

\$~50 to 52

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

+ W.P.(C) 2529/2018, CM Nos. 10439/2018 and 10440/2018

+ W.P.(C) 2530/2018, CM Nos. 10441/2018 and 10442/2018

+ W.P.(C) 2531/2018, CM Nos. 10443/2018 and 10444/2018

SAWERA FOUNDATION

NAYA SAVERA

SAMPARK FOUNDATION

..... Petitioner

Through: Mr. Anil Sapra, Sr. Adv. with Mr.
Rajeev Yadav and Mr. Aman Bakshi,
Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Ajjay Aroraa, Adv. for NDMC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **20.03.2018**

CM No. 10440 /2018 (for exemption) in W.P.(C) No. 2529/2018

CM No. 10442 /2018 (for exemption) in W.P.(C) No. 2530/2018

CM No. 10444 /2018 (for exemption) in W.P.(C) No. 2531/2018

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2529/2018, W.P.(C) 2530/2018 & W.P.(C) 2531/2018

1. These three petitions lay a challenge to the orders dated March 12, 2018 [W.P.(C) Nos. 2529/2018 & 2530/2018] and March 13, 2018 [W.P.(C) No. 2531/2018] whereby the respondent North Delhi Municipal Corporation ('NDMC' in short) has conveyed the decision that the unauthorized de-addiction centres run by them be closed with immediate effect and to ensure

Signature Not Verified

Signing Date: 16.10.2024 16:56:32
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

4

that while closing the centres, the petitioners shall ensure all human treatment and proper care in shifting the inmates from the centres to any nearby authorized de-addiction centre run by the Government or its agencies and submit an affidavit to the said effect.

2. As submitted by Mr. Anil Sapra, the facts as averred in W.P.(C) No. 2530/2018 have been noted for deciding these three writ petitions. It is averred and also contended by Mr. Sapra that the petitioners herein are registered non-profit organisations and are running drug de-addiction and rehabilitation centres from Dilshad Garden/Than Singh Nagar and Nathupura more, Burari, New Delhi solely for public and charitable purpose with proper facilities where patients/inmates are treated with care and concern by following practices adopted by leading rehabilitation centres worldwide. He would submit that a Public Interest Litigation was filed by one Mr. Rakesh Kumar being W.P.(Crl.) No. 2381/2017 wherein this Court noting the fact that guidelines for establishing and regulating de-addiction and rehabilitation centres are not in existence, directed drawing of broad outlines by giving wide publicity and granting opportunity for centres to seek registration/NOC/license from the concerned Department under the relevant provisions of law. The Court desired that wherever rules and regulations are to be made, would be made at the earliest.

3. According to Mr. Sapra, when the PIL had come up for hearing on October 30, 2017, the Court directed that if there is any such centre like the one in Rama Vihar, which is stated to have been voluntarily shut down, operating elsewhere in Delhi, then it should immediately be inspected and if found to be running without authority of law, should immediately be shut down. He also draws my attention to para 15 of the order that the Court has

5

also directed, if any de-addiction centre/rehabilitation centre, old age home, guest house are found to be running without necessary permission and without authority of law, no time should be wasted in immediately shutting them down after ensuring that the inmates found therein are provided necessary assistance. He also draws my attention to the order dated February 05, 2018, more specifically para 7 wherein the Court had expressed its disappointment the manner in which the DMCs have gone about the task of implementing the directions of this Court, which is shutting down the unauthorized centres and shifting out the inmates therein to the authorized de-addiction centres run by the Government or its agencies. He also draws my attention to order dated February 21, 2018 in W.P.(C) 8217/2017 wherein the Court has noticed the submissions made on behalf of Municipal Corporation that the centres have to show that they are operating in a notified zone; they have requisite health license and fulfil the other requirements applicable to any such commercial establishment.

