

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

+ **W.P.(C) 5259/2017 & C.M.Appln.22319/2017 (stay)**

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Reserved on: 04.07.2019
Date of decision: 22nd August, 2019

PADAMJIT SINGH

..... Petitioner

Through: Mr. Satish Kumar Tripathi and Mr.
Amit Kumar Dubey, Advocates

versus

N.D.M.C. & ANR.

..... Respondents

Through: Mr. Harsha Peechara, ASC with Mr.
Aditya Vikram Singh and Ms. Kriti
Sinha, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. Aggrieved by the order dated 02.06.2017, passed by the Enforcement Department of the respondent no.1/New Delhi Municipal Council (in short 'NDMC') cancelling his licence/tehbazari permission dated 18.08.1975, the petitioner has filed the present writ petition praying *inter alia* that the show-cause notice dated 06.01.2017 and the impugned order dated 02.06.2017 be quashed and respondent no.1/ NDMC be directed to permit him to carry on his business with the aid of the Health Monitor Weighing Machine at Connaught Place, Varanda Site at Arch (in Block-B), near Mc Donald's outlet with the provision to cover the same at night, till 9 a.m. with a

stainless steel collapsible door/sheet.

2. The facts, as set out in the petition, are that on 26.12.1974, the petitioner, who is the proprietor of M/s. Lunna Scales Company, applied for permission for installation of a Person Weighing Machine. On 18.08.1975, the respondent no.1/NDMC granted permission to place the said Weighing Machine in the porch of Regal Theatre, Connaught Place, New Delhi. An electricity connection was also sanctioned for running the machine in a space of 2 ft. x 2 ft.. On 30.07.2013, the petitioner requested the respondent no.1/NDMC for permission to shift his machine from Regal Theatre to Connaught Place, Varanda site and to change the machine into an advanced machine for Six Stages Health Monitor Programme, which he claimed was introduced by him in India for the first time. Permission for this shifting was granted by the respondent no.1/NDMC on 03.09.2013. A new electric load at the new location was applied for by the petitioner on 06.09.2013 and was sanctioned on 30.10.2013. A new meter No.SE24441 was installed at the newly located site on 14.11.2013. In order to protect the said machine from theft etc. the petitioner moved an application before the respondent no.1/NDMC and vide letter dated 07.03.2014, he was granted permission to cover the machine with a stainless steel collapsible/ removable door during the night time, till morning hours. Accordingly, the machine was installed at the new location by 07.03.2014.

3. The petitioner has alleged that on 22.02.2016, without issuing any show-cause notice and without following any procedure, on the directions of the Director (Enforcement), the NDMC officials forcibly took away the said machine and removed the electricity meter. The petitioner sought release of his machine and restoration of the electricity connection. The machine was

released by the respondent no.1/NDMC on payment of charges of Rs.2,000/-, but as electricity was not reconnected, the petitioner filed a writ petition bearing number W.P.(C) 4432/2016, wherein the Court granted an order of *status quo ante*. The petitioner also managed to get the electricity reconnected in the first week of November, 2016. On 17.12.2016, all of a sudden, the Area Inspector took away the collapsible door of the machine, without following the due process of law. Aggrieved thereby, the petitioner filed a contempt petition (CONT.CAS(C) 2/2017) against respondent no.1/NDMC and in the said proceedings, the collapsible door was directed to be returned to him vide order dated 04.01.2017, which reads as under: -

“After some arguments, it is agreed that the respondent shall return the petitioner’s collapsible door to the petitioner within a period of two days. It is further agreed that if the respondent wishes to take any action against the petitioner, the respondent-NDMC may do so only after giving a show cause notice to the petitioner. With the aforesaid liberty and direction, present contempt petition and the applications stand disposed of.”

