

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P. (C) NO. 8926/2005 and W.P. (C) No. 8337/2005**

Reserved on 05.12. 2007

14.01.2008

Date of decision: January 14th, 2008

1. W.P. (C) NO. 8926/2005

2.

ALL INDIA INSTITUTE OF MEDICAL SCIENCE

.... Petitioner

Through : Mr. Mukula Gupta with

Mr. Mithilesh Singh, Advocates

**: VERSUS:**

THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES and ors

..... Respondents

Through : Ranjan Sabharwal with

Ms. Seema Bhadavriya, Advocate for

R-1

Ms. Anubha Rastogi, Advocate for R-2

**CORAM:**

MR. JUSTICE S. RAVINDRA BHAT :

1. Whether reporters of local papers may be allowed to see the judgment.

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

**MR. JUSTICE S. RAVINDRA BHAT:**

1. In Writ Petition (C) No.8925/2005 the Petitioner seeks direction to the Respondent to restore possession of the Public Call Office (PCO) Telephone booth located on the premises on AIIMS and sealed on January 5th 2005 by AIIMS.

2. The Petitioner is physically handicapped with 60% impairment, and is duly certified as a disabled person under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 (hereinafter called the "Disabilities Act"). The Respondent, the All India Institute of Medical Sciences (hereafter referred to as "AIIMS") is an autonomous statutory body created under the All India Institute of Medical Sciences Act 1956. In the year 1981 the petitioner was allotted a PCO Booth to be operated in the Out Patient Department (OPD) of the Respondent Institute. The allotment was made under a Special Scheme introduced in 1980 by the Department of Post and Telegraph, Government of India for the benefit of physically handicapped persons. The scheme was intended to provide disabled persons with a regular source of income and the Department of PandT undertook to provide a booth and a cash chest for such persons. On 1st June 1981 an agreement was made between the President of India and the Petitioner to operate the PCO at the OPD of AIIMS. The Petitioner operated the booth from June 1981 to January 2005 for a period of 24 years. The petitioner avers that the PCO booth was inaugurated by the Director, AIIMS; he also alleges that the maintenance and upkeep of the booth was done by the AIIMS, whose patients benefited from the service.

3. The Petitioner avers that in January 2005, the security personnel of AIIMS threatened to dispossess him of the booth and on 5th January 2005, the Administrative Officer of AIIMS dispossessed him and sealed the PCO, without giving notice or granting opportunity of being heard. Failed attempts to persuade the concerned authorities of the Respondent prompted the Petitioner to approach the Chief Commissioner for Disabilities, New Delhi (hereafter the Chief Commissioner?) claiming that he be allowed to operate his booth, the only source of his livelihood. The Chief Commissioner issued notice to AIIMS on 27<sup>th</sup> January 2005, asked them to provide relevant documents relating to the

allotment of the booth, the scheme and the agreement. The Petitioner meanwhile approached many authorities, including the Director of AIIMS, the concerned Member of Parliament, but AIIMS refused to hand over possession. Meanwhile, repeated notices were issued by the Chief Commissioner to the Respondent.

4. On 21st February 2005, AIIMS sent a reply to the Chief Commissioner admitting that the Petitioner had indeed produced before it details of the scheme, a copy of the agreement and other relevant documents. However, AIIMS submitted that the Petitioner did not have any valid allotment from it and proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereafter the PP Act?) for unauthorized occupation were initiated. On 14th March 2005, the Estate Officer issued a notice to the Petitioner to show cause within two days why the booth must not be demolished. On the next day the Petitioner submitted all relevant documents, including details of the scheme, disability certificate, copy of the agreement and further also pleaded that since the booth was the only source of income, he be permitted to continue to operate it. The AIIMS submitted that the authorization was illegal since there was no agreement between them and the Petitioner.

5. On the 8th and 15th of April 2005 notices were issued by the Chief Commissioner scheduling a hearing of the Petitioner and AIIMS on the 24th of April. The Petitioner avers that both parties were adequately heard after which the Chief Commissioner passed an order directing AIIMS to allow the Petitioner to operate the booth with immediate effect. In the order the Chief Commissioner after recording details of the various documents filed by the Petitioner concluded that he had indeed been allotted the booth and also recorded that it was unreasonable on the part of AIIMSs to claim that the Petitioner was an unauthorized occupant after 24 years. This order of the Chief Commissioner was not complied with, and on 5th May 2005 the Petitioner once again approached the Chief Commissioner, who issued a notice to AIIMS asking it to furnish reasons for the non observance of the earlier order. Since the Petitioner was not handed back possession of the booth, he preferred the present petition claiming that restoration of possession be restored and the proceedings before the Estate Officer under the PP Act be quashed, besides damages for loss of income.

6. In WP (C) No. 8337/2005, the Petitioner, AIIMS, challenges the order dated 25th April 2005 of the first Respondent (the Chief Commissioner), asking them to hand over possession of the booth to the second Respondent as being void, without jurisdiction and passed in violation of principles of natural justice.

