

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4620/2011**

Decided on 29<sup>th</sup> September, 2011

IN THE MATTER OF :

MOHD. SHAHID ..... Petitioner  
Through: Mr. S.D. Ansari, Advocate with  
petitioner in person.

versus

MCD ..... Respondent  
Through: Mr. Mukesh Gupta and Ms. Manpreet  
Kaur, Advocates with Mr. D.S. Kharab,  
Health Inspector, MCD.

**CORAM**

**\* HON'BLE MS.JUSTICE HIMA KOHLI**

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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 the Digest?                | Yes |

**HIMA KOHLI, J. (Oral)**

1. The present petition is filed by the petitioner praying *inter alia* for quashing of the order dated 30.05.2011 passed by the Deputy Health Officer, Sadar Paharganj Zone, MCD, revoking the health trade license issued to the petitioner for running a *Dhaba* at shop No.8075, Ground

Floor, Main Road, Bara Hindu Rao, Delhi-110006. On a pointed query posed to the counsel for the petitioner as to why the prayer clause to the writ petition mentions shop No.8073-8075 as the subject shop, when the health trade license had been granted by the respondent/MCD in respect of shop No.8075 alone, he states that he confines the relief in the present petition to shop No.8075 alone.

2. The case set up by the petitioner is that he has been running a *Dhaba* in the name and style of "M/s Chicken Planet" on the ground floor of premises No.8073-8075, Main Road, Bara Hindu Rao, Delhi, since the year 1997, under a valid license issued by the respondent/MCD on 23.07.1998. The said license has been renewed from time to time, upto 31.03.2011. Thereafter, on account of complaints made by the petitioner's brother, Mohd. Javed and his wife, who do not share a cordial relationship with the petitioner and between whom civil and criminal litigations are pending, the respondent/MCD served a notice to show cause on 11.04.2011 upon the petitioner, asking him to show cause as to why the health trade license issued to him for running the *Dhaba*, be not revoked on ground of insanitary and unhygienic conditions prevalent therein. The petitioner replied to the aforesaid show cause notice vide letter dated 19.04.2011. After considering the reply of the petitioner, the impugned revocation order dated 30.05.2011 was passed. Aggrieved by the said revocation order, the petitioner has preferred the present

petition.

3. Learned counsel for the petitioner assails the impugned revocation order dated 30.05.2011 on the ground that while the notice to show cause had confined itself to insanitary and unhygienic conditions in which the *Dhaba* was being operated as the ground for revocation of license, however the order of revocation also states that the license was being revoked on the ground that on inspection of the premises it was found that the petitioner had carved out a mezzanine floor where the height of the roof was found to be much less than 9ft, in respect of which, no license had ever been granted by the respondent/MCD. He further states that as per the terms and conditions of the license, the only penalty provided for breach of terms of the license is a punishment by way of a fine, but the license in itself cannot be revoked for the said breach. Lastly, it is submitted that the respondent/MCD did not take into consideration the letter dated 09.06.2011 addressed by the petitioner to the Deputy Health Officer, MCD, wherein it was submitted that he had demolished the mezzanine floor and dispensed with the sitting arrangements therein and had increased the height of the roof to 12ft, and that since the ground for revocation no longer existed, the order of revocation be recalled.

4. Counsel for the respondent/MCD, however, opposes the

present petition and submits that the license initially granted to the petitioner in the year 1998, was for the purpose of running a *Dhaba*, and he was never granted any permission for having any sitting arrangements inside the premises, which he states is apparent from a perusal of the health trade license issued in respect of the premises in question. However during the course of inspection, the officers of the respondent/MCD found that sitting arrangements had been made at the mezzanine floor in the premises having a height of the roof at much less than 9 feet, and it was for such additional breach of conditions of the license that the revocation order was passed. He further states that at the time of the inspection, the premises was found to be in an insanitary and unhygienic condition, as mentioned in the show cause notice dated 11.4.2011, which was the other ground based on which the license was revoked.

