

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

Date of decision: 22nd September, 2010.

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W.P.(C) No.8983/2009

ANIL KUMAR GUPTA

..... PETITIONERS

Through: Mr. Anil Sapra, Sr. Advocate with
Mr. Vibhor Mathur & Ms. Urvi
Kuthiala, Advocates.

Versus

**MUNICIPAL CORPORATION OF
DELHI & ORS.**

.... RESPONDENTS

Through: Ms. Maninder Acharya, Advocate
for respondent no.1/MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner claims to be a tenant in a shop in property No.470, Chandni Chowk, Delhi and carrying on the business of selling Khoya, Paneer & Sweets from the said shop. The petitioner for carrying on the said business had obtained a license from the respondent no.1 MCD. The present petition has been filed impugning the order dated 5th February, 2009 of the Deputy Health Officer, City Zone of the respondent no.1 MCD revoking / cancelling the said license. This Court vide order dated

28th May, 2009 while issuing notice of the petition, restrained the respondent no.1 MCD from taking any coercive steps against the petitioner in terms of the closure notice dated 12th May, 2009 issued pursuant to the order aforesaid. The said order has continued in force till now. The respondent no.1 MCD has filed a counter affidavit and to which a rejoinder has been filed by the petitioner.

2. The contention of the senior counsel for the petitioner is that the respondent no.1 MCD, in the matter of cancellation of license of the petitioner, has acted at the instance of the landlord of the petitioner and with whom the petitioner is having disputes. It is contended that the guise of cancellation of license is being used to put the business of the petitioner in the shop to an end and to force the petitioner to vacate the premises.

3. Attention is invited to the notice dated 22nd December, 2006 preceding the order aforesaid, wherein it is stated that the shop of the petitioner was inspected on receipt of a complaint from the landlord to the effect that the documents submitted by the petitioner at the time of obtaining the trade license are fictitious and the issue of ownership of the property is *sub judice*. It is also stated in the said notice that upon inspection of the premises, it was found that the trade was being run under insanitary condition and that there was no water connection in the shop. The petitioner submitted a reply to the said notice but the respondent no.1

MCD vide orders dated 31st August, 2007 & 6th September, 2007 revoked the license. The petitioner preferred WP(C) No.6725/2007 in this Court challenging the said order and by an interim order dated 12th September, 2007 in the said writ petition, the operation of the said order was stayed. The said writ petition was disposed of vide judgment dated 21st July, 2008. It was held by this Court that the order of revocation / cancellation of license neither recorded the factum of show cause notice nor considered the reply submitted by the petitioner thereto. This Court thus while quashing the order of revocation remanded the matter to the Health Officer of the respondent no.1 MCD to pass a speaking order explaining the reasons for his decision.

4. It is in pursuance thereto that the order dated 5th February, 2009 impugned in this petition has been made.

5. The order impugned in this petition revokes / cancels the license of the petitioner on three grounds: i) that the documents produced by the petitioner in the year 1999 for obtaining the license were complained against by Smt. Nisha Sharma claiming to be the landlord of the shop, to be forged and fictitious; ii) on the ground that the water bill produced by the petitioner “also appears to be forged and the new water connection obtained by him only in the year 2008 much after the issuance of the notice to show cause of the year 2006 cannot be accepted”; iii) the

petitioner having submitted an affidavit on 12th February, 1998 at the time of obtaining the trade license to the effect that there was no dispute with the landlord; however, the petitioner along with the reply to the show cause notice filed a copy of the order dated 13th August, 2008 in CM(M) No.1281/2007 between the petitioner and the landlord and from which it was borne out that a case for eviction of the petitioner was pending as on 12th February, 1998 also.

6. I had at the outset enquired from the counsel for the respondent no.1 MCD as to the Rules and / or conditions on which the license is issued. It was felt that only on perusal thereof it could be known as to whether there was a requirement for a water connection in the shop and for furnishing of an affidavit to the effect that there was no litigation or dispute with respect to the premises qua which the license was sought. I have been told that such conditions are prescribed but the same were not readily available. Be that as it may, since the senior counsel for the petitioner also has not challenged the same, I proceed to decide whether the case for interference in writ jurisdiction in the order of cancellation / revocation of license is made out. However, before that an argument of the counsel for the respondent no.1 MCD may be noticed. The counsel for the respondent no.1 MCD has contended that the license of the petitioner is liable to remain cancelled for the reason of the unhygienic conditions prevailing in the premises where the Khoya sweets are

