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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 12455/2009

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LOKESH PRASHAR

..... Petitioner

Through:

Mr.V. Shekhar, Sr. Advocate with
Mr.Rajiv Narain, Advocate for petitioner

versus

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N.D.M.C. & ANR.

..... Respondent

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Through:

Mr.Manoj Kumar Singh and Mr.Nilava
Banerjee, Advocates for respondents

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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?

ORDER

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30.10.2009

G.S.SISTANI, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ of mandamus and/or certiorari against the order dated 28.08.2009 by virtue of which the licence of shop no.1, Shankar Market, New Delhi, awarded to the petitioner herein, was revoked by respondent no.1.
2. With the consent of counsel for the parties, present petition is set down for final hearing.
3. Necessary facts for the disposal of this petition are that the petitioner is a licensee of shop No.1 Shankar Market, Connaught Circus, New Delhi. By a

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communication dated 13.3.2009 the allotment was made pursuant to an open bid application dated 21.1.2009 made by the petitioner. As per the bid offer, the petitioner agreed to pay licence fee of Rs.1,04,000/- per month. Pursuant to this letter of allotment, a licence deed was executed on 17.6.2009, according to which shop was running for the trade of "*packed snacks (Non-Licensable items only and no preparation of food is allowed)*".

4. Learned counsel for the petitioner submits that the petitioner started doing his business of providing 'packed snacks' as per the conditions laid down by the respondents. The petitioner started selling packed eatable articles like Rajma Rice, Kari Rice, etc. Counsel further submits that, however, no food articles/snacks were being prepared in the shop as per the terms and conditions of the licence deed and all the snacks sold by the petitioner were in a packed state only. As per the learned counsel for the petitioner there are several unauthorized occupants near the shop of his client and one of them complained to the department against the petitioner *inter alia* alleging that the petitioner is selling licensable items, whereas the shop has been allotted for non-licensable products only. On the aforementioned complaint an Inspector from the Food and Adulteration Department visited the petitioner and issued a challan.
5. According to the NDMC, the petitioner had violated the terms of the licence and petitioner was selling snacks which required a licence. However as per the interpretation of the petitioner, 'packed food' would include any food items

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which is not prepared at the shop. The case of the NDMC is that the meaning of the term 'packed snacks' is restricted to "Biscuits, Wafer, Kaju, Popcorn, Nuts", for which counsel for NDMC relies upon Resolution No.11 dated 5.11.1974.

6. Be that as it may, after some hearing in the matter, counsel for petitioner upon instructions has made a statement in the court that he is willing to abide by the strict terms of the licence as well as the interpretation rendered by the NDMC as per Resolution No.11 dated 5.11.1974 and is willing to give a fresh undertaking to the NDMC that he would only sell packed snacks which are non-licensable items only, such as, Biscuits, Wafer, Kaju, Popcorn, nuts.
7. Counsel for respondent – NDMC on instructions submits that taking into consideration that the licence deed was issued on 17.6.2009, NDMC is willing to give concession in the peculiar facts of this case and as one last opportunity to the petitioner on the basis of an express undertaking. Learned counsel submits that in case the said undertaking is violated by the petitioner, NDMC would be entitled to take recourse to such steps as may be available to them in accordance with law. Counsel also prays that the concession given in these facts and circumstances may not be treated as precedent.
8. Taking into consideration the stand taken by the parties, the present petition is disposed of in the following terms:

- (i) Petitioner will give an undertaking to the NDMC within one week from today, clearly stating that the shop in question shall not be

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used for any purpose other than the use of non-licensable items, such as 'Biscuits, Wafer, Kaju, Pop-corn, nuts, cold drinks' Resolution No.11 dated 5.11.1974; and that no encroachment will be made in and around the shop in question.

- (ii) NDMC will withdraw the cancellation letter dated 28.8.2009, subject to the petitioner filing the undertaking.
- (iii) In case of any violation of the undertaking by the petitioner, it would be open for the respondent – NDMC to take such action as may be available to them in accordance with law against the petitioner.
- (iv) If the petitioner has not already stopped the sale of such non-permitted items as per licence, the petitioner undertakes to stop the same forthwith.

9. Counsel for petitioner submits that the petitioner would like to move an application to the NDMC seeking permission to sell products which would require a licence. Counsel for respondent – NDMC submits that no conversion is possible in view of the strict condition of the tender. In my view, as and when any application is moved, it would be open to the NDMC to deal with the same in accordance with law.

10. Counsel for petitioner on instructions submits that in the suit filed before the trial court appropriate application has been moved for withdrawal and the same shall

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be withdrawn unconditionally. It is also submitted that the appeal filed before the Court of Senior Sub-Judge has already been withdrawn on 28.10.2009.

11. In view of above, petition stands disposed of.

12. DASTI.


G.S. SISTANI, J.

October 30, 2009
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