

(2003) 10 DEL CK 0066
In the Delhi High Court
Case No : CW No. 3982 of 2001

Deepak Choudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 416, 417

Citation : (2003) 10 DEL CK 0066

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A.S.Chandhiok and J.K. Dembla, Geetika Panwar and K. Arora, for the Appellant; Sujata Kashyap, for the Respondent

Judgement

Badar Durrez Ahmed, J.—Rule. With the consent of the parties, the matter is taken up for final disposal.

2. The petitioner is aggrieved by the show cause notice dated 13.6.2001 whereby the petitioner was called upon to show cause as to why the license granted to the petitioner in respect of a fuel depot at Sector 4 Market, R.K. Puram should not be cancelled. It was specifically mentioned in the show cause notice that the Deputy Director of Estate was of the prima facie opinion that the petitioner had committed the following breach of license granted to him in respect of the premises in question:

" A number of Cars were parked in front of premises. You have been running an automobiles work shop named as J.R. Automobiles, Maruti Suzuki, without permission for changing the trades from specific trade of fuel depot."

3. It is against the issuance of this show cause notice that the petitioner had approached this court seeking a writ, direction or order to quash the notice dated 13.6.2001. It is an admitted position that the premises in question was granted on license to the petitioner by a letter dated 16.1.1996 issued by the Deputy Director of Estates for and on behalf of the President of India. The said license

was with reference to the petitioner's letter dated 1.11.1995. It is also an admitted position that the petitioner is running the business of sale of auto parts from the premises in question. It is the contention of the respondents that this amounted to a breach of the terms and conditions of the license. According to the learned counsel for the respondents the petitioner had been given the license of the premises in question for running a fuel depot and he could only run a fuel depot and nothing else. As he was admittedly running the business of sale of auto parts, he contravened the provisions of the license and Therefore the license was liable to be cancelled and it is on this basis that this show cause notice had been issued and Therefore there was no infirmity with the same. Mr A.S. Chandhiok, the learned senior counsel for the petitioner, however, submitted that the petitioner has not committed any breach of any of the terms and conditions of the license. He drew my attention to the letter dated 16.01.1996 which clearly indicated that the license was granted on the terms and conditions mentioned in the letter itself. Clause (x) thereof is set out hereinbelow:-

" No Atta Chakhi would be permitted to run in the shop. The running of other trades would be subject to the laws and byelaws of the local bodies concerned."

4. Mr Chandhiok submitted that what was prohibited under the license was that the petitioner could not run an "Atta chakki" in the said premises. The running of other trades was only subject to the laws and bye-laws of the local bodies concerned. There was no prohibition as such. Insofar as the running of the business of sale of automobile parts is concerned, the petitioner had obtained a license under Sections 416 and 417 of the Delhi Municipal Corporation Act, 1957, a copy whereof is at page 26 of the paper book. The said document clearly indicates that the Delhi Municipal Corporation has granted a license to the petitioner for running the business of sale of automobile parts. No other business is carried on from the premises in question. Thus, according to Mr Chandhiok, the specific terms and conditions have fully been complied with. The other trade, i.e. running of the business of sale of auto parts has been specifically permitted by the local body concerned that is the Delhi Municipal Corporation. In view of this fact situation, he submits, there is no breach of any of the terms and conditions of the license.

5. Learned counsel for the respondent however, contended that the petitioner was in breach of some of the conditions prescribed by the Manual of Office Procedure regarding the management of Central Government markets in Delhi revised up to 04.01.1992. She drew my attention to clause 4(a) (ix) which is set out herein below:

" If the licensee uses the shop, etc., for a trade other than a trade for which it has been allotted, without the prior written permission/consent of the Directorate of Estates and Local/Municipal authorities whosoever needed."

7. According to the learned counsel for the respondents this clause required that before premises were used for any other trade then prior written permission/

consent of the Directorate of Estates and Local/Municipal authorities would be necessary. In this case, it is her submission, that no prior written permission/consent of the Directorate of Estates was taken and Therefore this condition was violated and the license granted to the petitioner was liable to be cancelled.

8. I am not in agreement with the submission made by learned counsel for the respondents. First of all, the license which has been granted to the petitioner does not refer to any other terms and conditions (i.e., other than those specified in the letter itself). Nor is there any reference to the aforesaid manual. Therefore, the condition prescribed in clause 4(a) (ix) of the said manual would not be applicable to the petitioner. Secondly, on a comparison of clause (x) of the license granted to the petitioner on 16.1.1996 and the aforesaid clause 4(a)(ix) of the manual, it becomes immediately apparent that the words "without the prior written permission/consent of the Directorate of Estates" are conspicuous by their absence in clause (x) of the license dated 16.1.1996. It is clear that while granting the license, the respondents were conscious of the provisions contained in the said manual and despite that they have specifically excluded this portion. The only conclusion would be that the petitioner would not be prohibited to run auto parts business in the premises in question. But he could do so only subject to the laws and bye-laws of the local bodies concerned. In this particular case the petitioner has obtained the permission and license of the Municipal Corporation of Delhi for running the business of sale of auto parts. That being the case, it cannot, by any stretch of imagination, be held that the petitioner was in breach of clause (x) of the license dated 16.1.1996. Furthermore, it is specifically and categorically stated by Mr. Chandhiok, learned senior counsel for the petitioner that the petitioner is not running any business other than the sale of auto parts in the premises in question and in particular is not running any other automobile workshop.

9. In view of these facts and circumstances, it is clear that the show cause notice dated 13.6.2001 which is impugned herein is ex-facie bad and is hereby quashed. This being the case, the respondents are now free to process the application which has been moved by the petitioner for conversion of the premises to free-hold.

10. The writ petition is allowed to the extent indicated. There shall be no order as to costs.