4. According to Mr. Sapra, the Court had directed that the closure notice earlier given on February 16, 2018 be treated as a show cause by eliciting reply from the petitioners and then to pass a reasoned and speaking order. He draws my attention to the notice dated March 01, 2018 issued to the petitioners wherein it was the specific case of the Municipal Corporation that in spite of specific request, no such authorisation/permission letter to run such centre has been produced or intimated to the authority and it was also stated in the show cause notice that the de-addiction centre seems to be running in the premises without any permission from the Competent Authority and being run in violation of the orders of this Court. According to him, the petitioners herein have submitted detailed replies to the show

cause notice(s) issued to them. Unfortunately, none of the submissions made by the petitioners have been considered and answered to in the impugned order.

5. Mr. Sapra states that there are no existing guidelines framed by the Government of NCT of Delhi and therefore the petitioners are running the centres at Delhi by following the existing guidelines issued by the Ministry of Social Justice & Empowerment, Government of India and the petitioners are effectively following all the prescribed procedures and norms issued by the said Ministry. He would also submit that the petitioners have also applied to the Ministry for grant of financial aid to them. According to him, it is not the case of the Ministry that the petitioners are violating the guidelines. That apart, one of the petitioners namely Naya Savera is running successfully, de-addiction centres in the State of Himachal Pradesh. In substance it is his submission that in the absence of any express provision debarring the running of de-addiction centre, the petitioners are within their rights to run the same and in any case, when the Government of NCT of Delhi is in the process of framing the guidelines with respect to the establishment/license of de-addiction centres, any action now would cause great prejudice to the petitioners as they are involved in a charitable activity of enabling the persons, who are addicted, to lead a normal life by leaving the intake of drugs. Mr. Sapra would rely upon a judgment of this Court in the case reported as *2006 IV AD (Delhi) 115 India Oil Corporation Ltd v. SPS Engineering Ltd* to contend that the impugned order cannot be supplemented by additional material either in the form of affidavit or otherwise. In other words, the reasons must be spelt out in the order under challenge and mere existence of reasons in the show cause notice or any

material referred to in the show cause notice is not sufficient. According to him, it is obligatory on the part of the authority, at least in brief, to deal in the impugned order with the explanation given in the replies to the show cause notice(s).

6. On the other hand, Mr. Ajjay Aroraa would submit that the issue of running de-addiction centre is conclusive in view of the orders passed by this Court in the PIL, a reference of which is made above. According to him, in the absence of any rules, the petitioners cannot run a de-addiction centre from an unauthorised colony and without any license. He lays stress on the fact that the premises from which the de-addiction centres are being run, do not conform to the building byelaws; the fire safety norms and without any governmental control when such centres are dealing with life and personal liberty of an individual. In this regard, he would refer to the provisions of Section 343, 344, 417 and 421 of the DMC Act, 1957. He would also submit that the respondent Corporation has filed a status report before the Division Bench wherein they have referred to an undertaking given by the petitioners to close down the de-addiction centres.

7. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the respondent was justified in passing the impugned orders. There is no dispute that there are no guidelines/instructions of the Government of NCT of Delhi for running the de-addiction centres. The plea of Mr. Sapra that the petitioners are following the existing guidelines issued by the Ministry of Social Justice & Empowerment, Government of India for scheme of assistance for prevention of alcoholism and substance abuse is concerned, the same is without any merit. No certificate has been placed on record to show permission has been

