

(2015) 08 DEL CK 0219

In the Delhi High Court

Case No : Writ Petition (C) No. 4572 of 2007

Manushi Sangathan

APPELLANT

Vs

Govt. of Delhi and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Citation : (2015) 10 AD 6 : (2015) 234 DLT 35

Hon'ble Judges : S. Ravindra Bhat, J; S. Muralidhar, J

Bench : Division Bench

Advocate : Indira Unninayar and Narayan Krishan, for the Appellant; Suresh Kumar Yadav, ACP, Vijay Singh, TI and Rajeev, SI, Deeksha Kakkar, and Rajesh Jain, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. This order will dispose of the notice issued to the Commissioner, North Delhi Municipal Corporation ("North DMC") on 30th September 2014 by this Court, asking him to show cause why contempt proceedings ought not to be initiated against him.

2. The background to the order is that this Court has been monitoring the implementation of directions issued by the Full Bench of this Court in a judgment dated 10th February 2010 on the issue of plying of cycle rickshaws in Delhi. One of the issues that have been taken up for consideration is the provision of non-motorized vehicle (NMV) lanes on some of the main carriageways in Delhi. During the hearing on 28th September 2012, the Court's attention was drawn to the problem of congestion in the Chandni Chowk area. It was pointed out that no traffic management plan was operational in that area. The Court was informed by learned counsel for the Government of NCT of Delhi (GNCTD) that a meeting of the Delhi Police with the Petitioner, the representatives of the Municipal Corporation of Delhi ("MCD") the Chandni Chowk Vyapar Mandal ("CCVM") and others would be held for the development of a plan.

3. At the next hearing on 12th October 2012, the Court was shown the minutes of the meeting held on 22nd September 2012. The suggestions made by the CCVM were recorded in those minutes. It revealed that a multi-level parking facility constructed by MCD on Parade ground (near Chandni Chowk) had been completed but was yet to be made operational. MCD was asked to report to the Court on the next date as to when the said parking facility would be made operational.

4. On 18th October 2012 the Court was informed that the said parking facility had been inaugurated "only once, in respect of the surface facility" and that "the underground facility has not been completed and commissioning is yet to be done". The Court called for a status report. The MCD was asked to communicate the date by which the commissioning would take place. The Court was informed by Ms. Madhu Tewatia, learned counsel for MCD, that the surface parking would be made available to the public from 1st November 2012.

5. On 9th November 2012, the Court was informed that the Parade Ground parking facility would become operational by the end of January or in February 2013. On 25th April 2013, the Court was again informed that the multi-level parking at the Parade Ground would become operational in three weeks" time. On 29th April 2013, it was stated that it would be commissioned by 15th May 2013.

6. On 24th May 2013, Ms. Tewatia stated that levels 1 and 2 of the multi level parking had been commissioned and had become operational. This was disputed by Mr. Sanjeev Ralli, learned counsel for CCVM. Ms. Tewatia further stated that third level would be commissioned within two weeks.

7. On 23rd September 2013, the Court was informed that the multi-level parking facility at Parade Ground had been fully commissioned and was functional. The Court was then informed by Mr. Ralli that the surface parking area of the Parade Ground parking facility was proposed to be given on temporary allotment basis for the annual Ram Leela celebrations. Mr. Ralli also drew the attention of the Court to a public notice issued by the Delhi Police issuing instructions for ensuring the unhindered use of public spaces. Ms. Tewatia assured the Court that this would not in any way hamper the use of the basement parking facility at the three levels which had already been commissioned. The Court then issued the following directions:

"The MCD and the Delhi Police are hereby directed to ensure that that basement parking at the Parade Ground is fully functional during the festive season and that there is no impediment in its usage during the Ram Leela celebrations".

8. Subsequent to the above hearing, the DLC filed an application being CM No. 13874 of 2013 seeking variation of the order dated 23rd September 2013. This Court found the averments in the said application to be objectionable. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the Applicant DLC sought leave to withdraw the application with liberty to file a fresh application. The application

was dismissed as withdrawn with liberty as prayed for.

