

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 2310/2011 & CM 4941/2011

Reserved on: 2nd June 2011

Decision on: 3rd June 2011

KHAN MARKET TRADERS ASSOCIATION & ANR. Petitioners
Through: Mr. Sanjeev Sachdeva and Mr. Gaurav
Sarin with Mr. Vibhu and Mr. Priyam Mehta,
Advocates.

Versus

UNION OF INDIA & ORS. Respondents.
Through: Mr. Jatan Singh, CGSC for UOI.
Mr. Pinaki Misra, Senior Advocate with
Mr. Arjun Pant, Advocate for NDMC.
Mr. Anurag Sharma with
Mr. Prashant Kumar, Advocates for EPCA.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
03.06.2011

1. The decision by Respondent No. 2 New Delhi Municipal Council ('NDMC') to stop the free parking facility in Khan Market, New Delhi and introduce paid parking by inviting tenders is challenged in this petition by the Khan Market Traders Association ('KMTA'), Petitioner No.1, and its President Mr. Sanjeev Mehra, Petitioner No. 2.

2. KMTA states that it is an association of traders of Khan Market since 1950. There are around 156 shops in Khan Market apart from 74 'flats' on the first floor which by and large are being used for commercial purposes. Then there are 53 shops in the Prithviraj Lane Market ('PR Market'), 40 shops in the Lok Nayak Bhawan and 21 in the Mini Khan Market. KMTA states that the system of free parking in Khan Market has worked well. KMTA has 25 attendants managing the parking lot. The entire fund of the attendants is being collected by them by way of contributions from the shopkeepers.

Due to shortage of space, KMTA had been asking NDMC and other authorities to allot more space for parking.

3. KMTA states that a proposal mooted by the NDMC in 2001 to have paid parking was dropped after the KMTA protested. Similar proposals in 2004 and 2006 were likewise dropped. On 18th January 2011, the NDMC wrote to the Land & Development Office ('L&DO') in the Ministry of Urban Development ('MoUD') requesting the latter to expedite the allotment to the NDMC of a plot of land measuring 3250 sq. m. in the vicinity of Khan Market "for construction of a mechanized multi-level car parking lot." In response thereto, on 22nd February 2011 the L&DO wrote to the Chairman, NDMC on the subject of 'traffic congestion and parking problems in Khan Market area.' *Inter alia*, it was suggested that developing the Khan Market area as a community centre with a multi-level parking should be undertaken in a phased manner. The NDMC was asked to finalise a comprehensive re-development plan in consultation with the Chief Architect of the CPWD. The KMTA on 12th March 2011 wrote to the Chief Minister, Government of National Capital Territory of Delhi ('GNCTD') requesting her intervention with the MoUD to allot the piece of land at the end of Amrita Shergil Marg opposite the Bible Bhawan for the purpose of a multi-level car parking facility.

4. The Environment Pollution Control Authority ('EPCA') set up under Section 3 of the Environment (Protection) Act, 1986 on the orders of the Supreme Court, mooted the idea of paid parking at Khan Market. This was pursuant to reports it had submitted to the Supreme Court between 2004 and 2006 in a public interest litigation concerning air pollution in Delhi. At a meeting held on 5th March 2011 the EPCA reviewed the progress of implementation of a direction issued by it at a previous meeting held on 26th February 2011 on the issue of parking problems in Khan Market. The minutes of the meeting held on 5th March 2011, a copy of which has been enclosed with the affidavit of the EPCA in the present petition, refers to the opinion of the EPCA that "till the solution to parking problem is provided by the NDMC, CPWD/L&DO the free parking in Khan Market must stop."

5. On 22nd March 2011, KMTA represented to the NDMC that it should not levy any kind of parking fee "under the pressure of EPCA." KMTA apprehended that if paid parking was permitted, it would lead to spill over of cars to the arterial roads leading to

inconvenience and nuisance being caused to the neighbourhood colonies. It was pointed out that wherever a contractor was managing the parking “there has been rampant encroachment by hawkers, vendors and beggars.” Further, the contractors tended to maximise their profits by over-crowding parking lots. The NDMC was therefore requested to review its decision to go in for paid parking. A similar representation was made to the EPCA.

6. With the NDMC proceeding to float a tender for parking lots in several areas including Khan Market, the present writ petition was filed praying, *inter alia*, for a writ of certiorari to quash the decision of the NDMC to implement paid parking in Khan Market and to quash tender No. 40724 in so far as it related to the parking lot at Khan Market.

