IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 05, 2018
Judgment delivered on: July 02, 2018

+ W.P.(C) 8963/2017, CM No. 36692/2017 (stay)
+ W.P.(C) 8143/2017, CM No. 4483/2018 (for refund of the excess amount)
+ W.P.(C) 9016/2017, CM No. 36879/2017 (Ad interim direction)
+ W.P.(C) 7908/2017, CM No. 32679/2017 (Ad interim direction)
+ W.P.(C) 7930/2017, CM No. 32760/2017 (Ad interim direction)
+ W.P.(C) 9252/2017, CM No. 37799/2017 (stay)

INTEKHAB ALI & ORS
SH. RASHID
WALI MOHD. AND ORS.
MOHD. AHMED AND ORS.
INAMUL HAQ
MOHD. YAMIN

..... Petitioners

Through: Mr. Sanobar Ali, Adv.
Mr. Vijay Kasana, Adv. with Mr. Manu Padalia, Adv.

versus

THE COMMISSIONER, EAST DELHI MUNICIPAL CORPORATION
THE COMMISSIONER, EDMC AND ANR.
EAST DELHI MUNICIPAL CORPORATION
EAST DELHI MUNICIPAL CORPORATION
EAST DELHI MUNICIPAL CORPORATION
THE COMMISSIONER, EAST DELHI MUNICIPAL CORPORATION

..... Respondents

Through: Ms. Shipra Shukla, Adv. for EDMC
Mr. Sidharth Joshi, Adv. for EDMC
Ms. Manisha Agrawal Narain, Adv. with Dr. M.L. Sharma, Adv. for EDMC

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

As these writ petitions involve identical issue (s), they are being disposed of by this common order / judgment.

BRIEF FACTS

W.P.(C) 8963/2017

1. It is the case of the petitioners that they were operating meat shops, selling buffalo halal meat. Petitioner No.1 was running two shops for which veterinary licenses were issued by the Veterinary Department, Shahdra North Zone, EDMC. His licenses were set to expire and therefore, were to be renewed on March 31, 2009 and March 31, 2013 respectively. The licenses issued to petitioner Nos. 2, 3 and 4 were to be renewed on March 31, 2006, March 31, 2013 and on March 31, 2014, respectively.

2. Despite the aforementioned renewal dates, petitioner Nos.1 and 3 applied for renewal of their respective licences only on August 18, 2017 and petitioner No.2 applied for renewal on May 16, 2017 while petitioner No.4 applied for renewal in the month of April or May of 2015. The said applications for renewal are stated to have contained all necessary formalities to be complied with along with the necessary documents.

3. It is stated that the meat shop policy was revised by EDMC on January 01, 2016 vide office order dated March 30, 2016 which

superseded the erstwhile policy dated January 24, 2011, as revised on September 02, 2011. According to the Policy, 2016, the license fee has been increased from Rs.500/- to Rs.2400/-. The renewal fee has been increased from Rs. 300/- per month to Rs.2400/- per month and the late fee for renewal of license fee has been increased from Rs.100/- per month after the expiry of grace period (three months) to Rs.1200/- fortnightly.

4. The policy dated January 01, 2016 also required the applicants to obtain an NOC from the concerned Municipal Councillor at the time of grant of fresh license as well as renewal of meat shop license. The said provision was challenged before this Court in the W.P. (C) 4881/2016 as being arbitrary, illegal and unreasonable. Vide order dated May 31, 2016 corrected and released on August 27, 2016 the said condition was quashed/struck down. In pursuance of said order the respondent issued the consequent order revising the policy dated January 01, 2016 only on March 06, 2017. Admittedly, during the intervening period, the respondents had stopped renewing licenses and accepting the renewal fee in support thereof.

5. It is also pertinent to note that vide order dated August 30, 2017, this Court in W.P. (C) 7621/2017 directed that no late fee shall be chargeable from the petitioners therein for the renewal of their respective licenses for the period from April 01, 2016 to March 06, 2017 subject to payment of other dues as are permissible in law.

