

(2012) 02 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (C) No. 6290 of 2008

Harish Bharara

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0063

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : K.C. Mittal, for the Appellant; Kumar Rajesh Singh, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns: (i) the letter dated 14.07.2008 of the respondent Railways directing the petitioner to discontinue advertisements and to remove all Unipoles erected by the petitioner; and (ii) the tender invited by the respondent Railways vide advertisement dated 16.06.2008 so far as it related to the sites around Ambala Cantt. Railway Station allotted to the petitioner. The petition also seeks to restrain the respondent Railways from, for a period of five years extendable by five years, removing the Modern Style Unipoles (MSUs) for advertisement at Ambala Cantt. installed in pursuance to acceptance dated 20.01.2006 of the proposal of the petitioner.

2. Notice of the petition was issued and vide order dated 29.08.2008 which continues to be in force, the parties were directed to maintain status quo with respect to the MSUs installed by the petitioner. Pleadings have been completed and the counsels have been heard.

3. The petitioner, in the year 2005-06 was a registered advertiser with the respondent Northern Railways. As per the then policy of the respondent Railways, registered advertisers alone were entitled to submit proposals and grant of sites for advertising. The petitioner vide its letter dated 09.01.2006 to the Divisional Commercial Manager, Northern Railways, Ambala Cantt. submitted

a proposal for being granted exclusive rights of advertisement display on MSUs at three locations in the vicinity of Ambala Cantt. Station on payment of rentals as applicable. It was also stated in the said letter that since the cost of construction and maintenance of MSUs was very high, the proposal be sanctioned for at least five years extendable for another five years on increase of revenue as per the rate card.

4. A letter dated 20.01.2006 signed on behalf of the DRM (Commercial), Divisional Office, Ambala was addressed to the petitioner informing the petitioner that his proposal had been accepted by the competent authority and requiring the petitioner to send a demand draft of Rs. 3,85,000/- and an FDR of Rs. 20,000/-. The said amounts were deposited by the petitioner and the receipt thereof acknowledged by the respondent Northern Railways vide letter dated 24.01.2006.

5. According to the petitioner also, notwithstanding the aforesaid the mean commencement date of the contract was not fixed and the validity of the term of the contract wrongfully communicated in the letter dated 24.03.2006 as of one year till 22.3.2007 only, was not corrected by the respondent Railways inspite of request of the petitioner. Significantly, the petitioner has not filed the letter dated 24.03.2006 or its copy.

6. Though the petitioner has in the petition given certain other facts as to difficulties in installation of MSUs but the same are not relevant for the present purposes. Suffice it is to state that the respondent Railways vide its letter dated 20.04.2007 informed the petitioner that since the contract had already expired on 22.03.2007, the Unipoles be removed. The petitioner however claims that he was in May, 2007, verbally asked to deposit the charges for the next year and which he deposited. However the respondent Railways vide its letter dated 15.05.2007 with reference to the request of the petitioner for extension for six months, granted such extension for six months or till the date of finalization of tender, whichever was earlier.

7. The respondent Railways vide its letter dated 14.07.2008 again intimated to the petitioner that he was permitted to display advertisement at the aforesaid sites only upto 30.06.2008 and that tenders for the entire division had been called for as per the directions of the Ministry of Railways and called upon the petitioner to remove its advertisements. At that stage, this writ petition was filed.

8. The respondent Railways in its counter affidavit has blamed the petitioner of concealment of the letter dated 24.03.2006 vide which contract valid till 22.03.2007 only was awarded to the petitioner. A copy of the same is filed as Annexure R-2 to the counter affidavit. The petitioner in its rejoinder admits receipt of the said letter dated 24.03.2006.

9. Another application for interim relief being CM No. 11333/2009 was filed by the petitioner alleging that he was not being permitted to change the advertisements on display on the said MSUs. In view of the protection earlier

granted to the petitioner, direction was issued to the respondent Railways to permit the petitioner to change the display of advertisement.

10. The respondent Railways has filed an additional affidavit again reiterating that as per the letter dated 24.03.2006, the commencement date of the contract was fixed as 23.03.2006 and the period of the contract fixed till 22.03.2007. Reference is also made to the commercial Circular of the respondent Railways providing for the period of such contracts as one year only. It is thus the case of the respondent Railways that there could not have been a contract for five years as claimed by the petitioner.

