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

% *Judgment dated 06th December, 2016*

+ **W.P.(C) 5277/2016 & C.M. No.22075/2016 (for stay)**

JAGDISH

..... Petitioner

Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS

..... Respondents

Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.
Mr.Rahul Sharma, Advocate with
Mr.C.K.Bhatt, Advocate for respondent
No.3.

+ **W.P.(C) 5286/2016 & C.M. No.22119/2016 (for stay)**

LEELA VEER SINGH

..... Petitioner

Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS

..... Respondents

Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.

+ **W.P.(C) 5287/2016 & C.M. No.22121/2016 (for stay)**

MUMTAZ AHMED KASMI Petitioner
Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents
Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.
Mr.Rahul Sharma, Advocate with
Mr.C.K.Bhatt, Advocate for respondent
No.3.

+ **W.P.(C) 5290/2016 & C.M. No.22127/2016 (for stay)**

RAM LAL Petitioner
Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents
Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.
Mr.Sachin Nahar, Advocate for
respondent No.3.

+ **W.P.(C) 5292/2016 & C.M. No.22131/2016 (for stay)**

SHAFIQ

..... Petitioner

Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS

..... Respondents

Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.
Mr.Rahul Sharma, Advocate with
Mr.C.K.Bhatt, Advocate for respondent
No.3.

+ **W.P.(C) 5294/2016 & C.M. No.22135/2016 (for stay)**

SUDERSHAN JAIN

..... Petitioner

Through Mr.Kirti Uppal, Senior Advocate with
Ms.Aastha Dhawan & Ms.Wamika
Trehan, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL & ORS

..... Respondents

Through Mr.Sri Harsha Peechara, ASC with
Mr.Mananjay Kr. Mishra, Ms.Vidhi
Jain, Mr.Shailja Nanda Mishra,
Advocates for respondents No.1 & 2
along with Mr.Narayan Kumar, ALO,
NDMC in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J (ORAL)

1. Pleadings in these matters are complete. With the consent of the parties, the writ petitions are set down for final hearing and disposal.
2. Out of the innumerable pending writ petitions where street vendors are agitating their rights for grant of licence and leave to squat, this is a rare batch of writ petitions where the petitioners are allottees of *tehbazari* whose *tehbazaris* have been cancelled by the orders passed by the Joint Director (Enforcement), Enforcement Department, NDMC. We propose to dispose of this batch of writ petitions by a common order, as the legal issue which arises for consideration is common to all. The facts of each case are being set out as under:

W.P. (C) No.5277/2016

3. As per the petition, the father of the petitioner was allotted a *tehbazari* Space No. L/89 at R.K. Ashram Marg, New Delhi @ Rs.36/- per month by a communication dated 26.02.1977, a copy whereof has been placed on record.
4. The grievance of the petitioner is that an inspection was carried out by the officials of the NDMC and since the petitioner was not found at the site, a show-cause notice dated 23.02.2016 was issued to him. Reply to the show-cause notice was given. In the reply, it was stated that the petitioner had gone for lunch in the nearby Shankar Market. Finding the reply not to be satisfactory, the *tehbazari* site of the petitioner was cancelled by an order dated 03.05.2016.

W.P. (C) No.5286/2016

5. As per the petition, a *tehbazari* site bearing No.B-4, B-Block at Connaught Place, New Delhi, measuring 6 ft. x 4 ft. was being operated

by the petitioner since the year 1981. Thereafter, an application filed by the petitioner was allowed by the Committee headed by Sh. G.P. Thareja on 19.01.1993 and the petitioner was allowed to squat from the site in question subject to payment of charges to NDMC. Subsequently, the Chaturvedi Committee in its order dated 22.06.1999 confirmed the allotment of the petitioner for the said *tehbazari* site.

