 2010 and CM No''s. 7520, 11205 of 2010

Antra Rajya Bus Adda Samachar Patra Vikreta Upbhokta Co-operative Store Society Ltd. APPELLANT

Vs

Govt. of National Capital Territory of Delhi and Others RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2011) 121 DRJ 15

Hon'ble Judges : Dipak Misra, C.J;Manmohan, J

Bench : Division Bench

Advocate : D.K. Rustagi and B.S. Bagga, for the Appellant; N. Waziri and Prem Mishra, for the Respondent

Judgement

Manmohan, J.—The present Letters Patent Appeal has been filed challenging the judgment and order dated 26th February, 2010 passed by the learned Single Judge whereby he has dismissed the Appellant''s writ petition being W.P.(C) No. 3677/1992 with costs of Rs. 10,000/-.

2. Briefly stated the relevant facts of the present case are that in 1977, Appellant-co-operative society was granted a licence by Delhi Development Authority (hereinafter referred to as "DDA") to sell newspapers, magazines, books in two shops bearing Nos. S-31 and S-62 at the Inter State Bus Terminus, Kashmere Gate, New Delhi (hereinafter referred to as "ISBT Complex") on a monthly licence fee of Rs. 1700/- and Rs. 1874/- respectively. The said licence was for a period of five years. Subsequently, the Appellant was also permitted to sell newspapers, magazines, books on six trolleys for each shop at a monthly fee of Rs. 75/- per trolley. Clause 24 of a similar Licence Agreement dated 10th November, 1993 upon which the Appellant placed heavy reliance is reproduced hereinbelow:

24. That the licensor may at the request of Licensee renew the license for such further period on the terms and conditions as may be imposed by the licensor in the absolute discretion and subject to enhancement of license fee by 15% of the

then existing licensee fee.

3. The tenure of licence was renewed every three years with fifteen per cent increase in licence fee.

4. In 1988, the Appellant sought a renewal thereof on the same terms. Their request was declined. However, subsequently they were permitted by DDA to run their business from the premises occupied by them, provided they furnish an undertaking that they would pay the licence fee as may be determined by DDA. On 12th January, 1989, the said undertaking was promptly furnished. Accordingly, DDA (then managing the Bus Terminal) permitted the Appellant to continue on licence basis with the condition that the licence fee as may be determined by them would be paid by the Appellant. The licence fee was determined by DDA in 1991. A demand was raised for payment of licence fee as per the revised rates. However, instead of paying the demand, the Appellant impugned the same in a writ petition in 1992.

5. By virtue of an interim order in the writ petition, the present Appellant was permitted to make part payments to the Respondents. According to the Respondents, the payment was observed more in breach than in compliance and for the past many months no licence fee has been paid by the Appellant at all.

6. Since the Appellant relied upon the Respondent''s policy dated 10th November, 1993, to contend that there was automatic renewal of licence for an unlimited period on payment of 10% enhanced fee, the relevant portion of the said policy is reproduced hereinbelow:

prior to policy as laid down below, on expiry of license period, 100% increase in the existing license fee, or market rate, whichever is less, was applicable as per policy in the case of renewal/extension of license in respect of Shops/Kiosks/ Counters/Stalls etc. This policy has now been modified on 25.09.1992 under the approval of the Competent Authority. Under the policy, license of Shops/Kiosks/ Counters/Stalls etc. etc. at Inter State Bus Terminus Complex, Kashmere Gate, Delhi will continue till the currency of the contract or 31.12.1992, whichever is earlier. As such, the license of Shops/Kiosks/Counters/Stalls etc. will be extended/ renewed on the expiry of the initial period of license on payment of additional license fee every year as indicated below:

i) All allotments made through tender or at the market rate; : 10% per annum ii) All allotments made on Compassionate : 5% per annum iii) All allotments made to old evictees : 5% per annum

7. However, after a gap of eighteen years, a learned Single Judge of this Court dismissed the writ petition filed by the Appellant holding that there was no document or evidence to show and establish that the Appellant had been given exclusive licence or monopoly rights at the ISBT Complex. The learned Single Judge further held that the Appellant had concealed before him the fact of furnishing of an undertaking to pay additional licence fee as determined by DDA.

