

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31.08.2016

W.P.(C) 4432/2016 & CM 18534/2016

PADAMJIT SINGH

..... Petitioner

Through: Mr Satish Kr. Tripathi, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR

..... Respondents

Through: Mr Harsh Peechara, Standing Counsel
for NDMC with Mr Manonjay
Mishra, Advocates.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India
prays as follows:-

“a. admit the writ petition against the respondents with cost.

- b. pass writ of mandamus or any other suitable writ/directions where by pleased to direct the respondent to permit the petitioner to re-install his above said Health monitor weighing Machine at Connaught Place Varanda Site at Arch (in Balock-B), near Mc Donald's with provisions to cover the same at night till 9 am morning with collapsible polycarbonate sheet as granted to him.
- c. pleased to direct the respondent to simultaneously re-install, the electricity meter at the site, to enable the petitioner to run the said machine.
- d. direct the respondent No 1 to fix the liability on the officials concerned and quantify the loss and damages caused to the petitioner due to total illegal and whimsical acts/deeds and pay him accordingly.
- e. Direct the NDMC to refund the fine of Rs.2000/ charged for releasing the machine.
- d. pass any other order/relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of petitioner and against the respondent company."

2. It is the case of the petitioner that as far back as in the year 1975, the petitioner was granted permission by the New Delhi Municipal Committee, Town Hall, New Delhi, for installing a Person Weighing Machine in the allotted space measuring about 2'x2' in the Porch of Regal Theatre, Connaught Place, New Delhi, vide letter dated 18.08.1975 annexed to the present petition as Annexure- P1. It is further the case of the petitioner that an electricity connection for the operation of the Weighing Machine so

installed was also granted by the New Delhi Municipal Council (NDMC). It seems that vide letter dated 30.07.2013 (annexed to the present petition as Annexure P-4), the petitioner requested the NDMC for shifting of the Weighing Machine from its erstwhile location at the Porch of Regal Theatre, Connaught Place, New Delhi to Connaught Place Varanda Site at Arch (B-Block), near Mc Donald's restaurant. The petitioner was duly accorded permission for relocation of the site for installation of the Weighing Machine at Connaught Place Varanda Site at Arch (B-Block), near Mc Donald's restaurant, as afore-stated, vide letter dated 03.09.2013 by the NDMC (Annexure P-5 to the present petition). The petitioner had applied for grant of new electricity connection at the new site vide letter dated 05.09.2013 (Annexure P-6 to the present petition) and sanction for the new electricity connection was duly accorded vide letter of the NDMC dated 30.10.2013 (Annexure P-7 to the present petition). Subsequently, a new electricity meter was installed at the new site on 14.11.2013.

3. It is an admitted position that on 22.02.2016, the Weighing Machine came to be removed by the NDMC from the said new location, i.e., B-Block Connaught Place Varanda Site at Arch (B-Block), and simultaneously the electricity connection was disconnected as well as the electricity meter

removed without issuing any show cause notice in this behalf to the petitioner.

4. It is an admitted position that the Weighing Machine has since been returned to the petitioner. However, the petitioner is aggrieved by the unilateral action taken by the NDMC in terminating his license to vend without notice and without an opportunity to represent against it.

5. In the present case, admittedly, the NDMC did not issue any show cause notice to the petitioner before removing his machine from B- Block Connaught Place Varanda Site at Arch (B- Block), near Mc Donald's restaurant; disconnecting the electricity and removing the electricity meter. The same is palpably in utter disregard to the rights of the petitioner who has been a *bona fide* license holder since 18.08.1975.

6. The solitary submission made on behalf of Mr Harsha Peechara, learned Standing Counsel appearing for NDMC, to the effect that the petitioner is not poverty stricken and cannot, therefore, strictly be classified as a street vendor, is duly noted. In this behalf, regardless of whether the petitioner is a street vendor or not, the requirement of affording him a hearing before adversely affecting his civil rights, cannot be bypassed.

7. There is no gainsaying the position in law that any administrative action which has civil consequences for a citizen has to be preceded by a show cause notice affording an adequate opportunity to the latter to represent against such proposed action.

8. This principle of natural justice, i.e., *audi alteram partem* is firmly entrenched in our jurisprudence from the time of the decision of the House of Lords in the landmark case of ***Ridge v. Baldwin*: (1963) 1 ALL ER 66**, which has been followed by the Supreme Court of India in ***State of Orissa v. Binapani Dei*: AIR 1967 SC 1269**; ***Maneka Gandhi v. UOI*: AIR 1978 SC 597**; ***State of Haryana v. Ramkishan*: AIR 1988 SC 1301**.

9. The Supreme Court in ***Neelima Misra v. Harinder Kaur Paintal*: (1990) 2 SCC 746**, in para 23 of the report held as under:

“23. The shift now is to a broader notion of “fairness” or “fair procedure” in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See : *Keshav Mills Co. Ltd. v. Union of India* [(1973) 1 SCC 380, 387: (1973) 3 SCR 22, 30] ; *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405, 434: (1978) 2 SCR 272] ; *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664: (1981) 2 SCR 533] and *M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar* [(1990) 2 SCC 48] .) For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lis inter partes*. There need not be any struggle between two opposing parties giving rise to a ‘*lis*’. There need not be

resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept.”

10. In view of the foregoing discussion, on the solitary ground of non-observance of principle of natural justice, the present petition is allowed. The NDMC is directed to permit the petitioner to install his Weighing Machine at the site, i.e., B- Block Connaught Place Varanda Site at Arch (B- Block), near Mc Donald’s restaurant and is further directed to install an electricity meter and energize the same so as to enable the petitioner to ply his trade, in accordance with law.

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.

12. The writ petition is disposed of accordingly.

13. A copy of this order be given *dasti* under signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL, J

AUGUST 31, 2016

mk

