
(1998) 02 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No.375 of 1998

Delhi Rickshaw Chalak/Malik Sangharsh Association (Reg.)

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 01-02-1998

Acts Referred:

Citation : (1998) 02 DEL CK 0020

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. B.L. Chawla, for the Appellant; Ms. Madhu Tewatia, for the Respondent

Judgement

Manmohan Sarin, J.—This writ petition is filed by the petitioner Association, seeking a direction for quashing of the Public Notice No.985/VO/1997 dated 30.12.1997, by which applications were invited by the respondent MCD for grant of 99,000 Cycle Rickshaw Licenses.

2. I have heard learned counsel for the petitioners, who has contended before me that the said Public Notice is a gross violation of the Model Code of Conduct for the Guidance of Political Parties and Candidates, issued by the Election Commission of India. Learned counsel submits that the impugned Public Notice violates the guidelines in respect of item No. 71.04 and 72.5, which read as under:

"0.4 In particular, during the period when elections from a State, or part thereof, become imminent, those in positions of authority tend to undertake some such "administrative" and "welfare" measures as are aimed at perpetuation of power more than observance of rules, procedures and financial properties. Announcements of concessions to specially targeted sections of the electorate in competitive examinations, employment, taxes, business opportunities, trade licenses, etc.etc. which constitute the most common manipulative tactics of the ruling party have become the order of the day."

"5. These restrictions contained in part VII of the Model Code will apply equally to new schemes and also ongoing schemes. But it does not mean that in the case of national, regional and State utility schemes, which have already been brought up to the stage of completion, their utilisation or functioning in public interest should be stopped or delayed. The coming into force of the Model Code of Conduct cannot be given as an excuse for not commissioning such schemes or allowing them to remain idle. At the same time, it should be ensured that the commissioning of such schemes should be done without any fanfare or ceremonies whatever, so that no impression is given or created that such commissioning has been done with a view to influencing the electorate in favor of the ruling party. If, in doubt, a clarification should be obtained from Chief Electoral Officer/Election Commission of India."

3. The submission of learned counsel for the petitioner is that MCD has issued this advertisement with the object of gaining popularity for the party in power.

4. Learned counsel for the respondent MCD, on the other hand, submitted that this is a malafide petition, instituted at the behest of contractors and is a result of interunion rivalry. Learned counsel produced the record before me, from which it is apparent that the question of licensing of Cycle Rickshaws was considered by the MCD as far back as May 1997 and a Subcommittee was constituted to look into all aspects of the matter and make its recommendations. The Subcommittee carried on its deliberations and the same were discussed before the Standing Committee and further recommendations and suggestions were invited from the Zonal Ward Committees.

5. In July 1997, the Subcommittee, after considering all the points with the members of the Subcommittees, Councillors and the recommendations of the Zonal Ward Committees, gave its recommendations to the Standing Committee of the MCD for taking a policy decision in the matter. It was on 22.10.1997 that the Standing Committee of the MCD, vide its Resolution No.204, accepted the recommendations and placed the same before the House of the Corporation for approval. The House of the Corporation approved the new policy, vide its Resolution No.217, for the grant of 99,000 cycle rickshaw licenses under various categories within the jurisdiction of the MCD. The proposal was, thereafter, approved by the Chairman on 30.12.1997 for the grant of one cycle rickshaw license to one adult member of a family against one ration card. It was pursuant to this that on 30.12.1997 the Corporation issued the Public Notice, which is impugned in this writ petition.

6. It would be seen from the foregoing that the process for formulation of the policy, deliberations and consultations, were started well-in-advance in May 1997, when the elections were not looming large. It is also pointed out by learned counsel for the respondent that petitioner had, in fact, complained to the Election Commission of India regarding this Public Notice. An Explanation had been sought by the Election Commission from the respondent MCD, which was duly tendered and is annexed along with the counter affidavit. The Election

Commission, learned counsel submits, was satisfied with the said Explanation and did not proceed with the matter further.

7. Apart from what is stated by learned counsel for the respondent petitioner has not been able to show to me any statutory basis for enforcement of the Model Code of Conduct issued by the Election Commission of India. It would be seen that the body which is entrusted with and seized of the task of implementing the Code of Conduct, i.e. the Election Commission of India, is satisfied with the Explanation tendered by the MCD. In these circumstances, the decision of the Election Commission of India not to take cognizance of the complaint cannot be said to be arbitrary and not based on tenable grounds.

8. The writ petition has no merit and is dismissed.