
(2001) 03 DEL CK 0028
In the Delhi High Court
Case No : CW. No. 4555/96

Ms. Jaishree Manchanda

APPELLANT

Vs

New Delhi Municipal Council and others

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Citation : (2001) 5 AD 361 : (2001) 92 DLT 359

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. K.A. Dewan, for the Appellant; Ms. Alpana Poddar, for the Respondent

Judgement

Manmohan Sarin. J Rule.

1. With the consent of the parties writ petition is taken up for disposal.
2. Petitioner assails the order bearing No.10/3537/0/W dated 14.11.1996 rejecting her application for grant of regular electric connection on the ground that the premises basement-12, Central Lane, Bengali Market was being used for purposes other than permissible.
3. Facts as given in the petition may briefly be noted:
 - (i) Petitioner having completed the prescribed course in theory and practice of electrolysis, is, qualified to teach and practice the same. She hold an Aestheticienna Diploma from the International Therapy Examination Council.
 - (ii) The petitioner had initially taken on rent basement at 12, Central Lane, Bengali Market, New Delhi, which she subsequently purchased by entering into 4 agreements with the joint owners for purchase of 500 sq. ft. totalling 200 sq. ft.
 - (iii) Petitioner has been running her business and carrying the trade by way of running a school of electrolysis and clinic for practical purposes in the name and style of "Berkowits American School of Electrolysis" in the premises. Some of her

employees, staff and sub-staff are also residing in the basement after business hours and hold Ration Cards.

(iv) Petitioner was initially getting electric supply through electric connection bearing. K .No.76142. Electric supply to this connection number was disconnected on 28.2.1991. As per the petitioner electricity supply was disconnected on account of misuse of the same for commercial purposes.

(v) Petitioner was thus constrained to file CW No.1378/91. Wherein interim protection was granted to the petitioner. A direction for grant of temporary connection to the petitioner was also issued on 27.5.1991. The said writ petition was disposed of vide orders dated 30.9.1996, requiring her to make an appropriate application to the NDMC for sanction of electric connection to the basement within a period of 2 weeks. NDMC was required to take a decision there on and communicate the same to the petitioner.

(vi) In the event the petitioner submitted her application, which was rejected by the NDMC vide the impugned order No.I0/3537/0/W dated 14.11.1996.

4. The respondent has rejected the application for grant of connection, holding that as per the completion certificate and the sanctioned plan, the basement of the premises could only be used for domestic storage and the rejection has been made on the ground that the application was for sanction of the electricity connection in the basement for purpose other than the permissible use.

5. Learned counsel for the petitioner submits that the nature of petitioner's work carried out at the premises is professional. Essentially, it is teaching of electrolysis and treatment by electrolysis with the help of her staff and employees. Some of the staff also reside in the premises. Learned counsel for the petitioner submits that even if the plan sanctioned was for domestic storage, the professional activity carried out was permissible. At best, he submits that respondents can charge misuse charges but the petitioner is entitled to the grant of electric connection. Learned counsel submits that such connections have been granted to others also.

6. As regards use of a portion of the residential premises by professional such as Chartered Accountants, Doctors, Architects, lawyers etc., is concerned, a part of the premises could be used for professional purposes when the said persons were also residing in the premises. The relevant provision in the Bye-laws, when the impugned order was passed, is as under:-

"The professional activity shall be allowed in residential plots/flats on any floor on the following condition: The resident of the premises shall be permitted to use part of his residence to the maximum of 25% or 50 sqm., whichever is less for a non-residential but non-nuisance activity which is for rendering services based on his professional skills. In case of residential plots any one floor may be used provided the whole premises is occupied by the same professional.

The trade and industrial activity (excluding household industry on ground floor to

the maximum extent of 30 sq. mt.) shall not be permitted."

In the instant case, admittedly, the petitioner had initially taken on rent a basement, which now she claims is owned by her. The mere factum of one or two employees of the petitioner residing in the premises after working hours would not bring it as equivalent to the professional residing in the premises and using part of the premises for purposes of professional use. Moreover, based on the averments made in the petition itself, the present activity of the petitioner is in the nature of teaching of electrolysis and running a clinic. In these circumstances, it cannot be said that petitioner is residing in the premises or is using part thereof for non-residential professional activity, which is permissible. Accordingly, the refusal by NDMC for grant of electric connection in the basement sanctioned for domestic storage, in the light of the foregoing discussion and the then existing bye-laws, cannot be faulted with.

7. At this stage, notice deserves to be taken of submission by the learned counsel for the petitioner pointing out the amendment in the building bye-laws carried out vide notification No.K-12016/5/79-DDIA/VA?IB/IB dated 23rd July, 1998, Ministry of Urban Affairs and Employment. The amendment is as under:-

"Professional activity shall be allowed in residential plots and flats on any floor on the following conditions:

of the premises shall be permitted to be used up to a maximum of 25% of FAR or 100 sq. mtrs., which is less, for non-residential but non-nuisance activities for rendering services based on professional skills."

8. Learned counsel for the petitioner in the light of the above submits that under the amended provision residence by the professional himself is not necessary as long as the user of the rest of the premises/building even by others is residential. Part of the premises could be used for professional activity. There is nothing on record to show the usage of the different portions of 12 Central Lane Building Bengali Market apart from the basement. At this stage, learned counsel submits that alternatively petitioner is also entitled under the amended bye-laws to have a sanction for additional FAR including the basement, upon payment of charges. In which case, learned counsel submits that the restriction of domestic storage imposed by NDMC while sanctioning plans can be varied and changed and would no longer apply. Learned counsel for the petitioner submits that petitioner would like to have the usage as per the sanctioned plan with regard to the basement confined only to domestic storage changed by payment of charges, as applicable for additional FAR. Learned counsel for the petitioner submits that petitioner would be moving an application either in the pending proceedings before the Appellate Tribunal and seek her relief there, if admissible, or seek the same independently from NDMC in the light of the changed bye-laws.

9. Nothing stated herein would be construed as having expressed any opinion on the admissibility or otherwise of the request of the petitioner for change in the user upon payment of charges for additional FAR either by the Appellate Tribunal

or by the respondents themselves.

10. Writ petition is accordingly disposed of. With a view to enable the petitioner to seek appropriate relief, if admissible either from the Appellate Tribunal or from the respondents, the interim protection granted by this court would operate for a period of 2 months from now.