6. It is the petitioners case that when they applied for renewal, they were informed about the enhancement in renewal fees and consequently issued demand notices in terms of the policy dated January 01, 2016

applying the enhanced fee with effect from the date of expiry of their respective licenses till the date of application, which has led to an arbitrary and excessive amount being demanded.

7. It is stated that on August 14, 2017 without giving any show cause notice, the respondent sealed the shop of the petitioner No.2. It is contended that such action is in clear violation of the policy dated January 01, 2016 wherein it is provided that if a license holder failed to get his licences renewed within the grace period of three months the concerned Deputy Director (VS) would issue a notice to the license holder thereby asking him to get his license renewed within 15 days from the date of issuance of said notice, failing which the concerned shop would be sealed, only with the approval of Zonal Deputy Commissioner.

8. The petitioners have further challenged the Policy, 2016 in as much as the said policy was never presented in the House, or debated by the elected councillors. It is also pointed out that the Respondent, while revising the Policy, 2011, have not shown any basis for arriving at the rates as contemplated by the Policy, 2016.

9. The respondent stated that all petitioners had submitted the respective renewal applications, which have duly been processed, and are only awaiting final approval subject to the petitioners depositing the requisite fee/payment. It is further stated that the petitioners have been running their respective meat shops without proper licenses, which have already expired. Learned counsel for the respondent states that petitioner No.3 had applied for renewal but had not submitted the required

documents and the late renewal fee as outstanding against the rest of the petitioners is as follows:

Petitioner No.1	*Rs.2,68,900/-*
Petitioner No.2	*Rs.3,63,400/-*
Petitioner No.4	*Rs.1,11,400/-*

10. The learned counsel for the respondent contended that the benefit of orders in W.P. (C) 7621/2017, whereby the respondent has been directed to not charge late fee for renewal for the period intervening from January 01, 2016 to March 06, 2017, cannot be granted to the petitioners herein as the orders therein relate only to such persons/applicants who had applied during the said period, and their applications stood rejected or were not acted upon only on account of the absence of NOC from local Councillor in their application, a requirement which was later held to be bad in law, and therefore struck down. She further contended that the petitioners, having failed to apply for renewal for three or more years, cannot be considered under the old policy and as such renewal fee has been demanded in terms of the policy dated January 01, 2016.

11. It is the petitioners' contention that (a) late fee for the period of January 01, 2016 to March 06, 2017 must not be charged, in terms of orders in W.P. (C) 7621/2017; and (b) that in any case, the Policy dated January 01, 2016 cannot be applied retrospectively, and as such, late fee,

if any, must be charged only in terms of the policy in effect at the relevant time.

W.P. (C) 9252/2017, W.P. (C) 8143/2017

12. The facts with regard to these matters in this batch differ only to the extent of dates of expiry of original licenses granted to the petitioners, and those of consequent applications for renewal.

The relevant dates are as follows:

Matter	*Date of Expiry of License*	*Date of Application for Renewal*
W.P. (C) 9252/2017	*31.03.2014*	*12.04.2017*
W.P. (C) 8143/2017	*31.03.2013*	*05.04.2017*

13. Additionally, the petitioner in W.P. (C) 8143/2017 is stated to have fully paid up the amount of Rs. 1,42,900/-, as demanded by the respondent consequent upon the Petitioner's application for renewal of the said Veterinary License.

14. The respondent has stated in its status report that the petitioner's license has been renewed, and the subject shop de-sealed. The petitioner has therefore, filed CM 4483/18 for directions, seeking refund of the excess license/renewal fee so deposited, thereby reiterating the contention that the fees in terms of Policy, 2016 could not have been charged retrospectively.