7. When this writ petition was heard on 8th April 2011, learned Standing counsel for the NDMC appearing on advance notice stated that the NDMC was only carrying out the directions issued by the EPCA. The EPCA was then impleaded as a party Respondent. This Court while ordering notice to issue to the Respondents on 8th April 2011 directed that *status quo* be maintained as regards the parking lot in Khan Market.

8. In its affidavit by way of reply, the NDMC states that it asserts that it was within its rights as custodian to include the area of 5700 sq. m. of parking lot in Khan Market, classified as ‘Tariff Group A’, in the tenders floated by it for the period 1st April 2011 to 31st March 2013. NDMC states that it took the decision primarily with a view to better regulation of the use of the parking lot, in public interest and for maximizing revenue. NDMC points out that all other markets in the NDMC area including those at Connaught Place and Sarojini Nagar have paid parking. NDMC states that the EPCA had also made a similar recommendation to the NDMC. The background to this was that the EPCA had submitted three reports to the Supreme Court in July 2004, November 2005 and August 2006. On 22nd September 2006 the Supreme Court had passed an order in IA No. 179 in W.P. (Civil) 13029 of 1985 (***M C Mehta v. Union of India***), in which it considered EPCA’s Report No. 25 in regard to the parking policy. A series of directions were issued by the Supreme Court to the NDMC, the MCD and the DDA. As regards NDMC, the direction was that it would *inter alia* submit a proposal to the EPCA before 31st October 2006 for “rationalised parking rates for all types of parking based on the user pay principle in which the user will pay the full cost of

parking and the element of subsidy is eliminated.” The Supreme Court also required the officials of NDMC, the MCD and the GNCTD to cooperate with the EPCA “so that final parking policy can be placed by the EPCA before this Court expeditiously.” The NDMC stated that since KMTA was not paying any licence fees to the NDMC it was suffering loss of considerable revenue. It was pointed out that all other major markets in the NDMC jurisdiction had paid-parking. Further, the traders associations of PR Market, Mini Khan Market and Lok Nayak Bhawan had not objected to paid parking. NDMC states that the interim order passed by this Court in the present petition led to the Khan Market parking lots being taken out of the tender process.

9. A detailed affidavit has been filed by the EPCA in which it is pointed out that Delhi has more than 4 million registered vehicles and 1000 new personal vehicles are added each day. Between the years 2000 and 2007 the number of personal cars in Delhi had increased by 1.4 times and the exhaust emissions by 1.16 times. The EPCA had identified the key interventions needed to control air pollution. This included providing for controls over parking in the city “which would restrict private transport and provide the incentives for the modal shift.” After the directions of the Supreme Court on 22nd September 2006 based on the reports submitted by the EPCA, this Court had also issued directions on 10th February 2010 in Writ Petition (Civil) No. 4572 of 2007 [*Manushi Sangathan v. GNCTD 168 (2010) DLT 168*] constituting a Special Task Force (‘STF’) which *inter alia* was to explore all questions pertaining to road traffic in Delhi. The STF in its report had made specific recommendations on regulating parking. *Inter alia*, it was stated that “the parking charges need to be enhanced substantially and the system of parking to auction the parking sites should be abandoned since it leads to corrupt practices. A modern system based on parking meters and internet based parking should be introduced.” It is stated that a mission mode project for modernisation of parking system in Delhi to be headed by the Commissioner (Traffic) needs to be set up. The EPCA emphasises that “private vehicle owners must pay the cost of the use of public spaces required for parking” and further that “parking policy cannot be based on the increase of parking supply, but on restricting the availability of parking in the city and strict enforcement to ensure against misuse”.

10. Mr. Sanjeev Sachdeva, learned counsel appearing for the KMTA submits that the real purpose of the NDMC going in for paid parking was not control of air pollution as was being made out now but only for augmenting the revenue of the NDMC. He

expressed surprise that the EPCA was concerned with such an issue when the NDMC itself had yet to take any policy decision in the matter. He further queried the selective application of the paid parking policy inasmuch as other places in the NDMC area including spaces outside public institutions like the High Court, which had a large number of visitors on a daily basis, did not have paid parking. According to him, the recommendation of the EPCA also contradicts the recommendations of the STF which suggested doing away with auctioning of parking lots. Mr. Sachdeva submitted that the Supreme Court had by its order dated 22nd September 2006 only required the EPCA to submit a final parking policy. However, that does not appear to have happened yet. Reiterating the points raised by the KMTA in its representations, Mr. Sachdeva pointed out that KMTA was itself managing the free parking in Khan Market commendably well. The introduction of paid parking would lead to innumerable problems including encroachment of spaces in the parking lots by hawkers. He submitted that the KMTA is prepared to compensate the NDMC for any revenue loss but that should be on reasonable terms.

