

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WRIT PETITION (CIVIL) NO. 3677 OF 1992

% Reserved on : 19th November, 2009.
Date of Decision : February 26th, 2010.

ANTAR RAJYA BUS ADDA SAMACHAR
PATRA VIKRETA UPBHOKTA COOPERATIVE
STORE SOCIETY LTD. Petitioner
Through Mr.D. K Rustagi, B.S. Bagga
advocates

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through Mr. Sanjay Poddar, advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J. :

1. The petitioner-a cooperative society, in 1977 was granted licence to sell newspapers, magazines, books in shop nos. S-31 and S-62 at the Inter State Bus Stand Terminal, Kashmere Gate, New Delhi (hereinafter referred to as ISBT Complex, for short) on a monthly license fee of Rs.1700/- and Rs.1874/- respectively. The said licence was for a specific period of five years. Subsequently, the petitioner was also permitted to also sell newspapers, magazines, books on six trolleys for each shop on a monthly fee of Rs.75/- per trolley.

2. The licence period expired in 1982 but instead of inviting fresh

bids, the Delhi Development Authority (hereinafter referred to as DDA, for short) which was at that time managing and in control of ISBT Complex decided to renew the licence by enhancing the license fee by 15%. Accordingly, the license was renewed/extended in 1982-83 for shop nos. S-31 and S-62 @ Rs.2248/- and Rs.2400/- respectively. The license fee of the trolleys remained the same.

3. This extended license period expired in 1988. The petitioner again asked for extension of license period by enhancing the license fee rather than fresh tenders and allotment by open competition. It is stated in the writ petition that, DDA by their letters dated 6th December, 1991 and 17th December, 1991 informed the petitioner that the license fee had been increased for shop nos. S-62 and S-31 with retrospective effect from 23rd March, 1988 and 1st May 1988 as per details given below :

Shop No. S-62

<i>Srl. No.</i>	<i>License period</i>	<i>Fee (in Rs./p.m.)</i>
1.	23.03.88-22.02.89	4,962
2.	23.03.89-22.02.90	5,210
3.	23.02.90-22.02.91	5,471
4.	23.02.91-22.02.92	10,942

Shop No. S-31

<i>Srl. No.</i>	<i>License period</i>	<i>Fee (in Rs./p.m.)</i>
1.	01.05.88-31.03.89	4,496
2.	01.04.89-31.03.90	4,721
3.	01.04.90-31.03.91	4,957
4.	01.04.91-29.02.92	9,914

4. In addition to the enhanced license fee, the petitioner was also required to pay additional security deposit and furnish bank guarantee, etc. The license fee payable for each of the six trolleys was increased w.e.f. 1989 as per the details given below :

Shop no. S-62

Srl. No.	License period	Fee (in Rs./p.m.)
1.	23.03.88–22.02.89	172.66
2.	23.02.89-22.02.90	181.33
3.	23.02.90-22.02.91	190.33
4.	23.02.91-22.02.92	380.66

Shop no. S-31

Srl. No.	License period	Fee (in Rs./p.m.)
1.	01.05.88–31.03.89	172.66
2.	01.04.89-31.03.90	181.33
3.	01.04.90-31.03.91	190.33
4.	01.04.91-29.02.92	360.66

5. In case of the trolleys also, the petitioner was asked to pay enhanced security deposit and furnish bank guarantee.

6. In the year 1991, DDA also invited tenders and allotted shops for sale of book, magazines, etc. to other parties in the ISBT Complex.

7. Enhancement in license fee with retrospective effect and allotment of new shops to third parties for selling books and magazines prompted the petitioner to file the present writ petition. It is alleged that the license fee cannot be enhanced from retrospective effect and the enhancement is *per se* arbitrary. Another contention raised in the Writ Petition is that the petitioner was given exclusive license to sell

magazines and books in ISBT Complex and the allotments made to Mr. Harbans Lal and Mr.Suresh Mittal, respondent nos. 3 and 4 herein are illegal.