6. A show-cause notice was issued to the petitioner on 23.02.2016 pursuant to an inspection carried out on 21.02.2016 when the petitioner was not found at the site in question. As per the show-cause notice, it was found that the site was occupied by one Manish Om Parkash, grand-son of the petitioner. Reply to the show-cause notice was filed. In the reply, the petitioner stated that she is a very old woman, suffering from various diseases and has pain in both her knees and thus, she is unable to squat. In these circumstances, she has requested her grand-son to squat in view of her disability. This reply of the petitioner was found to be unsatisfactory. Resultantly, by an order dated 03.05.2016, the *tehbazari* site of the petitioner was cancelled.

W.P. (C) No.5287/2016

7. The petitioner was allotted a *tehbazari* site bearing No.132, M-12 'C' Block, Connaught Place, New Delhi, measuring 4 ft. x 3 ft. under the orders of the Chaturvedi Committee. He was running the site in question since the year 1985. The application filed by the petitioner was allowed by the Committee headed by Sh. G.P.Thareja on 21.10.1992 holding that he would be entitled to squat at the site in question subject to payment of charges to NDMC. Subsequently, the allotment of the petitioner for the site in question was confirmed by the Chaturvedi Committee on 22.06.1999.

8. On an inspection carried out on 21.02.2016, it was found that the petitioner was not present at the site. Resultantly, a show-cause notice was issued to the petitioner on 23.02.2016 calling upon the petitioner to show cause as to why his *tehbazari* licence should not be cancelled. A reply was filed on 24.02.2016 explaining his absence for the reason that the petitioner recites *Namaz* five times in a day and he had left his *tehbazari* site only for a limited period to recite *Namaz*. The petitioner had also denied subletting in any manner. Being dissatisfied with the explanation rendered, the *tehbazari* site of the petitioner was cancelled by an order dated 03.05.2016.

W.P. (C) No.5290/2016

9. In this petition, a *tehbazari* site bearing No.134, M-26 'F' Block, Opp. D-Mansion & Co., Connaught Place, New Delhi, measuring 4 ft. x 3 ft. was being operated by the petitioner since the year 1980. Thereafter, an application filed by the petitioner was allowed by the Committee headed by Sh.G.P. Thareja on 14.05.1993 and the petitioner was allowed to squat from the site in question subject to payment of charges to NDMC. Subsequently, the Chaturvedi Committee in its order dated 22.06.1999 confirmed the allotment of the petitioner for the said *tehbazari* site.
10. A show-cause notice was issued to the petitioner on 23.02.2016 pursuant to an inspection carried out on 16.02.2016 when the petitioner was not found at the site in question. As per the show-cause notice, it was found that the site was occupied by some unauthorized person. Reply to the show-cause notice was filed. In the reply, the petitioner stated that he had gone to the washroom for a short time and had asked his helper to take care of the site. This reply of the petitioner was

found to be unsatisfactory. Resultantly, by an order dated 03.05.2016, the *tehbazari* site of the petitioner was cancelled.

W.P. (C) No.5292/2016

11. As per the petition, the petitioner was allotted a *tehbazari* site bearing No.134, M-11 'C' Block, Connaught Place, New Delhi, measuring 4 ft. x 3 ft. under the orders of the Chaturvedi Committee. He was running the site in question since the year 1984. Thereafter, the application filed by the petitioner was allowed by the Committee headed by Sh. G.P.Thareja on 21.10.1992 holding that he would be entitled to squat at the site in question subject to payment of charges to be paid to the NDMC. Subsequently, the allotment of the petitioner for the site in question was confirmed by the Chaturvedi Committee on 22.06.1999.
12. On an inspection carried out on 16.02.2016, it was found that the petitioner was not present at the site as he has sublet the same to an unauthorized person named Shivam. Resultantly, a show-cause notice was issued to the petitioner on 23.02.2016 calling upon the petitioner to show cause as to why his *tehbazari* licence should not be cancelled on account of violation of the terms and conditions of the licence. A reply was filed on 26.02.2016 explaining his absence for the reason that the petitioner had left his *tehbazari* site only for a limited period to recite *Namaz*. Being dissatisfied with the explanation rendered, the *tehbazari* site of the petitioner was cancelled by an order dated 03.05.2016.