11. On the last submission of Mr. Sachdeva, this Court on 31st May 2011 passed an order recording the submission of Mr. Pinaki Misra, learned Senior counsel for the NDMC that the representatives of KMTA could meet the Director (Enforcement) NDMC ('DE') on 1st June 2011. Pursuant to the above order, the KMTA representatives met the DE who thereafter passed an 'order' on 1st June 2011 noting that the KMTA was not willing to pay a monthly licence fee of Rs. 5,34,207/- "which is competitive rates offered by the contractor in the tender process for parking lots of NDMC area for the period from 1st April 2011 to 31st March 2030." The DE also noted that the above rate offered by the contractor worked out to Rs. 93 per sq. m. per month which was lower than similar Category A parking lots of Connaught Place which fetched Rs. 186 per sq. m. per month in the tender process. He opined that the licence fee of Rs. 5,34,207/- offered by the contractor for the Khan Market parking lot of 5,700 sq. m. was reasonable and had to be paid by the KMTA if they desired to manage the parking lot on their own.

12. Mr. Pinaki Misra learned Senior counsel for the NDMC pointed out that Rs. 5,34,207/- as monthly licence fee worked out to a sum of Rs. 1500/- per month per shop which was hardly unaffordable for the members of the KMTA. He submitted that the NDMC had taken a policy decision to go in for paid parking in commercial areas.

The decision to make a distinction between purely commercial centres and other public institutions having a large number of visitors for the purpose of introduction of paid parking was based on an intelligible differentia. He submitted that although introduction of paid parking by itself may not reduce air pollution tangibly, a beginning had to be made. Further, no exception could be made only for Khan Market when every other major market in the NDMC area had paid parking. He further submitted that the NDMC was actively pursuing the setting up of a multi-level car parking in the vicinity of Khan Market which would ease traffic congestion in the area and the introduction of paid parking should be seen as an interim measure. Mr. Misra submitted that the impugned decision was neither arbitrary nor unreasonable and called for no interference by the Court.

13. Mr. Anurag Sharma, learned Advocate appearing for the EPCA referred to the report titled “Choc-A-Block: Parking Measures to Address Mobility Crisis” prepared in 2009 by the Centre for Science and Environment (‘CSE’), New Delhi. According to this report once paid parking is introduced it results in a 10 to 30% reduction in parking demand. It further states parking prices can have significant transportation impacts. The idea was to bring down demand for parking spaces through variable parking pricing.

14. The above submissions have been considered. The scope of judicial review by this Court in exercise of its powers under Article 226 of the Constitution is limited particularly in matters of decisions based on the policy of an instrumentality of the state. The question that Court is called upon to examine is whether the impugned decision of the NDMC to introduce paid parking in Khan Market is arbitrary, unreasonable or violative of Article 14 of the Constitution.

15. As far as the decision-making process is concerned a grievance was made by learned counsel for the KMTA that it was the EPCA which dictated the decision and that it was taken all of a sudden and without considering the view point of KMTA. The affidavit of the NDMC however points out that its decision to go in for paid parking was essentially to regulate the parking in Khan Market while at the same time maximising the revenue for the NDMC. The directive of the EPCA is cited as one other reason for the decision. The documents placed on record belie the contention of the KMTA that the decision to introduce paid parking was taken overnight. It was being contemplated from 2001 onwards but given up on at least two occasions on account of

protests by the KMTA. The KMTA itself has been making representations in that regard. There has been a lot of correspondence exchanged between the NDMC, the L&DO and the KMTA in the matter of parking in Khan Market. The Supreme Court too was seized of the issue. Its order dated 22nd September 2006 does reflect a tacit acceptance by the Supreme Court, based on the reports of the EPCA, that parking rates “for all types of parking” should be based “on the user pay principle” in which “the user will pay the full cost of parking”. The order of the Supreme Court also acknowledges that the parking policy adopted by civic agencies would have an important bearing on the issue of control of air pollution and traffic congestion in Delhi. Viewed in the above background, it is not possible to agree with the contention of learned counsel for the Petitioner that it was beyond the ambit of the powers of the EPCA to take up the issue of paid parking in Khan Market. There may not have been an actual reference to air pollution in that meeting. However, it was part of a series of meetings held by the EPCA to monitor the steps taken for control of air pollution in Delhi. The minutes of the meeting do show the participation of the representatives of the KMTA and the NDMC. The KMTA was in the loop throughout. After many years of prevarication, a decision had to be taken by the NDMC at some point in time. In the circumstances, it cannot be said that procedure by which the NDMC took a decision to introduce paid parking in Khan Market was arbitrary or unreasonable.