7. The AIIMS, avers that the second Respondent (the Petitioner in WP (C) No. 8926/05, hereafter called the claimant Petitioner) ran the booth without their permission and that till date no money had been paid to them by him as license fee. They also claim to have recently installed a state of the art diagnostic machine adjoining the OPD block called the PET with a heavy cost of about 5 crores, which has narrowed the passage to the OPD block. They submit that the booth operated by the claimant Petitioner creates congestion in the OPD block given that there has been a steady increase in the inflow of patients in the OPD. They submit that, as there was no allotment in favour of the second Respondent by the AIIMS, the Estate Manager of the AIIMS, took steps to initiate proceedings under the PP Act, since the properties of the AIIMS are public premises. Further, that during the proceedings before the Estate Officer the second respondent was unable to prove that he was given permission by the Petitioner to run the PCO.

8. The AIIMS further submits that the Chief Commissioner on the date of hearing only gave a semblance of hearing and handed over a prepared order to it, asking it to hand over possession to the claimant Petitioner. They allege that the Chief Commissioner did not consider the fact that proceedings were pending under the PP Act nor did he appreciate that no agreement existed between the parties. Further, the order of the Chief Commissioner is without jurisdiction and over reaches quasi judicial proceedings under the PP Act. They also submit that there is absolutely no power or authority with the first Respondent, to pass any such directions under Sections 58, 59 and 63 of the Disabilities Act. It is also submitted that under Section 23 the directions of the Central Government are binding on the authorities under the Disabilities Act.

9. Mr. Mukul Gupta, learned counsel for the AIIMS submits that there is nothing on record to show that the claimant Petitioner was in lawful occupation of the premises since 1981. Further, he contends that in the absence of a notified policy by the appropriate government with regard to allotment of the booths to persons with disabilities, the claimant Petitioner had no right to continue in possession of the premises. He was a

trespasser and was liable to be dealt with as such under provisions of the PP Act. Counsel also submitted that the Chief Commissioner's orders amount to curtailing independent quasi-judicial powers of the Estate Officer under the PP Act, which is uncalled for and unfounded in law.

10. Mr. Rajan Sabharwal, learned counsel for the Chief Commissioner contended that under section 58(c) read with section 59 (a) of the Disabilities Act, the Chief Commissioner had the jurisdiction to hear the matter and was also duly empowered to pass an order directing restoration of possession of the PCO to the claimant Petitioner. He submitted that since the matter at hand involved the question of deprivation of the rights of the disabled, the Chief Commissioner had the power to ensure that their rights were not violated. Furthermore, he submitted that notices were sent on various occasions to the AIIMS asking them to show cause and also adequate hearing was given to them before passing the order; therefore, the order was valid in law. Ms. Anubha Rastogi, learned counsel for the claimant respondent, adopted these submissions. She also stated that the Disabilities Act, being a special enactment and later in point of time, prevailed over the Public Premises Act. Counsel lastly submitted that the petitioner-claimant is not seeking a lease or interest in AIIMS property; he merely wants the continuation of a beneficial scheme to earn his livelihood.

11. The Disabilities Act, as is evident from the preambular paragraph, was enacted a welfare measure to ensure that disabled persons are extended an adequate standard of living and also to ensure that they are not discriminated against in terms of educational, employment and other opportunities. The Act not only guarantees rights for the disabled but also devises a system through which their problems can be redressed. The Chief Commissioner is one such authority created. His functions and powers are delineated by the Act; the relevant provisions are extracted below: Functions of the Chief Commissioner - The Chief Commissioner shall –

1. Coordinate the work of the Commissioners;
2. Monitor the utilisation of funds disbursed by the Central Government;
3. Take steps to safeguard the rights and facilities made available to persons with disabilities;

4. Submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe.

5. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities - Without prejudice to the provisions of section 58 of the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to -

1. Deprivation of rights of persons with disabilities;
2. Non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities; and take up the matter with the appropriate authorities.

Powers of the Commissioner - The Commissioner within the State shall-

1. Coordinate with the departments of the State Government for the programmers and Schemes for the benefit of persons with disabilities;
2. Monitor the utilization of funds disbursed by the State Government;
3. Take steps to safeguard the rights and facilities made available to persons with disabilities;
4. Submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities - Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved persons or otherwise look into complaints with respect to matters relating to -

- A. deprivation of rights of persons with disabilities;
- B. non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities; and take up the matter with the appropriate authorities.