8. The following prayers have been made in the Writ Petition:-

“(a) to issue any appropriate writ/order or direction thereby quashing the order dated 6th December, 1991 (filed as Annexure ‘B’ and ‘C’ of the respondent No.2 and the order dated 17.12.1991 (Annexure ‘D’ and ‘E’) passed by the respondent No.2.

(b) to issue any appropriate/writ/order or direction there by quashing/setting aside the order dated 14th September, 1992 whereby the respondent No.3 and 4 were permitted by respondent No.2 to ply the trollies beyond entry gate point.

(c) to issue writ of mandamous (sic) or in the nature of mandamous (sic) or any other writ/order or direction to the respondents No.1 and 2 thereby directing not to charge from the petitioner society more than the licence fees/lease money as per the rates applicable in November, 1988 or such other enhanced rate by 15% as per its policy till date in this regard.

(d) to direct the respondent No.1 and 2 produce the copy of the order dated 14.9.92 and other such record found relevant by this Hon’ble Court.

(d) To award costs of the writ petition;

(e) To grant any other relief as this Hon’ble court deems fit and proper under the facts and circumstances of the case in favour of the petitioner and against the respondents.”

9. The writ petition came up for hearing on 16th October, 1992 and

vide order dated 20th October, 1992, show cause notice was directed to be issued. Subsequently, interim orders were also passed under which the petitioner was asked to make part payments from time to time. By order dated 29th November, 1995, Government of NCT of Delhi was impleaded as a respondent to the writ petition as management and control of ISBT Complex was transferred to them. The writ petition was admitted for hearing on the same date and the interim order has continued though some payments have been made by the petitioner to the Govt. of NCT of Delhi/DDA. The petitioner has continued to remain in occupation of the said two shops and have continued to sell books, magazines, through the said shops and trolleys till today.

10. Respondent nos. 3 and 4 have filed their counter affidavit but it was stated by the learned counsel for the petitioner that their licences were not renewed and to this extent prayer clauses (b) and (d) of the writ petition have been rendered infructuous. However, it is noticed that there is no document or evidence available to show and establish that the petitioner was given exclusive license or monopoly rights at the ISBT Complex. In the writ petition itself, the petitioner has stated that some of their relatives had participated in other tenders and/had given highest bids for two trolleys, but subsequently allotment/tender was cancelled. The respondents on the other hand, have pointed out that ISBT Complex was constructed and became operational in 1976 and at that time the daily total traffic was about 500 buses. In 1993, the daily traffic in ISBT Complex had increased to about 3000 buses and

approximately 8 lacs passengers/commuters used to visit the ISBT complex every day. With a view to provide better facilities, the ISBT Complex was divided into five blocks, namely, departure, arrival, link, DTC and dhaba blocks. It was noticed that there were inadequate facilities for sale of newspapers, magazines, etc. at arrival, dhaba and DTC blocks, therefore fresh tenders were called for. Shop no.S-31 is located in the departure block and shop no.62 is in the link block. The said two shops were not sufficient to meet requirements of books, magazines, newspapers, etc. in arrival, dhaba and DTC blocks.

11. The contention of the petitioner therefore that they had monopoly or exclusive right for all times to come is without merit and has to be rejected.

12. As noticed above, initially the license granted to the petitioner was only for a period of five years w.e.f. 1977 and the said license expired in 1982. Without calling for fresh bids/tenders, the license was extended for another period of five years till 1988 with nominal increase in license fee from Rs.1874/- to Rs.2400/- in respect of shop no.S-62 and from Rs.1700/- to Rs.2248/- in respect of shop no.S-31. There was no increase in trolley fee. Subsequently, it was agreed in 1988 to renew/extend the license for further period of five years. However, the increased license fee was not fixed. The petitioner was asked to furnish an undertaking that they shall pay additional license fee at the current rate which may be determined by DDA. The petitioner in fact furnished two separate undertakings in respect of shop nos.S-31 and S-62.

