

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 17216/2004**

Date of Decision: 13th April, 2012

IN THE MATTER OF:-

RAJINDER SINGH

..... Petitioner

Through: Mr. Arun Kumar Sharma, Adv.

versus

COMMISSIONER OF POLICE & ANR.

..... Respondents

Through: Mr. V.K. Tandon, Adv. for R-1/Delhi Police.

Mr. Amit Mehra, Adv. for Mr. Ajay Verma, Adv. for R-3/DDA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

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

1. The present petition is filed by the petitioner praying inter alia for quashing of the order dated 08.10.2004 passed by the respondent No.1/Commissioner of Police (Traffic), Delhi, de-notifying and cancelling the Taxi Stand opposite Panchsheel Club, New Delhi on the ground that the said Taxi Stand was found to be causing obstruction to the pedestrian movement and hindrance to the movement of traffic.

2. Notice was issued on the present petition vide order dated 01.11.2004, on which date, an interim order was passed staying the operation of the impugned order dated 08.04.2004. The said interim order has been continued from time to time. On 27.09.2010, it was contended on behalf of the petitioner that the power to relocate and remove the Taxi Stand vests with the District Magistrate under Rule 76 of the Delhi Motor Vehicles Rules, 1953 and thus respondent no.1/ Deputy Commissioner of Police, Traffic was not competent to pass the impugned order. However, respondent no.1, averred in its counter affidavit that the powers to be exercised by the District Magistrate are now to be exercised by the Dy. Commissioner of Police. On 27.9.2010, counsel for respondent no. 1 had stated that he would produce the relevant documents to demonstrate that the Dy. Commissioner of Police, Traffic was empowered to de-notify the Taxi Stand. After completion of pleadings, on 19.04.2011, respondent no.1/Delhi Police was directed to revisit the area along with the petitioner to assess the traffic situation at the spot where the Taxi Stand exists.

3. Pursuant to the order dated 27.01.2012, an additional affidavit had been filed by the respondent No.1/DCP, Traffic on 15.02.2012,

wherein, it is stated that the subject Taxi Stand was inspected on 13.02.2012 and it was found that it was causing an obstruction to the free flow of traffic and to the free movement of pedestrians and was therefore a bottleneck point.

4. On the last date of hearing on 17.02.2012, counsel for the petitioner had submitted that while the petitioner did not claim a vested right in the taxi stand in question in terms of the order dated 28.08.1975 passed by the District Magistrate notifying the subject taxi stand, if this Court was inclined to accept the submission made by respondent No.1/Delhi Police that the present location of the taxi stand is a bottleneck point and is obstructing smooth flow of traffic, respondent No.1/Delhi Police be called upon to identify alternate sites in the vicinity that could be designated as parking bays for taxis for the purpose of 'halt and go'.

5. Pursuant to the aforesaid order, an additional affidavit dated 02.03.2012 has been filed by the respondent No.1/Delhi Police wherein it is stated that a survey was conducted in the vicinity of the

subject taxi stand and four such parking bays for taxis for the purpose of 'halt and go' are operating in the area and their exact locations have been indicated in Annexure-A to the affidavit, alongwith the site map enclosed therewith. Counsel for the respondent No.1/Delhi Police states that it is now for the petitioner to select a location from the aforesaid existing parking bays, but he cannot insist on operating from the subject taxi stand at Panchsheel Park, Outer Ring Road, opposite Panchsheel Club, as it was never allotted in his favour and in any case, it has since been denotified in terms of the impugned order dated 08.10.2004, passed by the Deputy Commissioner of Police(Traffic).

6. Counsel for the petitioner refutes the aforesaid submission and relies on a letter dated 03.10.1989 issued by the Deputy Commissioner of Police (Traffic) and addressed to the petitioner wherein he was informed that he had been allotted a taxi stand No.7102 which number was directed to be displayed on a board at the taxi stand and also mentioned in all correspondences to the Traffic Police. He submits that the said letter clearly establishes the fact that the petitioner had been allotted the subject taxi sand. The aforesaid

letter can, however, not be treated as a letter of allotment of a taxi stand exclusively in favour of the petitioner. The same is only a communication addressed to the petitioner informing him that the taxi stand has been assigned a particular number by the Traffic police.

