

\$~13

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

+ W.P.(C) 8373/2018

MOHD. SHAHAZAD

..... Petitioner

Through: Mr. Tanvir Khan and Mr. Irfan
Firdous, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND
ORS.

..... Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan,
Ms. Shiva Pandey and Ms. Rikita
Ganju, Advs. with Dr. Akhilesh
Kumar, Director, Veterinary Dept.,
SDMC.
Mr. A.K. Suri, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **15.07.2019**

1. This petition has been filed by the petitioner with the following prayers:-

“In view of the above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Issue a writ in the nature of mandamus or any other appropriate writ order or direction thereby declare the Policy for grant of license to the meat shop, commissioner's letter No.F-33/Dr. (V.S.)/SDMC/236/C&C dated 27.09.2012 is null

and void as well as directing the respondents to issue the License for carry on buffalo Halal Meat Shop from the shop mentioned above to the petitioner, in the interest of justice.

b) Pass any other or further order as this Hon'ble Court may deems fit and proper, in the interest of justice.”

2. It is the case of the petitioner that the petitioner was having a license for meat and chicken shop, which he was running in the name and style of M/s Azad Mutton and Chicken Shop at the premises Shop No. B-321, J.J. Colony, Hastal, Uttam Nagar, New Delhi. It is his case that he has surrendered the said license, which resulted in the cancellation of same on December 15, 2017. On November 03, 2017, he applied for issuance of license for running a Buffalo Meat Shop at the above address along with the requisite fee. The respondent No.3, which is the Department of Veterinary Sciences issued a letter dated December 08, 2017 to the petitioner asking him to submit several documents including NOC from the Imam of Masjid. On December 22, 2017, he submitted all the required documents excluding the NOC of the Masjid concerned. It is his case that he and his father visited the Imam / President of the Masjid but he did not issue any NOC to the petitioner on one pretext or the other. Finally, vide letter dated January 11, 2018, the respondent No.3 rejected the application of the petitioner for non

fulfilment of the condition.

3. It is the case of the petitioner that the insistence of NOC in terms of policy dated September 27, 2012 for grant of license to run buffalo meat shop is, illegal and arbitrary as the Masjid Committee is misusing the said power and they are issuing NOC to persons who obliges the Committee. It is the case of the petitioner that except the NOC, the petitioner has fulfilled all the stipulations of the policy and as such, could have been granted license for operating a buffalo meat shop.

4. Learned counsel for the petitioner has in his submissions reiterated the case as pleaded in the petition. He has drawn my attention to the policy regarding the location of meat shop at pages 89 and 90 of the paper book, which reads as under:-

1. Considering the sentiments of people visiting the religious places, following will be complied with while granting the new license to the meal shops.

(a) The minimum distance between the meat shop and a Temple/Gurdwara/religious place should not be less than 50 meters from the nearest/starting points/boundary wall of a Temple/Gurudwara/religious place to the meat shop for which licence is to be granted. Only the Temple/religious place of adequate size as mentioned in the Policy confirmed by the Gurdwara Prabandhak Committee, Delhi where general public,

regularly visit to offer their prayers would be considered for applying this condition. This restriction shall not be apply in case of a Temple/Gurudwara/religious place having the size lesser than mentioned in the policy whether or not the public visit to offer their rayers to such Temple / Gurudwara / religious place.

(b) The condition of 100 meters distance will apply in case the meat shop is situated directly opposite of the entry-gate of a Gurudwara/Temple/religious place of any community except Masjid. The condition of 100 meter distance from Masjid will be applicable in case of pork shop only..

(c) The condition of 50 meter distance from Masjid (Mosque) will be applicable in case of licensed pork shop only i.e. licenses to the mutton/chicken/fish and buffalo meat shops can be granted, if they are situated less than 50 meters distance from the Mosque.

(d) If a person is running his meat shop without licence prior to the construction of a Temple/Gurudwara/Mosque/religious place and applies for grant of licence after construction of Temple/Gurudwara/Mosque/religious place, the distance as mentioned in this policy shall be taken into consideration while considering his application for grant of license to the meat shop.

