

(2008) 03 DEL CK 0049

In the Delhi High Court

Case No : Writ Petition (C) No. 14332 of 2004

Sanjay Kumar Jha

APPELLANT

Vs

AIIMS and Another

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0049

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : S.K. Rungta and Sadhna Chaudhary, for the Appellant; Mukul Gupta, for AIIMS and Suresh Kait, for UOI, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The petitioner herein is a disabled person as he suffers from blindness. It is not in dispute that he suffers from a "Disability" as defined u/s 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Disability Act"). The petitioner has also enclosed a medical certificate dated 2.9.1994 issued by the office of Medical Superintendent, Hindu Rao Hospital, New Delhi, which comes under the Municipal Corporation of Delhi to show that he is medically handicapped. As per this certificate, his blindness is 100% and it is recommended that he be considered as a candidate for grant of benefit as a 100% visually handicapped person.

2. All India Institute of Medical Sciences (AIIMS) has a big campus known as "Ayurvigyan Nagar Campus". Having felt the need to have a local telephone booth for the visitors and residents etc., AIIMS has constructed a shop measuring 8 ft. x 5 ft. (40 sq. ft.) at the said campus from where local telephone booth is operated. On 8.2.1994, AIIMS had allotted the said shop to the petitioner for running a public telephone booth in response to his application for allotment thereof. This allotment was made on license basis and license deed was executed. As per the conditions of the said allotment and the license deed, the

allotment was for a period of 11 months renewable by mutual consent. The license fee, including water and electricity charges was fixed at Rs.100/- per month. There are other usual terms contained in the license deed. Though the initial period of the license deed was 11 months, the petitioner was allowed to run STD/ISD services in the said telephone even after the expiry of the initial period of 11 months. This license fee was, however, increased to Rs.600/- per month plus electricity and water charges of Rs.200/- vide letter dated 9.4.1995. On 20.4.1996, further extension for a period of two months from 1.4.1996 to 31.5.1996 was granted by the Director, AIIMS.

3. Thereafter in the year 1999 Negotiation Committee meeting was held on 22.2.1999 to decide the question of further renewal of the contract of STD/ISD pay phone booth. The said Negotiation Committee decided to renew the contract of the petitioner for further period of 11 months with effect from 1.3.1999 at the enhanced rate of Rs.1,800/- per month, including water and electricity charges. In the minutes of the meeting it was, inter alia, recorded:

The contract period of Shri Sanjay Kumar Jha who has been allotted STD Booth at A.V. Nagar was going to be expired by 28th February, 1999. Therefore, the Negotiation Committee had reviewed the contract. Shri Sanjay Kumar Jha was also present. This committee considered his services and found to be satisfactory, Therefore, the committee approved the extension of the contract for a period of 11 months w.e.f. 01.03.99 at the enhanced rate of Rs.1,800/- per month including water and electricity charges. The other conditions of the contract were also approved.

4. Further extensions were given from time to time. The petitioner has placed on record letter dated 14.2.2003 vide which license period was extended for a further period of 11 months with effect from 1.12.2002 to 30.11.2003 on the existing terms and conditions. Again, vide letter dated 23.6.2004 further extension was granted with effect from 1.12.2003 to 30.11.2003. It was further extended @ Rs.2,200/- per month. license Deed dated 9.7.2004 was also executed wherein it was, inter alia, stated that the license can be renewed thereafter with mutual consent on the terms and conditions as is clear from Clause 2 of the said agreement:

2. That the license shall be for a period of 11 months only from 01.12.2003 to 31.10.2004 and, thereafter, may be renewed with mutual consent on the terms and conditions to be agreed mutually between the Licensor and the Licensee.

5. During the currency of the said license agreement, AIIMS inserted tender notice dated 12.8.2004 in the "Times of India" edition dated 17.8.2004 as per which, tenders were invited to run the said STD/ISD local phone booth. This public notice reads as under:

ALL INDIA INSTITUTE OF MEDICAL SCIENCES

ANSARI NAGAR,

NEW DELHI-110 029.

No. 40-9/2004-Estate

Dated: 12 AUG 2004

TENDER NOTICE

On behalf of Director, AIIMS sealed item rate tenders are being invited from experienced persons to undertake the 11 months contract run round the clock the following establishments at Ayurvigyan Nagar Campus of All India Institute of Medical Sciences:

1. STD/ISD Local call booth built up shop of required pattern as decided by AIIMS will be provided by the Institute.

Tender form can be obtained from the Estate Section on payment of Rs.1000/- in cash on or before 27.8.2004 on working days up to 12 Noon. Tender can be dropped in a box available in Estate Section on or before 03.00 PM of 03.09.2004. The tender will be opened on 03.09.2004 at 03.30 PM in the office of Administrative Officer (Estate), 1st Floor Administrative Block in presence of the tenderers or their representative, if any.