7. The second document relied upon by the counsel for the petitioner is a letter dated 14.07.1971 addressed by the respondent No.3/DDA to the petitioner wherein he had been informed that the department had no objection to the allotment of a taxi stand to him at Panchsheel Club upon payment of tehbazari fee of ₹100/- per month. The said letter also called upon the petitioner to submit an undertaking that he would abide by the terms of allotment and would execute an agreement stipulating the conditions that may be laid down by the authority as and when called upon to do so.

8. The aforesaid communication is an intimation issued by the respondent No.3/DDA informing the petitioner that DDA had no objection to the allotment of a taxi stand in his favour. However, the actual allotment of a taxi stand was not made by DDA. In fact, DDA had only intimated to the petitioner the fact that he would have to pay

tehbazari fee of ₹100/- per month for occupying the area in question.

9. Counsel for the petitioner also relies on a letter dated 09.04.1981 addressed by the Superintending Engineer, DDA to the Financial Advisor, DDA on the subject of construction of a permanent taxi booth for taxi stand and tea stall opposite Panchsheel club and informing that the costing details of the taxi stand and the tea stall did not include the cost of land, administrative charges, development charges etc. It is contended that the taxi booth at the site was constructed by the petitioner from his own funds.

10. The submission made by learned counsel for the petitioner that the cost of construction of the taxi stand was borne by the petitioner runs contrary to the averments made in the writ petition, particularly para-2(ii) thereof wherein the petitioner has averred that possession of the subject taxi stand had been handed over to him by respondent No.3/DDA on 22.09.1971 and thereafter construction of the taxi stand was undertaken by the DDA and the built up structure of the taxi stand was handed over to him under cover of a letter dated 09.04.1981.

11. The aforesaid documents clearly establish that apart from paying ₹100/- per month as tehbazari fee to the respondent No.3/DDA, the petitioner has not paid a penny towards cost of construction of the permanent booth at the subject taxi stand or for that matter deposited any amount towards the cost of land, administrative charges, development charges etc. Further, from the documents placed on record, the petitioner has not been able to establish the fact that the order dated 28.08.1975 passed by the District Magistrate for the establishment of a class 'B' taxi stand at specified sites was passed in respect of the subject taxi stand at Panchsheel Club as well. Taking the case of the petitioner at the highest, even if it is assumed that the said order was passed in respect of the subject taxi stand, the order reveals that it was a general order and it can certainly not be treated as one allotting a taxi stand exclusively in favour of the petitioner. Even the general order of establishing taxi stands at various sites was confined to a period of three years from the date of issuance thereof and the inevitable conclusion is that the tenure of allotment of the taxi stand had to be renewed thereafter from time to time. The proof of renewal of the subject taxi stand is however not placed on record.

12. The last and the most important document relied upon by the counsel for the petitioner is the order dated 28.08.1975 passed by the District Magistrate (Annexure-A). The said order was issued by the District Magistrate under Rule 7.12 and 7.16 of the Delhi Motor Vehicles Rules, 1940, for establishing Class 'B' taxi stands at various sites as per the list enclosed with the order, for a limited period of 3 years from the date of issuance of the order, and subject to fulfillment of all the conditions prescribed in the Acts and Rules. But the same cannot be treated as an allotment made in favour of the petitioner.

13. Although the list of sites mentioned in the order dated 28.08.1975 has not been enclosed with the order, but the second page of the order shows that a copy of the same had been forwarded not only to the Manager/Proprietor of the taxi stand, but also to various government authorities including District Magistrate, DDA, MCD, Traffic Police, NDMC.

14. In the impugned order dated 08.10.2004, it was observed that a site for Class 'B' taxi stand at Panchsheel Park, Outer Ring Road, Opposite Panchsheel Club was notified vide order dated 28.08.1975

and it was further noted that the said order was issued for a period of three years from the date of its issuance and that the notifying authority had reserved the right to cancel the notification subsequently, if warranted in public interest. The aforesaid first paragraph of the order dated 08.10.2004 when read in conjunction with the order dated 28.08.1975 issued by the District Magistrate, completes the chain as far as identifying the location of the subject taxi stand is concerned as the same is common in both the documents.

