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

Date of Decision-04.04.2018.

\+ W.P.(C) 29/2013

TANDON CHIKAN ..... Petitioner

Through Mr.Manish Sharma with Mr.Pranay Raj Singh, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR ..... Respondent

Through Mr.Vivek B.Sahaya, ASC for NDMC with Mr.Mananjay Kumar Mishra,Adv.
Mr.Manish Manglin, AAO, NDMC
Mr.Rajesh Kumar, Sr.Astt.
Mr.Layak Ram, Jr.Astt.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, who is a licensee of shop no.20, Palika Bazar, Connaught Place, New Delhi carrying out the trade of Lucknow Chikan Handicrafts Work, has impugned the notice dated 09.11.2012 issued by respondents, whereby a sum of Rs.1,69,506/- had been claimed from the petitioner on account of arrears of license fee up to October 2012.

2. Pursuant to the directions of this Court, vide its order dated 08.05.2017, the respondents have filed a statement of account along with the justification for claiming the aforesaid arrears. The respondents have also filed a copy of a resolution dated 30.09.2004 claimed to have been passed by the Council.

3. Before noting the relevant facts, it would be appropriate to notice that the main dispute which appears to have arisen between the parties is in respect of the demand of cancellation charges raised by the respondents for the period from 26.03.2008 till 20.11.2009.

4. The learned counsel for the petitioner on instructions states that the petitioner is not challenging the calculation sheet filed by the respondents except for the enhanced amount claimed for the aforesaid period as also any interest claimed on account of non-payment of any further amount on account of the said enhancement.

5. The brief facts which emerge from the record are that the petitioner had applied for and was granted a license by respondent no.1 for the aforesaid shop no.20 on 02.12.1978, which was followed by execution of a license deed dated 11.03.1981 between petitioner and respondent no.1 and the same was renewed from time to time. The petitioner's further claim is that on 08.10.2007, he received a show-cause notice from the respondents alleging therein that he was not running his business in accordance with Trade Zone no.III and he was, therefore, asked to explain as to why his allotment should not be cancelled.

6. The petitioner submitted a detailed response dated 19.10.2007, to the show-cause notice clearly stating therein that he was carrying out his business in strict compliance with the terms of the license deed and was carrying out only the business of Lucknow Chikan Handicrafts Work, which was the same trade on basis of which the allotment had been made to him.

7. It appears that despite the petitioner's detailed explanation, the respondents vide their order dated 26/27.03.2008, cancelled the allotment made in favour of the petitioner.

8. At this stage, being aggrieved by the cancellation of his allotment, the petitioner had approached this Court by way of W.P.(C)No.2884/2008 wherein vide order dated 9.04.2008, this Court had subject to the petitioner paying the prevailing license fee, stayed the operation of the cancellation order. While the writ petition was pending consideration before this Court, the respondents appeared to have re-examined the matter and directed the petitioner to submit a fresh undertaking that he would not violate the trade zone restrictions at any time.

9. Upon the petitioner submitting an undertaking dated 30.10.2009, the respondents had vide their order dated 21.11.2009 passed an order revoking its cancellation order dated 26/27.03.2008 and accordingly the writ petition was disposed of as infructuous.

10. At this stage, it may be appropriate to reproduce the undertaking given by the petitioner, since it is the case of the petitioner that he had never violated any trade zone restrictions and according to the petitioner his lease has been cancelled on an erroneous perception that like some other shopkeepers, he was also violating the conditions of the trade zone.

11. The undertaking given by the petitioner reads as under:-

> "1. *Pramod Kumar Tandon, Proprietor of M/s. Tandon Chikan, 20, Palika Bazar, Connaught Place, New Delhi – 110001 is filing this undertaking for self and on behalf of Tandon Chikan.*

2. That I am aware of the Supreme Court decision in the case of Gursharan Singh & Other Vs. NDMC decided on 2nd February, 1996 wherein after upholding the trade zone restriction in Palika Bazar, directed that the allottees who have deviated from the trade zone, allotted to them on or before 31.12.1996 and in the event of failure to comply with the aforesaid decisions it shall be open to the NDMC to proceed with the cancellation of the license of allottee concerned.

3. That I undertake to abide by the trade zoning restrictions for the shop allotted to M/s Tandon Chikan Being shop No.20 in zone 3, Palika Bazar, Connaught Place, New Delhi. The shop will be used for Lucknow Chikan Handicraft Works (hand embroidered) and other hand embroidered works for which it is being used since allotment. If at any time, it is found that the said usage is not being followed by us, NDMC shall be free to proceed with the cancellation of license.