W.P. (C) 9016/2017, W.P. (C) 7908/2017, W.P. (C) 7930/2017

15. The relevant details of the licenses held by the Petitioners in these matters are as follows:

Matter		*Date of Expiry of License*	*Date of Application for Renewal*
W.P. (C) 9016/2017	*Petitioner 1*	-	*29.06.2017*
	Petitioner 2	-	*29.06.2017*
	Petitioner 3	-	*30.06.2017*
W.P. (C) 7908/2017	*Petitioner 1*	*31.03.2015*	*31.05.2017*
	Petitioner 2	*31.03.2015*	*31.05.2017*
	Petitioner 3	*31.03.2015*	*17.4.2017*
	Petitioner 4	*31.03.2015*	*26.05.2017*
	Petitioner 5	*31.03.2015*	*26.05.2017*
	Petitioner 6	*31.03.2013*	*27.03.2017*
W.P. (C) 7930/2017		*31.03.2006*	*11.04.2017*

16. The factual matrix in these matters is largely the same as that in the aforenoted matters.

17. The petitioners in these matters additionally stated that they had approached the respondent with applications for renewal, but the same

were rejected or not taken on record on account of the missing NOC from the local Councillor.

18. They further alleged that the respondent has adopted a pick and choose policy while levying penalty. It is stated that the respondent has allowed renewal of the licenses without demanding the renewal/late fee in several cases.

19. It is a common contention raised by all petitioners that the respondent could not have given retrospective effect to the Policy, 2016. It is contended that as per the settled law, retrospective application to a policy cannot be given until and unless specifically provided for in the policy, and further, even if provided in the policy, the said provision needs to derive its power from statutory provisions. It is further stated that the Policy, 2016, flowing out of Delhi Municipal Corporation Act, cannot be used to charge late fee/penalty with retrospective effect. Reliance is placed on ***Sri Vijaylakshmi Rice Mills vs State of Andhra Pradesh, AIR 1976 SC 1471***, and ***Govinddas & Ors. Vs Income Tax Officer & Anr., AIR 1977 SC 552***, in furtherance of this contention.

20. It is further stated that the Office Order dated January 01, 2016 and subsequent order dated March 30, 2016 are executive orders and are not legislative in nature. As per settled law, executive orders cannot impose penalty retrospectively. Moreover, the said orders are not based on any statute, and therefore they cannot be given retrospective effect.

21. The stand of the respondent corporation remain the same in all the matters, reiterating that (a) the respective applications have been processed, and are only awaiting the final payment of late renewal fee; (b) the petitioners have been running their respective shops illegally,

despite expiry of their respective licenses; (c) the benefit of orders in W.P. (C) 7621/2017 cannot be granted to such persons whose applications for renewal were not rejected, or otherwise kept in abeyance during the period impugned therein; and (d) the present applications for renewal are to be governed only by the Policy dated January 01, 2016, taking into account the entire period of default, starting from the date of expiry of respective licenses. The respondents have not, in any matter, responded as to the charge of illegal sealing of the petitioners' shops.

22. The learned counsel for the parties, in their oral submissions reiterate their respective stands in their pleadings.

23. The common question which arises for consideration in this batch of writ petitions are the following:-

(1) Whether the renewal rates, and relevant late/penalty fees, as envisaged by the Policy dated 01.01.2016 can be applied for the period prior to the date of enforcement of the Policy; and

(2) Whether the petitioners herein can be granted the benefit of orders in W.P. (C) 7621/2017, and therefore an exemption from paying renewal/late fee for the period from 01.01.2016 to 06.03.2017 can be granted to the petitioners herein.

24. The dates of the license, expiry of the license and the application for renewals have already been referred to above.

25. From the above, it is noted that after the expiry of their respective licenses, the petitioners herein have only applied for renewal of their licenses on dates subsequent to January 01, 2016. It is also

noted, the grant of renewal of license for operating meat shops was regulated by a Policy dated January 24, 2011 as revised on September 02, 2011. The features of the said Policy are as under:-

*"**<u>Renewal of Licenses</u>***

License Validity Period:

1. One Year and valid up to 31st March of the Financial Year

License Renewal Period and Late Fee Charges

1. Valid (non-expired) Licenses can be renewed from the month of March to June without any late fee 93 months grace period will be given for renewal of license).