The learned Single Judge also found that the increase of licence fee as demanded by the Respondents was reasonable. While dismissing the writ petition, the learned Single Judge directed the Appellant to pay the outstanding dues as determined by the Respondents with simple interest @ 18% per annum.

8. Mr. D.K. Rustagi, learned Counsel for the Appellant submitted that Clause 24 of the agreement and the policy dated 10th November, 1993 stipulated automatic right of renewal of the licence for an unlimited period. He further submitted that a Division Bench of this Court in Bharat Catering Corporation and Another and Vardan Restaurant and Caterers and Another Vs. Union of India (UOI) and Others, had recognised the right to renewal of licence as a valuable right and also enforceable so long as the same is provided in the policy of the government/licensor. The relevant portion of the said judgment is reproduced hereinbelow:

11. A licence granted in favour of a person may not be renewed but he has a right to be considered therefore.

In Principles of Judicial Review by De. Smith, Woolf and Jowell, published in 1999, it is stated:

Non-renewal of an existing licence is usually a more serious matter than refusal to grant a licence in the first place. Unless the licensee has already been given to understand when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It m ay therefore be right to imply a duty to hear before a decision not to renew irrespective of whether there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the licence

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13. Renewal of a licence, as is well known, is a valuable right. Such a valuable right could not have been denied to the Petitioners herein arbitrarily. It can be refused only on cogent and valid grounds. Licences are granted and renewed in terms of the provisions of a policy decision. The Competent Authority derives their power thereunder. They, thus, must act strictly in terms of the provisions thereof. Their actions must be fair, reasonable and equitable

9. Mr. Rustagi also submitted that the Respondents in the present case had not placed on record any terms of the agreement between the parties justifying increase of the licence fee by 100% as a pre-condition for renewal of the licence. He pointed out that the Respondents in the counter affidavit had claimed that the basis of the increase was "the decision of the authority." According to him, the impugned increase is based on a decision of the officer of the Respondents without any backing of a policy and was thus not enforceable.

10. In our opinion, neither Clause 24 of the Agreement nor the policy dated 10th November, 1993 confers upon the Appellant an automatic right of renewal of

licence for an unlimited period. We are of the view that the policy dated 10th November, 1993 was not applicable when the Appellant''s licence had come up for renewal. In any event, the said policy offers no assistance, as of today, to the Appellant inasmuch as it was valid till the currency of the contract or 31st December, 1992, whichever date was earlier.

11. Even judgment of Division Bench of this Court in Bharat Catering Corporation and Anr. v. Union of India and Ors. (supra) is of no help to the Appellant as it pertains to a catering contract which was executed in accordance with the catering policy of 1992 wherein licencee was given a right to seek extension for a further period of five years subject to satisfactory performance by the licencee. In fact, in the present case, the Appellant''s renewal would be governed by the agreement between the parties and in particular the undertaking dated 12th January, 1989 furnished by the Appellant.

12. Consequently, even if the right of renewal is held to be enforceable, as contended by Mr. Rustagi, learned Counsel for the Appellant, then also by virtue of the undertaking dated 12th January, 1989, the licence would be liable to be extended only if the Appellant agreed to pay licence fee as determined by the Respondent licensor. The said undertaking dated 12th January, 1989 is reproduced here in below:

Undertaking

I, Mohan Kumar Son of Sh. Basanta Ram Resident of News Paper Co-op. Society Shop No. 31, ISBT, K. Gate, Delhi, do hereby undertake as under:

1. That after the expiry of license period of Shop No. 31, I shall continue to pay the license fee at the existing rate and agree to pay additional amount equivalent to difference between current rate and rate as may be determined by the Delhi Development Authority in accordance with the decision of the Authority in this regard. I shall also abide by the guidelines and the terms and conditions of the licensor, as may be imposed upon me. In case the rates determined by D.D.A. are excess of my paying capacity, I shall vacate the premises after giving notice of one month for the intervening period clear dues on the rates determined for consideration of Delhi Development Authority agreeing not to charge penalties for such surrender.

Executant

Sd/-

Mohan Kumar (Cashier)

(Emphasis supplied)

13. In our opinion, once the Appellant agreed to pay the licence fee as determined by DDA, it cannot now contend that the licence fee could not be revised at all or had to be revised in a particular manner. We may mention that neither the Appellant was statutorily bound to take the shops in question on

licence nor the licence pertained to any essential commodity without which the Appellant could not have survived. In case, the licence fee determined by the Respondents was high or commercially unviable, then the Appellant should have vacated the licenced premises.