(e) The condition of distance of Temple/Gurudwara/religious place from the meat shop would not be implemented in case of renewal of licenses, which have already been issued before the

date of approval of this policy by the Corporation. In other words, if a Temple/Gurudwara/religious place /Mosque comes into existence after grant of licence to a meat shop, the factor of distance shall not be taken into account at the time of renewal of license of that meat shop. The condition of distance of meat shop from Temple/religious place/Gurudwara shall also not be implemented in the cases where the license issue before approval of this policy have been revoked and are to be re-instated in accordance with this policy.

2. The license for a meat shop to sell the meat of species of animals mentioned in this policy (Except of pork) can be granted if it exists in or around the premises of a Masjid provided that the applicant encloses “ No Objection Certificate” from the Masjid Committee or Imam of the Masjid with the application form.

3. The licences to the meat shops shall be granted in commercial areas, residential areas (confirming / Non-confirming / authorized / unauthorized colonies) subject to the fulfilment of the terms and conditions mentioned in the policy. In residential areas, the licences shall be granted to the meat shops located on the ground floor only up to the maximum size of 20 sq. meters. In commercial areas, the licenses to the meat shops would be granted irrespective of the floor provided that there is an arrangement of water for cleaning and its drainage.

4. The explanation of religious place, as contained under Para No. 16(b) of the Public Notice of 2002-2003 from the

Excise Commissioner, Govt. of NCT of Delhi shall be adopted, which is as follows:-

“For the purposes of Clause (1) above, a religious place would imply a religious place having a pucca structure with a covered area of more than 400 square feet”.

5. He submits that the policy giving unbridled powers to the Masjid Committee / Imam is bad, as it imposes unregulated power in the Masjid Committee / Imam that too at his whims and fancy, decide to whom to issue NOC and to whom to refuse the same. He relies upon the judgment of this Court in the case of ***Delhi Meat Merchant Association v. East Delhi Municipal Corporation of Delhi and Ors. W.P.(C) 4881/2016*** wherein a similar stipulation of the policy requiring NOC from the area Councillor for applying meat trade license was held to be bad.

6. On the other hand, Ms. Pushkarna, learned counsel appearing for the respondent Nos.1 to 3 would submit that the petitioner in the present case was carrying on business of mutton and chicken shop at the address given above. For that purpose, he was issued a license by the respondent Nos.1 to 3. However, he surrendered the same, which resulted in cancellation of license on December 15, 2017. Thereafter, he applied for license for running business of buffalo meat from the same shop. Thereafter, upon examination of the application, submitted by the petitioner, it transpired that

the petitioner had not annexed the required documents. The petitioner was clearly informed that since the shop of the petitioner was situated at a distance of 50 meters from Masjid, NOC from the Imam of the Masjid was required to process the case for issuance of license for buffalo meat at the shop in question and the petitioner being unable to submit the requisite NOC from the Masjid Committee / Imam, wherein his shop is situated, the application of the petitioner is rejected. She justifies the policy having been issued under Section 415 of the DMC Act. The policy for grant of meat license clearly envisages under the head "*location of meat shop*" that the minimum distance between the meat shop and any religious place should not be less than 50 meters from the nearest / starting points / boundary wall of a Temple / Gurudwara / religious place to the meat shop for which licence is to be granted. As per Clause 1(c) of the policy, the licenses to the mutton/chicken/fish and buffalo meat shops can be granted, if they are situated less than 50 meters distance from the Mosque. However, in that eventuality, as per Clause 2, no objection certificate from the Masjid Committee or Imam of the Masjid is required. This condition of no objection is only for meat shops, which are situated within 50 meters of the Masjid has been made keeping in mind the larger interest of the society, so

that peace of the area does not get disturbed due to any objection from any religious body/Masjid in the vicinity. She contest the contention of the petitioner regarding the other shop owners, who are running the buffalo meat shop in the vicinity stating that the petitioner has admitted in the petition that the said shops are running after submitting the requisite NOC from the Masjid in question. She submits that the petitioner will not be required to submit any document from the Masjid in question in case he wishes to run his business of sale of buffalo meat at a distance of more than 50 meters from the Masjid. She states, there is no arbitrariness / illegality in the policy and the same is in the larger public interest.

