

(2011) 10 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 633 of 2011

Pisces Communications Pvt. Ltd.

APPELLANT

Vs

DTC

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Citation : (2011) 10 DEL CK 0041

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anusuya Salwan, Mr. Anil Garg and Mr. Kunal Kohli, for the Appellant; Avnish Ahlawat with Ms. Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks to restrain the respondent DTC from dismantling the Bus Queue Shelters (BQSs) situated in the Rohini-I Zone, Delhi till such time the petitioner has contract with the respondent DTC. The petitioner also seeks mandamus to the respondent DTC to provide 175 Bus Queue Shelters fit for the purposes of display of advertisement. The said claims have been made by the petitioner on the basis of an agreement dated 10th March, 2010 entered into with the respondent DTC and which contract is stated to have been for the term of two years i.e. till 10th March, 2012.

2. Notice of the petition was issued on 1st February, 2011; the counsel for the petitioner also stated on that date that the petitioner was aggrieved from action of the respondent DTC of removing the BQSs subject matter of contract with the petitioner without notice to the petitioner and without giving alternative sight to the petitioner and has already submitted a representation to the respondent DTC in that regard. Thereafter the matter was adjourned from time to time for filing of the counter affidavit by the respondent DTC and awaiting the decision on the representation stated to have been made by the petitioner. No counter affidavit has been filed by the respondent DTC.

3. The counsel for the petitioner, in the light of the judgment dated 14th September, 2011 in W.P.(C) No.4874/2010 titled Himalayan Advertising v. DTC, today confines the relief in this petition only to a direction to the respondent DTC to give a reasonable notice to the petitioner before demolishing any of the BQSS subject matter of agreement with the petitioner during the pendency of the term of the agreement. It is contended that if the respondent DTC demolishes the BQSSs without notice, the advertising undertaken by the petitioner thereon (under the agreement with the respondent DTC) suffers and the petitioner become susceptible to a claim for damages by the advertiser.

4. Attention of the counsel for the petitioner has however been invited to clause 11 of the agreement which is as under:-

11. Removal/Demolition of Shelters"

The Chairman-cum-Managing Director or his authorized representative shall have the right to have the shelters/booths demolished, discontinued, shifted or removed at any time during the period of contract without notice to the contractor for any reason whatsoever. In the event of such removal or shifting, the Contractor may be permitted at the discretion of Chairman-cum-Managing Director to display the advertisement on the alternative shelter or booths so constructed/allotted in the same zone.

The contractor/advertiser has to abide the directions of Govt. as agreed by them in the form of affidavit, before entering into the contract in regard to deletion of such nos. of BQSSs from the tendered list of BQSSs as deemed fit by the Govt. for the purpose of construction of new BQSSs/modernization through any agency/ DIMTS. The contractor shall not claim any compensation on this account nor shall take the matter in the court of law under any circumstances. Advertisers can use deleted BQSSs for any advertisement purpose till M/s DIMTS starts reconstruction. However, he has to pay the Monthly License fee and R & M Charges for these BQSSs also as per applicable rate.

Further, in view of the ensuing Common Wealth games to be held in October, 2010, the DTC may withdraw the advertising rights temporarily for a period to be specified at the appropriate time with a notice of 07 days for displaying the Common Wealth games related advertisement and in such situation the contract period of two years shall be deemed to have been completed only after adding the period of such temporarily withdrawal as stated above.

5. It has been enquired as to how in the face of express contract entitling, the respondent DTC to demolish the BQSSs even without notice to the petitioner, can this Court give a direction contrary thereto.

6. The counsel for the respondent DTC in this regard has also invited attention to Clause 13 of the agreement which also entitles the respondent DTC to terminate the contract without notice to the petitioner and cause the advertisements to be removed at the risk and cost of the petitioner.

7. Faced with aforesaid the counsel for the petitioner states that the aforesaid clauses of the agreement are onerous and are liable to be ignored. It is contended that the same are illogical as the advertisements of third parties cannot be permitted to be so removed without notice. On enquiry as to why the petitioner signed the contract if found the clauses aforesaid to be illogical, the counsel contends that the Courts in the past have given directions contrary to the contractual clauses and sought time to place the judgments in this regard. After the close of hearing the counsel for the petitioner has handed over copies of judgments in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, .

8. The Apex Court in Central Inland Water Transport Corporation Ltd. in paras 83, 84 & 89 to which attention is invited held that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. In Pawan Alloys & Casting Pvt. Ltd. the Apex Court in paras 44, 55, 55 & 56 to which attention is invited held the petitioner therein to have not voluntarily or by even the remotest chance agreed to give up the benefits given to them by clear representation held out in the earlier notifications. In my view, the judgments aforesaid have no application to the facts of the present case. The petitioners have neither made any pleadings of the clauses aforesaid in the argument being unreasonable or unfair nor claimed any relief in this regard. The Apex Court in Central Inland Water Transport Corporation Ltd. was dealing with a contract between an employer and the employee. The said contract was found to have been imposed on the employees under threat of disengagement and the employees were found to have no option in the matter. Pawan Alloys & Casting Pvt. Ltd. is a case of promissory estoppel. In the absence of any foundation having been laid in the pleadings or a relief in that regard having been claimed, doctrines of law in abstract cannot be relied upon.

9. The contract of the petitioner with the respondent DTC is admittedly unenforceable. That being so, if the petitioner claims to have suffered any losses for the reason of any of the clauses in the contract being void or unreasonable or unfair, the remedy of the petitioner is by way of a claim for damages and not by way of this writ petition.

10. There is thus no merit in the petition, the same is dismissed. No order as to costs.