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

+ **W.P.(C) 8797/2017**

ASHOK KUMAR AND ANR. Petitioners

Through: **Mr. B.S. Saini, Adv.**

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: **Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Arun Kumar
Panwar, Panel Counsel with Ms.
Vidhi Jain, Adv.**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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05.01.2018

1. The present petition has been filed by the petitioners with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

- a) issue a writ of mandamus or any other appropriate writ order or direction thereby quashing the impugned sealing order dated 12/19.07.2017, passed by the Deputy Commissioner (Central Zone) under Section 491/417/419 (5) and 423 of DMC Act and further directing the respondent to de-seal the shop of the petitioners bearing No.Hs-14, Ground Floor, Kailash Colony, New Delhi;*
- b) Issue a writ of mandamus or any other appropriate writ or direction thereby directing the respondent to issue license to the petitioners for running business of tea stall in view of his application dated 16.09.2017;*

c). *Cost and damages may also be awarded to the petitioner.”*

2. On September 27, 2017, this Court had passed the following order:

“ *Petitioner has approached this Court impugning the sealing order dated 19.07.2017, which was provided on the premise that the petitioner was carrying on the business of tea stall at HS-14, Ground Floor, Kailash Colony, New Delhi without obtention of health trade licence and of running it under unsanitary and unhygienic conditions and in pursuance thereof, the subject stall of the petitioner was sealed.*

During the course of hearing, ld. counsel for the petitioner submits that the health trade licence has since been issued to the petitioner on 16.09.2017 for carrying on the business of tea and snacks from the premise in question. Copy thereof, has come to be furnished to the ld. counsel for the respondent. On verification, in view of the health trade licence which is said to have been issued to the petitioner on 16.09.2017, the respondent shall de-seal the subject premises of the petitioner within two days from today. Compliance affidavit be filed three days before the adjourned date.

List on 4th December, 2017.

Dasti under the signature of the Court Master.”

3. Thereafter, an application has been filed by the respondent / SDMC seeking modification of the said order. Relevant averments seeking modification of the order have been made in Paras 3 to 7 of the application, which read as under:

“3. *The present application is being filed by the respondent seeking partial modification / variance of the said order which directs for de-sealing of the said property in question for the reason that the said Health Trade*

*Licence was not been issued by the Respondent it was only obtained by the petitioner through online portal of the Respondent Department which has been made for the purposes of “Easy of Doing Business”. As in the present case, petitioner has only obtained the Health Trade Licence online under the Scheme of **“ORDER CUM GUIDELINES FOR ONLINE DISPOSAL OF HEALTH TRADE LICENSE”** and the said Health Trade License has not been issued by the Respondent Department and also it has not been verified on 16.09.2017 when it was printed / obtained by the petitioner.*

- 4. That it is pertinent to mention here that while obtaining the said Health Trade License petitioner concealed the fact that the said premises against which he is obtaining the said License have been sealed vide order dated 19.07.2017 of Dy. Commissioner, SDMC and the license was obtained online by petitioner only on 16.09.2017, which is subject to verification.*
- 5. That the Municipal Corporation of Delhi (MCD) for **“EASY OF DOING BUSINESS”**, has simplified the process of Health Trade License under Section 417, 420, 421, 422 of DMC Act, 1957 w.e.f 8th August, 2016 with the approval of competent authority. That the traders dealing with the Health Trade under the jurisdiction of South Delhi Municipal Corporation (SDMC) have been made enabled to obtain Health Trade License by applying through online by uploading the essential documents on SDMC website, i.e., mcdonline.gov.in. The requirement of documents has been reduced and most of the requirements have been shifted to **trust based self declaration / undertaking mode**. The list of essential documents uploaded on the web page are as under:*

Documents:

- i. Proof of legal occupancy of the shop / premises like sale-deed / lease-deed / registered GPC / proof of tenancy /*

allotment letter from the Govt. Agency / Proof of water connection (latest paid bill) / proof of land line telephone connection (latest paid bill).

- ii. Photo-ID of the applicant with photo i.e., Aadhar / voter ID / Pan / Copy of valid Indian Passport / permanent driving license / bank pass book with photo and signature.*
 - iii. Copy of PAN / VAT / TIN if applicable.*
 - iv. One copy of site plan showing the inner detail of premises in occupation.*
 - v. Other essential documents like fire NOC & sanctioned building plan are trade specific, if the eating house has more than 50 seats, cinema hall, boarding / loading house and if trader want to run the trade in the basement.*
- 6. That apart from the above said documents a SELF – DECLARATION / UNDERTAKING also needs to be filled. The policy (obtaining Health Trade License) for doing business has been simplified on **trust base** under “**Ease of Doing Business**”. A copy of the said guidelines for online disposal of health trade license and the said self – declaration / undertaking is annexed herewith as Annexure R-1.*
- However, few of the most important self-declarations / undertaking are reproduced here-below for ready reference:*

“

- 4. That the shop / establishment premises is / are permitted for commercial use duly approved by central agency / notified street of master plan of Delhi (MPD) – 2021.*
- 5. That I have gone through all the technical requirements of department as described in Technical instructions and Bye-Laws for Health Trades and have fulfilled the same.*

...

