
(2011) 01 DEL CK 0474

In the Delhi High Court

Case No : Writ Petition (C) 7057 of 2009 and CM Appl 2545 of 2009

General Taxi Stand

APPELLANT

Vs

The Assistant Engineer, Cpwd and Others

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Delhi Control of Vehicular and other traffic on Roads and Streets Regulations, 1980 — Regulation 3
Delhi Police Act, 1978 — Section 28(1)

Citation : (2011) 179 DLT 758

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Jagat Rana, for the Appellant; R.V. Sinha and R.N. Singh for R-1/CPWD, Mukesh Gupta, for R-2/MCD and Rajiv Nanda and Rachna Saxena for R-3, for the Respondent

Judgement

S. Muralidhar, J.—These two petitions raise common questions concerning the General Taxi Stands ("GTS") notified by the Deputy Commissioner of Police (Traffic) ["DCP (Traffic)"] and permitted to operate on land owned by the Land & Development Office ("L&DO").

2. The facts in Writ Petition (Civil) 7057 of 2009 are that on 16th October 1979, an order was passed by the Commissioner of Police, Delhi in exercise of the powers u/s 28(1)(b) of Delhi Police Act, 1978 ("DP Act") stating that the places specified in the Schedule annexed to the said order shall be used as GTS. At Serial No. 3 of the Schedule to the said order was the location: "Near new constructed road at Pragati Vihar Apartments, Lodi Road, New Delhi." It is stated that after the notification of the aforementioned GTS, the Petitioner i.e. Mr. Suresh Chand approached the Municipal Corporation of Delhi ("MCD"), Respondent No. 2 who issued the Tehbazari in his name. It is further stated that a telephone booth was also sanctioned on 22nd December 1979. Suresh Chand claims that he was paying the Tehbazari fees to the MCD till March 2009 and that at no point of time was there any deviation from the terms and conditions

attaching to the aforementioned notification. It is claimed that the GTS has been used for parking and plying taxis.

3. On 8th January 2004, a notice was issued by the L&DO addressed to Mr. Krishan Dutt Yadav stating that the land on which the GTS was located was being unauthorizedly used for commercial purposes and, therefore, was required to be vacated forthwith. In reply to the said notice, Suresh Chand by a letter dated 30th January 2004 pointed out that Krishan Dutt Yadav is his cousin brother and that it was his understanding that the land in question was under the control of the MCD. The L&DO was requested to sort out the matter with the MCD and withdraw the notice.

4. On 26th March 2007, the Assistant Engineer, 3U, CPWD, New Delhi issued a notice to the GTS requiring the immediate removal of the unauthorised taxi stand. On 3rd September 2007, the DCP (Traffic) issued a show cause notice as to why the GTS should not be de-notified under the Regulation 3 of Delhi Control of Vehicular and other traffic on Roads and Streets Regulations, 1980 (1980 Regulations) in public interest. Suresh Chand replied to the show cause notice on 19th September 2007.

5. In the meanwhile, the Petitioner filed Writ Petition (Civil) No. 2836 of 2007 in this Court in which status quo was granted on 23rd April 2007. However, the said petition was withdrawn on 17th February 2009 since it had been indicated in the said writ petition that the taxi stand had been "allotted" whereas it had been "notified". Thereafter the present writ petition was filed in which this Court passed an order granting status quo on 24th February 2009.

6. On 13th January 2010, the Executive Engineer, PWD was directed by this Court to visit the site, prepare a rough sketch plan and also take photographs. This exercise was to show the extent of the land in possession of the Petitioner pursuant to the stay order dated 24th February 2009. Pursuant to the said order, a compliance report has been filed by the PWD along with the site map showing the extent of unauthorised occupation by the Petitioner. The photographs showing the encroachment have also been placed.

