

(2009) 01 DEL CK 0235

In the Delhi High Court

Case No : Writ Petition (C) No. 2488 of 2008, C.M. Application No. 4668 of 2008, W.P. (C) No. 2491 of 2008, W.P. (C) No. 2493 of 2008 and C.M. Application No. 4673 of 2008

Guru Nanak KOD and Others

APPELLANT

Vs

Asstt. Commissioner (South)

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Citation : (2009) 7 ILR Delhi 43

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Raghuvinder Varma, for the Appellant; S.D. Salwan and Mr. Neeraj Choudhary, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—Heard counsel for the parties. In all these writ petitions, common question of facts and law are involved. The writ petitions challenge order dated 15.03.2008 whereby the Kerosene Oil Depot (KOD) licenses issued earlier were cancelled. Briefly the facts are that the petitioners were issued KOD licenses to operate from different premises in Tughalakabad Extension in 1978, 1981 and 1998. License in such cases are issued upon the applicants fulfilling several requirements, including having regard to the extent and location of the business premises. This Court is concerned with a stipulation that the premises should be located in front of a road which is 15 feet wide and accessible for heavy traffic. The relevant guidelines in this regard read as follows;

The proposed premises should be located at a Central Point preferably in a commercial area and easily accessible by heavy vehicles with 15 feet wide road in front of the premises.

2. The petitioners for various reasons applied for shifting of business premises. These were allowed by the respondent department on 01.04.2004, 23.09.2004

and 09.12.2004. The petitioners alleged that after transfer, they were functioning in the new locale for considerable time when suddenly an order suspending their licenses was issued alleging that the business premises did not conform to the prescribed norms. Later, show cause notices were issued and after granting opportunity of hearing, the respondent cancelled their licenses. The relevant part of the cancellation order reads as follows:

Whereas at the time of shifting of the KOD the then Area Inspector and FSO Circle-35 have reported vide their report dated 31.03.2004 that width of the approach road is 15 feet wide. This shows that the shifting of KOD at TA-73/5, Tuglakabad Extn. New Delhi was approved on the basis of false report of Area Inspector & FSO.

And whereas, as per the Deptt. norms the approach road in front of the PDS outlets should be 15 feet wide.

In view of the above, it is clear that the KOD does not fulfill the Deptt. Norms to be eligible for its existence at TA-73/5, Tuglakabad Extn. New Delhi which is in contravention of provisions of Delhi Kerosene Oil (Export & Price) Control Order, 1962.

Now, Therefore, I. R.D. Sharma, Asstt. Commissioner (South), Food & Supply in exercise of powers conferred under clause 6 (3) of Delhi Kerosene Oil (Export & Price) Control Order, 1962, hereby cancel the license granted to M/s Guru Nanak, KOD Lic. No. 4174/98 with immediate effect.

3. Mr. Raghuvinder Varma, Advocate, appearing on behalf of the petitioners contended that the respondent's action in first permitting shifting of premises upon its understanding that the shop was located in front of 15 feet wide road and allowing the petitioners to function there and later on alleging that the premises did not satisfy the norms is arbitrary. The learned counsel also relied upon an answer to a query under RTI act, 2005 received from the MCD to the fact that the shop is located in front of 4.65 meter wide road. It is submitted that the impugned cancellation order is, therefore, unreasonable and cannot be sustained.

4. Mr. S.D. Salwan, appearing on behalf of the respondent relied upon averments in the counter affidavit. He pointed to the lapses by the departmental authorities at the initial stage when the licencees were permitted to shift premises. It was submitted that the records available with the department show that the road has a width of 9 feet 1 inch from wall-to-wall at entry point and at another point, a width of 13 feet 3 inches. He relied upon the report (filed in W.P. 2493/2008). The same contains three tables describing the nature of the road. The said three tables are extracted below:

5. The above discussion would show that the writ petitioners in these cases are holders of KOD licences since long. Apparently, in 2004, for various reasons which found favour with the respondents, they sought for shifting of the business

premises to another location where licenses could be operated; the respondent recorded satisfaction and allowed these requests in 2004-05. It is not in dispute that the petitioners continued to function in the new premises till 2007. The respondents appear to have inspected the KOD outlets on 24.08.2007 and determined that the premises did not conform to the standards prescribed. Based on that understanding, licenses were cancelled after granting hearing.

6. The petitioners, no doubt, in a sense are right in contending that the respondents should have satisfied themselves about the feasibility of their carrying on the business in the premises, which they were permitted to in 2004-05. That they did so for more than two years is not in dispute. Yet, the concerns which ultimately led to cancellation of the KOD license cannot be overlooked or glossed over by the Court. The respondent in its report has indicated that at the point of entry into the locality, the concerned road has a width of 9 feet; at another point, according to the same report, road is 13.4 feet from wall-to-wall although the same road appears to be 17 feet from wall-to-wall somewhere near the vicinity of petitioner's premises. The public interest consideration which undoubtedly, weighted with the respondent in withdrawing/cancelling the petitioners' licenses in such circumstances cannot be held arbitrary. The respondents are right in contending that in event of emergency, the movement of fire-tenders would be hindered. All the petitioners are located on the same plot of land. In the circumstances, the fact that at a prior point of time, the respondents allowed them to shift to these premises cannot be construed as an impediment for shifting their entire decision. Such review, based on relevant considerations, is neither arbitrary nor unreasonable.

7. The above observations should normally have been dispositive of all these writ proceedings. Yet since the petitioners are holder of KOD licenses for long and in two cases at least for more than two decades, it would be necessary that the respondent considers the feasibility of permitting shifting to other premises, in accordance with their prescribed norms. A decision shall be taken after due consultation with the petitioners in these cases, but in accordance with the prevalent policy norms, applicable in this regard, within eight weeks from today.

8. The writ petitions are disposed of in the above terms. Order dasti.