

(2009) 05 AHC CK 0061
In the Allahabad High Court

Rajput Advertising Service

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Easements Act, 1882 — Section 52

Citation : (2009) 3 AWC 3027

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—The petitioner is a registered proprietorship firm carrying on business of advertising. The firm is registered with North Eastern Railways for displaying hoardings after entering into contract at Kalyanpur surrounding areas since 1990. By this writ petition the petitioner has prayed for quashing the order dated 13.2.2009, passed by Asstt. Commercial Manager, Izzat Nagar, Bareilly, U.P. and for renewing the contract for the year 2009 -10 on an increase at 10% of the agreed rate for the previous year. Notices were accepted by Shri Govind Saran for all the respondents except respondent No. 5, a private firm. Shri Govind Saran has filed a counter-affidavit to which a rejoinder-affidavit is filed by the petitioner.

2. We have heard Shri Anil Kumar Singh, the counsel for the petitioner and Shri Govind Saran for respondent Nos. 2, 3 and 4.

3. It is admitted that prior to July, 2007 the petitioner firm had entered into a contract with the Divisional Railway Manager, Commercial, North Eastern Railway, Izzat Nagar for display of the hoardings. The dispute started with the invitation of tenders for the year 2007-08 for entering into contract for displaying hoardings for 4000 sq. ft. It is stated in para 8 of the writ petition that the petitioner was given the contract for an amount of Rs. 91,798 at the rate of Rs. 22.95 per sq. ft. For the year 2008-09 tenders are invited for a period of three

years. The petitioner submitted the tender by increasing the rates at 10% at Rs. 33.33 per sq. ft. of Rs. 4,00,124 for 4000 sq. ft. It is stated that the tender were neither accepted nor rejected, and that the existing contract was renewed for a period of one year at 10% enhancement of the previous years rates, fixing the rate at Rs. 25.24 per sq. ft. for total amount of Rs. 1,00,978 for 4000 sq. ft.

4. An advertisement was published on 7.1.2008 in the daily newspapers inviting fresh tenders for displaying hoarding at Kalyanpur surrounding areas for an area of 4000 sq. ft. on deposit of earnest money of Rs. 8,000. It is stated that the petitioner had received the letter of renewal of the contract on 11.3.2008 and was required to pay Rs. 1,00,978. The petitioner deposited the amount by a bank draft with letter dated 21.4.2008, which was acknowledged by the Asstt. Commercial Manager, Izzat Nagar, Bareilly on 12.5.2008. It is stated in para 15 of the writ petition that this acceptance of amount was for renewal of contract from 28.3.2008 to 27.3.2009.

5. The petitioner received a letter from Asstt. Commercial Manager, Izzat Nagar dated 12.5.2008 reminding that the firm was allowed to display hoarding from 28.3.2008 to 27.3.2009. If the renewal fees is not deposited within a week at the end of the contract, his hoardings shall be removed and some one else will be allotted the space. The petitioner lodged a protest on 22.10.2008 with the Chief Manager (Commercial), North Eastern Railway, Headquarter Gorakhpur, stating that he had submitted the tender with increased rates at 10% in pursuance of the advertisement dated 7.1.2008 for a period of three years and had deposited the amount calculated with increase of 10% on demand for a period initially for one year. Thereafter inspite of several letters he did not receive any response for renewal of contract for a period of three years upto 27.3.2011. The petitioner requested that the amount of Rs. 1,00,978 deposited by him should be adjusted towards the amount for a period of one year of the three year contract. The petitioner also protested to the oral orders of Shri D. D. Misra for deposit of Rs. 31,000 more for renewal fees. Once again the petitioner sent a letter on 31.1.2009 in response to the letter dated 22.1.2009 requesting that his renewal should be accepted upto 27.3.2010.