9. On 4th October 2013, Ms. Tewatia, learned counsel for MCD, stated that she would obtain instructions on whether any formal order had been issued permitting the DLC to use the surface parking area at the Parade Ground facility for the Ram Leela festival.

10. On 7th October 2013, while dealing with DLC's fresh application being CM No. 14000 of 2013, the Court was informed that North DMC had in fact issued a letter on 12th August 2013 to the DLC granting it temporary licence to use surface area of the Parade Ground parking facility for holding the Ram Leela festival. The Court was informed that the President of India would be the Chief Guest at the said festival on 13th October 2013. The DLC prayed that the underground parking be shut down for the entire period of the festival. The Court noted that the temporary licence granted by North DMC to the DLC was silent about shutting down of the underground parking facility during the festival. The Court in its order dated 7th October 2013 observed "In the circumstances, the only modification that the Court considers appropriate to be made to its order dated 23rd September 2013 is to direct the concerned authorities i.e., Delhi Police and North DMC to ensure appropriate security arrangement for the visit of the President of India during the festival". The Court further directed that if the normal security drill for the visit of the President required the entire parking facility to be shut down, then it would remain closed only for the period of the said two days. It was made clear that the order dated 23rd September 2013, was being "modified to the above limited extent".

11. This issue resurfaced a year later when on 26th September 2014 the Court was informed that North DMC had again permitted "on a temporary allotment basis, the use of the surface parking area of the Parade Ground for the entire duration of the Dussehra festival" i.e., from 25th September 2014 to 5th October 2014, to the DLC. The Court directed Ms. Tewatia to produce a copy of the said allotment letter. The Court was assured by Mr. Rajiv Nanda, learned counsel for the Delhi Police, that the underground parking at the Parade Ground, at all three levels, would be available for use without any obstruction. The Court directed the Delhi Police "to ensure that no visible signs preventing use of the underground parking facility at the Parade Ground are allowed to be retained on that site".

12. At the hearing on the 30th September 2014 the Court was still not shown the copy of the allotment letter. The Court noted that from a conjoint reading of the orders dated 23rd September 2013 and 7th October 2013, "both surface and the underground parking facility" in the Parade Ground could not be allotted for any other use. It was observed that the parking facility was commissioned at public expense and only after constant monitoring by the Court. The Court was again informed that for the visit of the Prime Minister and the President to the Ram Leela celebrations on 3rd October 2014, the entire parking facility would have to be shut down on 2nd and 3rd October 2014. The Court having been presented with the fait accompli permitted shutting down the facility for the said two days

but directed both North DMC and the Delhi Police to ensure that it was made fully operational in all respects on the very next date.

13. The Court formed a prime facie view that North DMC had flouted the earlier orders dated 23rd September 2013 and 7th October 2013 with regard to the allotment of the surface parking at the Parade Ground and this violation came to light only at the hearing on 28th September 2014. It is in those circumstances that the aforementioned notice was issued to the Commissioner, North DMC asking him to show cause why contempt proceedings ought not be initiated against him. The Commissioner was asked to remain present on the next date with the relevant records pertaining to the allotment of the surface parking facility for the Ram Leela celebrations.

14. The Commissioner, North DMC filed an application seeking exemption from personal appearance. This application was rejected on the next date i.e., 30th October 2014. He was again asked to remain present on the next date with the records.

15. Mr. Dharmender Kumar, Deputy Commissioner of North DMC filed an affidavit on 7th October 2014, wherein it was stated, inter alia, that the copies of the orders dated 23rd September 2013 and 7th October 2013 had not been brought to the notice of the Commissioner/competent authority at the time permission was accorded for use of the Parade Ground parking for the Ram Leela festival. He stated that the said orders were not in his knowledge, otherwise a specific condition to the effect that "no obstruction or impediment would be created while using the Parade Ground parking for the Ram Leela festival" would have been incorporated in the allotment letter and North DMC would have ensured that the access to the basement parking was not blocked or hindered in any manner.

