

(1981) 09 DEL CK 0045
In the Delhi High Court
Case No : Civil Writ No. 1839 of 1981

S.S. Sobti

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Punjab Municipal Act, 1911 — Section 238(2)(b), 238(2)(c), 238(b)

Citation : (1981) 09 DEL CK 0045

Hon'ble Judges : J.D. Jain, J;D.K. Kapur, J

Bench : Division Bench

Advocate : P.N. Lekhi, with M.K. Garg and C.V. Francis, for the Appellant; R.K. Anand, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Kapur, J.—The writ petition under consideration seeks to challenge the validity of certain transactions which have resulted in a licence deed dated 11th March, 1981, being granted by the New Delhi Municipal Committee to M/s. Delhi Automobiles (P.) Ltd., New Delhi, for building and running a hotel on a plot situated at Barakhamba Road, New Delhi. The petitioner is an erstwhile member of the Delhi Development Authority and an alderman of the Delhi Municipal Corporation. He is also a social worker and a rate-payer. He claims to have a legal right to see that public property vested in the Union Government or the New Delhi Municipal Committee is not wastefully used to serve personal ends.

2. We issued a show cause notice on the petition and have heard learned counsel of the concerned parties. It has been stressed before us that the project of building the hotel is of an extremely urgent nature and involves the investment of large funds. We have, therefore, been called upon to decide the petition at this very stage, as otherwise, the project (even if valid) would come to disaster, because of the difficulty of continuing the same, with a petition like the pre-sent hanging over the heads of all interested parties. In these circumstances, we have

heard the parties extensively at this very stage.

3. The facts of the case are that the plot in question was placed at the disposal of the New Delhi Municipal Committee some time in 1976. This was part of a plan to redevelop an area of about 30 acres in the Barakhamba Complex. The Government had considered that at least a portion of this land should be used for constructing a 5-Star Hotel. The highest tender for this purpose was made by M/s. Delhi Automobiles (P.) Ltd. Then the area of the plot was increased to over six acres in place of 4.5 acres and the licence fee was increased to Rs. 37.78 lakhs per year. In furtherance of this, the 4th respondent, (M/s. Delhi Automobiles) deposited a sum of Rs. 20 lakhs and was to pay the balance when actual possession of the site was delivered. However, in March 1977, after the change of Government, the New Delhi Municipal Committee was informed that it should not finalise the transaction and later the allotment in favour of the New Delhi Municipal Committee was cancelled in March, 1978. The amount deposited was refunded to the 4th respondent, who represented their case to the Lt. Governor and also filed a Civil Suit No. 144 of 1979 in this High Court for specific performance of the contract/damages. The petitioner's case is that this acceptance of tender was not a valid and bona fide transaction. In any event, the suit in this Court resulted in a compromise which led to a new licence being granted for the same area in favour of the 4th respondent, but the licence fee has now been fixed at Rs. 1.45 crores in place of the previous amount of Rs. 37.78 lakhs annually. The petitioner has raised many different points in relation to the transaction. It has been urged that the New Delhi Municipal Committee was superseded and, therefore, the property of the Committee could not be dealt With by Shri P. N. Behl, respondent No. 5 under the provisions of S. 238 (b) of the Punjab Municipal Act, 1911. It is contended that no licence could be granted by the New Delhi Municipal Committee if this land belongs to the Union of India, as is contended by the respondents. Furthermore, it is contended that it was a political decision which was admitted by the 7th respondent. Shri Bhishma Narain Singh, Minister of Works and Housing in the Lok Sabha.

4. On behalf of the respondents, it is contended that the transaction is entirely in accordance with law and cannot be described as politically motivated. Furthermore, the locus standi of the petitioner to move the present petition has been seriously challenged.

5. Reference was made during the arguments to the judgments of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Fertilizer Corporation Kamgar Union (Regd.) Sindri v. Union of India*, AIR 1981 SC 344. Some passages in the first of these judgments were strongly relied upon by the petitioner also. We must say at the outset that we have been perturbed by the fact that the Court can be called upon to examine the validity of a transaction to which the petitioner is not a party. The petitioner cannot be said to have any special interest in the hotel project. It is common ground that the hotel, leaving aside the question whether it is urgently required for the Asian

Games, can only be set up by a person who is either skilled in the setting up of such a hotel, or can get technical assistance in this respect. Also, a very substantial financial investment is required. So, not everybody can set up such a hotel. It is not the petitioner's case that he has any connection with any group of persons who wanted to set up the hotel. We are perturbed by the fact that if we entertain petitions of this type to challenge transactions on whatever grounds they may be based at the instance of the public at large, the Court may be flooded with such petitions. No doubt, the legal validity of a transaction can be challenged by a person whose rights are affected thereby, but the person concerned must be one who is discriminated against, or who has been deprived of some valuable right. He must be an "aggrieved person". Learned counsel for the petitioner states that the petitioner can also claim to be aggrieved and he has a right which can be decided by the Court. In this respect, certain passages in the aforementioned judgments and conclusions contained therein are of great value to us. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Court held that the transaction was not valid, but it had dismissed the petition. Why the petition was dismissed is of importance at this juncture. It was stated as follows (at p. 1651) :--

"Now, on this view we should have ordinarily set aside the decision of the 1st respondent accepting the tender of the 4th respondent and the contract resulting from such acceptance but in view of the peculiar facts and circumstances of the present case, we do not think it would be a sound exercise of discretion on our part to upset that decision and void the contract. It does appear from the affidavits filed by the parties that the appellant has no real interest in the result of the litigation, but has been put up by A.S. Irani for depriving the 4th respondents of the benefit of the contract secured by them....."