2. Expired Licenses renewed after 30th June and within 1 year from date of expiry of license.

Late fee Charges Rs.100/- per month will be collected.

3. Expired Licenses renewed after 1 year

Late Fee Charges will be double the Annual License Fee for every expired year + Rs.100/- per month for part months, if any (i.e Late Fee = License Fee x 2 x No of year = 100 X part months), if any

Documents to be submitted for Renewal of Veterinary Trade License

Document Description
Photocopy of license
Photocopy of last renewal receipt
Processing fee receipt
Identify Proof
Medical certificate for sputum and X-ray chest for T.B. stool for worms and for bacteria, E. colo, salmonella, shigella and vibrio cholera
No dues certificates from property tax department MCD

Rental Agreement with Rent Receipts in case of Tenant
Any other document required by MCD

<u>Surrender of Veterinary Trade Licenses</u>

Licenses can be surrendered only after clearing all the license dues, if any. In other words, applicants can file the applications for surrender of license only after clearing renewal dues if any

Charges associated with Surrender of Veterinary Trade Licenses

Application/Processing Fees- Rs.250 + Rs.5.00 (onwards transaction charges will be collected at the time of Submission of Application Form for Surrender of Veterinary Trade License."

26. The said Policy has been superseded by orders issued on January 1, 2016 and March 06, 2017. In terms of Office Order dated March 30, 2016, the respondents have revised the license fee for Veterinary Trade License. The features of the Policy, 2016 differ from the Policy, 2011 for the purpose of these petitions only to the extent of the license/renewal fee, as set forth by Office order dated March 30, 2016, is as under:-

Description of License	Revised fee as approved by the Corporation vide Resolution No. 168 dated 25.02.2016
<u>Meat Shop License</u> 1. Fee for grant of New License 2. Renewal fee 3. Late Fee	 1. Rs.2,400/- 2. Rs.2,400/- 3. Rs.1,200/- fortnightly (15 days)

4. Processing fee for grant license	after expiry of grace period. 4. Rs.300/-

27. The grievance of the petitioners is also that the respondents are claiming the late renewal fee on the basis of the Policy of the year 2016 even for the period prior to coming into force of the said Policy. It is also their case that pursuant to order dated May 31, 2016, corrected and released on August 27, 2016 in W.P.(C) No. 4881/2016, wherein this Court had struck down the stipulation in the Policy, 2016 requiring all applications for licenses to be accompanied by an NOC from the concerned Municipal Councillor, the respondent issued the revised Policy only on March 06, 2017. The petitioners herein therefore seek benefit of order dated August 30, 2017 in W.P.(C) No. 7621/2017, wherein relief had been granted to the petitioners therein inasmuch as they were granted exemption from paying application/license fee for the intervening period from January 01, 2016 to March 06, 2017, during which the respondent had admittedly stopped renewing licenses or accepting renewal fee in support thereof, due to absence of NOC from concerned councilors, and subsequently the challenge to said stipulation in aforenoted writ petition.

28. Further, it is contended that the Policy, 2016 is applicable prospectively, and that there is no provision contained therein allowing retrospective application. In other words, any late fee demanded for the period prior to coming into force of Policy, 2016, i.e January 01, 2016, must be in terms of the erstwhile policy in force, i.e the Policy, 2011.

29. Having noted the relevant provisions of 2011 Policy, it is seen that the registration charges/processing fee/license fee are prescribed as ₹500/-, ₹250/- and ₹750/- respectively. Insofar as renewal of license is concerned, the license validity period is one year and valid up to 31st March of the financial year. The license can be renewed from the month of March to June without any late fee. The expired license renewed after 30th June within one year from the date of expiry of license, a late fee charge of ₹100 per month will be collected. The Policy also contemplate late fee charges shall be double the annual license fee for every expired year.