Sd/-

Administrative Officer (Estate)

6. The petitioner got alarmed from this tender notice as it was clear from the aforesaid move that the AIIMS wanted to go with open tender and had invited bids from the general public for allotment of the said booth. Aggrieved by this action of the AIIMS, the petitioner filed the instant petition on 25.8.2004, inter alia, on the ground that being a disabled person he was conferred with various rights under the Disability Act one of which was that he was entitled to preferential allotment of land at concessional rates by the Government at all levels and Therefore, the respondents could not deprive him of the possession of the said booth, which was already allotted to him and was in his possession. The petitioner also filed application for stay seeking restraint against the respondents from terminating the license of the petitioner in respect of the aforesaid public phone booth. Matter came up for preliminary hearing on 27.8.2004 when counsel for AIIMS appeared on advance notice. He, however, took some time to seek the instructions and on his request the matter was adjourned. After few adjournments thereafter when the matter came up for hearing on 25.10.2004, again learned Counsel for the AIIMS prayed for some time to produce the original file wherein the request of the petitioner for allotment of the STD/ISD phone booth was processed. The matter was accordingly adjourned to 19.11.2004 and in the meantime, direction was given that the petitioner shall not be evicted from the said booth allotted to him as his license period was coming to an end by 31.10.2004. On 19.11.2004, notice to show cause was issued with direction to the AIIMS to file the counter affidavit. Interim order thereafter was continued

from time to time which remained under operation throughout the pendency of the writ petition.

7. The petitioner has sought preferential treatment for allotment of the said telephone booth to him which is under his occupation for a long period of 14 years primarily because of his disability and the rights which flow in his favor under the Disability Act. Section 43 of the said Act, which deals with preferential allotment of land at concessional rate to such disabled persons is in the following terms:

43. The appropriate Government and local authorities shall by notification frame schemes in favor of persons with disabilities, for the preferential allotment of land at concessional rates for-

- a) House;
- b) Setting up business;
- c) Setting up of special recreation centres;
- d) Establishment of special schools;
- e) Establishment of research centres;
- f) Establishment of factories by entrepreneurs with disabilities.

8. It is his case that though he was allotted the booth in the year 1994, while the said allotment was still continuing, the Disability Act came into force with effect from 7.2.1996 and keeping in view the provisions of Section 43 of the Act, he has right to continue with the occupation of the said booth because of statutory sanction provided by Section 43.

9. In the counter affidavit filed on behalf of the AIIMS, it is stated that the AGCR unit while preparing the report of the AIIMS for the year 2003-04 had raised certain objections with regard to the manner of fixation of license fee and the procedure of renewal without calling tenders from year to year. It is in this backdrop that on 17.6.2004 the competent authority took a conscious policy decision and directed for initiation of the process for calling of the tenders for other shops. Such a decision was not only in consonance with the system of transparency but to avoid any other further objection for AGCR. It is admitted that though Negotiation Committee in its meeting on 15.12.2004 had approved the extension for a further period of 11 months on payment of license fee of Rs.2,500/-, this could not be accepted by the competent authority because of the aforesaid reasons. It is also mentioned that the AIIMS had to face allegations of discrimination as well in WP (Civil) No. 6799/2004 filed by one Mr.Rakesh Kumar, who had alleged that the STD booth given to the petitioner was not being tendered since 1995.

10. We may also at this stage note certain developments which have taken place during the pendency of the writ petition. Since the license period of the petitioner

had come to an end, he was treated as unauthorized occupant and proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter referred to as the "PP Act") were initiated against him in which orders for eviction were passed by the Estate Officer. The petitioner challenged those orders by filing appeal u/s 9 of the PP Act, which appeal has also been dismissed by the learned Additional District Judge vide its decision dated 10.2.2006. These facts are disclosed by the AIIMS in its application being CMP No. 7616/2006. Though in this application it is stated that the order dated 10.2.2006 of the learned ADJ is annexed as Annexure R-1, whereas the fact is that copy of that order has not been annexed.

11. The AIIMS also moved CMP No. 7617/2006 for impleadment of the Union of India as a respondent in view of Section 43 of the Disability Act as it is pointed out that though said provision stipulates that the Central Government would frame a scheme, no such scheme has been framed so far. Orders dated 4.12.2006 were passed impleading the Union of India as party and the Union of India was impleaded as the respondent No. 3. Consequent thereto, the Union of India has filed the counter affidavit wherein the Union of India has itself emphasized that the Disability Act extends to whole of India and is an important landmark in the efforts to ensure equal opportunities for persons with disabilities and their full participation in nation-building and the said Act provides for both preventive and promotional aspects of rehabilitation like, education, employment, vocational training, job reservation, research and manpower development, creation of barrier-free environment, rehabilitation for persons with disability, unemployment allowance for disabled and establishment of homes for persons with severe disability etc. It is also accepted that under this Act the Government of India plays a catalytic and pioneering role in the rehabilitation of persons with disabilities. Referring to the definition of appropriate Government in Section 2(a) of the Act, it is further mentioned that the Act is very comprehensive and all encompassing. Implementation of the provisions of the Act, Therefore, requires a multi-sectoral collaborative approach involving all the appropriate Governments, i.e. Ministries of the Central Government, the State Governments/UTs, Central/State undertakings, local authorities and other appropriate authorities. It is also accepted that as per Section 43 of the Disability Act, the appropriate Government and local authorities have to frame scheme, by notification, in favor of persons with disabilities for the prevention of allotment of land at concessional rates for housing, setting up of business etc. What is more relevant for us is the following averments made in paras 7 and 8 of the said affidavit, which deal with the issue in question:

7. That as AIIMS is a body set up under the statute of Union of India, the Persons with Disabilities Act, 1995 enjoins upon Ministry of Health and the AIIMS to provide such preferential treatment to the persons with disabilities. This it appears happened initially, as could be observed from Annex-B, C & D to the petition since the petitioner seems to have been allotted the booth by giving preference under some scheme of Department of Telecommunications. This

happened though the Persons with Disabilities Act, 1995 had still not come in force.

8. Further, it is observed from the additional affidavit of AIIMS that the petitioner is being dispossessed, based on an audit objection. Perhaps, AIIMS could explain to audit that the applicant has been given preferential treatment as has been provided under the PWD Act, 1995. The Ministry of Social Justice and Empowerment, Therefore, does not support dispossession of the Petitioner, who has been running the telephone booth satisfactorily for more than 10 years.

12. The aforesaid averments made in the counter affidavit filed on behalf of the Union of India, in fact, clinch the whole issue. We appreciate the fair and pragmatic approach taken by the Central Government which dovetails with the objectives of the Disability Act. It is rightly observed that the action of dispossession of the petitioner or for that matter inviting public tender for allotment of the said booth arose only because of audit objection. In such circumstances, it would have been more appropriate for the AIIMS to give proper reply to the audit objection bringing to the notice of the AGCR the benevolent provisions of the Disability Act. These provisions warrant a different approach and one cannot be tied down by such audit objections relating to fixation of mode of license fee.

13. We may note at this stage the two submissions made by Mr. Mukul Gupta, learned Counsel for the AIIMS, namely, no scheme was prepared by the appropriate Government, namely, the Central Government u/s 43 of the Act and in the absence of such a scheme, no right had accrued to the petitioner. Even if a disabled person was to be given preferential allotment, the petitioner could not claim exclusive right, as in such eventuality as well, the booth could have been put to tender by making only disabled persons eligible to submit their bids.

14. In so far as the first contention is concerned, we express our disability to agree with the same. Section 43 falls in Chapter VII of the Disability Act under the caption "Affirmative Action". Thus, there is a duty cast on the appropriate Government and local authorities to frame schemes in favor of persons with disabilities for preferential allotment. It is, thus, the bounden duty of the appropriate Governments and the local authorities to frame such schemes and take such an affirmative action so that persons with disabilities are able to reap the benefit of the provisions like Section 43 of the Act. However, merely because such a positive action is not taken and scheme is not framed, would not mean that the respondents take advantage of their own inaction. As has been pointed out above, in so far as the present case is concerned, the petitioner was allotted the booth in question way back in the year 1994. This allotment was given to him even at that time, keeping in view the fact that he was visually impaired person. It is a matter of common knowledge that even before the enactment of the Disability Act such schemes for disabled persons were in vogue. If the petitioner was given the benefit thereof in the year 1994 and there is a statutory sanction behind such a move, now it would be a travesty of justice to dislodge the

petitioner by taking such an alibi that scheme has not been framed u/s 43 of the Act. At least, those persons who have got the benefit of preferential allotment in their favor should not be and cannot be dislodged by taking such an abysmal argument.

15. As far as second plea is concerned, no doubt, in cases where fresh allotments are made, opportunity need be given to such differently abled persons, who may form one class and would be entitled to equal treatment under the Disability Act. However, where, as in the instant case, a person is already in occupation of said shop since 1994 and is suffering from total disability, that too visual in nature, it would not be an appropriate move to dislodge a rehabilitated disabled person in order to rehabilitate another disabled person. After all, what is the purpose for which the respondents want to do this? Obviously, to get more license fee. This objective with predominantly commercial purpose in mind should not govern the actions of the authorities having regard to the objectives with which the Disability Act has been enacted. In so far as the fixation of license fee is concerned, we are of the opinion that there may be various reasonable methodologies which can be adopted to work out an appropriate license fee.

16. We, Therefore, make the rule absolute, allow this writ petition and quash the public notice dated 12.8.2004 published in the "Times of India" edition dated 17.8.2004 calling for tenders for allotment of STD/ISD built up shop at Ayurvigyan Nagar Campus, AIIMS, New Delhi. The contract of the petitioner in respect of the said STD/ISD booth shall be renewed by fixing reasonable license fee on the basis of some objective yardstick.

17. Before we part with, it is necessary to point out that the appropriate Government or the local authorities have not framed the requisite schemes in favor of persons with disabilities for preferential allotment etc., though this is the duty cast upon them by the Legislature u/s 43 of the Disability Act. This Act came into force with effect from 7.2.1996, i.e. more than 12 years ago. Therefore, it would be necessary to give direction to these authorities to make appropriate schemes u/s 43 of the Act within a period of six months.