

**Shiv Anand Vs. Union of India and anr.**

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**Court :** Delhi

**Decided On :** May-05-2014

**Judge :** Hima Kohli

**Appellant :** Shiv Anand

**Respondent :** Union of India and anr.

**Judgement :**

11 & 12 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 6668/2013 & CM No.14471/2013 Decided on :

05. 05.2014 IN THE MATTERS OF SHIV ANAND ..... Petitioner Through: Mr. Jitender Mehta, Advocate versus UNION OF INDIA & ANR. .... Respondents Through: Mr. Joydeep Mazumdar, Advocate AND + W.P.(C) 8191/2013 & CM No.17286/2013 JAMIL AHMED ..... Petitioner Through: Mr. Jitender Mehta, Advocate versus UNION OF INDIA & ANR. .... Respondents Through: Mr. Joydeep Mazumdar, Advocate CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

(ORAL) 1. This order shall govern two petitions filed by the petitioners praying inter alia for identical relief, which is for issuance of directions to the respondents/Railways to declare the proceedings of closure of STD/PCO/FAX/Internet booths allotted to them at New Delhi Railway Station, as illegal and arbitrary and to call upon the respondent/Railways to explain failure on

their part to invite fresh bids for the aforesaid PCO booths.

2. For the sake of convenience, the facts of WP(C)No.6668/2013 are taken into consideration.

3. The petitioner in WP(C) No.6668/2013 was allotted a PCO booth at New Delhi Railway Station on 23.10.2003. allotment was made for a period of three years. Originally, the said However, it is an admitted position that later on, the said period of three years was extended to five years. At the expiry of the first term of contract on 22.10.2008, the said contract was extended for another term of five years, from 23.10.2008 to 22.10.2013.

4. On 2.10.2013, the petitioner had approached the respondent/ Railways seeking renewal of the contract on the ground that the Railways had failed to take steps to invite fresh bids for the PCO booth allotted to him. On 9.10.2013, the petitioner received a letter from the respondent/ Railways calling upon him to deposit the licence fees in respect of the subject booth for the period w.e.f. 1.10.2013 to 31.3.2014. The petitioner had immediately deposited the amount demanded on 10.10.2013, but to his utter surprise, he came to know that the respondent/Railways was taking steps to close down the PCO booths and they had even issued a closure notice to the petitioner in WP(C)No.8191/2013, informing him that the tenure of his contract was over and calling upon him to close the said booth. Immediately upon gaining knowledge of the aforesaid steps being taken by the respondent/Railways, the petitioner had filed the present petition on 22.10.2013.

5. While issuing notice in the writ petition, an interim order was passed in both the petitions, directing that the contract of the petitioners would not be terminated till the next date of hearing. The said order is continuing to operate in favour of the petitioners.

6. A counter affidavit in opposition to the writ petition has been filed by the respondent/Railways, wherein it is stated that the Railways has acted in consonance with the Policy Circular dated 14.5.2004, whereunder, it is stipulated that the licence to be granted to an individual cannot extend beyond the period of

ten years, including the extended period, and no further extension shall be permitted.

7. Learned counsel for the respondent/Railways states that it is an undisputed position that the petitioners have remained in occupation of the subject booths beyond the period of ten years as prescribed in the Circular. But, as the fault lay with the respondent/Railways in accepting licence fees from the petitioners for the additional period of six months, the respondent/Railways had not taken any steps to dispossess them. It is further stated that the department is taking steps to call for fresh bids for the subject booths, but the same has got delayed on account of the order dated 6.3.2014 passed in WP(C)No.7182/2010 entitled Kuldeep Singh vs. Union of India & Ors., wherein the petitioner therein, who is a physically handicapped person and had been allotted a STD/ISD/PCO booth, had approached the Court for protection against the purported illegal action on the part of the Railways in trying to dispossess him.

8. Learned counsel for the respondent/Railways submits that in the aforesaid writ petition, the court had directed that the vacant booths in the category of disabled persons would be allocated first and if the petitioners booth is specifically bid for, then he would be accommodated in a vacant booth in the same category on completion of formalities. However, if the Railways did not receive any application for the petitioners booth, then he would be permitted to continue occupying the same.

9. Counsel for the respondent/Railways states that the department is taking a holistic view on the issue of allotment of STD/ISD/PCO booths situated at New Delhi Railway Station and at Nizamuddin Railway Station and it will soon take steps to invite fresh bids by issuing public notices.

10. On the issue of discrimination, as has been alleged by the petitioners, learned counsel for the respondent/Railways states that the Railways has been following a uniform policy of allotment/renewal of contracts and it did not adopt any pick and choose policy in the present case, as has been claimed by the other side. In support of his submission that the Railways have already closed down all such STD/ISD/PCO booths that were being operated by individuals for over ten years,

learned counsel hands over a copy of the letter dated 14.10.2013 issued by the Divisional Office, Northern Railway, New Delhi listing inter alia 15 booths, including those occupied by the petitioners herein, at Sr.Nos.5 & 6, as those that have completed the tenure of ten years and recommending that they should be closed down. A copy of the aforesaid letter is handed to the counsel for the petitioners as also to the Court and taken on record.

11. In addition to the above, it is stated that due to the fact that an officer of the department was at fault for having issued letters to the petitioners calling upon them to deposit the licence fees beyond the extended period of ten years, appropriate departmental action had been initiated against and a warning letter has been issued to the erring official(s).

12. Thus, counsel for the respondent/Railways states that in view of the aforesaid uniform policy decision taken by the Railways, all the thirteen booths, except for those occupied by the petitioners herein, have been closed down and their possession taken over. But in the case of petitioners herein, no coercive steps have been taken by the respondents in view of the interim orders operating in their favour.

13. Counsel for the petitioners states that the respondent/Railways was under a mandate to have taken necessary steps well in advance for notifying tenders for the allotment of PCO booths upon expiry of the contractual periods, which it has failed to do and till such time that fresh contracts are finalized, the petitioners should be permitted to continue occupying the subject booths on payment of licence fee at the same rate.

14. Counsel for the respondent/Railways suggests that the petitioners still have an option to approach the respondent/Railways directly with such a request.

15. In view of the aforesaid position, this Court is not inclined to grant any relief to the petitioners as has been prayed for. However, liberty is granted to the petitioners to approach the respondent/ Railways with a representation within one week, for permission to continue occupying the subject booths on a purely temporary basis, on payment of licence fees, along with an undertaking that they

shall hand over vacant peaceful possession of the same, as and when the contracts are finalized for allotment to the successful bidders. The said representations shall be duly considered and in case the same are found to be commercially viable, the respondent/Railways shall pass appropriate orders within intimation to the petitioners. one week thereafter, under written Till then, no coercive steps shall be taken against the petitioners.

16. If the respondent/Railways decides to turn down the representations of the petitioners, then they shall handover vacant peaceful possession of the subject booths to the respondent/Railways within one week from the date of receipt of the decision.

17. The petitions are disposed of, along with the pending applications. HIMA KOHLI, J MAY05 2014 sk/mk/rkb

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