4. It may be noted here that the said collapsible door was received by Sh. Subhash Tiwari, an employee of the petitioner.
5. On 06.01.2017, a show-cause notice was served upon the petitioner on the basis whereof the impugned order, cancelling his licence/tehbazari permission was passed by the respondent no.1/NDMC.
6. Mr. Tripathi, Learned counsel for the petitioner has submitted before us that the action of the respondent no.1/NDMC is in gross violation of the principles of natural justice and therefore, the order of cancellation must be set aside; that during the pendency of the licence/tehbazari permission, the

policy norms could not have been changed to the detriment of the petitioner; that the petitioner had not violated any terms of the licence/tehbazari permission; that merely because the petitioner was successful in his enterprise, could not be a ground to cancel his licence/tehbazari permission and therefore, the ground of commercial gains mentioned by the respondent no.1/NDMC in the show-cause notice was unfounded. To substantiate his submission that the NDMC's own report suggested that there was no traffic congestion caused due to the placing of the machine, learned counsel for the petitioner drew our attention to the photographs of the machine and its location as placed on record.

7. On the other hand, Mr. Harsha Peechara, learned Additional Standing Counsel of the respondent no.1/NDMC opposed the present petition and submitted that tehbazari is intended for the economically weaker sections and not meant for the benefit of a company. He argued that the machine was a high-end machine and the petitioner had himself admitted that such machines have been placed by his company, M/s.Lunna Scales Company at other Malls and Metro Stations. He submitted that placing of such a high-end machine interfered with the free flow of traffic. Moreover, the shuttering was of a permanent nature. On all these grounds, the tehbazari permission granted to the petitioner had been rightly cancelled.

8. In his rejoinder, learned counsel for the petitioner argued that the impugned order traversed beyond the show-cause notice, which is impermissible and in support of the said submission, he placed reliance on the judgment of the Supreme Court in Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd., (2006) 7 SCC 592.

9. It is well settled that though hawkers have a right to carry on their

vending activity under Article 19(1)(g) of the Constitution of India, the said right is not unfettered and is subject to reasonable restrictions under Article 19(6) of the Constitution of India. No fundamental right is recognized under Article 21 of the Constitution of India for carrying on hawking activity as a business at a particular place or at a place of the choice of a hawker. That a person who is granted tehbazari permission is commercially successful, would not be a ground for denying him such tehbazari permission but at the same time, the very purpose behind granting tehbazari permission cannot be lost sight of. Tehbazari is intended to enable persons from the weaker sections of the society to eke out a living with dignity. We therefore find force in the submission made by learned counsel for the respondent/NDMC that a company, that too a manufacturing company, would, therefore, not be eligible for being granted a licence/tehbazari permission.

10. There is sufficient material on record to establish that the petitioner does not qualify for grant of a tehbazari permission. The letter-head of the petitioner itself describes his company-M/s. Lunna Scales Company, as the *“Manufacturers and Operators of Coin Operated Persons Weighing Machines and a Government contractor”*. Interestingly, when the tehbazari permission was granted to the petitioner in the year 1975, it was for a “Self Operated” “Coin Operated Ticket Issuing” Persons Weighing Machine. This Self Operated Weighing Machine, is no longer at the site as the petitioner had installed an Electronic Weighing Machine described as a Health Monitor Machine and to operate the same, he had employed persons, not only at the site in question at Connaught Place, but also at other sites, as for example, Pacific Mall and other Metro Stations. Significantly, when the collapsible steel door was released by the respondent no.1/NDMC on

16.03.2017, it was not received by the petitioner but by one Subhash Tiwari, an employee of the petitioner. In response to the show-cause notice issued by the respondent/NDMC, the petitioner had admitted to the fact that he had installed similar Health Monitor Weighing Machines at Pacific Mall and Metro stations.

11. The petitioner has tried to wriggle out of the above admissions in the rejoinder filed to the counter affidavit of the respondent/NDMC by stating *inter alia* that the presence of a person at the site was to assist the general public on how to operate a multi-functional and multi-featured machine that is based on latest technology. Further, it has been averred that installation of the machine at the Metro Stations was only for a period of three years and at the Mall, for six months, on a contractual basis and the said machines had been installed by his son.

12. From the facts of the case, it is clear that the petitioner is not qualified for grant of a tehbazari permission. Though such a permission was granted by the respondent/NDMC to the petitioner for reasons best known to it, the respondent/NDMC is well within its rights to cancel the tehbazari permission in appropriate cases, as in the present one.

13. The very nature of tehbazari entails an open to sky removable vending activity over a 6' X 4' space. By no stretch of imagination could the petitioner have installed a permanent structure at a public place in the form of steel sheets to protect the machine, even on the ground that it was very expensive. In any case, such a structure would undoubtedly obstruct the use of the veranda by visitors and the public at large, and could not have been permitted.