63. Authorities and officers to have certain powers of civil court - The Chief Commissioner and the Commissioners shall, for the purpose of discharging their

functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- A. summoning and enforcing the attendance of witnesses;
- B. requiring the discovery and production of any document;
- C. requisitioning any public record or copy thereof from any court or office;
- D. receiving evidence on affidavits; and
- E. issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

12. It is a well settled rule of interpretation that while construing welfare legislations, a beneficial rule of construction should be adopted. (**State of Tamil Nadu v. Sabanayagam, (1973) 1 SCC 813; Workmen v. Firestone Tyre and Rubber Co. Ltd, (1973) 1 SCC 813**) The construction so placed must effectuate their objectives and also effectuate the rights conferred by the legislation to the disadvantaged. If that is so, rights of the disabled can be safeguarded only if the powers of the authorities created under the Disabilities Act are to be given their widest possible construction. Sections 58(c) and 59 (a) give ample power to the Chief Commissioner to take necessary action, in order to safeguard the rights and facilities made available to the disabled and to look into complaints regarding deprivation of their rights. The position of law in this regard has been summarized in **Dilbagh Singh v. Delhi Transport Corporation 2006 (1) LLJ 480** thus:

22. By virtue of Sections 59, that authority has fairly wide powers to make, inter alia, suo motu enquiry into instances of violations of provisions of the Act; including deprivation of rights of persons with disabilities. He also has the power to look into complaints, under Section 62. Rule 42 of the Rules framed in 1996 under the Act prescribes the procedure to be followed while investigating into complaints; the Chief Commissioner can decide the matter ex-parte, and decide, on merits, after hearing the parties (sub-rule 8). Powers

of a civil court, in regard to matters specifically listed, inhere with the Chief Commissioner (Section 63(1)); proceedings before him are deemed to be judicial proceedings under Sections 193 and 228 of the Indian Penal Code (Section 63(2)). It can therefore, safely be concluded that the powers and duties of the authority are akin to a quasi judicial tribunal, charged with deciding issues entrusted to it.

23. The Act does not, expressly provide that the orders/ decisions of the authority bind the establishment/ government body concerned. However, the statutory provisions noted above give sufficient indication that its functions are not purely recommendatory; it decides the issue of entitlements of individuals. In such a situation, it must necessarily be inferred, in the absence of any provision to the contrary, that full and effectual adjudicatory powers were granted by the statute. To this end, the maxim *ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest* (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) can be invoked.

13. This court will exercise its power of judicial review only if it finds that the impugned order is illegal, irregular or irrational. It will have to be shown that order suffered some infirmity either in terms of jurisdiction, procedural irregularity, the consideration of irrelevant factors or the omission to consider relevant ones. From the foregoing discussion it is amply clear that the Chief Commissioner was cloaked with appropriate powers to take cognizance of the matter and pass suitable orders. A look at the impugned order would indicate that the Chief Commissioner had provided both parties adequate notice, appreciated the relevant documents relating to the allotment of the booth including the scheme under which it was allotted, heard both parties and concluded that it was unreasonable on the part of the AIIMS after a period of 24 years, to contend that the claimant Petitioner was an unauthorized occupant, especially so when the PCO was his only source of livelihood.

14. Pursuant to the notice of this Court, the Mahanagar Telephone Nigam Limited (MTNL) was impleaded as a party respondent in WP(C) No. 8926/2005. In its return by way of affidavit, the MTNL admitted that the claimant Petitioner was indeed allotted the

PCO under a scheme for the orthopedically disabled persons, evolved by it. It also states that the allotment, made in 1981 subsisted.

15. The Disabilities Act is a *lex specialis*; and therefore, in cases where the rights of the persons with disabilities are involved, it will take precedence over the provisions of the PP Act. Section 43 of the Disabilities Act, enjoins upon all public authorities the obligation to create opportunities for the full participation of the persons with disabilities, by evolving policies through which they can be ensured a decent standard of livelihood, including, though not limited to granting allotment of public spaces and office or commercial premises. Viewed from this perspective, the action of AIIMS, notwithstanding the order of the Chief Commissioner, is indefensible. Having not disputed possession of the claimant petitioner for the past 25 years, and having been involved in the inauguration of the PCO booth, it would be highly iniquitous for the AIIMS to now contend that the claimant does not have documentary evidence to support his possession. Significantly, the claimant Petitioner does not claim any right, title or interest in the property but only demands that the status quo be maintained. To deny him of this opportunity to earn a decent livelihood would not only be iniquitous, but would run contrary to the spirit of the Disabilities Act and to many of the provisions enshrined in Part III and IV of the Constitution of India. Undoubtedly the authorities of AIIMS are clothed with power to evict unauthorized occupants under the PP Act. Yet, like all forms of power, these powers too are to be used taking into account relevant considerations, and towards securing public interest. Evicting a person with disability, who had been in undisputed occupation of premises to earn his livelihood, can hardly benefit the public weal. It may even run counter to the enactment by which AIIMS itself was brought into existence and owes its character as an institution of national importance.

16. Therefore, this Court is of opinion that even if for some reason the order of the Chief Commissioner is unsound, the facts of this case do not disclose grounds on which that order should be set aside. During the pendency of these proceedings, the premises were directed to be de-sealed. In view of the conclusions recorded in this judgment, AIIMS is directed to hand over possession of the PCO, in operable condition, within one week, to the claimant petitioner (i.e. Shri Dalip Kumar). The AIIMS shall, in case it becomes

necessary to use the space occupied by him, for any reason, arrange for an alternative space to house his kiosk within the Hospital premises, in a manner which does not adversely affect the business interests of the said claimant petitioner, after giving him reasonable notice.

17. The writ petitions are disposed off in the above terms. No costs.

**(S. RAVINDRA BHAT)**

**Dated: 14th January, 2008 JUDGE**