7. A counter affidavit has been filed by the respondent No.4 i.e Muslim Mumtazima Committee, wherein apart from reiterating the factual aspect, they have denied the stand of the petitioner that no objection certificate to the petitioner was not given for extraneous consideration. It is also the contention of Mr. A.K. Suri, learned counsel for the respondent No.4 in order to keep maintenance of peace in the area, the petitioner had not given the NOC for grant of license for the business of buffalo meat shop. He justified the policy framed by the Municipal Authorities by stating that it has rational behind it. He states that the population residing in the J.J. colony

are followers of different religions having different food habits. They are residing peacefully and there is no need of reopening another buffalo meat shop. Moreover, granting license of buffalo meat will add nuisance to the residents and there is every likelihood of peace getting disturbed. He states that at the time of initial development of the colony, it was orally agreed between the community representatives of different faiths that there shall be only limited number of buffalo meat shops in the colony and the respondent No. 4 being the representative body of Muslim community agreed to the proposal in order to maintain communal harmony in the vicinity. He has drawn my attention to para 11 of the counter affidavit filed by the respondent No.4 to contend that in order to meet the expenses of the newly established mosques, respondent No.4 inducted five tenants in the property out of whom three shops were given to the tenants who are running the business of selling of buffalo meat from their respective tenanted premises adhering to the laws laid down by respondent No.1 to 3. He seeks the dismissal of the writ petition.

8. The petitioner has filed the rejoinder affidavit.

9. Having heard the learned counsel for the parties, the only issue, which arises for consideration is whether the policy framed by the respondent

Nos.1 to 3 is illegal, arbitrary and liable to be set aside only on the ground that the NOC is required to be filed by an applicant seeking license for running a buffalo meat shop. I have perused the relevant provisions of the policy, which have been reproduced above. Suffice it would be to state that, it is only when a licence is sought for running a meat shop at a distance of 50 meters from a mosque, the applicant has to enclose a no objection certificate from the Masjid Committee or Imam of Masjid with the application form. There is no dispute that the petitioner, who had submitted an application for grant of license of buffalo meat is having a shop with 50 meters from the masjid / mosque.

10. The only plea of the learned counsel for the petitioner is that under the guise of the policy, the Masjid Committee / Imam of the Masjid is behaving arbitrarily by giving no objection certificate to known persons for extraneous considerations and as the petitioner is not obliging the Masjid Committee / Imam, the same has been refused to him. This argument of the petitioner does not hold good inasmuch as, no names of the persons in whose favour no objection certificates have been given are mentioned by the petitioner. That apart, during the course of the argument, I have asked Ms. Pushkarna, to inform the Court, how many buffalo meat shop licenses

have been granted to the persons in the vicinity of the Masjid. The answer to the same was given by Ms. Pushkarna after taking instructions stating that three persons have been given the licenses, that too in the year 2001. In other words, the respondent Nos.1 to 3 have not given any license to persons after 2001. This aspect has been conceded by the learned counsel for the petitioner. If that be so, if for the last 18 years, no license has been granted to anyone, the non-grant of NOC or for that matter licence for buffalo meat shop cannot be faulted.

11. I agree with the submission of Ms. Pushkarna that requirement of NOC is prerequisite only if a person intends to operate a buffalo meat shop within 50 meters of the Masjid and not beyond 50 meters. In other words, the right of the petitioner to operate a meat shop has not been curtailed / affected. The petitioner is within his right to run a meat shop from a distance beyond 50 meters of mosque. It is not a case where the right of a person to carry out the business / earn his livelihood has also been curtailed. So, it cannot be said that the policy is arbitrary.

12. Further, the reliance placed by the learned counsel for the petitioner on the judgment *Delhi Meat Merchant Association (supra)* has no applicability in the facts of this case, more particularly, when the petitioner's

right to carry out the business beyond a distance of 50 meters from mosque has not been curtailed.

13. I do not see any reason to interfere in the impugned policy. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

JULY 15, 2019*/ak*