14. Coming next to the contention that the impugned order dated

02.06.2017 has travelled beyond the show-cause notice dated 06.01.2017, we may refer to the show-cause notice that reads as under: -

*“No.D/17/SO(Eng.)/2017
06.01.2017*

Dated: - 6/1/2017

*M/s. Luna Scales Company,
7593(3) Pearey Lal Bhawan,
Ram Nagar,
New Delhi-110055.*

Whereas M/s. Luna Scales Company was allowed to utilize the space for operation of coin operated ticket issuing person weighing machine on the basis of licence fee on tehbazari basis.

Whereas a permanent structure was erected by the Company at ‘B’ Block verandah at Connaught Place, which is creating obstruction for free movement of pedestrians in the inner corridors of Connaught Place.

Whereas a liberty is granted to NDMC in “Bhola Ram Patel” case wherein any tehbazari licence can be cancelled which obstructs the free pedestrian movement.

Whereas while giving permission for erecting collapsible stainless steel sheet, it is noticed that proper procedure was not followed and approval was wrongfully conveyed without the approval of the Competent Authority, NDMC.

Whereas it is also noticed that similar structures have also been placed by M/s. Luna Scales Company at various Shopping Malls, metro Stations and other spaces on commercial and competitive rates.

Whereas similar spaces are allotted on commercial basis on competitive rates.

Whereas the issue was examined before the Hon’ble High Court in WP(Civil) No.4432/2016 & CM 18534/2016 in the

matter “Padamjit Singh versus New Delhi Municipal Council & Anr.” Wherein the Hon’ble High Court vide its order dated 31.08.2016 stated as under: -

“11. “However, liberty is reserved to the NDMC to take action against the petitioner in accordance with law, if so advised, but with a caveat that the same shall only be taken after due issuance of a show cause notice and after affording the petitioner an adequate opportunity to represent against the proposed action, if any.”

Now therefore, you are hereby given a notice to show cause as to why permission given to your company for commercially operated weighing scales machine be not cancelled in view of reasons like obstructing of free flow of pedestrian movements, using tehbazari permission for commercial purpose and erecting permanent collapsible structure within the corridors of Connaught Place.

Your reply to the above Show Cause Notice should reach to this office within 7 days of the receipt of this notice, failing which action in accordance with the law will be initiated.

*Sd/ -
(N.L.Chawla)
Jt. Director (Enforcement)
06.1.2017”*

15. The impugned order dated 02.06.2017 passed by the respondent/NDMC reads as under: -

“XXXX

Please note that Tehbazari permission/licence is

granted to economically weak person who is unable to earn his/her livelihood due to low level of skills, illiteracy, physical disabilities, poor widows, etc. and it is a purely temporary and personal right granted in favour of the tehbazari holder to provide them opportunities to use a public place and earn their livelihood and such persons are called street vendors under the provisions of the Street Vendors Act, 2014.

*In the present case, you are an owner of a company doing business in the name and style of “M/s. Luna Scales Company” and has been working for the commercial gains. Your letter dated 30.07.2013 (enclosed by you as Annexure-A-4 in your reply dated 25.01.2017 at page 16) and a recent letter dated 28.02.2017 written by you reflects the name and style of your business as **“LUNA SCALES COMPANY, Govt. Contractors Manufacturers and operators of : COIN OPERATED PERSONS WEIGHING MACHINES”**. Further, when you had appeared before NDMC on 06.03.2017 for personal hearing, you had voluntarily admitted that you are running several other such high value sophisticated weighing machines in other places such as Pacific Mall, Subhash Nagar and metro stations which are operated by your employees.*

Further, it is also an admitted fact that you are not personally operating the machine at the place in question and in fact you have deployed an employee, one Mr. Subhash Tiwari to operate the machine in question and this fact is further corroborated by the fact that when NDMC had gone to the site on 16.3.2017 to return the steel collapsible, shutter, which was earlier confiscated by NDMC as the same was illegal, we had found that Mr. Subhash Tiwari was operating the machine on your behalf and he had said that he was your employee and he had taken possession of the same on your behalf and put his signature which is on record. In view of the

above, it is evidently clear that neither you are a person unable to maintain himself nor you work for earning your livelihood and you are also not working personally in violation of usual terms and conditions of tehbazari and you have already admitted.....