- 7. That the building is structurally safe and*

sound. And in case of any accident / mis happening, I will be liable for any claim / damages or legal liabilities from any quarter. I shall maintain the structural stability during the continuation of trade.

...

11. That there is no court case on account of violation of any law is pending against the above establishment with respect to grant to health trade license and I fully indemnify SDMC for any loss due to court case or any reason whatsoever with regard to dispute being applied / sanctioned herewith.

12. That I shall at all times maintain in good order the license premises to prevent danger to life or property or any nuisance, annoyance or inconvenience to the neighbourhood or public from the use of which the premises is put to. And shall strictly adhere to & abide by all terms and conditions of health trade license imposed and also imposed from time to time in future.

...

14. That the workers / food handlers employed in the establishment have been examined by the doctor of modern medicine (allopathic doctor) and none of them is suffering from any communicable diseases at any time.

...

16. That the license if granted by the Commissioner, SDMC for running the said Health Trade License in the present premises, shall be liable to be suspended, revoked or cancelled at any time by the Commissioner or any other officer authorized by him as per the provisions under Section 430 (3) of the DMC Act.

17. *That I undertake that the proposed activity is permitted activity as per provisions under Master Plan – 2021 of Delhi and I have not applied for Health Trade which is prohibited by any Act / Law / Government Orders / Director from any court of Law / MPD-2021.*

...

20. *That I shall keep the premises neat and clean and prevent accumulation of filth or refuse. I shall make arrangement for safe disposal of all waste including waste water, grease, oil remnants etc. generated in my establishment.*

...

22. *That I undertake to ensure that no there is no encroachment on public land out of the proposed Health Trade.*

...

25. *That the license is issued purely on the basis of self-declaration / undertaking. If any of the statements of the self-declaration / undertaking are subsequently found otherwise, the license is liable to be cancelled / revoked for all intents and purposes forthwith while forfeiting the fee and I / we shall be liable for legal and penal action for obtaining license fraudulently by making false averments. The grant of license shall not amount to permission in any manner whatsoever, for change of land use of the premises in question.”*

7. *That while agreeing to the above said self-declarations / undertakings an applicant also agrees to the **Technical Instructions and Bye-Laws for Health Trade** and one of the Technical instructions is that the area of the premises for grant of trade license for tea shop has to be 40 sq. Ft. That the said condition is there in place since 01.06.1978*

issued vide circular no.1000/HC/DHO (PH)/78. A copy of the circular no. 1000/HC/DHO (PH)/78 dated 01.06.1978 along with its true typed copy is annexed herewith as Annexure R-2. (Colly) ”

4. It is also stated that Paras 9 to 18 of the said application read as under:

- “9. That in the present case initially the Respondent department received several complaints regarding encroachment done by a tea stall which has been converted in to a Dhaba on the Road in Kailash Colony Market and which is being run in unhygienic conditions and also without obtaining the necessary health trade license from the Respondent / SDMC. The photographs showing the said encroachment on the road and the unhygienic and insanitary condition in which the said business of tea stall was run from the said premises in question are annexed herewith as Annexure R-3.*
- 10. That after receiving the several complaints and photographs, a show cause notice was issued on 13.06.2017 by the Dy. Health Officer, when it was brought to his notice that the petitioner is running a Tea Stall from the premises in question without obtaining valid Municipal Health Trade License from SDMC and the said trade was run in unhygienic and insanitary conditions from health point of view and nuisance was created near the said premises. That for the said nuisance, the petitioner was prosecuted vide challan No. 70303 dated 03.06.2017 but the petitioner did not desist from practice of unlicensed business at the said premises.*
- 11. That thereafter on 22.06.2017, a closure notice was issued by the Dy. Health Officer to the petitioner for running a Tea Stall from the premises in question without obtaining valid Municipal Health Trade License from SDMC and the said trade was run in unhygienic and insanitary conditions from health point of view and nuisance was created in any near the said premises. And the petitioner was requested to close down the aforesaid trade within 03 days of the receipt of the present notice.*