5. In the course of proceedings on 02.09.2011, as the counsel for the petitioner asserted that as on date, there did not exist any mezzanine floor in the premises in question, the petitioner and the officer of the respondent/MCD, who were present in Court, were directed to proceed to the premises in question straightway and conduct an inspection thereof. The parties were also directed to be accompanied by a photographer for photographs of the premises to be taken including that of the mezzanine floor, if any. Thereafter, the officer of the

respondent/MCD was called upon to submit a report by way of an affidavit within one week from the date of inspection and the matter was adjourned to 13.09.2011. On 13.09.2011, counsel for the respondent/MCD stated that the Health Inspector, who was present in Court on 02.09.2011, had proceeded to the shop from the Court straightway, however the petitioner had failed to turn up. It was further stated that the petitioner did not render any co-operation to the officer of the respondent/MCD to enable him to take photographs of the premises and in fact, the officer was obstructed from performing the inspection as directed by the court. Though a report, as directed, was not submitted by the respondent/MCD, two photographs taken at the spot on 02.09.2011 were handed over. The first photograph showed a number of tyres piled up at one side of the entrance of the shop, thus making it impossible for anyone to enter and inspect the same from within. The second photograph showed two shutters outside the subject premises and when standing on the road facing the same, it could be seen that a pile of tyres was stacked in front of the shutter in the left portion of the premises, whereas part of the premises on the right side appeared to be vacant.

6. In view of the submission made on behalf of the respondent/MCD that the Health Inspector was not permitted access to the shop, the SHO of the area was directed to render assistance to the respondent/MCD to carry out inspection of the subject premises by

removing any obstruction/hindrance in that regard. Thereafter, a status report dated 26.09.2011 was filed by the respondent/MCD, wherein it is stated that the premises was re-inspected on 14.09.2011, on which date the petitioner was again not found present at the premises. It is stated that photographs were taken from within the premises and on the said date, it was found that the mezzanine floor had been removed and further, that the floor level of the premises was about 2½ feet below the road level and to enter the shop, one had to take three steps down for reaching the ground floor level of the shop. It is stated that on the earlier date when inspection was conducted on 02.09.2011, the petitioner had intentionally stacked tyres in front of his premises to hide the fact that a mezzanine floor still existed in the premises. It is further urged that had the mezzanine floor been removed by the petitioner prior to 02.09.2011, as had been claimed by the petitioner before this court on the said date, then he would have also ensured that the floor level of the premises was raised to the height of the road, however the same had not been done even till 14.9.2011, clearly belying the assertion made by the counsel for the petitioner on 02.09.2011. A perusal of the photographs enclosed with the status report shows that there was a staircase built in the premises, which was leading up to an upper floor of the shop. This is quite apparent from the marks of the steps alongside the wall, on which the electricity meters have been fixed. Further, it is apparent by digging the floor level of the premises and bringing it down by a couple of feet, a

mezzanine floor had been carved out, which fact is also apparent from the existence of iron girders supporting the mezzanine floor and installed on both sides of the wall and a part of the shop have been removed by soldering them out but the remnants are still visible in the photographs, as they lie embedded in the walls.

7. It was the contention of the counsel for the petitioner that there were two distinct portions of shop No.8075 and while standing on the road facing the shops, the shop on the left side having a separate shutter, was being used for a number of years by another brother of the petitioner, namely Mohd. Aziz to run the business of sale of tyres and that only the right side portion of the premises having a separate shutter was being used by the petitioner for running a *Dhaba* and further, that the health trade license had been granted by the respondent/MCD only in respect of the right side of the shop. However, he concedes that there is nothing placed on record to establish that the respondent/MCD had granted the license only in respect of a part of the shop and not the whole of the shop. This fact is also borne out from a perusal of the license issued by the respondent/MCD and placed on record as Annexure-A, which mentions the shop bearing No.8075 and not a part of the premises.

8. The aforesaid contention of the petitioner is further belied by three photographs of the shop handed over by the counsel for the

respondent/MCD, which he states were taken by the Health Inspector, when the shop of the petitioner was inspected and challaned on 6.6.2011. Counsel for the respondent/MCD hands over the carbon duplicate of the challan book No.350301 to 350350, which shows that vide challan No.350349 issued on 06.06.2011, the premises of the petitioner was challaned under Sections 417 and 397 of the DMC Act, by observing that the petitioner was found continuing to run the *Dhaba* without a municipal license and under insanitary and unhygienic conditions, even after the revocation of license vide order dated 30.5.2011. In the photographs, it can be seen that the entire premises was one shop with only a pillar in the center. On the left side of the ground floor were stairs, which once taken would lead to the mezzanine floor carved out of the left side portion of the subject premises. The photographs also reveal that there was no internal partition wall dividing the premises into two portions and that the ground floor of both sides of the shop was below the level of the road. The third photograph taken is that of the mezzanine floor carved out of a part of the premises where sitting arrangements had been made by the petitioner.