16. On the merits of the decision, it is not possible to accept the contention that the impugned decision was dictated by the EPCA. The directive of the EPCA, when viewed in the background of the order dated 22nd September 2006 of the Supreme Court, was one reason for the impugned decision of the NDMC but certainly not the sole reason. It was a policy decision that the NDMC had to take keeping in view the increased traffic congestion in the area and the corresponding increase in the demand for parking space. The possible revenue loss in not adopting paid parking was another factor. The need for a uniform policy was yet another consideration. There is paid parking in every major commercial centre and market in the NDMC area except Khan Market. The impugned decision was only extending the policy of paid parking to Khan Market as well.

17. The report of the CSE demonstrates how parking prices can have an impact on parking demand. It contains statistics on use of parking spaces in different commercial centres in Delhi. Interestingly, the report states that “parking contractors in

most places are utilising the available parking spaces most efficiently to accommodate the demand.” At the same time, it points out that “parking lots remain over-crowded and inconvenient.” It notes that “surface parking lots require qualitative improvements.” It suggests that the current provisions in the parking contracts entered into by civic agencies “should be reviewed to improve overall management of parking lots and also efficient utilisation.” While the CSE report advocates rationalising of parking pricing with a view to efficiently manage the increased demand on parking space and deterring use of vehicles for short distances, it does not suggest doing away with awarding of parking contracts altogether. The report of the STF takes a different approach on this aspect. It recommends doing away of auctioning of parking lots altogether. It is difficult for this Court to definitively hold that one view is better than the other. It is for the NDMC to weigh the options and take a policy decision keeping in view the larger public interest. All that can be said is that the views of these expert bodies are relevant inputs for the decision of the NDMC.

18. It is possible that given the limitation of available space, there may not be much of a difference in the actual regulation of parking at Khan Market whether through free parking or paid parking. Given the profile of those visiting Khan Market, which is doubtless a much sought after destination in the heart of the city, the payment of a modest parking fee at rates comparable to the parking rates in other commercial centres in the area including Connaught Place cannot cause inconvenience to either the general public or the KMTA. The concerns expressed by KMTA about the possible misuse of the parking lot in the event of it being given to a contractor to manage may be genuine but can be addressed by a tighter vigil by the NDMC. For any violation of the conditions of the parking contract the NDMC can always take corrective action. The possibility of breach of the terms of contract by itself cannot be a reason for the NDMC to make an exception for Khan Market and not introduce paid parking.

19. Even the KMTA is unable to deny that by not introducing paid parking in Khan Market the NDMC is being deprived of the revenue it would otherwise earn on that score. The sum as it transpires is not insubstantial. Although according to the KMTA the figure of Rs. 5,34,207/- is on the higher side, this Court has no means to doubt the statement of the DE that this was the sum that the contractor was prepared to pay as a monthly parking fee. The stand of the NDMC that KMTA should be prepared to pay NDMC the said amount as monthly fee if it wants to manage the parking on its own

appears to be a reasonable one. However, at the time of the hearing the KMTA was not inclined.

20. KMTA has been unable to persuade the Court to hold that the impugned decision of the NDMC to introduce paid parking in Khan Market is arbitrary, irrational, unreasonable or violative of Article 14 of the Constitution. It is expected that the NDMC and the L&DO would expedite the steps to have a multi-level parking facility in the vicinity of Khan Market at the earliest to ease the traffic congestion in the area.

21. Considering that at one stage the KMTA expressed its willingness to compensate the NDMC for possible revenue loss on account of non-introduction of paid parking, this Court considers it appropriate to give KMTA one last opportunity, up to 5 pm on 6th June 2011, to convey to the NDMC its willingness to pay the NDMC a monthly licence fee of Rs. 5,34,207/- in which event it will be permitted by the NDMC to manage the parking in Khan Market for a period to be decided by the NDMC on the terms and conditions laid down by the NDMC, which would be no different from the terms and conditions governing other parking contracts of the NDMC. If the KMTA does not convey its willingness by 5 pm on 6th June 2011, the status quo order passed by this Court on 8th April 2011 will automatically stand vacated.

22. For the aforementioned reasons, this Court is not inclined to interfere with the impugned decision of the NDMC to introduce paid parking in Khan Market. The writ petition and the application are disposed of with the above directions.

S. MURALIDHAR, J.

JUNE 3, 2011