



2025:DHC:3126-DB



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

**Date of decision: 01.04.2025**

+ LPA 209/2025 & CM APPL. 16833/2025, CM APPL. 16834/2025 CM APPL. 16835/2025, CM APPL. 16836/2025

PLANET ADVERTISEMENT PVT. LTD. ....Petitioner  
Through: Mr. Kunal Kalra, Advocate.

versus

DELHI METRO RAIL CORPORATION AND ANR.  
.....Respondents  
Through: Mr. Srinivasan Ramaswamy,  
Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD  
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

**J U D G M E N T (Oral)**

**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present appeal filed under Clause 10 of the Letters Patent, assails the **order dated 09.12.2024<sup>1</sup>** passed in W.P.(C) No. 17017/2024 titled as "*Planet Advertisement Pvt. Ltd. vs Delhi Metro Rail Corporation Ltd. And Anr.*" by the Ld. Single Judge of this Court dismissing the petition on the ground that the Respondents - **Delhi Metro Rail Corporation<sup>2</sup>** and **Municipal Corporation of Delhi<sup>3</sup>** - have not violated any fundamental or other right of the Appellant.

2. The principal contention of the Appellant is that Ld. Single Judge passed an unreasoned order with respect to the fact that the MCD failed to grant permission without assigning any cogent reason

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<sup>1</sup> Impugned Order

<sup>2</sup> DMRC

<sup>3</sup> MCD



to advertise on the foot-over bridge against the Outdoor Advertisement Policy<sup>4</sup>, 2017.

**BRIEF FACTS:**

3. A tender bearing no. 323M043713 was floated by the DMRC for licensing of exclusive co-branding rights of Chhatarpur Metro Station of Line-2 of the DMRC network.

4. The Appellant was selected as the highest bidder and was issued the **Letter of Acceptance<sup>5</sup> dated 15.02.2024.**

5. The Appellant, *vide* communication dated 12.03.2024 issued to the DMRC, conveyed discrepancies regarding the licensed area and scope of the advertisement in the LOA *vis-à-vis* the floated tender document.

6. *Vide* letter dated 06.05.2024 sent to the MCD, the Appellant sought permission to put the advertisements at the tendered location.

7. Simultaneously, the DMRC, *vide* communication dated 25.06.2024 also requested the MCD to review their decision and grant the approval for the issued tender.

8. Awaiting the requisite approval from the MCD, the Appellant, *vide* communication dated 08.07.2024 acknowledged the endeavour made by the DMRC in following up with the MCD for the requisite approval and also asserted that the reasoning of the MCD with regards to the distance criteria is not applicable as per the OAP-2017.

9. *Vide* letter dated 12.11.2024, the DMRC cancelled the LOA citing the grounds that (a) the necessary approval of MCD has not been received, (b) the Appellant has not accepted the LOA

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<sup>4</sup> OAP-2017

<sup>5</sup> LOA



unconditionally and, (c) the Appellant has not deposited the LOA payment even after eight months since the issuance of the LOA.

10. Upon cancellation of the LOA, the Appellant *vide* letter dated 29.11.2024 requested the DMRC to withdraw the cancellation of the LOA, and later, approached this Court by way of the writ petition bearing W.P.(C) No. 17017/2024 seeking quashing of the cancellation of the LOA.

11. The Appellant questioned the DMRC's decision on the ground that instead of seeking clarifications from the MCD for the denial of the requisite permissions, the DMRC chose to cancel the LOA. The Appellant further contended that the lack of cogent justification or order by the MCD for the denial of permission is arbitrary and a clear violation of the fundamental rights of the Appellant.

12. The Ld. Single Judge, *vide* the impugned order rejected the contentions of the Appellant holding that the decision of the DMRC to revoke the LOA was appropriate and reasonable, as the requisite approval of the MCD was crucial for execution of the tender. The Ld. Single Judge also noted that, in the communication dated 08.07.2024, the Appellant itself had requested the refund of the **Earnest Money Deposit**<sup>6</sup> with interest, in case of failure to obtain permission from the MCD by the DMRC.

### ANALYSIS:

13. This court has carefully considered the submissions and meticulously perused the documents on record.

14. The learned counsel for the Petitioner would re-assert the arguments raised before the Ld. Single Judge.

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<sup>6</sup> EMD



15. While cancelling the LOA *vide* letter dated 12.11.2024, besides citing the absence of permission from the MCD, the DMRC also pointed out that, despite the passing of eight months, the Appellant had not accepted the LOA unconditionally and also deposited the LOA payment.

16. These facts were not denied by the Appellant in the subsequent communication dated 26.11.2024 issued to the DMRC whereby the Appellant requested to withdraw the cancellation of the LOA.

17. A three Judges' bench of the Hon'ble Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer***<sup>7</sup>, while examining the power of judicial review in case of arbitrariness in the cancellation of tenders, held as follows:

“69. To ascertain whether an act is arbitrary or not, the court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action.