12. *That on 19.07.2017, Dy. Commissioner, Central Zone, SDMC, issued the sealing order as the petitioner did not resist from running the tea stall from the said premises in question despite of issuance of show cause notice, closure notice and did not bother and continued his business under unhygienic conditions.*
13. *That the petitioner filed the present writ petition on 21.09.2017, it was listed on 27.09.2017, whereupon during the course of hearing this Hon'ble Court on the pretext that the since the said premises were sealed on the premises that the business from the said premises were carried on without obtaining the health trade license and since the said health trade license has been issued to the petitioner on 16.09.2017. This Hon'ble Court directed to de-seal the said premises within two days after verification of the said Health Trade License.*
14. *That on 28.09.2017, the petitioner served the order of this Hon'ble on the respondent.*
15. *That the documents submitted by the petitioner at online portal were as follows:*
 - i. *Aadhar card of the petitioner.*
 - ii. *Electricity Bill dated 15.05.2017 issued in the name of One Duli Chand.*
 - iii. *Pan Card of the petitioner.*
 - iv. *One photograph of the said premises.*
The documents submitted by the petitioner at online portal are annexed herewith as Annexure R-4 (Colly).
16. *That the above said documents were taken out and after verifying the same, a notice was served vide letter dated 11.10.2017 for submitting the following documents for further processing the petitioners case:*
 - i. *Proof of ownership (Legal Occupancy).*
 - ii. *If Tenant, rent agreement and NOC from owner of the premises.*
 - iii. *Site and key plan in blue print.*
 - iv. *Structure Stability Certificate.*
 - v. *Water paid bill of DJB or water test report*

in the absence of DJB supply.

vi. Electricity paid Bill.

vii. Fire Extinguisher purchase receipt.

viii. Medical certificate of food handlers.

That petitioner was requested to supply the above said documents within three days of the receipt of the said letter dated 11.10.2017, failing which the case of the petitioner will be rejected without further assigning any further notice and legal action will be taken as per DMC Act, 1957. A copy of the said letter dated 11.10.2017 is annexed herewith as Annexure R-5.

17. That till date the petitioner has not supplied any of the above mentioned documents, for further processing the request of the petitioner for de-sealing the said premises, for verification as per said circular come guidelines for obtaining the Health Trade License.

18. That in view of the aforesaid, it is submitted that unless and until petitioner submits the documents as requested to him vide letter dated 11.10.2017, the said premises in question cannot be de-sealed. And moreover, it has been more than 10 days since it was requested to the petitioner to supply the said documents, the case of the petitioner issuing Health Trade License is to be rejected and the said premises cannot be de-sealed in the present facts and circumstances.”

5. From the above, it is noted that the respondent's case on the license is, that the petitioners could not have been granted the license as the premises was sealed which aspect has not been disclosed by the petitioners while applying for the same.

6. Today, Mr. Sri Harsha Peechara, states that he has taken instructions that if the petitioners submit the required documents as sought by the respondent vide its letter dated October 10, 2017, then the case of the petitioners for grant of health trade licence shall be considered as per policy.

He also states that pending consideration of the case of the petitioners for grant of the licence, subject to petitioners submitting an undertaking that they would not encroach upon the public land and would not carry out any trade, which requires a licence, the shop can be de-sealed. He clarifies, the petitioners can carry on trade, which does not require license.

7. Mr. B.S. Saini, learned counsel appearing for the petitioners states that such an undertaking to enable the petitioners earn their livelihood (pending consideration of grant of license) and the required documents for grant of license shall be submitted to the Deputy Health Officer, SDMC, South Zone within two days from today.

8. If that be so, it is directed, on receipt of such an undertaking, the respondent shall de-seal the shop immediately to enable the petitioners earn their livelihood. Further the respondent shall also consider the case of the petitioners for grant of health trade licence on the basis of documents to be submitted by the petitioners within two weeks of receipt of documents. The decision taken shall be communicated to the petitioners immediately thereof. If the petitioners are still aggrieved with the order to be passed by the respondent, they shall be at liberty to challenge the same in accordance with law.

9. Mr. Saini states, the aforesaid shall satisfy the grievance of the petitioners in the writ petition and the petition may be disposed of.

Accordingly, the petition is disposed of.

CM. No. 35970/2017 (for Stay) & CM. NO. 431/2018 (for modification)

In view of the order passed in the writ petition, applications have

become infructuous and disposed of as such.

A copy of this order be given *dasti* under the Signatures of the Court Master.

V. KAMESWAR RAO, J

JANUARY 05, 2018/jg