15. The observation made in the impugned cancellation order was that in the course of a survey that had been conducted at the aforesaid taxi stand, it was found that the same was causing obstruction to the pedestrian movement as well as hindrance to the smooth flow of traffic, that a flyover was under construction at the Outer Ring Road near Panchsheel Club and the taxi stand was coming in the way of the flyover. As a result, the Deputy Commissioner of Police/Traffic (Head Quarters), Delhi in the exercise of powers conferred on him under Section 3 of the Delhi Control of Vehicular and Other Traffic on Roads and Street Regulation, 1980 and in terms of the guidelines issued vide circular dated 15.06.1998, had ordered that the

taxi parking site in question be de-notified and the same was cancelled with immediate effect in public interest.

16. The first leg of the argument of the counsel for the petitioner is that as the aforesaid taxi stand had been notified by the District Magistrate, the order of de-notification could have been passed by the same authority, i.e., District Magistrate and not by the Deputy Commissioner of Police as done in the present case. The second leg of his argument is that till date, respondent No.3/DDA has not cancelled the tehbazari site allotted to the petitioner and that he has been regularly depositing a sum of ₹100/- with the DDA as *tehbazari* fee, which DDA has been duly accepting and therefore respondent No.1/Delhi Police could not displace him in the manner sought to be done.

17. Undoubtedly, the order dated 28.08.1975 notifying the taxi stand in question was issued by the District Magistrate. As per Rule 76(5) of the Delhi Motor Vehicle Rules, 1993 all orders of a District Magistrate sanctioning the establishment of a stand or revoking or modifying an order permitting the establishment of a stand, are

appealable to the State Government, whose orders thereon shall be final. On 18.07.2003, the Divisional Commissioner, Govt. of NCT of Delhi had intimated the Principal Secretary, Transport as also the Joint Commissioner of Police (Traffic), that the Divisional Commissioner of Delhi is the District Magistrate for the Union Territory of Delhi and that the Deputy Commissioners in the nine districts had been conferred with the powers of Additional District Magistrates (Territorial) and they could exercise all or any of the powers vested in the District Magistrate except those restricted only to the District Magistrate. A copy of the aforesaid letter dated 18.07.2003 is handed over by learned counsel for the petitioner and taken on record.

18. In view of the aforesaid document, it is clear that the impugned order dated 08.10.2004 passed by the Deputy Commissioner of Police, Traffic (Head Quarters) denotifying the taxi stand in question is invalid for the reason that only that authority who had passed the order notifying the taxi stand, namely, the District Magistrate, was empowered to denotify the taxi stand in question. If the Traffic Police was of the opinion that the location of the taxi stand in question was objectionable as it was causing an obstruction to the

pedestrian and traffic movement, it ought to have approached the Divisional Commissioner/Deputy Commissioner of the District in terms of the aforesaid letter dated 08.07.2003, recommending de-notification of the taxi stand. Admittedly, the aforesaid procedure was not followed by the respondent No.1/Delhi Police.

19. Respondent No.3/DDA has also not denied the fact that the taxi booth constructed at the site in question had been allotted to the petitioner on *tehbazari* basis and the said *tehbazari* has not been cancelled by the said authority till date. The submission made by counsel for the respondent No.3/DDA that DDA had only provided the site/land and it is for the Traffic Police to issue a licence for the purpose of establishing a taxi stand thereon may not be enough to oust the petitioner as on its part, DDA has not denied having allotted the taxi booth at the site in question to the petitioner on *tehbazari* basis which allotment continues to subsist in his favour till date.

20. In view of the aforesaid facts and circumstances, it is deemed appropriate to allow the present petition and quash the impugned order dated 08.10.2004 passed by the Deputy

Commissioner of Police/Traffic (HQ), Delhi de-notifying and cancelling the taxi parking site in question. At the same time, liberty is granted to the respondent No.1/Delhi Police to approach the Divisional Commissioner/Deputy Commissioner of the concerned district with a recommendation for de-notifying the taxi stand in question after reviewing the traffic position at the spot, if considered necessary. If such a recommendation is made by the Delhi Police as per the procedure prescribed in that regard, the same shall be considered by the concerned authorities and a decision shall be taken in accordance with law. Respondent No.3/DDA shall also be at liberty to conduct a survey of the present location of the taxi stand in question and if deemed necessary, take a decision as to whether it proposed to continue with the tehbazari site allotted to the petitioner herein, after obtaining the views of the concerned authorities, including the Traffic Police.

21. The petition is disposed of while leaving the parties to bear their own costs.

(HIMA KOHLI)
Judge

APRIL 13, 2012
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