
(2000) 11 DEL CK 0052
In the Delhi High Court
Case No : CW No. 3043 of 2000

Rakesh Kumar

APPELLANT

Vs

All India Institute of Medical Science and Others

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 58 DRJ 148 : (2001) 2 RCR(Civil) 597

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : A.K. Bajpai, for the Appellant; Mukul Gupta, for Respondents 1 and 2 and Piyush Sharma, for the Respondent

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. The petitioner, a handicapped person, suffering from 50% permanent disability of bony analysis, had applied for and was allotted an STD/ISD/PCO booth at Masjid Moth, Doctors Hostel of AIIMS. The respondents had invited applications by a tender/advertisement, which appears as annexure-D page 39, for the allotment of STD/ISD booths. The petitioner, whose license for the booth had been renewed from time to time from 1995, also applied for renewal of the agreement for the STD/ISD booth.

3. Petitioner's grievance in the writ petition is that license agreement in his favor was not renewed and the booth has been allotted to respondent No, 5. Learned counsel for the petitioner had contended before me that the license though being renewed from time to time was really on a perpetual basis and the understanding was that the same would be continued, unless the service of the petitioner was found to be unsatisfactory. It is claimed that as the petitioner was unable to fulfill illegal demands being made on him by staff to respondents 1 and 2, they became inimical towards him resulting in non renewal. Learned counsel

for the petitioner further urged that the petitioner belonged to the category of unemployed handicapped and had been allotted under the scheme for this purpose. The whole purpose of the scheme would be brought to naught by depriving the petitioner of his livelihood now.

4. These, submissions are refuted by the counsel for the respondent who have urged before me that the petitioners had duly applied for and was considered for the grant of a license as per the advertisement/tender issued. The petitioner failed to get selected and respondent No. 5 was awarded the contract. Respondents also refuted the suggestion that the agreement was intended to continue in perpetuity unless there was unsatisfactory service. Learned counsel also brought to the court's attention that the petitioner had been fined for not keeping the complaint book available.

5. From a perusal of the record and upon hearing the counsel for the parties, it is clear that the submission of the petitioner that the license agreement was intended to be in perpetuity and was renewable unless the services were unsatisfactory, is devoid of merit. The contention of it being an agreement in perpetuity is contrary to record and the written contract. The license agreement was for specific periods. The petitioner cannot claim any vested rights to continue in possession.

6. The second contention of the petitioner is that the terms and conditions of the tender/advertisement were in violation of the stated policy and accordingly liable to be quashed. Here the petitioner is really assailing the terms of the tender. The petitioner having sought renewal and having been considered for the grant of the same in pursuance to the tender/advertisement, it is not open for the petitioner to challenge the terms and conditions of the advertisement, which are really in the realm of contract. Reference is invited to the decision of the Apex Court in *Tata Cellular Vs. Union of India*,

7. Learned counsel for the respondents have submitted that the earlier policy of granting STD/ISD/PCO booths to unemployed graduates only has been done away with. Allotments are now liberalised and freely available. Reference is invited to the public notice Annexure R-1 page 55 of the paper-book. The term of tender/advertisement was Therefore in consonance with the liberalized policy and petitioner cannot claim that only the educated unemployed are eligible.

8. Learned counsel for the petitioner next contended that the selection process was vitiated by not giving any preference to the petitioner as a handicapped person, as per the liberalized policy of the respondents. Learned counsel for AIIMS sought to contend that the policy of preference to widows, handicapped, SC/ST etc. was that of the Department of Telecommunication, Ministry of Telecommunication, in respect of grant of telephone lines and not applicable to the respondent No. 1 AIIMS in the allotment of STD/ISD booth. The policy has to be harmoniously interpreted. It cannot be a situation where the handicapped person is entitled to the grant of a telephone line on preference basis, but not for

the allotment of a booth. It would result in negating the preference provided.

9. In the instant case, on a perusal of the record, I find that the petitioners had fared reasonably well in the rating and assessment done by respondents. Learned counsel for AIIMS very fairly states that from the record, it cannot be said that any preference was given to the petitioner on account of being a handicapped person. I am informed that the petitioner has already vacated the STD/ISD booth and removed his luggage and transferred the booth to the new allottee, who has been operating the same. The term of the present allotment is also given to expire by 31.3.2001.

10. In these circumstances, rather than disturbing and interfering with the present allotment, relief to the petitioner deserves to be moulded in the interest of justice. The petitioner may apply to the respondents for allotment of an ISD/STD booth. Upon such application being made, respondents would duly consider the petitioner's application for the grant of allotment of an ISD/STD Booth, having due regard to the preference to be given to a handicapped, widow and other categories, for the allotment in the next available vacancy.

Writ petition is disposed of with the aforesaid directions.