W.P. (C) No.5294/2016

13. A *tehbazari* site bearing No.134, near A & Z Bank, E-Block at Connaught Place, New Delhi, measuring 6 ft. x 4 ft. was being operated by the petitioner since the year 1991. Thereafter, an application filed by the petitioner was allowed by the Committee headed by Sh. G.P.

Thareja on 28.01.1994 and the petitioner was allowed to squat from the site in question subject to payment of charges to be paid to the NDMC. Subsequently, the Chaturvedi Committee in its order dated 22.06.1999 confirmed the allotment of the petitioner for the said *tehbazari* site. The possession slip was also handed over to the petitioner.

14. A show-cause notice was issued to the petitioner on 23.02.2016 pursuant to an inspection carried out on 16.02.2016 when the petitioner was not found at the site in question. As per the show-cause notice, it was found that the site was sublet to an unauthorized person. Reply to the show-cause notice was filed. In the reply, the petitioner stated that there was bereavement in family on the day of the inspection and he rushed to attend the funeral place requesting his neighbour to take care his site. This reply of the petitioner was found to be unsatisfactory. Resultantly, by an order dated 03.05.2016, the *tehbazari* site of the petitioner was cancelled.

Submissions of the learned counsel for the petitioners

15. Mr. Uppal, learned senior counsel, appearing on behalf of the petitioners submits that the petitioners had replied to the show-cause notices issued to them and had given valid and genuine reasons for their absence. However, the explanations did not find favour with the respondents resulting in cancellation of the sites.
16. Learned senior counsel further submits that the respondent council has failed to consider the replies of the petitioners/allottees and passed the cancellation orders dated 03.05.2016 in a pre-decided manner. It has also been alleged that the principles of natural justice have been violated as no hearing was granted to the allottees prior to the harsh action of cancellation of *tehbazaari* licences and removal of the

petitioners. It is submitted that the respondent council has failed to take into account that the order so passed has far reaching consequences including loss of livelihood. It is also argued that by the impugned order dated 03.05.2016, sites of genuine vendors have been cancelled whereas illegal encroachers are being allowed to squat.

Submissions of the learned counsel for the respondents

17. Mr. Sri Harsha Peechara, learned Addl. Standing Counsel on behalf of NDMC, submits that as per the settled allotment norms, no person can be allowed to squat other than the original allottee. In all the petitions, persons other than the allottees were found vending at the sites and thus, there is no infirmity in the orders passed by the Joint director (Enforcement), Enforcement Department, NDMC.
18. Further in the case of Jagdish (W.P.(C) No.5277/2016), learned standing counsel submits that the documents placed on record would show that the father of the petitioner was allotted a site at R.K. Ashram Marg, New Delhi. However, the father of the petitioner thereafter applied for change of trade and also in a clever manner himself changed the site to M.T. No.25, D-Block, Near Odeon Cinema, Connaught Place, New Delhi, which site was never allotted to him. Mr. Harsha further submits that additionally, the name of the petitioner has still not been substituted upon the death of his father which is evident upon the address in the show-cause notice and *tehbazari* challans in question.

Findings of the Court

19. We have heard the learned counsel for the parties. The basic facts are not in dispute in all the writ petitions. The petitioners were granted *tehbazari* rights except in the case of W.P. (C) No.5277/2016 where the

tehbazari rights were granted in favour of the father of the present petitioner. The father of the petitioner has died and the petitioner has sought substitution of his name.

20. In all these cases, show-cause notices were issued to the petitioners on 23.02.2016. All the petitioners had filed their replies. But, by stereo-type orders, the respondent/NDMC cancelled the *tehbazari* licences of the petitioners by merely stating that the reasons explaining the absence of the petitioner were “*not found satisfactory.*”
21. The short question which arises for consideration is whether the licences of the petitioners could have been cancelled without passing a reasoned order. The law on the subject is well-settled. It has been repeatedly held that even a quasi-judicial authority must record reasons in support of its conclusion, more particularly, in cases where the order would have far reaching consequences.
22. The petitioners who have approached this Court hold *tehbazari* licences and by passing the orders of cancellation, their only source of livelihood has been taken away. In our view, the orders so passed have far reaching consequences.
23. The Supreme Court has from time to time held that failure to give reasons amounts to denial of justice. In the case of ***Union of India (UOI) v. Mohan Lal Capoor and Ors.***, AIR 1974 SC 87, the Apex Court has emphasized the importance of giving reasons and held as under:

“52. ...Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial.