7. The facts in Writ Petition (Civil) No. 7336 of 2009 filed by "General Taxi Stand through Shri Yadav Singh Rawat are that by a Notification dated 10th February 1981, the Commissioner of Police notified, inter alia, the taxi stand "on vacant land of Service Road, Opposite UNIDO Hostel Flats (Near Horticulture Nursery and Electric Sub-station), Lodhi Road, New Delhi." It is stated that this space was used for parking and plying taxies. Thereafter, Yadav Singh Rawat approached the MCD who issued the Tehbazari in his name for 4" x 4" taxi telephone booth and 10 x 3 m. parking space for five taxies. The Petitioner claims to have paid Tehbazari fees to the MCD till March 2009. In the first week of April 2007, the Petitioner received a copy of order dated 26th March 2007 from the MCD for removal of the taxi stand. The Petitioner then filed Writ Petition (Civil) No. 2835 of 2007 in this Court in which a status quo order was passed on 23rd April 2007.

The said petition was dismissed as withdrawn on 17th February 2009 with liberty to challenge the order dated 26th March 2007 on the ground that in the said writ petition, it was incorrectly indicated that the GTS had been allotted whereas it had been notified.

8. While directing notice to issue in this writ petition on 25th March 2009, the status quo was directed to be maintained by the parties. Pursuant to the order passed by this Court on 13th January 2010, a site inspection was undertaken and a compliance report has been filed on 22nd January 2010 along with the site plan and photographs showing the extent of unauthorized construction/ parking. An affidavit has also been filed on 3rd December 2009 by the DCP (Traffic) enclosing a copy of the show-cause notice dated 3rd September 2007 issued by him.

9. Appearing for the Writ Petitioners, Mr. Jagat Rana, learned Counsel submitted that both the GT Ss have been operational for nearly three decades and should not be disturbed. He submitted that the Petitioners were not responsible for the other encroachments. It is submitted that the Petitioners have been paying Tehbazari fees to the MCD till March 2009. They have also been paying the bills for the telephones in the GT Ss. There was no occasion for Respondents to issue show-cause notices for their removal. Inasmuch as the halt and go taxi stands are for the convenience of the residents of the locality concerned, denotification of such GT Ss can cause tremendous inconvenience not only to the Petitioners but to the general public as well.

10. Appearing for the Respondent No. 3 Delhi Police, Mr. Rajiv Nanda, learned Counsel referred to the affidavit filed by DCP (Traffic) in Writ Petition (Civil) No. 7336 of 2009 on 3rd December 2009, in which it is clarified that the land owning agency is the L&DO and not the MCD. When a survey was got conducted by area traffic police, it was found that a large number of taxis were being operated in excess of the permissible limit from the said GTS i.e. Opposite UNIDO Hostel Flats (Near Horticulture Nursery and Electric Sub-Station), Lodhi Road, New Delhi. Consequently, a show-cause notice dated 3rd September 2007 was issued. On account of the status quo order passed by this Court on 25th March 2009, no final order could be passed. It is submitted that the GT Ss are nothing more than a halt and go taxi stand and they did not give any legal right to the Petitioners to use it to the exclusion of the other taxi drivers.

11. As regards the Writ Petition (Civil) 7057 of 2009 of Suresh Chand, a detailed affidavit has been filed by the CPWD pointing out that the Petitioner who is not a bonafide taxi operator, managed to encroach upon an area of about 800 sq. yards just outside the Gate No. 3 of the CGO Complex and built two pucca concrete offices of about 100 sq.ft each on the government land adjoining the public road. Further, the Petitioner, who is not even a licenced DLT taxi operator/ driver, had given or sold one of the office space to M/s. Alwar Tourist Transport Service. On enquiries, it was revealed that Krishan Dutt Yadav is running a tourist taxi from this office. The traffic police gathered evidence to show the unauthorized use of the GTS space by the said tourist taxi service. The DCP

(Traffic), by a letter dated 20th August 2008 addressed to the CPWD, stated that by a letter dated 9th August 2007 the CPWD confirmed that the land, on which the GT Ss existed, belonged to the L&DO. Since the CPWD sought de-notification of the GT Ss, a show cause notice had been issued to the operators. The said letter reads as under:

The primary allottee of the above GT Ss submitted their replies. The replies were scrutinized and inspection were also got conducted in which it was found that 20 taxis were operating from the said GT Ss. The GT Ss were also not operating from the allotted site and were encroaching upon the service road. The RWA had also complained about the nuisance being created from the GT Ss. It was found during the inspection that primary applicants/ allottees of above said GTS viz., Yadav Singh Rawat and Suresh Chand, respectively did not possess any taxi in their names. Moreover, temporary and permanent structures were also found to have been built by the operators of the above said GTS, respectively in violation of the terms and conditions of the notification.

The violation of the terms and conditions and the inspection report clearly warrant a denotification of the above GT Ss but since the Hon'ble High Court of Delhi have passed an interim order for maintenance of status quo, we have not been able to take a final decision on it so far. Therefore, the Hon'ble Court may be apprised that the operators of above notified GTS have violated the conditions contained in the notification of General Taxi Stand and could not maintain the norms of GTS and we may be allowed to proceed for denotification.

12. Pursuant to an order dated 13th January 2010 passed by this Court, the CPWD filed an affidavit enclosing a site map and photographs showing the extent of encroachment by the Petitioner.

13. The first issue concerns the very locus standi of the Petitioners in both these petitions. Writ Petition (Civil) No. 7057 of 2009 is by Suresh Chand on behalf of GTS at the Pragati Vihar Apartments and Writ Petition (Civil) No. 7336 of 2009 is by Yadav Singh Rawat on behalf of the GTS located on the service road at Opposite UNIDO Hostel Flats. Neither of the two notifications of the concerned GT Ss mentions the names of any of the taxi drivers. There is no concept of a GTS being notified by specifying the names of the taxi drivers attached to a GTS. A GTS is a "halt and go" taxi stand. There cannot possibly be any claim by a taxi driver to the exclusive right to a GTS. In practice it is an arrangement of mutual convenience amongst a group of licenced taxi drivers that they would have a certain GTS as their "base". However, no individual taxi driver can claim to represent a GTS. A GTS is not a legal entity as such. In fact there is no document issued by the DCP (Traffic) or the L&DO granting any exclusive right to Suresh Chand or Yadav Singh Rawat to use either GTS exclusively. Clearly, neither of the Petitioners has been able to establish any locus standi to maintain the petitions on behalf of the respective GT Ss. These petitions ought to be rejected on this ground alone. Nevertheless, these petitions raise other important issues which require to be dealt with.

14. The notifications by the DCP (Traffic) issued in exercise of powers u/s 28(1) (b) of the DP Act state that the GT Ss have been notified on the vacant space, which is sufficient for parking five taxis in a particular location. This is basically for the convenience of the residents of an area. IN order that they can call for a taxi to come to their residence, the facility of a telephone has been provided at the GTS. The notifications do not give any right of use of the GTS or the telephone to an individual or group of taxi drivers to the exclusion of other licenced taxi drivers. The idea was that if a call was made to the phone installed at the GTS by a resident, one of the taxi drivers parked at the GTS at that point in time would answer that call. The parking of taxis beyond the permissible limit of five taxis at a GTS has to be necessarily considered to be unauthorized in terms of the statutory notification.

15. Over the years, there has been a misconception about the nature of the GTS as well as the agency which should regulate the functioning of such GTS. Although in both petitions, it is stated that Tehbazari fees were paid to the MCD, it is now clear from the stand of the MCD that it is not the land owning agency. It is the L&DO which owns the land on which the GT Ss in question are located. The L&DO was, therefore, well within its rights to seek removal/denotification of the GT Ss once it found that the land has been encroached upon and unauthorized constructions have been erected contrary to the notifications of the DCP (Traffic).