14. We may also mention that a comparative chart has been filed by the Respondents to show that for the last three decades, the licence fee paid by other similarly situated shop owners was many times higher than that of the Appellant. The said chart is reproduced here in below:

Shop No. Name of Area in Before increasing Period when License fee Outstanding amount Licensee Sq.ft. the licensee fee License fee after upto June 2010 increased 100% increasing Shop No.4 Kamlesh Jain 140.94 Rs.563.00 20-May-89 Rs.1,126.00 Nil Shop No.7 Kamlesh Jain 131.75 Rs.1,865.00 18-Jul-90 Rs.3,356.00 (Vacated) Shop No.12 Mohan Lal 140.94 Rs.1,389.00 4-Jun-89 Rs.2,778.00 (Vacated) Shop No.15 Tulsi Dass 140.94 Rs.1,746.00 19-Nov-89 Rs.3,491.00 (Vacated) Shop No.31 Newspaper 63.08 Rs.5,441.00 22-Feb-91 Rs.10,882.00 Rs.10,480,732.00 Society Shop No.31 6 Trollies 36.00 Rs.1,254.00 Rs.2,508.00 o/s dues with 6 trollies Shop No.42A Bharat Bhushan 56.66 Rs.1,376.00 11-Mar-91 Rs.2,752.00 (Vacated) Shop No.56 Ashwani Kumar 60.35 Rs.3,306.00 2-Jan-88 Rs.6.154.00 (Vacated) and Kuldeep Raj Shop No.61 Vijay Kumar and 168.03 Rs.4,113.00 21-Apr-91 Rs.8,266.00 (Vacated) Ved Parkash Shop No.63 Newspaper 143.17 Rs.6,004.00 22-Feb-91 Rs.12,008.00 Rs.10,959,706.00 Society Shop No.62 6 Trollies 36.00 Rs.1,254.00 Rs.2,508.00 o/s dues with 6 trollies Shop No.63 Kailash Rani 62.24 Rs.3,194.00 11-Mar-89 Rs.6,388.00 (vacated)

15. Moreover, it is settled position of law that a person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. (Refer to D.H. Maniar and Others Vs. Waman Laxman Kudav, and Puran Singh Sahni Vs. Sundari Bhagwandas Kripalani (Smt) and Others, . In fact, in Salmond & Heuston on the Law of Torts, 20th Edition, it has been stated as under:

(2) Trespass by remaining on land Even a person who has lawfully entered on land in the possession of another commits a trespass if he remains there after his right of entry has ceased. To refuse or omit to leave the plaintiff''s land or vehicle is as much a trespass as to enter originally without a right. Thus any person who is present by the leave and licence of the occupier may, as a general rule, when the licence has been properly terminated, be sued or ejected as a trespasser, if after request and after the lapse of a reasonable time he fails to leave the premises. A reasonable degree of force may be used to control the movements of a trespasser or to eject him. This must be distinguished from the case of a person lawfully in possession of land who refuses or omits to give it up on the termination of his lease or other interest. A lessee holding over is no trespasser until demand made; for a trespass can be committed, as we shall see,

only against the person in the present possession of the property.

(Emphasis supplied)

16. We may also mention that the Appellant has not disputed before us that the Appellant had suppressed the fact before the learned Single Judge that it had given an undertaking dated 12th January, 1989. In our opinion, this ground of suppression is itself sufficient to disentitle the Appellant from any relief from this Court.

17. Consequently, we direct the Appellant to vacate the licenced premises by 31st December, 2010. In case the Appellant does not vacate the said shops and trolley space by the stipulated time, the Respondents would be at liberty to initiate appropriate proceedings in accordance with law including contempt of Court proceedings against the office bearers of the Appellant and seek dispossession of the Appellant with police aid. However, as far as payment of outstanding dues is concerned, liberty is granted to the Respondents to initiate appropriate recovery proceedings against the Appellant in accordance with law. Accordingly, the present appeal and applications are disposed of but with no order as to costs. Interim directions given vide order dated 11th June, 2010 stand vacated.