

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

Date of decision: 18th January, 2011.

+ **W.P.(C) 4612/2010 & CM.No.9113/2010 (for stay)**
% **CM.No.12687/2010 (u/s 151 CPC for direction)**

D K WADHWA(PROP OF V K ENTERPRISES) Petitioner

Through: Mr. Kirti Uppal with Mr. Pradeep
Chandel, Advocates.

versus

MCD & ANR

..... Respondents

Through: Ms. Mansi Gupta, Advocate for R-1
Mr. A.P.S. Ahluwalia, Sr.Advocate with Mr. S.S.
Ahluwalia, Advocate for R-2.

AND

+ **W.P.(C) 7676/2010**
%

SCHOOL OF OPEN LEARNING

..... Petitioner

Through: Mr. A.P.S. Ahluwalia, Sr.Advocate with
Mr. S.S.Ahluwalia, Advocate.

versus

MCD & ORS

..... Respondents

Through: Mr. Mukesh Gupta, Advocate for R-1.
Mr. N. Waziri with Mr. Shoaib Haider, Advocates
for R- 2 and 3.
Mr. Kirti Uppal and Mr. Pradeep Chandel,
Advocates for R-4.

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. Mr. D.K. Wadhwa, petitioner in WP(C)4612/2010, having been granted a licence under Section 420 OF Delhi Municipal Corporation Act by the MCD for parking a Chef Cart in front of School of Open Learning , 5, Cavalry Lane, University of Delhi, filed the writ petition impugning the notice dated 6th July, 2010 of the MCD directing him to remove the Chef Cart/Catering Van from the said location and to shift to a suitable place after getting NOC from DCP (Traffic). The reason given by the MCD was that the Chef Cart was causing nuisance and obstruction at the said site and was also required to be removed in view of the Common Wealth Games Venue University stadium in the vicinity. The said writ petition came up before this Court first on 14th July, 2010 when Mr. D.K. Wadhwa offered to remove himself from the site during the Commonwealth Game with right to return to the said site thereafter. Notice of the said petition was issued and it was directed that after the Commonwealth Game Mr. D.K. Wadhwa would be entitled to return to the said site and would not be disturbed from carrying on his business therefrom if not in breach of the terms and conditions imposed upon him. The said order has continued in force till now. The licence granted to Mr. D.K. Wadhwa is valid till 31st March, 2011. Mr. D.K. Wadhwa of course claims a right to apply for renewal of the licence.

2. The School of Open Learning filed WP(C)7676/2010 claiming the relief for removal of the Chef Cart. Both petitions are being taken up

together for consideration. The counsels have been heard.

3. It is the counter affidavit of the DCP (Traffic) in WP(C)7676/2010 that it is not in favour of continuance of the Chef Cart at the said location; no NOC was sought by the MCD before granting the licence as required; that the Chef Cart is located on pedestrian way/footpath and is apparently causing obstruction in free movement of pedestrians, students and staff of the School of Open Learning and other road users.

4. The stand of the MCD is that in view of the objection by the DCP (Traffic), the licence in favour of the petitioner has been cancelled.

5. Now barely about two and a half months remain of the validity of the licence presently in vogue. The counsels have relied upon a circular dated 22nd July, 2009 of the MCD where in the case of renewal of licence, no fresh NOC is required from Traffic Police and it is provided that if the Traffic Police finds the location approved by MCD to be unworkable from traffic point of view, the parking site will be changed as per alternative site allotted by Traffic Police Department. The Traffic Police though has found the location approved by MCD to be unworkable, has till date not allotted any alternate site to Mr. D.K. Wadhwa.

6. The counsel for the DCP (Traffic) says that the obligation for allotment of alternate site is not of the DCP (Traffic) but of the MCD only. The counsel for Mr. D.K. Wadhwa controverts the stand of the DCP

(Traffic). However the counsel for DCP (Traffic) agrees that the circular does provide for allotment of alternate site by DCP (Traffic). He contends that it's an obvious error in as much as Police is not land owning agency. The fact remains that the error remains inspite of circular being 1 ½ years old and also, MCD treating the obligation to allot alternate site to be of police, has not allotted alternate site.

7. In the circumstances aforesaid, it is felt that even if the order directing removal of Mr. D.K. Wadhwa is to be upheld, Mr. D.K. Wadhwa cannot be removed till alternate site is allotted to him be it by the MCD or by the Traffic Police Department. It is not felt necessary to adjourn the matter for the said purpose.

8. In the circumstances, the writ petitions are disposed of with the following directions:

- i. Mr. D.K. Wadhwa shall be entitled to continue at the same site till 31st March, 2011. Mr. D.K. Wadhwa shall however abide by the other terms and conditions imposed upon him and if found to be in violation thereof shall be liable for appropriate action.
- ii. The School of Open Learning shall have a right to be heard in opposition to the application if any of Mr. D.K. Wadhwa for renewal of the licence at the said site for the period after 31st March, 2011. The MCD while considering the application for renewal shall consider not only the objection by the School of Open Learning

including in the present proceedings but also the objection of the DCP (Traffic) and if feels the need may invite fresh objection from the DCP (Traffic).

iii. If the licence of Mr. D.K. Wadhwa is not renewed, Mr. D.K. Wadhwa shall remove himself from the said site on or before 7th April, 2011.

9. At this stage the counsels for the DCP (Traffic) and School of Open Learning state that removal of the petitioner before 31st March, 2011 be also permitted if allotted alternate site.

10. The counsels however admit that the petitioner has been having his Chef Cart at the said location since 1996 and the licence in his favour was renewed from time to time. The counsel for the DCP (Traffic) states that no NOC was obtained at any time. The fact however remains that no objection was taken for the last 14 years. The anxiety now is not understandable. The licence was given to Mr. D.K. Wadhwa under the Welfare Scheme to provide employment to educated unemployed. In the circumstances it is not deemed appropriate to displace the petitioner in the last 2 ½ months of his licence term and which if permitted may give rise to further litigation only.

11. The petition is disposed of. No order as to cost.

JANUARY 18, 2011/M

RAJIV SAHAI ENDLAW, J