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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12318/2024, CM APPL. 51222/2024**
VIDHIPAKSHA (NGO)Petitioner
Through: Counsel(appearance not given.)

versus

**DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED. (AN ENTERPRISE OF GOVT. OF
NCT OF DELHI) & ORS.**Respondent

Through: Mr. Mukesh Gupta, SC for MCD, Mr.
Shasi Gupta, Mr. Arnav Gupta, Mr.
Chirag Chaturvedi, Advs.
Ms. Nidhi Mohan parashar, SPC, Ms.
Seema Singh, GP, for R-4.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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04.09.2024

CM APPL. 51223/2024(Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 12318/2024

1. The petitioner in the instant writ petition seeks for issuance of directions to the respondents to initiate immediate necessary action for removal of private tour operators namely, *NEUGO*, *Intercity Smart Bus*, etc who are allegedly using the platform of Maharana Pratap ISBT for arrival/departure, boarding, carrying and dropping passengers and goods, allegedly in an unauthorised manner without having valid licences and permits.



2. For the sake of clarity, the relief prayed in the instant writ petition is reproduced as under:

*“a).issue a writ of mandamus or any other writ directing the respondents to take immediate necessary action for removal of private tour operators namely " neugo", " intercity smart bus", etc, who are using platform of Maharana Pratap ISBT for arrival/ departure, boarding, carrying and dropping passengers and goods in unauthorised manners without having license; and
b. also directing the respondents to take immediate necessary action for removal of ticket counters at arrival gate of Maharana Pratap ISBT of private tour operators namely "neugo", " intercity smart bus", etc, who are using ticket counters platform of Maharana Pratap ISBT for selling tickets in unauthorised manners without having license and permission; and
c). grant such other appropriate writ, direction or order as this hon'ble court may deem fit, in the facts and • circumstances of the case and in the interest of justice, equity and fair trial.”*

3. The petitioner appears to be an NGO and the nature of the grievance which is sought to be agitated in the instant writ petition requires exercise of the power of issuing writ of continuing mandamus.

4. The Court *vide* order dated 12.08.2024 in W.P.(C) 4562/ 2018 in a case titled as ***Ajay v. North Delhi Municipal Corporation through its Commissioner***, while dealing with almost similar controversy, in terms of paragraph nos.13 to 15 has held as under:-

*“13. Recently, this Court vide order dated 29.07.2024 in W.P. (C) 4206/2024 titled as **Jangpura Extension Residents Forum RWA v. Delhi Urban Shelter Improvement Board & Ors.**, while dismissing a petition seeking continuing mandamus has held as under:-*

"6. It is well-established that while the Court is vested with extraordinary jurisdiction under Article 226 of the Constitution of India, the essence of the remedy of continuing mandamus lies in eliminating the uncertainties of adjudication. This remedy empowers courts to supervise, superintend, and intervene to actualize specific socio-economic rights and rectify administrative non-compliance.

7. Examining the prevailing jurisprudence, the remedy of continuing mandamus is invoked exclusively in exceptional



circumstances where persistent executive recalcitrance obstructs the delivery of justice. In such instances, judicial follow-up becomes imperative in accordance with the Court's constitutional and moral obligations to uphold the rule of law.

8. In the present case, the respondent-MCD has taken adequate actions and has demonstrated compliance through Status Report, to which the petitioner has not raised any objections. Therefore, the Court is of the considered opinion that the facts and circumstances of this case do not warrant the issuance of a continuing mandamus, as the respondent's conduct has remained within the scope of their statutory duties and in compliance with the directions of this Court."

14. In any case, if the petitioner has any further grievance, he is always entitled to take up appropriate proceedings under the provisions of Bharatiya Nyaya Sanhita, 2023 or may file a civil suit against the private respondents. Besides that, there exists a Special Task Force constituted as per the directions of the Supreme Court. The petitioner can very well approach the STF as well.

15. The Court, at this stage, does not find any grave violation of any extant rules and regulations and more so, nothing to that effect has been pointed out by the petitioner."

5. In the instant case, the nature of the grievance and the relief claimed therein also seem to be of recurring nature, which requires constant monitoring by the Court. Therefore, under the facts of the present case, the Court is not inclined to entertain the instant writ petition and instead leaves it open to the petitioner to seek any other alternate remedy in accordance with law. The petitioner can approach concerned Magistrate in terms of the provisions of Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023. This Court in W.P. No 11400 of 2024 *vide* order dated 20.08.2024 in a case titled as ***Nilabh Sharma v. Municipal Corporation of Delhi*** has held as under :-

7. A perusal of the aforesaid provision would indicate that the underlying rationale behind the enactment of such provision is to prevent public nuisance. This Section empowers a magistrate to deal



with specific public nuisance and it provides a summary remedy for their removal. The scope and extent of Section 152 of BNSS, 2023 can be understood from the following discussion in the case of **Ratlam v. Vardichan**², wherein, it was held as under:-

“9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. “All power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist.” [**Vivian Grey, Bk. VI Ch. 7, Benjamin Disraeli**] Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.”

8. In **Ratlam (supra)**, the issue which was posited before the Supreme Court for adjudication pertained to the legality of the order passed by the magistrate under Section 133 of CrPC curbing the alleged public nuisance. The Supreme Court, while upholding the order of the magistrate under Section 133 of CrPC to remove the public nuisance having a nexus with the drainage system, took a view that the an order abating the nuisance by taking a timely affirmative action may be justified in the given circumstances. Thus, it was clarified that there is no fetter on the power of the magistrate to wield an authority to remove the public nuisance where the circumstances warrant such an invocation. The relevant paragraphs of the said decision reads as under:-

“13. Section 133 CrPC is categorical, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the Sub-Divisional Magistrate, Ratlam, has before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under Section 133 CrPC is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by Section 188 IPC. Therefore,



the Municipal Commissioner or other executive authority bound by the order under Section 133 CrPC shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133 CrPC read with the punitive temper of Section 188 IPC make the prohibitory act a mandatory duty. 16. In this view, the Magistrate's approach appears to be impeccable although in places he seems to have been influenced by the fact that "cultured and educated people" live in this area and "New Road, Ratlam is a very important road and so many prosperous and educated persons are living on this road". In India "one man, one value" is the democracy of remedies and rich or poor, the law will call to order where people's rights are violated. What should also have been emphasised was the neglect of the Malaria Department of the State of Madhya Pradesh to eliminate mosquitoes, especially with open drains, heaps of dirt, public excretion by humans for want of lavatories and slums nearby, had created an intolerable situation for habitation. An order to abate the nuisance by taking affirmative action on a timebound basis is justified in the circumstances. The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. Therefore, the court, armed with the provisions of the two Codes and justified by the obligation under Section 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 CrPC authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. We see no reason to disagree with the order of the magistrate." (emphasis supplied)"

6. Leaving all rights and contentions open, the instant writ petition stands disposed of, alongwith all pending applications.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 4, 2024/KG