They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. ...”

24. It would also be useful to refer to ***Siemens Engineering & Manufacturing Co. of India Ltd. v. The Union of India (UOI) and Anr.***, AIR 1976 SC 1785, wherein it was held that:

“6. ...If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the ad judicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....”

(Emphasis Supplied)

25. The Courts in India have repeatedly relied upon the observations of Lord Denning in ***Breen v. Amalgamated Engineering Union And Others***, (1971) 2 Q.B. 175, wherein it was held as under:

“Then comes the problem: ought such a body, statutory or domestic, to give reasons for its decision or to give the person concerned a chance of being heard? Not always, but sometimes. It all depends on what is fair in the circumstances. If a man seeks a privilege to which he has no particular claim — such as an appointment to some post or other — then he can be turned away without a word. He need not be heard. No explanation need be given: see the cases cited in Schmidt v.

Secretary of State for Home Affairs [1969] 2 Ch. 149, 170–171. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamentals of good administration...

(Emphasis Supplied)

26. In ***Alexander Machinery (Dudley) Ltd. v. Crabtree***, 1974 ICR 120

(NIRC), it was observed that:

“Failure to give reasons amounts to denial of justice”. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at”. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.

27. In ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan***, (2010) 9 SCC 496, the Supreme Court while dealing with appeals from decisions of the National Consumer Disputes Redressal Commission, after considering a conspectus of judgments upon the subject, had concluded as under:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.”

(Emphasis Supplied)

28. Applying the law to the facts of the present cases, it may be noticed that in all these matters, the respondent council has passed almost similar or stereo-type orders uniformly holding that the replies were not found satisfactory. The respondent has completely lost sight of the fact that the orders are devoid of any reasons. The orders do not show as to whether replies so filed by each of the petitioners to the show-cause notices were actually verified or tested.
29. We may also notice that in all these cases, the case of the respondents is that on an inspection carried out, the *tehbazari* holder was not found at

the site. But in none of the cases, the respondents have returned a finding or even reading of the show-cause notices would show that it has not been alleged that these are cases of subletting or cases where the *tehbazari* holders have sold their rights illegally. The consistent stand of NDMC in all these cases is that when the inspection was carried out, the *tehbazari* holder was not present at the site. The replies to the show-cause notices, as noticed in the paragraphs foregoing with respect to each case, would show that in two cases the *tehbazari* holders have stated that they have gone to recite *Namaz*; in one case, the petitioner has pleaded her physical disability; in Ram Lal's case, he had gone to answer the call of nature; in another case, the petitioner Jagdish had gone for lunch; and finally, the petitioner Sudershan Jain had gone to attend a funeral.

30. Accordingly, in our view, the orders in the aforesaid matters cannot be sustained. Resultantly, the impugned orders dated 03.05.2016 are quashed.
31. In the case of Jagdish (W.P.(C) No.5277/2016), the statement of Mr.Uppal, learned Senior counsel, on instructions, was recorded to the effect that the present petitioner undertakes to carry out his *tehbazari* at the site which was initially allotted to his father; he would not exceed the area of 6 ft. x 4 ft. and would continue with the trade which has been recognized by the respondents and he would also pay the necessary fee and comply with the norms as per the Act. He further submits that the case of the petitioner may be considered by the Town Vending Committee.
32. In the said case, the Vending Committee would consider the application for substitution, provided the petitioner vends at the site allotted to his

father, the original allottee, i.e. Space No. L/89, at R.K. Ashram Marg,
New Delhi.

33. The writ petitions are accordingly disposed of.
34. All pending applications also stand disposed of.

G.S.SISTANI, J.

DECEMBER 06, 2016

// /ka

VINOD GOEL, J.

