
(2011) 09 DEL CK 0113

In the Delhi High Court

Case No : Criminal M.C. 3429 of 2010 and Criminal M.A. 16938 of 2010

Logistics India and Others

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 416, 417, 430

Citation : (2011) 8 AD 697 : (2011) 4 JCC 2722

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sima Gulati, for the Appellant; Mukesh Gupta, APP for State and Jeevan Singh, F.I. MCD, for the Respondent

Judgement

Mukta Gupta, J.—The Petitioners are one of the many Carrying and forwarding agents of M/s Hindustan Lever Ltd. which is marketing ice cream and frozen desserts under the brand name of "Kwality". M/s. Hindustan Lever Ltd. has entered into agreements with various companies owning cold storages for using cold storage services on payment of service charges. As a carrying and forwarding agent, the Petitioners are required to store the products in cold storage. Thus, one such cold storage facility owned and maintained by M/s. Kold Hold Industries Pvt. Ltd. for storage and further distribution of the said product was taken on lease by the Petitioner firm. M/s. Kold Hold Industries Pvt. Ltd. has been issued a license as required under the Delhi Municipal Corporation Act (in short the DMC Act). The Respondent instituted a Criminal Complaint No. 917/08 u/s 416/417/430 DMC Act against the Petitioner for running a cold storage without the license wherein the Petitioners were summoned. Hence the present petition.

2. Learned Counsel for the Petitioner contends that prior to the present challan, two challans being challan case Nos. 272904 and 335405 were filed against the Petitioner for the same allegations in the years 2006 and 2008 which were dismissed for the Learned Municipal Magistrate holding that the Petitioners did

not require any license, as a valid license has been issued to M/s. Kold Hold Industries Pvt. Ltd. which was running the cold storage facility. Despite earlier two challans being dismissed, the Respondent has again initiated prosecution of the Petitioners for violation of Sections 416/417/430 DMC Act.

3. It is further contended that the requirement of the license is for the premises and not for the individual running the premises. It is not the case of the Respondents that there was no license issued for the premises in question. The present is at best a case of subletting which is not prohibited under the Act and, thus the present proceedings against the Petitioners are also liable to be quashed.

4. Learned Counsel for the Respondent on the other hand contends that the Petitioners do not have a valid Municipal license and the license issued is of the premises and the Petitioners are not permitted to use the said license which has been issued in the name of some other person/ company. Whenever electricity, power load etc. are required to be used a factory license is required u/s 416 of the DMC Act. The Petitioners are running the cold storage contrary to the terms of the license and hence they are liable to be prosecuted.

5. I have heard learned Counsel for the parties. The short issued in the present petition is whether the license issued u/s 417 of the DMC Act is issued in the name of the individual/ company or the premises. Section 416 and 417 reads as under:

416. Factory. etc., not to be established without the permission of the Commissioner:

(1) No person shall without the previous permission in writing of the Commissioner, establish in any premises or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power.

(2) The Commissioner may refuse to give such permission, if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the neighbourhood thereof, or would be a nuisance to the inhabitants of the neighbourhood.

417. Premises not to be used for certain purposes without license:

(1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, namely:

- a) any of the purposes specified in Part I of the Eleventh Schedule;
- b) any purpose which is, in the opinion of the Commissioner dangerous to life, health or property or likely to create a nuisance.
- c) keeping horses, cattle or other quadruped animals or birds for transportation,

sale or hire or for sale of the produce thereof; or

d) storing any of the articles specified in the Part II of the Eleventh Schedule except for domestic use of any those articles.

Provided that the Corporation may declare that premises in which the aggregate quantity of articles stored for sale does not exceed such quantity as may be prescribed by bye-law's in respect of any such articles shall be exempted from the operation of Clause (d).

(2) In prescribing the terms of a license granted under this section for the use of premises as mills or iron yards or for similar purposes the Commissioner may, when he thinks fit, require the licenses to provide a space or passage within the premises for carts for loading or unloading purposes.

(3) The Corporation shall fix a scale of fees to be paid in respect of premises licenses under Sub-section (1):

Provided that no such fee shall exceed five hundred rupees.

6. A perusal of Section 416 DMC Act shows that no person is permitted to establish in any premises, any factory, workshop or trade premises wherein it intends to employ steam, electricity, water or other mechanical power. Thus, the emphasis is on the permission to carry on the work employing such power in the premises and not by the individual. This interpretation is further fortified by a plain reading of Section 417 DMC Act which prohibits a person from use or permit to be used any premises without or otherwise than in conformity with the terms of the license granted by the Commissioner in that behalf. Thus, Section 417 expressly permits the premises to be used by some other person/ company though in conformity with the terms of the license granted. A perusal of Clause 6 of the license agreement copy of which has been annexed with the reply affidavit of the Respondent shows that the license issued in the name of a person, place or premises will not be transferred except without the written permission of the Commissioner. Thus, the license itself envisages that it can be issued in favour of the premises. Thus, once there is a valid license of the premises, it cannot be held that the Petitioners violated the terms of the license and were thus liable to be prosecuted for offences punishable u/s 416/417/430 DMC Act.

7. In view of the aforesaid discussion, the Criminal Complaint No. 917/08, the order summoning the Petitioners and the proceedings pending before the Learned Metropolitan Magistrate (MCD North-West) are quashed.

8. Petition and application are disposed of. Trial Court Record be sent back.