9. The present case once examined in the light of the aforesaid documents clearly establishes the fact that when the petitioner submitted the letter dated 09.06.2011 to the respondent/MCD and stated *inter alia* that he had demolished the mezzanine floor and dispensed with the

sitting arrangements, the same was a false averment as the mezzanine floor of the shop appeared to still have been in place till as late as on 02.09.2011. It is in this context that the absence of the petitioner on 02.09.2011 from the spot, even after being directed to proceed with the Health Inspector from the Court itself to inspect the shop, has to be treated as deliberate and a willful intent to mislead the court. Furthermore, no explanation has been forthcoming from the petitioner to justify his absence on the said date. The intent of the petitioner is further amplified by the fact that on 02.09.2011, a huge pile of tyres were found stacked up in front of the left side portion of the premises, which could only be for the purpose of obstructing the access of the MCD Health Inspector so that he would not be able to carry out the inspection of the premises as directed by this Court. It is only after that, having got sufficient time between 2.09.2011 and the next date of hearing, i.e., 13.09.2011, that the petitioner got activated and took steps to remove the mezzanine floor. However, the evidence of the existence of the said mezzanine floor at the shop and the lingering remnants of the mezzanine floor could not be completely wiped away and have been brought out clearly in the photographs taken of the shop on 6.9.2011, and thereafter, on 14.09.2011.

10. The second argument of the counsel for the petitioner that the show cause notice having been issued on account of insanitary and

unhygienic conditions at the site, the respondent/MCD could not have revoked the license of the petitioner for any additional ground, is not tenable. A perusal of the impugned revocation order dated 30.05.2011 reveals that the Deputy Health Officer mentioned having heard the petitioner and thereafter having carried out an inspection of the premises, and it was during the said inspection that it was found that the petitioner had created a mezzanine floor in his premises, contrary to the terms of the license issued to him. The order further states that in the inspection it was also found that the premises continued to remain in an insanitary and unhygienic condition, causing nuisance and health hazard to the public. Based on both these grounds, the revocation order was passed by the respondent/MCD and this court finds no fault with the same.

11. The submission of the counsel for the petitioner that the provisions of Section 430 of the DMC Act could not have been invoked by the respondent/MCD in the given facts and circumstances, and at best the only punishment that could have been imposed on him was by way of a fine for breach of terms, as per Clause 24 of the license is also devoid of merits. A perusal of Section 430 of the DMC Act shows that the respondent/MCD is empowered to suspend/revoke a health trade license issued by it to a party upon being satisfied, amongst other grounds, that the conditions imposed under the license have been evaded by the grantee. The aforesaid provision of the DMC Act would override any

clause/term mentioned in the license itself. In the present case, the petitioner was granted the license for running a *Dhaba*, but by carving out a mezzanine floor from within the subject premises without obtaining any prior consent of the respondent/MCD and in effect, converting the *Dhaba* into a mini restaurant by making sitting arrangements on the mezzanine floor amounts to a major breach of the terms of the license, for which contravention, the provisions of Section 430 of the DMC Act were rightly invoked.

12. In light of the fact that the assertion made by the petitioner, in his representation dated 09.06.2011 addressed to the respondent/MCD, that he had demolished the mezzanine floor and dispensed with the sitting arrangements stands belied, this Court is compelled to observe that the petitioner has approached this Court with unclean hands and has deliberately concealed material facts including the fact that even on the date of filing of the present petition, there existed a mezzanine floor in the subject premises for which the respondent/MCD had never issued a license. Further, the challan dated 06.06.2011 issued to the petitioner reveals that despite the revocation order having been passed by the respondent/MCD on 30.05.2011, the petitioner not only continued to illegally run the *Dhaba*, he also maintained the sitting arrangements on the mezzanine floor, which is apparent from a perusal of the photographs taken by the respondent/MCD and produced in Court.

Taking into consideration the fact that the petitioner has with willful intent tried to mislead this court as also the respondent/MCD, the present petition is dismissed with costs of ₹10,000/- payable by the petitioner to the respondent/MCD within two weeks.

SEPTEMBER 29, 2011  
rkb

(HIMA KOHLI)  
JUDGE