
(2006) 04 DEL CK 0011

In the Delhi High Court

Case No : WP (C) No. 7857 of 2003

Darshan Singh and Sons (HUF)

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 421

Citation : (2006) 129 DLT 416

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : S.N. Kumar and Purnima Maheshwari, for the Appellant; R.K. Yadav, R-1 and Rattan Lal, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Darshan Singh and Sons (HUF) owns property No. E-25, South Extension Part -I, New Delhi.

2. With a view to provide affordable and hygienic accommodation to foreign and domestic tourists, the Central Government formulated a scheme as per which residential buildings could be used for providing boarding and lodging to tourists. It was a term of the scheme that the person availing benefit of the scheme should have his/her residence in the building. The scheme was called "Paying Guest Residential Accommodation".

3. Vide letter No. Trav.14(1)/91 dated 17.12.1993 petitioner obtained permission to use property No. E-25, South Extension Part-I for keeping paying guests. Permission was for a period of 5 years.

4. As per the petitioner when the scheme was in force, the Central Government decided that Government of NCT Delhi should be the regulatory body to grant approval under the Scheme for those who wished to avail benefit under the scheme or wished to continue under the scheme after sanction period lapsed.

5. Petitioner claims that the Government of NCT, Delhi did not frame any guidelines when it became the regulatory body to deal with paying guest residential accommodations. Since 5 years period had lapsed and petitioner did not know when to approach for renewal, it filed a writ petition in this Court which was registered as C.W.P. No. 3303/99. It was disposed of vide order dated 1.8.2002 which reads as under:-

Present: Ms. Hima Kohli for the petitioner Mr. Yogesh Chaudhary for respondent CW No. 3303/99

Let a copy of the policy, based on which the petitioner is to apply, be supplied to the petitioner within a period of two weeks from today. Petitioner shall, within two weeks of the receipt of the policy, make an application. A decision thereon shall be taken by the respondents within four weeks of the receipt of the application. Till the decision is taken by the respondents, interim order shall continue.

The writ petition stands disposed of with these observations. In case the petitioner has any grievance with regard to the decision taken by the respondents, he may seek such remedies as available at law.

6. Petitioner claims that since it did not receive the policy, in absence whereof it could not apply for permission to continuance use of the premises as paying guest accommodation, on 14.11.2002, it wrote a letter to the Tourism Department of Government of NCT, Delhi requesting that copy of the scheme be supplied so that it could seek registration under the scheme. It did not receive any response from the Tourism Department and Therefore sent a reminder on 19.5.2003. Getting no response, on 11.11.2003, another reminder was sent.

7. As per the petitioner, neighbouring property No. E-24, NDSE, Part I was illegally put to use as a "Halwai" shop and dirty water started seeping from said property to that of the petitioner. Hence it was constrained to file a suit for injunction to restrain owner of said property from using the property or carrying on such activity there from which cause damage to the property of the petitioner. Since MCD was the civic body to enforce municipal laws, MCD was imp leaded as a defendant.

8. MCD filed a written statement in which it disclosed that petitioner was guilty of using its premises for running a guest house without permission from the competent authority and without a license and was even challaned on 8.10.2003 before the Municipal Magistrate.

9. As per the petitioner said challan was malafide and was intended to non suit the petitioner.

10. Petitioner pleads that use of a premises for paying guest accommodation needs no license from the MCD. It is additionally pleaded that Government of NCT, Delhi has never intimated the policy under which petitioner could apply for revalidation of the permission.

11. It is accordingly prayed by the petitioner that challan dated 8.10.2003 be quashed and MCD be restrained from interfering in the running of the Paying Guest Residential Accommodation from the writ property.

12. Response filed by MCD is that petitioner claimed to have got the necessary permission from the tourism department, which on enquiry was found to be false and Therefore prosecution was launched.

13. MCD has annexed as Annexure R-1 a tariff card used by the petitioner wherein it is declared that the guest house is approved by the tourism department. MCD has also annexed as Annexure R-2, the policy framed by the Government of NCT, Delhi as per which residential houses could be used as paying guest accommodation.

14. Stand of Government of NCT, Delhi is that Annexure R-2 filed with the counter affidavit of MCD is the notified policy and that petitioner did not apply there under, Therefore, the guest house is being run illegally.