11. The respondent Railways has filed yet another additional affidavit in response to the directions of this Court explaining the policy and guidelines issued by the Ministry of Railways for allotments of sites for commercial advertisements. As per the said affidavit, the period of contracts for commercial publicity is to be for a period of three to five years. It is also stated in the said affidavit that the petitioner was not paying the fee after 17.05.2010 and a sum of Rs. 7,69,568/- upto 18.07.2011 was due from the petitioner.

12. The only question which thus arises for consideration is whether the contract of the respondent Railways with the petitioner, with effect from the year 2006, was for five years extendable by another five years or was for a period till 22.03.2007 only. The counsel for the petitioner in this regard relied upon the judgment dated 02.06.2011 of this Court in W.P. (C) 7289/2010 titled Kishan Freight Forwarders Vs. UOI and other connected petitions and on Bal Sahyog Vs. Union of India (UOI) and Another, . The counsel for the respondent Railways relies on Bharat Catering Corporation and Another and Vardan Restaurant and Caterers and Another Vs. Union of India (UOI) and Others, .

13. However, the question as aforesaid is a question of fact. Ordinarily, such questions are not to be adjudicated in writ jurisdiction as the said adjudication entails examination and cross examination of witnesses. Be that as it may, during the pendency of this writ petition, the period of five years, for which the petitioner claims the contract was entered into, has also lapsed in the year 2011. Now the only question is of the entitlement if any of the petitioner for extension of the contract for another period of five years.

14. I am not inclined to, in writ jurisdiction, enforce such claim of the petitioner. The petitioner admits the receipt of the letter dated 24.03.2006 (supra). The petitioner also admits that he was in the said letter informed that the period of the contract was till 22.03.2007 only. The petitioner though claims to have represented to the respondent Railways to correct the error in mentioning the period of the contract as till 22.03.2007, to for a period of five years extendable by another five years as contended by the petitioner but the fact remains that notwithstanding the respondents having not carried out the said correction, the petitioner did not take any proceedings for having the said correction carried out and proceeded with the contract. The petitioner in his letter dated 17.04.2006 (in

response to the letter dated 24.03.2006) also reminded the respondent Railways that his proposal was accepted for five years and not for five plus five years. The petitioner even in the year 2007 appears to have made out a case for extension for a period of six months only and which was granted; the petitioner even then did not insist upon contract for five plus five years. The petitioner on receipt of letter dated 24.03.2006 had knowledge that notwithstanding the earlier letter dated 20.01.2006 accepting the proposal of the petitioner of a contract for five years extendable by another five years, the respondent Railways had issued the contract for a period of one year only. More than five years have elapsed since then; the limitation for the petitioner to seek specific performance has also lapsed. Thus no case for accepting the claim of the petitioner for extension for another five years from the year 2011 is made out. Even otherwise, such contracts are generally not specifically enforceable and even if there is any merit in the claim of the petitioner, the remedy is to claim damages for short closing of the contract.

15. Moreover, it is amply borne out from the record that the policy of the respondent Railways even then was for entering into such contract for one year or at best for a period varying from three years to five years only. The respondent Railways thus could not have entered into a contract for a period in excess of five years and the acceptance even if by the authorized officer of the Railways of such a proposal of the petitioner is of no avail. Contracts tainted with illegality of being in contravention of Policy cannot be supported by the Courts. The Supreme Court recently in *Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport and Another*, held that even a statutory corporation is bound by the Regulations and no action contrary thereto of its officials can bind such a corporation. It is also significant that the award of the contract to the petitioner was not in response to any tender as were subsequently sought to be floated.

16. The claim in the petition is thus found to be untenable. The petitioner is also found to be guilty of partial concealment of the letter dated 24.03.2006. The petition is therefore dismissed. The interim order is vacated. The petitioner if has not already paid the charges till the date of removal of the advertisement is directed to pay the same immediately failing which the respondent Railways to take appropriate steps for recovery of the said amount including by barring the petitioner from all future contracts with the Railways. The petitioner to also pay costs of these proceedings of Rs. 25,000/- to the respondent Railways within four weeks of today.