8

granted by the Govt. of India to the petitioners for running the de-addiction centres. That apart, a perusal of the guidelines issued by the Ministry of Social Justice & Empowerment, Govt. of India only reveal that the same are for grant of financial assistance. It is conceded by Mr. Sapra that no such financial assistance is being given by the said Ministry to the petitioners. If that be so, the plea of Mr. Sapra that the petitioners are following the guidelines issued by the Ministry of Social Justice & Empowerment, Govt. of India is of no consequence / effect, as the Ministry has no control over the petitioners/centres. The plea of Mr. Sapra that in the absence of any express provision debarring the petitioners from running a de-addiction centre and as such, the petitioners are within their right to run the same is concerned, the same is also without any merit. There is no dispute that in the process of their activity of running de-addiction centres, the petitioners admit the inmates for de-addiction programme. They deal with the life and the liberty of such individuals as they house them in their centres. Surely, the reasoning in the impugned orders that the petitioners are dealing with life and personal liberty of an individual without any authorisation by a governmental agency, is appealing. It must be stated here that the regulatory/supervisory jurisdiction of Government become relevant in this background. In fact, in the PIL referred to above, this Court keeping in view the necessity of framing the guidelines has directed so. That apart, the submission of Mr. Ajay Aroraa, learned counsel for NDMC that such centres are running from unauthorized colonies /from premises constructed without following byelaws and without having proper fire safety norms is also appealing. It must also be stated here that this Court in its order dated October 30, 2017, has in para 9 directed as under:-

"9. It is accordingly directed that if there is any such centre (similar to the one in Rama Vihar which is stated to have voluntarily shut down) operating elsewhere in the NCT of Delhi, then it should immediately be inspected and if found to be running without the authority of law, should immediately be shut down."

8. That apart, even in the order dated February 05, 2018, in para 11 the Court held as under:-

"11. It is reiterated that no time should be wasted by any of the DMCs in closing down those de-addiction centres, old age homes, guest houses, etc which are operating without the authority of law or without necessary permission being granted. The Court is assured by the counsel appearing for East DMC that the necessary action in compliance with the said directions will be initiated within a week's time. It is made clear that the inmates of these unauthorised centres would be accommodated, if found necessary upon medical examination, in other de-addiction centres being run by the Government or Government Agencies."

9. The aforesaid orders passed by the Division Bench, are very clear that no de-addiction centres, old age homes, guest house etc can run without any authority of law or without necessary permissions. If that be so, the plea of Mr. Sapra that till such time the Rules are framed, the petitioners should be allowed to run the centres, cannot be accepted. In fact, the very existence of such centres even for a day, shall be in violation of the orders passed by the Division Bench.

10. One of the pleas of Mr. Sapra that the impugned order is without any application of mind, without referring to the pleas taken by the petitioners in their replies to the show cause notice dated March 01, 2018 by referring to the judgment of this Court in the case of *Indian Oil Corporation (supra)* is

concerned, the said objection of Mr. Sapra was primarily in relation to the submission made by Mr. Aroraa that the centres are being run from unauthorized colonies in violation of the building byelaws, I note the said aspect has been referred to in the impugned order at page 36 in the following manner:-

"After the survey, it was found that some of the centres had already vacated the premises while some of them requested for some more time for vacation/closure of de-addiction centres. During the inspection, it was also learnt that these De-addiction centres were not only operating without any permission from Government but they were also violating various building by-laws like operating commercial activity in residential/unauthorized area without any permission either from building department or from the Health department of North DMC."

11. That apart, I note, one of the primary reason for the authority concerned to direct the closing of the centre is that the running of de-addiction centre is related to life and liberty of the individuals and no-one can be allowed to run such a drug de-addiction centre without permission/authorisation from the Government as the same is against the fundamentals of basic principles of life and dignity enshrined in the Constitution. The impugned order/action of the respondent can still be justified on that very ground. There is no dispute on the proposition of law laid down by the Supreme Court in the case of *Indian Oil Corporation (supra)* but in view of the reasoning given by the respondent justifying the impugned action, the impugned orders need to be upheld.

12. I do not see any merit in these petitions. The same are dismissed.

CM No. 10439/2018 in W.P.(C) 2529/2018

CM No. 10441/2018 in W.P.(C) 2530/2018

11
CM No. 10443/2018 in W.P.(C) 2531/2018

In view of the order passed in the writ petitions, the present applications have become infructuous.


V. KAMESWAR RAO, J

MARCH 20, 2018/ak