6. It was thus held that in spite of the transaction being voidable, the petitioner could not get relief because he had no real interest. The same appears to be true, and even more so than in *Ramana Dayaram Shetty's* case, in the present case. There, the petitioner was a person who could be said to have a possibility of running the restaurant if he had been given the chance but, in this case the petitioner does not satisfy even that test.

7. In the *Fertilizer Corporation's* case (AIR 1981 SC 344) certain plant and equipment belonging to the Sindri Fertilizer factory was sold to the 4th respondent (in that case). The majority judgment held that no fundamental right of the petitioners was infringed, but the minority judgment which also dismissed the petition took the view that not everybody could file a petition which can be described as "public interest" litigations. The judgment of Krishna Iyer J., after dealing with this point at length doubted the competence of the Courts to decide questions like the sale of public property by a public body. It was observed (at p. 356):--

"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of

this country, the door of the Court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Art. 226."

This conclusion was on account of the fact that the petitioners were the employees in the factory and, therefore, were concerned with the unit in question and had deep interest in the sale of the plant and machinery of the factory. We have been unable to ascertain what interest the petitioner has which is different from that of any other citizen. We would, therefore, doubt the petitioner's locus to move the Courts in the circumstances of this case. The Court cannot be converted into a public inquiry commission at the instance of a single petitioner. We must guard against an unnecessary judicial inquiry into questions which are connected only with contracts, transactions or dealings by public bodies or authorities or the Government with which the person moving the Court has no connection at all. We agree with the learned Solicitor General that the petitioner has no direct or even remote connection with the present transaction. Therefore, we are of the view that the petition is not maintainable at the instance of the petitioner, but we would deal in short with the merits of the points also, to the extent necessary for these proceedings.

8. The petitioner's challenge based on Section 238 (2) (b) of the Punjab Municipal Act, 1911, is based on the contention that under S. 238 (2) (c) all property of the Committee vests in the State Government on the supersession of the Committee. It is contended that Shri P.N. Behl could, therefore, not grant a licence to the 4th respondent. This point has no substance in the present case because the New Delhi Municipal Committee was superseded on 27th Feb., 1980. The plot in question was neither at the disposal of the Committee nor was the property of the Committee on that date or even later. The allotment had been cancelled in 1978, so this question did not arise. It was on 17th Feb., 1981, by letter Annexure "R-II" filed along with the Government's reply to the show cause notice that this land was placed at the disposal of the New Delhi Municipal Committee in order to set up a 5 Star Hotel to meet the requirements of the Asian Games 1982. It was stated in this letter that a formal lease would be drawn up later, but the land was being allotted to meet the requirement of hotel accommodation and the hotel was to be built by the New Delhi Municipal Committee. It was provided that land should not be sublet in favour of any other party, but such arrangement could be made for constructing and running the hotel as would not involve the subletting of the plot. Thus, the land was placed at the disposal of the New Delhi Municipal Committee which was already superseded and hence the powers in relation to this land, granted by the allotment (which was to become a lease) has to be exercised only by Shri P.N. Behl under S. 238 (2) (b) of the Act. As a suit was pending in relation to this very arrangement, it appears that there was a compromise resulting in the

licence in favour of the Delhi Automobiles (P.) Ltd., in Mar. 1981.

9. The transaction is, therefore, not hit by S. 238 (2) (c) of the Act as Shri P.N. Behl, who can be described as the Administrator of that Committee for purpose of convenience of expression, was not transferring or selling any property vested in the Union of India under S. 238 (2) (c), but was acting in accordance with the allotment made by the Union Government of its own land. Learned counsel for the petitioner has urged that the subsequent transaction is invalid because Art. 299 of the Constitution had not been complied with. However, it is clear from the letter of allotment that intimation has been given and a later formal lease deed is to be drawn up. If no such lease is granted and the transaction does not go through as contemplated, then of course, the licence by which the hotel is to be set up and run will also fall through. However, in view of the terms of the allotment which is to be followed by a formal lease, it is clear that what has happened is that the New Delhi Municipal Committee is setting up a hotel through the agency of M/s. Delhi Automobiles (P.) Ltd., and this is what was contemplated by the allotment. It is generally the practice in the matter of allotments and sales, etc.. to first take provisional action and then to draw up the formal deed later, as the completion of the same takes time.