16. Enclosing a copy of the allotment letter dated 22nd August 2014, it was stated in the affidavit of Mr. Dharmendra Kumar that the said letter did not permit shutting down of the underground parking and in fact no orders had been passed in that regard. It was stated that "permission to use only the surface parking had been granted". It was again stated in para 4 of the affidavit that "neither the Court orders nor the factum of blockage of the multi level parking was brought to the notice of the deponent or the Commissioner otherwise action would have been taken by the Department/Commissioner".

17. It was then claimed by Mr. Dharmendra Kumar that on receipt of the Court orders immediate orders were issued to ensure that the multi level underground parking remains open and unhindered for parking purposes. Regarding the barricades at the entry point of the basement parking it was claimed that this was not done at the instance of the North DMC. In para 7 the deponent tendered unconditional apology in the matter and assured the Court that "such a lapse shall not occur in future". In para 9 it was stated that temporary allotment was not with an "intent to violate the orders of the Court and was made bona fide in the premises explained above".

18. This was followed by another affidavit dated 30th October 2014 of Mr. P.K. Gupta, Commissioner of North DMC. He has stated that, on receiving the Court's order dated 30th September 2014, he had called for the relevant file. As regards the letter dated 22nd August 2014, he noted that this had been issued under the orders of the Deputy Commissioner, City Zone after taking a "no objection" certificate from the Deputy Commissioner, R.P. Cell, North DMC. He stated that "at no point of time the file was shown to the deponent. This provisional allotment grants permission to use the ground parking but does not permit the shutting down of the underground parking facility during Ramleela Festival or use thereof by the Ramleela Committee."

19. In his affidavit the Commissioner stated that he sought explanations from the Deputy Commissioner (DC) and was informed that neither were the orders dated 23rd September 2013 and 7th October 2013 in the knowledge of the latter nor were these available in the relevant department file. It was further stated that the communications received from the counsel of North DMC available in the case file "did not show or indicate that this Court had restrained the NDMC for making allotment of the surface parking and the NDMC had been directed to ensure free access of the basement multi level parking." It further transpired that "parking facility had been blocked by the police and not under the orders of the NDMC". The Commissioner stated that their counsel acknowledged this lapse and had expressed her deep apologies for not bringing the said orders to their notice. It further stated that "in case the court orders were in the knowledge of the department the deponent would have positively placed the matter regarding according permission before this Hon'ble Court for seeking appropriate directions and would have ensured that temporary allotment was granted subject to the specific condition that no obstruction or impediment shall be created by the allottee while using the surface of the parade ground parking for the Ramleela festival". The said affidavit ended with the deponent stating that he "feels remorse for what has happened and hereby tenders unconditional apology in the matter" and assuring the Court that "such a situation shall not occur in future".

20. The Court has heard the submissions of Ms. Madhu Tewatia, learned counsel for North DMC who also appeared on behalf of the Commissioner. A perusal of the files produced by the North DMC before the Court shows that on the receipt of the application of the DLC for permission to hold the Ram Leela at the Parade Ground from 16th September 2013 to 15th October 2013, an LDC in the City Zone prepared a note stating that the said Department has no objection to the same provided the R.P. Cell also conveyed no objection for holding the Ram Leela and managing the parking "according to permission being granted by the competent authority." It was also stated that this permission was subject to the police conveying no objection. It was noted that the Horticulture Department, City Zone had already conveyed no objection to the Digamber Jain Panchayat (DJP) for the Paryushan Daslakshan Parv with effect from 6th September 2013 to 22nd September 2013 on the same ground. It was stated that DLC had to make "its own adjustment" with the DJP.

21. To the Court it appears from a perusal of the relevant file that no thought was extended at any level of decision taking, including at the level of the Commissioner, about the allotment of a public parking facility for the Ram Leela celebration despite the fact that the parking facility had been constructed at considerable public cost and the fact that this Court had to pass several orders for its commissioning. There is no noting in the file to indicate whether North DMC was conscious of the orders passed by the Court from time to time.

