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

+ W.P.(C) 10532/2015 & CM No.26561/2015 (for interim relief)

ASHOK KUMAR GUPTA ..... Petitioner

Through: Mr. Satish Kumar Tripathi, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondents

Through: Ms. Malvika Trivedi & Mr. Jitendra Kr.  
Tripathi, Advs. for NDMC.

SI Pramod Kumar, PS Connaught Place.  
Mr. Devesh Singh, Adv. for R-4.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**14.01.2016**

1. The petition seeks mandamus to the respondent New Delhi Municipal Council (NDMC) to grant licence to the petitioner to carry on sale of on spot light food items along with snacks and tea from the premises forming part of property no.7 Jantar Mantar Road, New Delhi. Mandamus is also sought to the respondent NDMC to modify and change the Policy in this regard. The police is also sought to be restrained from harassing the petitioner till the application of the petitioner for licence is decided.
2. The petition was entertained.
3. The respondent NDMC along with its counter affidavit has filed copies of the communications dated 19<sup>th</sup> October, 2012 and 30<sup>th</sup> December, 2015 of the respondent NDMC to the petitioner rejecting the applications of the petitioner for grant of Health Trade Licence and directing the petitioner to close down / stop the trade immediately.
4. Though the counsel for the petitioner seeks time to file rejoinder but it has been enquired from him as to how, without challenging the order (communication) dated 30<sup>th</sup> December, 2015, he can claim a mandamus.

5. The counsel for the petitioner states that the petitioner, prior to receipt of copy of counter affidavit was not aware of the rejection of his application.
6. As far as a direction to the respondent NDMC to change the policy is concerned, though it *prima facie* appears that the same cannot be granted without the petitioner challenging any specific part or clause of the Policy or the Policy as a whole. It is however deemed appropriate to consider the said aspect in the proceedings in which the petitioner impugns the order dated 30<sup>th</sup> December, 2015 of rejection of his application.
7. The counsel for the petitioner seeks leave to withdraw this petition with liberty to take appropriate proceedings for challenging the order dated 30<sup>th</sup> December, 2015 and to therein also claim the same relief or a different relief qua the policy.
8. A perusal of the order dated 30<sup>th</sup> December, 2015 shows that the application was rejected for the reason of the petitioner having not submitted the required documents along with the application form.
9. Thus, while dismissing the petition as withdrawn, liberty is given to the petitioner to, if so desires, instead of challenging the order dated 30<sup>th</sup> December, 2015 make another application along with all the required documents and satisfy the respondent NDMC qua the other objections taken in the order dated 30<sup>th</sup> December, 2015 or to file a fresh proceeding challenging the order dated 30<sup>th</sup> December, 2015 and the policy.

No costs.

**RAJIV SAHAI ENDLAW, J**

**JANUARY 14, 2016**

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