16. The inspection reports filed in this Court pursuant to the order dated 13th January 2010 confirm that there is encroachment in the area around the GT Ss. The DCP (Traffic) has been unable to pass consequential orders pursuant to the show-cause notice issued by him only on account of the status quo orders passed by this Court.

17. Learned Counsel for the Petitioners, apart from the pleading equities and hardship, was not able to show the legal basis for the Petitioners to maintain these petitions as individual taxi drivers and to seek protection against the denotification of the GT Ss. For the reasons already noticed, no one taxi driver can seek to claim an exclusive right to the use of a GTS. It is really meant to facilitate the parking of any taxi, which may be passing by at any point in time. The only restriction is that the GTS cannot accommodate more than five taxis at a time.

18. For the above reasons, this Court holds that Suresh Chand and Yadav Singh Rawat have no right to seek any of the reliefs prayed for in these two writ petitions. Therefore the orders of status quo as far as these individual taxi drivers are concerned cannot be continued any longer. The status quo order dated 24th February 2009 in CM Application No. 2545/2009 in WP (Civil) No. 7057 of 2009 and status quo order dated 25th March 2009 in CM Application No. 3133 of 2009 in WP (Civil) No. 7336 of 2009 are hereby vacated. Consequently, the applications CM Application No. 2545 of 2009 and CM Application No. 3133 of 2009 stand dismissed.

19. The next issue to be considered is whether the DCP (Traffic) should be restrained from denotifying the GT Ss in question. The GTS is obviously meant to fulfil the needs of the residents of the colony where they are located. A decision to denotify a GTS should not be taken lightly as it might deny the residents of the area where it is located the services of the GTS. A GTS is meant to serve the residents. It must however be ensured that the GTS functions within the bounds of the notification notifying it. Whether a GTS should be denotified is for the DCP (Traffic) to decide after assessing the requirements of the residents of an area and ensuring that they are not unduly inconvenienced on account of the denotification of the GTS. There may be other factors that may weigh with the DCP (Traffic) which may be relevant for such a decision. In other words, the GTS may not be denotified only because some of the taxi drivers are misusing the GTS. Once it is clear that an individual taxi driver or a group of them cannot claim exclusive use of a GTS, it becomes incumbent on the land owning agencies, in this case the L&DO, in cooperation with the traffic police, to ensure that the GTS is not misused by any of the taxi drivers at any point in time. If misuse and encroachment are the primary concerns, then in the first instance, the attempt should be to strictly regulate the use of the GTS and not straightaway remove it.

20. In the above circumstances, this Court considers it appropriate to direct that the DCP (Traffic) should, in terms of the present order, pass the consequential order to the effect that neither Suresh Chand nor Yadav Singh Rawat or any other individual taxi driver will have any right to the exclusive use of the respective GTS. The DCP (Traffic) will extend all cooperation to the L&DO to forthwith ensure removal of all encroachments in and around the two GT Ss. The DCP (Traffic) will not pass any final order on de-notifying either GTS in question for a period of three months from today. During this period, the DCP (Traffic) will take effective steps in consultation with the L&DO to clearly mark out the exact parking space for the five taxis in respect of each of the GT Ss. The L&DO will take charge of the telephone attached to each of the GT Ss and make sure that it only has the facility of receiving calls and not outgoing calls. Hereafter, the bills of the telephone will be raised by the MTNL in the name of the L&DO, and will be paid by the L&DO. There will be no exclusive possession of the telephone or the telephone booth by any individual taxi driver or a group of them. The use of the GT Ss will be regulated in the above terms with constant monitoring by the office of the DCP (Traffic).

21. It is further directed that within the next three months, the DCP (Traffic) will ascertain from the residents of the locality if, in view of the changed circumstances brought out by this order, the two GT Ss should be continued. Thereafter it will be open to the DCP (Traffic) to review the situation and pass appropriate orders in accordance with law.

22. The writ petitions are disposed of with the above directions. Certified copies of this order shall be delivered forthwith to the L&DO and the DCP (Traffic) for compliance.