6. The petitioner was informed on 13.2.2009 that the period of the contract will come to an end on 27.3.2009, and that for the subsequent period beginning from 1.4.2009 M/s. M. Kumar Aid and Publicity, Bareilly, U.P.-respondent No. 5 has been allotted the space. The petitioner should immediately remove the hoardings, details of which were given in the letter, on the date when the contract was to end. The letter would show that the petitioner was displaying hoarding at 20 sites in the Kalyanpur area. The petitioner then filed this writ petition after giving a notice to General Manager, North Eastern Railway and Divisional Railway Manager, Commercial, North Eastern Railway, Izzat Nagar Division requesting them again to accept his renewal upto 27.3.2010 and to send the payment for deposit at increase of 10%.

7. Learned Counsel for the petitioner has relied upon para 10 of the General

Directions issued in the Advertising Rate List of the North Eastern Railways published to be effective w.e.f. 1.8.2003. The list gives the details of rates and also the lists of the stations of various categories. The Kalyanpur station is a B-category station for the rates of hoardings for displaying advertisements on railway sites, wagons of passenger trains, and the space provided on the front and back of the tickets, reservation demand slips, banners and platforms etc. of different sizes. Para 10 of the general directions provide that in accordance with Railway Board's letter dated 9.5.2000, Item No. 5.2 the notified rates of all the advertisements will record automatic increase at 10% per year. He has placed reliance upon the letter of the Asstt. Commercial Manager, Izzat Nagar dated 12.5.2008 in which the petitioner was informed that if the renewal fees is not deposited within a week of the end of the contract, his hoardings shall be removed from the sites and will be allotted to some other persons.

8. It is contended that the rates of advertisement and the letter renewing the contract and the letter of the Asstt. Commercial Manager, Izzat Nagar dated 12.5.2008 held out a promise to the petitioner for renewal for the next year at the increase of 10% and would thus operate as promissory estoppel against the respondents from advertising inviting tenders, and allotting the same space to some other persons. The petitioner had deposited renewal fees of one year at the increased rate at Rs. 1,00,978 valid upto 27.3.2009 and is ready to deposit the renewal fees for the next year by increasing it at 10%.

9. Shri Anil Kumar Singh, learned Counsel for the petitioner has filed an amendment application stating there in para 34A that in January, 2008 an advertisement was made in daily newspaper "Dainik Jagran" inviting contracts for a period of three years. The petitioners tender in pursuance to this invitation was not rejected and was intact upto 17th February, 2009, when the petitioner was returned the bank draft of the earnest money of Rs. 8,000. In para 34D it is stated that subsequent to the advertisement dated 17.6.2008, the invitation of the tenders for a period of three years from 2009 to 2012 is not sustainable as on that date the petitioners tender was intact and was not rejected. He has offered Rs. 4,00,124 in 2008 for a period upto March, 2011 and was never told and informed that fresh advertisement will be issued inviting fresh tenders for the same period. His tender was not rejected at any point of time and would be deemed to have been accepted.

10. Shri Yashpal Singh, Asstt. Commercial Manager, North Eastern Railway, Izzat Nagar has filed counter-affidavit and supplementary counter-affidavit stating therein that an advertisement was made in newspapers on 17.6.2008 inviting applications for allotment of contracts for displaying of commercial publicity through open tender on licence basis. The advertisement was also given on North Eastern Railway website www.nerailway.gov.in and in tenders www.tender.gov.in on the internet. The tenders received were scrutinised by the Tender Committee constituted by the competent authority. All the tenders were examined and the allotment was made giving advertising rights in the concerned area. M/s. M.

Kumar Aid and Publicity, Bareilly was allotted the contract on 8.9.2008 for sites to be handed over after the expiry of the existing site on 27.3.2009. Shri Govind Saran appearing for the North Eastern Railway submits that the petitioner did not have right of renewal of licence, Tenders were earlier invited and were opened on 8.1.2008. The petitioner was not found eligible and thus tenders were invited afresh, for publishing advertisement both in newspapers and on Internet on 17.6.2008. The petitioner does not have legal right to continue with his licence even on the increased rates. The amount deposited by him was for the period, which has come to an end on 27.3.2009 and that thereafter he has no right to occupy the sites. It is submitted that the guidelines providing for increase of rate and the letter of the Asstt. Commercial Manager providing for deposit of renewal fees by increase of rates, cannot be said to be the acceptance of the tender of the petitioner by the Tender Committee. The petitioner did not have a right either under the contract, or under the general conditions of contract to continue to occupy the sites on deposit of licence fees by increasing it at 10%. The general conditions of contract, are applicable to those persons in whose favour the contract has been settled by the Tender Committee and are by way of guidelines giving conditions of contract, which also includes the category of stations, size and the places, where the advertisements are to be displayed. The letter of the Asstt. Commercial Manager dated 12.5.2008 would have operated, if a fresh contract was executed in favour of the petitioner and did not give petitioner a right to continue inspite of settlement of the tender with a third party.

