

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

Date of decision: 19th October, 2010.

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W.P.(C) No.4235/2010

MOHAMMAD SAHIM

..... PETITIONER

Through: Mr. S.A. Khan & Mr. Asghar Khan,
Advocates

Versus

M.C.D. & ANR.

..... RESPONDENTS

Through: Ms. Shobha Gupta, Advocate for R-1
with Dr. Mool Chand, Veterinary
Officer, MCD.
Mr. L.K. Garg, Advocate for R-2 with
Mr. Sajjan Singh, SHO & Mr. Sudhir
Kumar, SI, PS Ranhola, New Delhi.

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 on 31st May, 2010 was granted a trade license by the respondent No.1 MCD for carrying on the business of sale of buffalo meat at Shop No.35-A, Sector-5 in front of Madina Masjid, Sainik Enclave, Mohan Garden, Uttam Nagar, New Delhi – 110 059. The said license is valid upto 31st March, 2011. The grant of the said license is governed by the Guidelines framed by the MCD in this regard pursuant to the order of this Court in another writ petition. The Guidelines under the head “Requirement of Documents” *inter alia* prescribe “No Objection Certificate from law and

order point of view to be obtained from Police Department by the applicant before grant of license for buffalo meat and pork shops”. The license aforesaid was issued to the petitioner pursuant to the NOC dated 8th April, 2010 issued by the Office of Deputy Commissioner of Police, West District, New Delhi. It is stated in the said NOC that a survey of the area had been conducted; the area in which the shop is situated is a Muslim residential area; that according to the statements recorded there was no other religious place except a Masjid within 100 meters from the proposed buffalo meat shop and the proposed buffalo meat shop was convenient to the residents of the area.

2. The SHO, P.S. Ranhola on 1st June, 2010 itself i.e. on the very next day of grant of license recommended to the Office of Deputy Commissioner of Police for closure of the said buffalo meat shop on the ground that some local residents of Hindu community had objected and complained against the same citing existence of a Hanuman temple. It is further stated in the said recommendation that a Hanuman temple is situated within 100 meters radius of the meat shop and there was strong opposition from the Hindu community in the area with respect to the said meat shop. The Deputy Commissioner of Police, West District, New Delhi on 1st June, 2010 itself forwarded the said recommendation to the Deputy Commissioner of the MCD. The MCD on the basis of the said recommendation, issued a show cause notice dated 12th June, 2010 to the petitioner for revoking the said license.

3. The petitioner immediately approached this Court and this Court vide order dated 18th June, 2010 stayed the show cause notice. The said order continues till date.

4. Though the petitioner had not impleaded the Police Authorities in the

present petition but vide order dated 2nd August, 2010, the Police Authorities were impleaded as a respondent. Counter affidavits have been filed by the MCD as well as the Police Authorities.

5. The counsel for the respondent MCD has contended that the respondent MCD initiated action for revocation of the license merely on the basis of recommendation of the Police Authorities.

6. As far as the Police Authorities are concerned, they have in their counter affidavit reiterated the contents of the recommendation dated 1st June, 2010.

7. The Guidelines aforesaid prescribe prohibition of grant of buffalo meat trade license within 50 meters of a religious place other than a Masjid. The Police Authorities in their recommendation dated 1st June, 2010 and counter affidavit have deposed of the existence of a Hanuman temple within a distance of 100 meters from the meat shop of the petitioner. Finding a discrepancy qua 100 meters and 50 meters, the same was enquired from the counsel for the Police Authorities and the respondent MCD. The counsel for the Police Authorities on instructions from the SHO Sajjan Singh and the counsel for the respondent MCD under instruction from Dr. Mool Chand, Veterinary Officer, MCD present in Court state that the requirement is of 50 meters only and not of 100 meters and the distance of 100 meters was wrongly mentioned in the communication dated 15th March, 2010 of the respondent MCD to the Police Authorities.

8. The counsel for the Police Authorities again on instructions states that the Hanuman temple aforesaid is beyond 50 meters but within 100 meters radius of the meat shop of the petitioner. Thus, it cannot be said that the said condition of the Guidelines is violated.

9. The other reason cited by the Police Authorities is of the existence of the meat shop causing potential law and order problem in the vicinity. They also state that more than 150 residents of the locality have protested. They further rely upon the application of 31st May, 2010 of the petitioner himself for protection, apprehending trouble. It is contended that since the meat shop of the petitioner causes law and order problem, it cannot be allowed to continue.

10. The counsel for the petitioner contends that there is no law and order problem and the Police Authorities gave a recommendation against him only for the reason of the petitioner refusing to pay the “protection money” demanded by them. He seeks to explain away his application of 31st May, 2010 by averring the same to be at the instance of the Police Authorities only. He further states that in the last about four months since when his shop has been operating, there has been no law and order problem in the area. He further contends that no protection has been provided to him.

11. The SHO, P.S. Ranhola present in Court also states that though initially protection was provided to the petitioner but now the protection is not being provided. He also confirms that there has been no law and order problem owing to the shop till now.

12. The Guidelines aforesaid provide for revocation of the license only upon respondent MCD being satisfied that the license had been obtained by fraud or misrepresentation or that there was any contravention of the terms of the license or if the licensee does not within the reasonable time comply with the terms of the notice, if any, served upon him. None of the said conditions are satisfied in this case. The counsel for respondent MCD however contends that license can also be revoked in the event of the Police Authorities withdrawing the NOC.

13. A license by its very nature is revocable at any time with the only remedy of the licensee being to claim damages. However, it is not deemed expedient to elaborate on the said aspect further in the present case as I find strange that the Police Authorities have changed their stand within a short time. On enquiry in this respect, the counsel for the police authorities states that no enquiry with respect to law and order was made earlier and NOC was issued only on the basis of area being predominantly inhabited by the Muslim community and there being no religious place other than a Masjid within 100 meters and which fact was ultimately found to be wrong.

14. I am unable to uphold the aforesaid contention. The Police Authorities, before giving the NOC are expected to know the law. In the present case, the NOC was required to be issued in accordance with the Guidelines and which prescribe for the NOC to be issued from the point of view of law and order. It is thus not acceptable that the NOC given was not after the survey that the existence of the proposed meat shop would not pose a law and order problem.

15. The subsequent recommendation of the Police Authorities therefore does not inspire confidence and particularly in view of what has transpired subsequently. In view of the aforesaid circumstances, while allowing the petition, liberty is given to the Police Authorities to reassess the situation in the event of the petitioner applying for renewal of the license and then give the necessary inputs in accordance with the Guidelines. The SHO concerned is also expected to ensure that the continuance of the licensed meat shop of the petitioner does not lead to any law and order problem as was indicated in the recommendation of 1st June, 2010. If any serious threat is perceived, the Police Authorities to make a proper report in that regard and in which event the respondent MCD shall be entitled to take action *de novo*.

16. The show cause notice impugned in the petition is therefore set aside / quashed. The petition is allowed and the Rule is made absolute. No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

19th OCTOBER, 2010
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