Photocopy of the said undertakings have been filed on record by the DDA. The petitioner has concealed this fact in the writ petition and has not stated that they had furnished undertakings. Thus, the petitioner was fully aware when they applied for extension of license in 1988 that DDA was yet to determine the current license fee. They gave an undertaking that they shall pay additional license fee demanded from them. The petitioner was fully conscious that the license fee from 1988 onwards is still to be determined and was to be enhanced. The petitioner, therefore, cannot object to the license fee now claimed on the ground that the same has been enhanced retrospectively.

13. On the question of quantum of enhancement, power of judicial review is limited. The Court is not concerned with arithmetical calculations but is primarily concerned whether the respondents have taken and considered, due and relevant facts and have been fair. It is not possible to accept the plea of the petitioner that this Court should strike down enhancement of license fee as demanded by the respondent vide letters dated 6th December, 1991 and 17th December, 1991. By these letters, the existing license fee for first three years from 1988 to 1991 was marginally enhanced by 5% each year and for the current year 1991-1992 the license fee was doubled. Increase in the current year was a substantial enhancement but one has to keep in mind that the initial license was only for a period of five years and was fixed by way of competitive bids made in 1977. This period was again extended with nominal increase in license fee for another period of

five years till 1988. As noticed above, ISBT Complex was constructed in 1976. By 1993, there was an increase in the number of buses plying daily from 500 buses to 3000 buses. About 8 lac passengers/commuters were visiting ISBT Complex daily. The respondent no1 is required to provide service to the passengers and maintain ISBT and for this purpose they are entitled to earn from persons allotted commercial space in the complex. It may be relevant to state here that in the fresh tenders floated in the year 1991, Mr.Harbans Singh and Mr.Suresh Mittal-respondent nos. 3 and 4, had quoted license fee of Rs.4250/- p.m./for each trolley at entry gate plaza at the departure block. The tender was accepted and allotments were made. The said respondents have filed counter affidavit. Keeping in view the tender submitted and the rates quoted by the said respondents, it cannot be said that the license fee fixed by the DDA for the two shops and the trolleys was exorbitant and abnormally high. In view the increase in standard of living, scales of expenditure, increase in prosperity, inflation and the market value of money and commercial value of shops, etc., it cannot be said that the enhancement is *per se* arbitrary and irrational. The petitioner cannot contend and claim that increase in the license fee should be only 5% or 10% per year. Increase in license fee has to be in tune with the market conditions and is an administrative decision which can be reviewed by judicial proceedings on the basis of well established legal principles and should not be discriminatory, arbitrary or based on whims and fancies but should be

based upon relevant material and criteria. The petitioner and their members is a commercial association engaged in trade of selling newspapers, magazines, books, etc. and are earning money from the said activities and are liable to pay license fee. The respondents should not be compelled and asked to charge lower license fee so as to subsidize commercial operations and increase profits of the petitioner. Any such attempt will fall foul of Article 14 of the Constitution of India and would be discriminatory and arbitrary. In normal course after expiry of the term of a short-term commercial license given for a specific period, fresh tender/bids should be invited. This promotes openness, transparency and ensures that the authorities secure license fee determined and based upon market conditions. It also gives opportunity to third parties to conduct and do business. It ensures/promotes free and fair competition which is essential and necessary. (***Aggarwal & Modi Industrial Pvt. Ltd and another v N.D.M.C*** (2007) 8 SCC 75). In the present case, the petitioner wanted renewal of the license which was issued to them for a limited period of five years in 1977. They undertook and agreed to pay the license fee which would be determined by the respondent DDA. The respondent DDA, keeping in view the increase in number of buses plying daily, increase in commuters/passengers at ISBT Complex, inflation, etc., decided to charge doubled license fee. It was open to the petitioner to reject the said offer and ask the respondent DDA to go for fresh bidding. The petitioner did not make any such statement.