prepared by the petitioner and which are brought to the shop in question for sale. The counsel for the respondent no.1 MCD similarly sought to give other grounds in support of the order impugned in this petition but which grounds admittedly do not find mention in the order impugned in the petition. The law in this regard is settled. The Supreme Court in ***Mohinder Singh Gill Vs. Chief Election Commissioner*** (1978) 1 SCC 405 has held that a public order is to be tested by the Courts only on the reasons given therein and cannot be permitted to be justified on grounds which do not form the basis therefor but put forth subsequently. Upon the same being put to the counsel for the respondent no.1 MCD, she contended that the grounds being urged by her are borne out from the annexures to the order and from the file on which the order was made. However, once the same do not form the reasons for the making of the order, the order cannot be justified on those grounds. The counsel was thus not permitted to urge the said grounds.

7. Coming to the grounds on which the cancellation / revocation was effected, as far as the dispute with the landlord is concerned, the case of the petitioner that the erstwhile landlord was having disputes with his brother and sisters and in which disputes there was a restraint against the landlord from dealing with the property; that the landlord had nevertheless inducted the father of the petitioner as a tenant in the premises; that though the landlord had filed the petition averring that an old tenant in

another portion of the premises had inducted the father of the petitioner as a sub-tenant but it was always represented that the purpose of filing the said petition for eviction was to serve the purpose of the landlord in dispute with his brothers and sisters and there was no dispute between the landlord and the father of the petitioner/petitioner; it was in such circumstances that at the time of obtaining the license, affidavit was given that there was no dispute with the landlord. The petitioner has before this Court filed the judgment of the Court of Additional Rent Controller in the said eviction proceedings where the said version of the petitioner has been accepted. Of course in appeal by the landlord, the Rent Control Tribunal decided in favour of the landlord but the senior counsel for the petitioner contends that vide interim order of this Court in CM (M) No.1281/2007 preferred by the petitioner, there is a stay of the order of the Rent Control Tribunal. The senior counsel thus contends that as of today the judgment wherein the said version of the petitioner has been accepted is in operation. The senior counsel contends that, that being the position, there could be no cancellation / revocation of the license on the said ground.

8. With respect to forgery of the rent receipt also, I find that it is a disputed question of fact. While the petitioner claims a certain rent receipt to have been filed by him, the respondent no.1 MCD contends otherwise. Rather it is the case of the respondent no.1 MCD itself that some of its officials were hand in glove with the petitioner and have

allowed the petitioner to substitute the rent receipt. No definite finding has been given in the impugned order in this regard. The Health Officer also could not have given any definite finding. It is thus found that the said reason also does not stand the scrutiny of law.

9. Lastly, with respect to the water bills, it is stated that the impugned order in any case states that the same “appears to have been forged” and no definite finding in this regard has been returned. The senior counsel contends that it was open to the respondent no.1 MCD to verify from its records as to whether the said water connection had been issued or not. It is stated that instead of doing the same, the license of the petitioner was revoked / cancelled on presumptions / assumptions.

10. I find considerable merit in the contentions of the petitioner. The license is found to have been cancelled for reasons on which there is no definite finding and / or which are still pending adjudication in the litigation between the petitioner and the landlord. The senior counsel for the petitioner has also informed that the earlier landlord had never made any such complaint against the petitioner with the respondent no.1 MCD but sold the premises upon being unsuccessful in evicting the petitioner and it is the transferee landlord who enjoying a clout in the respondent no.1 MCD has devised this method to indirectly evict the petitioner.

11. The impugned order records that at the time of making thereof the water connection did exist in the premises. The respondent no.1 MCD was concerned with the existence of the water connection. Once the water connection was found to exist and in the absence of any definite finding of there being no water connection prior thereto the license could not have been cancelled.

12. Exercise of power of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion. In exercising that power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body, it acts *ultra vires*". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. (vide *State of U.P. Vs. Maharaja Dharamander Prasad Singh* (1989) 2 SCC 505).

13. The petition is therefore allowed. The order dated 5th February, 2009 revoking / cancelling the license of the petitioner and the order dated

12th May, 2009 directing the petitioner to close the business in pursuance thereto are quashed / set aside.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

22nd September, 2010
'gsr'..