22. The Court has also been shown another file of North DMC concerning the main case in which orders have been passed by the Court from time to time. Ms. Tewatia drew our attention in the said file to a letter dated 24th September 2013 addressed by her to the Chief Law Officer of North, South and East DMCs. The letter is marked "Very Urgent". The said letter appears to have been received by Chief Law Officer of the North DMC on 26th September 2013. Ms. Tewatia stated in the said letter as under:

"As regards the surface parking being given for Ram Lila celebration, the court has lifted the stay orders and has directed that in the event of the surface parking being given for Ram Lila celebrations, then it shall be ensured by the MCD that the access to the basement level parkings (-1 -2 & -3) is not stopped or obstructed in any many whatsoever and shall continue to remain operational/ accessible to the vehicles coming to park their respective vehicles."

In case, there is violation of the said direction, the court shall take stern action in regard to the erring officials/contractor. The spirit of the order is that the ground to be used for Ram Lila should remain independent and there should be no linkage with the basement level parking in terms of parking facility being made available to the vehicles or causing impediment in the Parking".

23. The above letter does not accurately paraphrase the order dated 23rd September 2013. The Court had not, by the said order, "lifted the stay orders". Ms. Tewatia does not appear to have subsequently forwarded a copy of the Court's order to her client. Thirdly, if the said letter was received on 26th September 2013 itself, then the stand of Mr. Dharmender Kumar and Mr. P.K. Gupta that no one in the North DMC knew of the Court's order dated 23rd September 2013 is not correct. There are endorsements on the second page of the letter dated 23rd September 2013 written by Ms. Tewatia with seals of the Horticulture Department and City Zone of the North DMC, each bearing a date of late September or early October. This shows that the letter did travel further from the Chief Law Officer. However, there is no indication of the responses to the said letter.

24. On other factor that requires to be noted is that the DLC was aware of the order dated 23rd September 2013. When it applied to the North DMC for permission to hold the Ram Leela festival, it must have been informed by someone in the North DMC of the said order. That is how DLC filed CM No. 13874 of 2013 seeking modification of the order. This makes it even more difficult to

believe that the officials of North DMC were not aware of the said order.

25. Turning to the next order dated 4th October 2103, it should be noted that Ms. Tewatia had stated in her said letter dated 23rd September 2013 that the case would be next listed on 4th October 2013. On that date Ms. Tewatia told the Court that she would "in the meanwhile obtain instructions to ascertain whether any formal order has been passed permitting the applicant to use the surface parking area for the Ram Leela festival". When it is evident from the file that the permission was granted way back on 22nd August 2013 itself, the above submission of Ms. Tewatia is not understandable. Assuming she had not by then been apprised by the North DMC of the factual position, there is nothing to indicate that she was so apprised at any time after receipt of her letter.

26. After the hearing on 4th October 2013 when Ms. Tewatia sought time to seek instructions, she ought to have written a letter to her client in that regard. Certainly she would have talked to someone in the North DMC at least. Neither is there any such letter of hers in the files, nor is there any noting in the file about her seeking such instructions. This again is not understandable.

27. The statements made in the affidavit of the Commissioner North DMC that his DCs were not aware of the orders of 23rd September 2013 or the subsequent order of 4th October 2013 is not convincing. Both the said orders and the subsequent order dated 7th October 2013 were passed in the presence of Ms. Tewatia. The order dated 23rd September 2013 was modified only to the limited extent of allowing the shutting down of the parking facility for two days during the President's visit. Specific directions were issued to both the Delhi Police and North DMC regarding security arrangements for the President's attendance at the Ram Leela festival. In the circumstances, the Court finds it difficult to comprehend why and how the Court's orders dated 4th and 7th October 2013 would not be conveyed to the North DMC by its counsel.

28. It is evident that the Chief Law Officer of North DMC was apprised of the order dated 23rd September 2013 and was also told that the next date would be 4th October 2013. No effort was made by him or the DC of the RP Cell or the DC of the Horticultural Department, City Zone to whom the letter dated 23rd September 2013 travelled, to ascertain what had happened on that date or the next dated in the Court. In any event the orders are available on the High Court website. It would not have been difficult for the officers of the North DMC, if they were diligent, to have made themselves aware of the orders of the Court.