70. One another way, to assess whether an action complained of could be termed as arbitrary is by way of scrutinizing the reasons that have been assigned to such an action. It involves overseeing whether the reasons which have been cited if at all genuinely formed part of the decision-making process or whether they are merely a ruse. All decisions that are taken must earnestly be in lieu of the reasons and considerations that have been assigned to it. The Court must be mindful of the fact that it is not supposed to delve into every minute details of the reasoning assigned, it need not to go into a detailed exercise of assessing the pros and cons of the

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<sup>7</sup> 2024 SCC OnLine SC 1682



reasons itself, but should only see whether the reasons were earnest, genuine and had a rationale with the ultimate decision. What is under scrutiny in judicial review of an action is the decision-making process and whether there is any element of arbitrariness or mala fide.

71. Thus, the question to be answered in such situations is whether the decision was based on valid considerations. This is undertaken to ensure that the reasons assigned were the true motivations behind the action and it involves checking for the presence of any ulterior motives or irrelevant considerations that might have influenced the decision. The approach of the court must be to respect the expertise and discretion of administrative authorities while still protecting against arbitrary and capricious actions. Thus, now the only question that remains to be considered is whether the action of the respondent to cancel the tender could be termed as arbitrary?"

*(emphasis supplied)*

18. In the present case, the cancellation of the LOA was premised not only on the non-grant of the approval from the MCD but also on the inaction on the part of the Appellant.

19. Coming to the non-grant of permission by the MCD, from the record, it appears that the bone of contention in the refusal of the requisite permissions by the MCD was the presence of structures from the foot-over bridge within the specified time limit. However, as per the Appellant and the DMRC, the said mandate would not be applicable in the present case by virtue of the OAP-2017.

20. For the said purpose, numerous communications were exchanged among the parties.

21. Despite the consistent efforts by the DMRC in following up with the MCD to obtain the requisite permissions, the same did not bear fruit.

22. It is a matter of fact that the beneficiaries of the advertisement were not only the Appellant and the DMRC, but the MCD as well; as



there was a memorandum of understanding between the MCD and the DMRC regarding the sharing of revenue.

23. All parties of this Petition were affected in some way or the other by the non-execution of the tender. Therefore, the non-grant of permission by the MCD cannot be termed arbitrary or *malafide* or with ulterior motives. The Appellant does not, in fact, assert as such.

24. While declining the writ petition on the ground that there is no violation of the fundamental or any other right of the Appellant, the Ld. Single Judge noted the fact that months prior to the cancellation of the LOA, *vide* letter dated 08.07.2024, the Appellant itself had asserted that it is upon the DMRC to obtain permission from the MCD and in case of failure, the EMD with interest shall be refunded to the Appellant. The relevant extract of the impugned order is as follows:

“3. Counsel for Petitioner argues that MCD had not responded to the communications of DMRC. In such circumstances, DMRC, instead of following up with the MCD, has wrongly taken the impugned action. It is further urged that the since the Petitioner had emerged as the successful bidder in the tender, it was anticipated that they would be granted unencumbered rights to advertise on the Foot Over Bridge. However, MCD denied permission for the same without passing a speaking order and therefore, the said decision is arbitrary, unreasonable and inconsistent with the Outdoor Advertising Policy, 2017. Furthermore, it is contended that Petitioner had secured the tender for INR 1.21 crores and since the tender was intended to last ten years, the impugned action has led to a potential loss of nearly INR 15 crores both for the Petitioner and the Government Exchequer.

4. The Court has considered the afore-noted contentions but remains unconvinced. In absence of the requisite approval from the MCD, the decision of DMRC is appropriate and, the Court cannot find any arbitrariness. Further, communication dated 08th July, 2024 makes it clear that the Petitioner had called upon DMRC to obtain permission from the MCD or the tender itself would get vitiated and in that case, they made a request for the EMD to be refunded at the earliest. The relevant extract reads as follows:

“XX ... XX ... XX ...



In case the DMRC fails to obtain permission from MCD, the tender itself gets vitiated, and EMD with interest shall be refunded at the earliest.”

5. Hence, the Court is not inclined to entertain the present petition in absence of any violation of fundamental or any other right of the Petitioner.

6. As regards the Petitioner’s claim for recovery of any alleged damages or potential damages, if any, the Petitioner shall be free to take recourse to appropriate civil proceedings, if so advised.”

*(emphasis supplied)*

25. In view of our discussion above, while affirming the judgment of the Ld. Single Judge, we are of the considered view that there is no merit in the present appeal and the same is, consequently, dismissed.

26. The present petition and all pending applications are disposed of in the above terms.

**SUBRAMONIUM PRASAD, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**APRIL 1, 2025** *sm/as*