

(2001) 04 DEL CK 0143

In the Delhi High Court

Case No : CW. No. 1722 and CM 2986 of 2001

Indigo Radio Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Citation : (2001) 4 AD 865 : (2001) 92 DLT 222 : (2001) 59 DRJ 135 : (2001) 60 ECC 637 : (2002) 1 RAJ 448

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayyar and Mr. Mahesh Aggarwal, for the Appellant; Rajeev Sharma, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner has filed the present writ petition seeking writ of certiorari for quashing condition No. 3 in the letter of intent dated 2.8.2000. In addition directions are sought for refund of the earnest money deposited as well as the advance license fee of Rs. 75,00,000/- along with interest @ 24% p.a.

2. The petitioner had earlier filed civil writ petition bearing No. 6791/2000 wherein the following reliefs were sought:

(a) issue a writ of certiorari or any other appropriate Writ, order or direction quashing the Condition No. 3 in the letter of intent dated 2.8.2000 issued by the Respondent in favor of the petitioner.

(b) issue a writ of mandamus directing the Respondent to grant an extension of 8 weeks to furnish the Bank Guarantee and execute the license Agreement;

alternately the Respondent may be directed to refund the earnest money deposit of Rs. 1.5 lac and the Advance licenses Fee of Rs. 75 lacs Along with interest @ 24% per annum.

(c) Pass such other and further orders as this hon'ble Court deems fit and proper under the circumstance of this case.

3. The aforesaid said writ petition was disposed of vide order dated 18.12.2000 based on the understanding arrived at and as recorded in the order. The respondent had offered clarification on various issue vide its letter on 29th November, 2000 to M/s. Hind Broadcasting Company Limited. These clarifications related to the question of an assignability of license, take over of assets, black listing and forfeiture clauses. It was agreed that the clarification given by the respondent/UOI in the case of M/s Hind Broadcasting Company shall also apply to the case of petitioner. The petitioner accepted this position and prayed for extension of time for submission of bank guarantee. The time for furnishing of bank guarantee was extended as recorded in the order dated 18th December, 2000. The petitioner was also required to pay a sum of Rs. 10,00,000/- (rupees ten lacs only) on account of the delay and various factors such as saving of interest and margin money etc.

4. It appears that the petitioner neither furnished the bank guarantee within the extended time nor paid the sum of Rs. 10,00,000/- (rupees ten lacs only). The petitioner has instead filed the present writ petition challenging and seeking quashing of condition No. 3. The said condition is as under :-

"Failure to furnish the bank guarantee or execute the license agreement during the stipulated period will result in forfeiture of the advance license fee deposited by you. Further, in the even of revocation of this Letter of Intent you will not be eligible to apply directly or indirectly for any FM Radio Station license in Future."

5. As regards this condition, the clarification which was accepted in the letter of 29.11.2000 was as follows:

"Forfeiture of 50% reserve license fee

As soon as the license agreement is signed and the bank guarantee for the requisite amount is furnished, this clause becomes irrelevant."

6. I have heard learned counsel Mr. Rajiv Nayyar in support of the present writ petition. Learned counsel submits that the respondent has imply in its letter dated 29th November stated that as soon as license agreement is signed and the bank guarantee for the requisite amount is furnished, forfeiture clause would become irrelevant. Learned counsel submits that this would show that the respondents have not given up the forfeiture clause which was the demand of the petitioner. It cannot be overlooked that this was the clarification which was found acceptable by petitioner. More over counsel submits that even if the petitioner has not been able to furnish the bank guarantee, the agreement as recorded in the order dated 18 December, 2000 does not become operative, the petitioners right to challenge the terms as originally challenged in the writ petition bearing No. 6791 stands revived. I am unable to accept this contention.

7. Writ petition bearing No. 6791/2000 stands disposed of in terms of the order dated 18.12.2000, recording the terms agreed between the parties. It is not open for the petitioner after having not complied with the terms as agreed, to

revive the challenge to the original tender terms.

8. In view of the foregoing discussion, writ petition is dismissed.