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During the inspection it was found that you had erected a permanent structure at your site i.e. in the Verandah of Block-B, Connaught Place and created obstruction to the pedestrians and public movement. It was also found that you use collapsible steel shutters to cover your machines and encroached the verandah meant for the pedestrians' movements and even leave your machines with covered stuff even in night. We have already clarified in the Show Cause notice that for erecting the collapsible stainless steel sheet, proper procedure not followed and approval was wrongfully conveyed to you without the due approval of the competent authority, NDMC.

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Further, there are several provisions in the Street Vendors Scheme, 2016 like Scheme 2.1.4, 2.1.13, 2.1.17, 2.1.18, 2.1.21 and also 8.2.5, 8.2.6, 8.2.7 which prohibits creating any temporary or permanent structure or encroachment or hampering the free flow of pedestrians' movement and traffic whereas you were found in the violations of above said and removal was also carried out. It is clarified that this Scheme was made by the GNCTD and which is under challenged before the Hon'ble Court and the petitions are pending adjudication.

Electricity connection is not meant for the tehbazari

holders that too you have installed at the Pillar of the Corridors of the Connaught Place that may prove risky and hazardous for the general public using these corridors while shopping in Connaught Place area.

In view of the above, your activities are in the gross violation of the applicable laws and since you do not qualify to be a tehbazari license holder, therefore, it is appropriate for NDMC to cancel your license/tehbazari permission dated 18.07.1975 bearing no. 2463-46/Enf. with immediate effect, and you are requested to remove your machine and other articles if any, within seven days and clear the place.”

16. It can be seen from the above that the only ground that did not find mention in the show-cause notice, but was stated as a ground for the cancellation, is the following: -

“Electricity connection is not meant for the tehbazari holders that too you have installed at the Pillar of the Corridors of the Connaught Place that may prove risky and hazardous for the general public using these corridors while shopping in Connaught place area.”

17. Even if the contention of the learned counsel for the petitioner that an order cannot traverse beyond the scope of show-cause notice is accepted, excluding the ground relating to grant of electricity connection for tehbazari holders will not vitiate the impugned order dated 02.06.2017. The specific grounds taken in the show-cause notice for the cancellation were “(i) *That the space was to be utilized for operation of Coin Operated Ticket Issuing Persons Weighing Machine; (ii) A permanent structure was erected at B-Block Varanda, Connaught Place, which was creating obstruction for free*

movement of pedestrians in the inner corridors of Connaught Place; (iii) That the permission for erecting collapsible stainless steel sheets was without proper procedure and without approval of the competent authority, NDMC and (iv) Similar structures have been placed by M/s. Lunna Scales Company at various shopping malls, metro stations and other spaces on commercial and competitive rates”.

18. The petitioner had submitted a reply to the show-cause notice in respect of each of the grounds mentioned therein. Thereafter, the impugned order was passed by discussing each of the grounds and holding *inter alia* that licence/tehbazari permission is granted to an economically weak person, who is otherwise unable to earn his livelihood, due to low levels of skills, illiteracy, physical disabilities, etc., and that too on a purely temporary and personal right basis, whereas the petitioner herein was running a company in the name and style of M/s. Lunna Scales Company, that was working for commercial gains and was a manufacturer and operator of Coin Operated Persons Weighing Machines and also in the business of a government contractor. It is not as if the machine was being personally operated by the petitioner himself as a licenced tehbazari holder. The petitioner is a businessman who has installed such machines at Pacific Mall, Subhash Nagar and Metro Stations, and for operating them, has engaged employees. Further, the impugned order refers to the permanent structures installed at the site in the shape of collapsible steel sheets, which had not been authorised by the competent authority, as it was virtually a permanent structure in a public place.

19. In the light of the foregoing discussion, we are of the opinion that the cancellation of the licence granted to the petitioner is on valid grounds after

adhering to due process. There is no merit in the present petition which is resultantly dismissed along with the pending application.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 22nd, 2019
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