30. Having noted the difference in the charges/fee in the Policies of 2011 and 2016, apparently the grievance of the petitioners against the claim of the respondent of a higher amount for renewal of licenses, is appealing. But whether the impugned action can be set aside on that ground alone, is the moot question. The answer has to be "No" and the same has to be seen and decided whether the renewal rates and relevant late/penalty fee in terms of orders dated January 01, 2016 and March 30, 2016, would govern the applications for renewals, prior to January 01, 2016.

31. The submission of the petitioners in support of their contention is that the renewal rates and relevant late/penalty fee as contemplated in the office order dated March 30, 2016 cannot be given retrospective effect. Such a plea needs to be accepted for the simple reason that the office orders dated January 01, 2016 and March 30, 2016 clearly stipulate that the revised fee/penalty shall come into force with immediate effect. So, post January 01, 2016 the grant of license

including renewal of license shall be on the terms of the office order dated January 01, 2016 and in terms of fee prescribed in office order dated March 30, 2016. In other words, the same shall have a prospective effect.

32. The concern of the respondent is that the petitioners have, even after the expiry of their licenses, continued to operate the buffalo halal meat shops without renewal.

33. The concern may be justified. The petitioners after expiry of their licenses were running the meat shops, for a considerably long period of time. They cannot take advantage of their own wrong, of running the meat shops without seeking renewal at the appropriate time resulting in loss of revenue to the respondent. There should be some consequence of not seeking renewal. To balance the equities, it shall be appropriate that the license fee / late fee etc. for the period prior to January 1, 2016 is computed as per the rates prevailing then, in terms of policy of 2011 and the same shall be paid, with interest @ 12% per annum, from the dates, the amount (s) became payable.

33. If on the basis of the computation made above, it is found that in a given case the petitioner has deposited the renewal charges (W.P.(C) No.8143/2017) which are in excess, the same shall be refunded to the said petitioner.

34. One of the issues raised in the petitions is that for the period between January 01, 2016 and March 06, 2017, the petitioners should be exempted for renewal/late fee based on the order of the Court dated August 30, 2017 in W.P.(C) 7621/2016. The plea of the ld. Counsel for

the respondent Corporation is that, the petitioners cannot be granted the benefit of the order, as the same relate to such persons / petitioners who had applied during the said period and their applications stood rejected or were not acted upon only on account of absence of NOC from local councilor. This plea is not appealing. A perusal of the order dated August 30, 2017 would reveal that in the said case also, this Court was dealing with facts where the petitioners therein had applied in April – May, 2017, like the petitioners herein. The order relied upon, has not been set aside. At least nothing has been shown in that regard. So it follows, the petitioners are also entitled to the benefit as granted to the petitioners therein, that for renewal of the licenses of the petitioners w.e.f April 1, 2016 till the expiry of the grace period as is permissible, from the date of issuance of office order dated March 6, 2017 no late fee shall be chargeable from the petitioners for the renewal of their licenses, subject to the petitioners making payment of other dues as are permissible as per law or byelaws of the respondent.

35. On payment of the demanded amount, the follow up action shall be taken by the respondent Corporation which shall include de-sealing of the shops. The directions shall be implemented within a period of two months of receipt of the order. The writ petitions are disposed of, on the above terms. No costs.

CM No. 4483/2018 (for refund of the excess amount) in W.P.(C) 8143/2017

In view of the order passed in the writ petition, no further orders are required to be passed in the present application.

<u>CM No. 36692/2017 (stay) in W.P.(C) 8963/2017</u>
<u>CM No. 36879/2017 (Ad interim direction) in W.P.(C) 9016/2017</u>
<u>CM No. 32679/2017 (Ad interim direction) in W.P.(C) 7908/2017</u>
<u>CM No. 32760/2017 (Ad interim direction) in W.P.(C) 7930/2017</u>
<u>CM No. 37799/2017 (stay) in W.P.(C) 9252/2017</u>

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

V. KAMESWAR RAO, J

JULY 02, 2018/*ak*