14. By Order dated 20th November, 2007, the respondents were asked to place on record the policy decision pursuant to which the license fee was enhanced in 1991. The respondents have not been able to place on record the said policy decision. This is understandable as the decision was taken in 1991 and the said order was passed on 20th November, 2007. Further the said policy decision was taken by DDA and subsequently the management came under the control of Government of NCT of Delhi. In the said order, subsequent policy decision dated 10th November, 1993 has been quoted. The first paragraph of the said policy decision reads as under:-

“Prior to policy as laid down below, on expiry of licence period, 100% increase in the existing licence fee, or market rate, whichever is less, was applicable as per policy in the case of renewal/extension of licence in respect of Shops/Kiosks/Counters/Stalls etc, etc. This policy has now been modified on 25.9.1992 under the approval of the Competent Authority. Under this policy, licence of Shops/Kiosks/Counters/Stalls etc.etc. at Inter State Bus Terminus Complex, Kashmere Gate, Delhi will continue till the currency of the contract or 31.12.1992, whichever is earlier. As such, the licence of Shops/Kiosks/Counters/Stalls etc. etc. will be extended/renewed on the expiry of the initial period of licence on payment of additional licence fee every year as indicated below:-

- i) All allotments made through tender or at the market rate; **10% per annum;**
- ii) All allotments made in compassionate-5%per grounds; **5% per annum;**
- (iii) All allotments made to old evictees; - **5% per annum”**

15. It is clear from the said paragraph that it was earlier decided that

on expiry of the license period, 100% increase on the existing license fee or market rate whichever is less would be charged. This was followed by another policy decision on 25th September, 1992, inter alia, stating that extension/renewal would be on additional license fee which would vary between 5% and 10% p.a. The respondents have also filed on record the latest statement of accounts showing the license fee demanded and paid from the petitioner from time to time since 1988 till March, 2010. The respondents have been asking the petitioner to pay license fee with 10% increase p.a. w.e.f. February, 1992 and 5% annual increase as per the policy decision dated 16th September, 2004 w.e.f. March, 1998 in respect of the two shops. In respect of the trolleys, the respondent no.1 has been charging 10% increase in the license fee w.e.f. February 1992. These policy decisions have been universally applied and as per the respondents other licensees have accepted the increase and paid the amount.

16. The petitioner had filed C.M. No. 12694/2006 for disposing of the writ petition as settled/compromised. In this connection, petitioner had relied upon letter dated 31st August, 2005 written by the respondent Govt. of NCT of Delhi to pay outstanding amounts. It is stated that the petitioner had paid the said amount in terms of letter dated 31st August, 2005, therefore the whole dispute stands resolved/settled. The respondent in reply to the said application has stated that the licenses were last extended in 1988 for 11 months and had expired in 1989. All others, except the petitioner had accepted enhancement of license fee

in 1991 and the said policy was uniformly applied. Petitioner had filed the present writ petition challenging the enhanced license fee and the same has remained pending. On 17th March, 2005, the petitioner had stated that they would be satisfied if the license fee was enhanced by 15% after every three years. On this basis, calculation was made and communicated to the petitioner. This, however, did not mean that the respondent had given up their claim for enhanced license fee as communicated in December 1991.

17. In view of the aforesaid discussion, it is held that the petitioner is not entitled to any relief in the present writ petition. It is clear that the respondent have been wrongly denied their dues. Principle of *actus curiae neminem gravabit* is applicable and the respondent should not be made to suffer on account of the stay order. The petitioner will therefore be liable to pay simple interest @ 8% p.a. on the defaulted amounts from the date the license fee as demanded by the respondent became due and payable till payment was/is made i.e. on reducing balance. In case fresh tenders/bids are invited, Petitioner or their members will be entitled to participate in the said tender/bid provided they pay the arrears.

Writ Petition is accordingly disposed of. Respondent Govt. of NCT of Delhi is also held entitled to costs of Rs.10,000/-.

(SANJIV KHANNA)
JUDGE

FEBRUARY 26, 2010
P