29. One year later, when the DLC applied for permission to hold the Ram Leela festival at the Parade Ground, the same story repeated itself. On the same file again, an LDC prepared a note stating that the DLC had applied for grant of permission for holding Ram Leela at the Parade Ground from 5th September 2014 to 4th October 2014 and noted that "same is managed by R.P. Cell/NDMC 1/4 of the ground is still with horticulture department city zone and 3/4 of the ground with multilevel car parking is with R.P. Cell." The City Zone stated that it

would have no objection if the R.P. Cell provided NOC. This was done routinely. The note thereafter simply states that "if the site is booked by the Horticulture Department as per practice/procedure, R.P. Cell has no objection".

30. In other words, neither of the two wings of the North DMC seem to have had any problem with the parking facility being used for the Ram Leela celebration, even for a whole month. No thought was given to the fact that the parking facility was meant for public and that allotting it for any other purpose would entail inconvenience and loss of revenue. There is nothing in the note on file to indicate that the attention of the authorities was drawn to any of the orders passed by the Court in relation to the allotment made in 2013. It was simply stated "the Parade Ground was also booked previous year and this is a religious programme".

31. There are three levels of basement parking at the multi-level parking facility at Parade Ground. It was evident from the experience during the Dussehra festival in 2013 that giving of the surface level parking space for holding the Ram Leela celebration would block access to the basement levels. It required the Court's intervention in 2013 to ensure unhindered access to the basement level parking. It is inexcusable that despite this the North DMC did not take corrective action for 2014. It is only after this Court on 30th September 2014 expressed its displeasure that a circular dated 30th October 2014 was issued stating that in light of the orders of this Court dated 23rd September 2013 and 7th October 2013 it had to be ensured that there is no restraint of access to the basement levels of parking.

32. It is disconcerting to note that while the Court, the Petitioner and CCVM are concerned that the multi-level parking at Parade Ground constructed at considerable cost for the benefit of the public should not be misused for any other purpose, the officers of the North DMC entrusted with the responsibility of properly maintaining and managing the facility do not appear to exhibit any such concern. There is an unacceptable routineness with which the applications for permission to use the parking facility for other purposes have been processed. It should not require a Court to remind the administrators what their priorities should be. Chandni Chowk and its surroundings are gripped in an endemic traffic congestion problem. The multi level parking facility was constructed with the intention of alleviating this in some measure. Blocking access to the surface parking, which is an integral part of the complex, would mean denial of the facility to several users, who would be then forced to add to the chaos in the streets. This basic though process has eluded the North Delhi Municipal Corporation and its Commissioner, who never paused to consider the impact of the permission given - firstly in violation of this Court's order and secondly, the resultant hardship and inconvenience. The Court, therefore, cannot but express disapproval of the indifference of the officers of the North DMC, headed by the Commissioner, to the need to be accountable to the public for their actions.

33. The Commissioner has expressed his unconditional apology. The Court would

like to remind the North DMC and its Commissioner of their duty and responsibility to strictly comply with and follow up on the Court's orders. The Commissioner, North DMC is directed to forthwith put in place a mechanism whereby a responsible officer of the North DMC will remain present at all the hearings of this case in Court and report forthwith to the Commissioner about the proceedings and the directions issued by the Court from time to time. This will be irrespective of whether counsel appearing for North DMC appears or communicates the Court's orders. The Court makes it clear that any further lapse of the kind that the Court has had to deal with will not be countenanced hereafter.

34. Subject to the Commissioner North DMC filing an affidavit within two weeks reporting compliance with the above directions, the apology tendered by him is accepted and the notice issued to him by the order dated 30th September 2014 will stand disposed of.

35. A certified copy of this order be delivered to the Commissioner, North DMC by a Special Messenger forthwith and an acknowledgment be placed on file.