15. Since Annexure R-2 filed by the MCD was a copy of the note submitted to the Council of Ministers containing the policy for approval of the Council of Ministers, on 6.8.2004 an order was passed by this Court directing the respondents to disclose on affidavit, whether the scheme was notified to the public by causing publication in a newspaper. On 3.9.2004 an affidavit was filed by the Additional Secretary, Tourism Department, Government of NCT, Delhi disclosing that on 18.7.2000, 20.7.2000 and 21.7.2000, public notice was issued in Hindustan Times, Indian Express, Times of India, Nav Bharat Times, Jansatta, Jathedar and Daily Milap. First three being in English and the next four being in Hindi.

16. Shri S.N. Kumar, learned senior counsel for the petitioner urged that MCD challaned the petitioner at behest of owner of property No. E-24, NDSE Part I since petitioner had sought a decree of permanent injunction against him to restrain him to use the property in a manner which caused damage to petitioner's building. Idea behind the challan was to project that petitioner was itself a law violator. On the policy relied upon, counsel submitted that Annexure R-2 relied upon by the respondents was a note to the council of Ministers. It was not a public document. Qua the public notice issued in the newspaper, counsel urged that in terms of the order dated 1.8.2002 passed in C.W. No. 3303/99, the respondents were to supply the policy to the petitioner and inspire of letters dated 14.11.2002, 19.5.2003 and 11.11.2003 written by the petitioner to Government of NCT, Delhi, the policy was not supplied and hence petitioner could not be prosecuted.

17. Annexure R-1, filed by the MCD, being tariff chart of the petitioner reads as under:

LEXUS E-25 South Extn. Part -I.

H.O.L.I.D.A.Y. H.O.M.E. Behind Main Market

A PAYING GUEST HOUSE New Delhi -110 049

Phone :2463 1765

2469 1662, 24691663

2469 1664

Fax 91-11-2464 0301

E-Mail :lexus_home@yahoo.com

ACCOMMODATION

24 Hours Power Back-up

APPROVED BY DEPTT. OF TOURISM

EXCLUSIVE FEATURES

ELEGANTLY FURNISHED FULLY AIRCONDITIONED ROOMS WITH ATTACHED BATH TELEPHONE IN EVERY ROOM WITH DIRECT DIALLING FACILITY RUNNING HOT AND COLD WATER IN EVERY ROOM COLOUR TELEVISION WITH MULTI-CHANNEL CABLE

REFRIGERATOR IN EVERY ROOM

LAUNDRY AND DRY CLEANING SERVICE

EXCELLENT INDIAN MUGHLAI, CONTINENTAL AND CHINESE CUISINE

TAXIS AND CARS ROUND THE CLOCK

ALL MAJOR CREDIT CARDS ACCEPTED

FACILITY TO ARRANGE BUSINESS CONFERENCE AND GET-TOGETHER UP TO 50 PERSONS

18. In Paras 2 and 3 of the writ petition, petitioner has pleaded as under:

2. That the Central Government decided as a matter of policy that affordable and hygienic accommodation for both Foreign and Domestic Tourists should be provided with Indian families. The object was that the Foreign Tourist would have an opportunity to stay with and experience the Indian way of life and have a better understanding Indian Culture. With that object the said Government formulated a scheme of granting permission to different families who could provide clean and comfortable accommodation.

3. That under this scheme the petitioner was given permission vide Letter No. Trav 14(1)/91 dated 17.12.93 w.e.f 26.8.1993 under the scheme namely ?Paying Guest Residential Accommodation?. This scheme was different from the ordinary guest houses. Under this Scheme the guests were accommodated where the family was also residing and the guest would share food cooked in the family kitchen.

19. It is the admitted case of the petitioner that the paying guest facilities to be provided as per the scheme formed by the Central Government required the owner of the building to reside in the building and permit guests to be lodged in a manner that guests experienced an Indian way of life. As pleaded by the petitioner in Para 3 of the writ petition the paying guests had to share food cooked in the family kitchen. But, a perusal of the tariff chart shows that petitioner was offering a multi cuisine kitchen. Not only that, petitioner was boasting of facility to arrange business conference and get-together up to 50 persons.

20. It is apparent that right from the inception petitioner was misusing the facility and the permission by running a full fledged guest house/lodging house.