10. This brings us to the next question which is whether the 4th respondent has been granted this licence on political considerations. We do not really think that this question arises. The facts are quite clear. Originally, this hotel plot was given to M/s. Delhi Automobiles (P.) Ltd., after tenders had been obtained in 1976. From facts brought to our notice there appears to have been a number of tenderers including some well-known hoteliers. The highest offer was of M/s. Delhi Automobiles (P.) Ltd. We have been shown some comparative figures of the rates at which plots were given to Maurya Hotel and Taj Hotel in more or less the same period for out-right transfers, we do not find the initial licence-fee to be any lower. Thus, if the transaction at the initial stage, was made in accordance with an appropriate procedure, all subsequent events would flow from the same. Those events, were; the cancellation of the allotment bringing to an end the initial transfer; the filing of the suit in 1979 and the compromise in the suit. It may be said that there was no necessity to compromise the suit, and even it has been suggested that the suit for specific performance was not meritorious. We cannot go into this question, as a decree of the Court was passed. As pointed out by learned Solicitor General, it would have been difficult to get some new party to agree to take the hotel while the suit was pending. Keeping in view the large investment necessary for setting up a hotel, we agree that it would be almost impossible for some third party to take the hotel which he might lose in case the suit was decreed in favour of the plaintiff. In view of the fact that the licence fee of Rs. 37.78 lakhs has been raised to Rs. 1.45 crores, it does seem that the Union of India and the New Delhi Municipal Committee are not worse off financially than if the original tender of 1976 or 1977 had been acted upon.

11. Apart from the fact just set out, we may now examine the contention of the

petitioner to the effect that the only way in which the New Delhi Municipal Committee could have entered into the arrangement was by examining open public tenders. It is submitted that all other methods are barred. We cannot agree with this. Even in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Supreme Court noted that it was open for the authority to give the restaurant on a negotiated basis without inviting tenders. That case was based on what happened when tenders were actually invited. The question whether open tenders are to be invited and the public generally allowed to participate in a particular transaction, depends more largely on the nature of that transaction. The field of choice should naturally be as large as possible. Generally, the subject-matter of the transaction governs what procedure should be followed. If a building has to be constructed, then the generally accepted pattern is to allow recognised contractors to submit their tenders. In a transaction which involved both financial commitment such as investing in a hotel building and also the obligation to run that hotel, the field of choice was obviously very limited. It is well known that the hotel industry in India is not much developed. Only a handful of hotels are to be found even in larger towns. Keeping in view the nature of the transaction, we think that it would be enough for the New Delhi Municipal Committee to ask some recognised hoteliers and others of that type and capable of undertaking a big Project of this type and; capable of raising the necessary finance to make a restricted tender. In such a case the feasibility of the project and its ultimate successful completion is of greater importance than the question whether a larger or lesser sum can be realised from the tenderer. This sort of analysis has to be made in all big construction contracts. It is not for us to say how it should be done, but we find nothing illegal in the manner of the tender and the initial payment in 1976. The next stage was reached when this whole project was cancelled in 1977. After its cancellation, the question of re-opening the transaction and making the hotel arose because of the proximity of the Asian Games which made the lack of hotel accommodation in New Delhi obvious to all. At that stage, it was a question of reversing the decision to abandon the project. It may be noticed that if it was a mere political question, then the old tender could have been accepted which was for Rs. 37.78 lakhs annually as licence fee. Keeping in view the rise in the land value, it seems that the New Delhi Municipal Committee took care that the figure was increased and Rs. 1.45 crores annually does not seem to be at all low. At least we do not see why it is illegal to revive the project, especially when it had obviously become necessary in view of the forthcoming Asian Games, 1982.

12. It must also be kept in view that the sum of Rs. 1.45 crores is the amount to be paid out of the earnings of the hotel and, therefore, has to be earned from the hotel business. As the hotel is meant for public purpose, there is a limit to which the amount can be raised. The purpose of the licence is such that it requires a very rapid construction of a large building. It does not seem to us that there are many persons who can undertake to build a large building at high speed. If there are some who have been affected adversely by the decision taken by the Union

Government and the New Delhi Municipal Committee, they have not moved this Court. In the circumstances, we do not find that the transaction can be treated as a political act in itself.

13. Some reference was made to what was stated by the 7th respondent in Parliament in a debate concerning the same issue as is before us. It is said that the Minister concerned described the decision as a political one. We are not at all concerned with that debate. But, it may incidentally be mentioned that the Minister stated that the licence was not given because the Government changed, and then it was stated that; this Government can also take a political decision and the Government decided to give the plot to the New Delhi Municipal Committee. This does not in any way mean that the decision to allot the plot to the 4th respondent was a political decision because it seems to flow out of the events already narrated above. In fact it seems that the decision to allot the plot in favour of M/s. Delhi Automobiles (P.) Ltd., was taken much earlier and the politics concerning the same arose later. We are not concerned with those political matters. We have to see the legality of the transaction and the fact that it was not arbitrary. We are of the view that the decision was not arbitrary, but arose out of the circumstances when this very plot was originally to be licensed to the 4th respondent, M/s. Delhi Automobiles (P.) Ltd. for building and running a hotel, but the transaction was cancelled in 1977 leading to the filing of the suit. When the transaction was renewed, it could be granted to the same party and this is particularly so when a much higher amount of licence fee was agreed to by the party concerned. We would accordingly dismiss the petition in limine.