11. The North Eastern Railway as an instrumentality of the State has a right to grant licence for display of advertisements by hoardings and by other means by inviting tenders in settling contracts on fair and reasonable terms. The guidelines published by North Eastern Railway provides for various medium of advertisements, categorising stations, places, where advertisements are to be provided, the size and the rates w.e.f. 1st August, 2003. These conditions are applicable to only those persons, who make an offer in pursuance to the invitation of offer made in the advertisement carried out for settlement of the sites. The petitioner firm was the existing licensee. The period of his licence under the contract was coming to an end. It had applied for contract in pursuance of the tender notice published on 8.1.2008. His offer was not accepted as he was not found eligible. His offer was, however, accepted for renewal from 28.3.2008 to 27.3.2009. The amount of Rs. 1,00,978 deposited by him, was in pursuance to the extension of the earlier contract and was not by way of acceptance of his tender in pursuance of the advertisement dated 8.1.2008. The petitioner did not challenge the subsequent advertisement inviting tenders on 17.6.2008, and did not participate in the process by making an offer. The tender submitted by the firms were scrutinised by the Tender Committee and the new contract for a period beginning from 1.4.2009 were settled in favour of M/s. M. Kumar Aid and Publicity, Bareilly, U.P.-respondent No. 5.

12. Section 52 of the Easements Act provides that where one person grants to another, or to a definite number of other persons a right to do, or continue to do,

in or upon the immovable property, of the granter, something which would, in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence. There must be a valid contract or permission to grant the licence. The general conditions of contract or an assurance by a person, who is not competent to grant licence or to enter into a contract is not enforceable to establish a valid licence.

13. We do not find substance in the contention that the general conditions and rates of advertisement notified by North Eastern Railway for various modes of advertisement w.e.f. 1.8.2003, provides any such promise in Clause 10, which may be treated to be a representation made by the railways for renewal of all existing contracts for subsequent period by increasing the rate at 10%. We also do not find any force in the contention that the letter dated 12.5.2008, issued by the Asstt. Commercial Manager held out any such promise for renewal of the contract by depositing renewal fees within one week of the end of the period of contract, to give right to the petitioner for renewal of the licence. The respondents had invited fresh tenders on 8.1.2008 and thereafter on 17.6.2008. The petitioner's offer in pursuance to the tender dated 8.1.2008 was not accepted and that petitioner did not make any offer in pursuance to the advertisement inviting tenders on 17.6.2008.

14. The petitioner has not made any prayer to cancel the acceptance of the tender of respondent No. 5, nor has submitted any proof of deposit of the licence fees, for the alleged renewal offered to him in letter dated 12.5.2008, within a week of the end of the period of his contract.

15. Shri Anil Kumar Singh states that during pendency of the writ petition his hoardings were unauthorisedly removed and that he has suffered losses on account of high handed act of the respondents. The petitioner did not have a right to continue to occupy the hoardings space after the end of the period of contract. The petitioner did not make any offer in pursuance to the advertisement carried out on 17th June, 2008. The amount offered by the respondent No. 5 at Rs. 4,36,920 for three years was higher than the amount offered by the petitioner earlier by his offer made in pursuance to the advertisement dated 8.1.2006, which did not materialise.

16. The petitioner does not have a right of renewal or renovation of the contract and did not participate in the tender process vide advertisement dated 17.6.2008.

The writ petition is dismissed.