21. The premises are admittedly residential. Section 421 of the DMC Act 1957 reads as under:

421. Eating houses, etc., not to be used without license from the Commissioner:-

(1) No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, keep any eating house, lodging house, hotel, boarding house, tea shop, coffee house, cafe, restaurant, refreshment room or any place where the public are admitted for repose or for the consumption of any food or drink or any place where food is sold or prepared for sale.

(2) The Commissioner may at any time cancel or suspend any license granted under Sub-section (1) if he is of the opinion that the premises covered thereby are not kept in conformity with the condition of such license or with the provisions of any bye-law made in this behalf, whether the licensee is prosecuted under this Act or not

22. Petitioner does not have a license to run a lodging house. Under the garb of the permission obtained from the Central Government to use the building as paying guest accommodation i.e. restricted user, by using the premises as a full fledged loading house, petitioner has violated the initial sanction. The controversy project that due to non supply of policy by Government of NCT, Delhi when it became the nodal agency in the year 2000 petitioner cannot be faulted is Therefore meaningless.

23. Even otherwise, wide publicity was given by Government of NCT, Delhi in the month of July, 2000 that it had notified the Paying Guest Residential Accommodation Scheme. The public notice reads as under:

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

TOURISM DEPARTMENT

5/9, Underhill Road, Delhi-54

PUBLIC NOTICE

Sub: Registration under the Paying Guest

Residential Accommodation Scheme

The Tourism Department of Government of NCT of Delhi has approved the scheme

Paying Guest Residential Accommodation?. Under the Scheme it is proposed to provide hygienic accommodation at reasonable rates both for foreign and domestic tourists. The tourists particularly the foreign ones will get an opportunity to stay with an Indian family, experience the Indian (Local) way of life, discover rich culture, relish exotic cuisine and forge an understanding with Indian culture and traditions. Some of the salient features of the Scheme are as under:

1. The accommodation will be located in a suitable locality and easily accessible from airport and railway station etc.
2. The accommodation to be provided and to be used as Paying Guest Accommodation should not be more than 50% of the bed rooms available in the house subject to a maximum of 4 bed rooms of 8 beds.
3. Drawing rooms, lobby and store rooms etc, will not be taken into consideration while counting the 50% of the accommodation.
4. The Paying Guest will be provided bed and breakfast only and will be charged accordingly.
5. The type of breakfast, tariff charges shall be displayed on a notice board to be provided by the owner of the house within the premises.
6. A register has to be maintained by the owner and necessary entries in respect of the paying guest shall be entered into the register.
7. In case of the foreign tourist, passport details are to be obtained from the tourist in "form C-I" and are required to be submitted to the concerned authorities.

The following essential documents will be attached with the application form :

- a) Proof of ownership of the house.
- b) Proof of residence with his/her family.
- c) To provide at least two references out of which one has to be a gazetted officer.

So far 100 applications have been short-listed for registration. The Scheme is being implemented by Delhi tourism and Transportation Development Corporation, Interested applicants, who are owners of the houses in approved colonies in Delhi, are required to register themselves for approval under the Paying Guest Residential Accommodation Scheme. The application form with terms and conditions is available with the General Manager, Delhi Tourism and

Transportation Development Corporation, 18 -A SCO Complex, defense Colony,
New

Delhi on any working day from 10.00 am to 1.00 pm.

Sd/-

(C.S. KHAIRWAL)

SECRETARY(TOURISM)

24. Public was informed that the application form and the detailed scheme could be obtained from the office of the General Manager, DDTDC. 25. Petitioner may not have been aware of the policy as it may not have seen the public notice. But on 3.9.2004 when the public notice was filed in Court, petitioner became aware of the policy. Strangely, was during the pendency of the writ petition, petitioner took no steps to apply under the scheme.

26. Plea of malafide raised in baseless. If the petitioner is running an illegal trade, it must suffer the consequence.

27. Evidence from Annexure R-1 is the fact that a full fledged lodging house with conference facilities and party facilities for up to 50 persons as also multi cuisine facilities are available at the writ property. This was not permissible under the policy of the Central Government nor under the current policy. Petitioner's claim that it was and is running a paying guest house in the writ property is falsified by Annexure R-1.

28. The petition is dismissed with cost in sum of Rs. 10,000/- to be paid by the petitioner to the respondents 1 and 2 in equal proportion.