4. The deponent is bound by the directions of Hon'ble Supreme Court.

5. That the deponent has never till date violated the trade zone restrictions from the time of occupying the Shop No. 20 in zone No. 3.

6. That the deponent has also till date never violated any other conditions of allotment of shop by NDMC, nor has any intention of violating any restrictions of trade zone so imposed.

7. That the notices dated 31/05/1980 and 08/10/2007 and order dated 27/03/2008 were thus issued by NDMC to the deponent in a routine manner, probably on a general misconception that all shopkeepers are violating trade zone restrictions. The deponent has never violated the same.

8. That the allotted premises shall not be used for trade in smuggled or pirated goods and if report is received by NDMC about illegal trade from the premises. NDMC shall be free to proceed in accordance with law for Cancellation of license of the premises. "

(emphasis supplied)

12. It is an admitted case of the parties that the petitioner has continued to pay the normal license fee regularly. The record also

shows that much after the revocation of the cancellation order, the respondents raised a Bill dated 1.05.2012 for the month of May, 2012, wherein also the normal license fee of Rs.21,887/- alongwith surcharge of Rs.1,094/- per month was demanded from the petitioner and the column for the arrears demands clearly showed a nil demand. The said bill also reflects the surcharge and rebate given to the petitioner as per the guidelines of the respondent.

13. It is also an admitted position that it was only on 02.07.2012 that the respondents for the first time claimed an amount of Rs.93,562/- from the petitioner as arrears leading to the filing of the present writ petition.

14. Thus, what emerges from the record is that the arrears demanded by the respondents pertains only to the period from 26.03.2008 till 20.11.2009, for which period the respondents have claimed a 30% cancellation charges, in addition to the normal license fee and the other periodic enhancement of 10% every two years.

15. Learned counsel for the petitioner contends that the respondents were not at all authorised to charge 30% cancellation charges, since it is the respondents themselves who were responsible for having wrongly cancelled the license of the petitioner, which was stayed by this Court in WP (C) No.2884/2018 and was subsequently revoked by the respondents upon getting notice of the earlier writ petition i.e.W.P.(C)No.2884/2008 filed by the petitioner.

16. On the other hand, it is the contention of Mr Sahaya, learned counsel for the respondents that once the petitioner's license had been cancelled, the respondents were fully justified in demanding the

30% cancellation charges from the petitioner and the said demand is in consonance with their resolution dated 30.09.2004, which provides for a levy of cancellation charges, in case, the licensee continues to occupy the property even after cancellation of the license.

17. Thus, it emerges that the controversy in the present case is very narrow and the only question which needs to be considered by this Court is, as to whether, even if the resolution of the respondents is treated as binding, were the respondents justified in demanding the cancellation charges from the petitioner. There is no denial to the fact that while giving an undertaking to the respondents, the petitioner had in categoric terms reiterated that he had never violated the term of the license deed and had never carried out any trade in violation of the trade zone restriction from the very inspection of the license deed.

18. Thus in my view, if the respondents were of the opinion, that the cancellation of the petitioner's license was in any manner justified, it was incumbent upon the respondents while revoking the cancellation order to clearly specify that the said revocation was being done only subject to the petitioner paying the cancellation charges for the period from 26.03.2008 till 20.11.2009. The respondents admittedly did not put any such situation at the time of revocation of the cancellation order and, therefore, I see no reason to disbelieve the contention of the learned counsel for the petitioner that the petitioner had never ever violated the trade zone restriction and was carrying out the trade only in terms of the license deed.

19. There is another reason, as to why, I find merit in the contention of the learned counsel for the petitioner, the same being that the order revoking the earlier cancellation order was passed by the respondents at the time when the petitioner's writ petition challenging the cancellation order was pending before the Court and the operation of the cancellation order had been stayed by this Court vide its interim order dated 09.04.2008. In these circumstances, it was essential for the respondents to have clarified that the revocation would be subject to the payment of enhanced charges for the intervening period. The respondents having not done so, I see no reason as to why the respondents should be permitted to charge the 30% cancellation charges from the petitioner for the aforesaid period at a belated stage.

20. The writ petition is allowed in the aforesaid terms and the impugned notice dated 09.11.2012 is quashed. The respondents would be at liberty to raise a fresh demand upon the petitioner, if any further amount is found due payable from the petitioner. The respondents would, however, not be entitled to claim 30% cancellation charges for the aforesaid period from 26.03.2008 to 20.11.2009.

21. The writ petition is disposed of with no order as to cost.

(REKHA PALLI)
JUDGE

APRIL 04, 2018
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