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

\+ W.P.(C) 15135/2021 & CM APPL. 47684/2021

VISHWAKARMA ENGINEERING WORKS ..... Petitioner

Through: Mr. Piyush Rayal, Mr. Aashish Kr. Sagar, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Ms. Salonee Keshwani, Adv for R-3 & 4

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>O R D E R</u>

% **07.05.2024**

1. The Petitioner has approached this Court challenging an Order dated 19.05.2021, 27.05.2021 and recovery notice dated 03.12.2021 passed by the Sub-Divisional Magistrate levying a penalty of Rs.75,000/- for running the factory without valid permission during COVID-19.

2. The facts of the case reveal that the Petitioner was carrying out the business of manufacturing and supplying of molds for single use medical disposal devices. Since the Petitioner was running an essential commodity manufacturing unit, the Revenue Department, GNCTD issued an e-pass to the Petitioner valid from 30.04.2021 to 03.05.2021 stating that the manufacturing unit of the Petitioner is engaged in manufacturing essential commodities and it should be permitted to be functional on COVID-19 duty.

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3. Material on record discloses that the Petitioner tried to renew the license. However, he received an e-mail stating that the Petitioner holds an e-pass inclusive of night/weekend curfew e-pass and the Petitioner need not to re-apply for the same as the validity of the e-pass was automatically extended till 24.05.2021.

4. The Petitioner received a show cause notice dated 17.05.2021 asking the Petitioner to show cause as to why action should not be taken against the Petitioner under the Delhi Disaster Management Act and other applicable laws for violation of COVID-19 related guidelines issued by the DDMA.

5. The Petitioner gave a reply to the said show cause notice on 18.05.2021 placing reliance on the e-pass issued to him by the GNCTD under which the Petitioner unit was deemed as one functioning under COVID-19 duty. The impugned order has been passed stating that no valid explanation has been given by the Petitioner. Thereafter, the second order was passed on 27.05.2021 to initiate criminal proceedings, and a recovery notice has also been sent to the Petitioner. The present writ petition has been filed challenging the show cause notice and the said two orders.

6. Notice was issued in the matter. Counter affidavit has been filed. Paragraph 7 to 12 of the counter affidavit reads as under:-

> *"7. That on 15.05.2021 an inspection at the petitioner's premises was carried out. During the course of inspection no document evidencing the grant of permission to operate the factory had been shown by the petitioner. Furthermore several employees were noticed to be present at the site, evidencing that no social distancing norms were being followed. No e pass of any of the employees was also shown.*

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8. That it is pertinent to mention that the period in question, i.e. May. 2021 was the most severe wave which had been witnessed in the National Capital Territory of Delhi. All requisite steps in order to control the spread of the pandemic were being taken. It is for the said reason lapses like the instant one on the part of the petitioner were viewed severally.

9. That pursuant to the inspect a show cause notice was issued to the petitioner on 17.05.2021. A response thereto was received from the petitioner on 18.05.2021.
10. That the answering respondent no. 3 after taking into account the petitioner's response passed an order on 19.05.2021, imposing a penalty on the petitioner.

11. That on 26.05.2021 the petitioner was found to be operating the factory without availability of requisite e pass of all concerned and neither having deposited the fine amount. The petitioner's premises were accordingly sealed on 26.05.2021.

12. That in the light of the DDMA guidelines issued on 29.05.2021, due to permission for operating the industrial units within closed premises having been granted the petitioner's premises was desealed and he was permitted to carry out his manufacturing activities. "

7. A perusal of the reply shows that action has been taken against the Petitioner on the basis that the Petitioner was not working with a requisite e-pass and that other protocols were not followed. The show cause notice does not disclose that the employees of the Petitioner were not following the protocol and there is no specific contention that Annexure P-2 of the writ

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petition, i.e., the e-pass issued by the Revenue Department, GNCTD, is not valid a pass issued by the Delhi Government permitting the Petitioner for functioning during COVID-19.

8. Resultantly, the show case notice and the subsequent orders are beyond the jurisdiction and are hence quashed.

9. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MAY 7, 2024
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