

(2002) 04 DEL CK 0139

In the Delhi High Court

Case No : Criminal Writ No. 208 of 2002

Vijay Kumar Sharma

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Police Act, 1978 — Section 112, 28

Citation : (2002) 100 DLT 9

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Pinki Anand, for the Appellant; Mukta Gupta and Inspector Ajay Kumar Sharma/SHO/Prashant Vihar, for the Respondent

Judgement

S. Mukerjee, J.—This writ petition has been filed by the allottee of a site in DDA's Swaran Jayanti Park, Sector 10, Rohini who had been granted permission to install "jhoolas"/joy rides such as Carter-Pillar, Joint-Wheel, Merry-Go Round, Jumping and Toy Train for a period of two months from 6.7.2001 to 4.9.2001. It is the case of the petitioner that after he deposited the money and completed the formalities, there was considerable delay in DDA giving possession allegedly at the instance of local MLA. Subsequently according to the petitioner, he got the possession and immediately thereupon made an application dated 14.8.2001 seeking grant of permission at the allotted site from the DCP (Licensing).

2. According to the petitioner, when he ultimately started running his joy rides, the area SHO, at the instance of area MLA, not only booked the petitioner under Sections 28/112 of the Delhi Police Act, but also stopped his business by total transgression of" the police powers, both by arresting the petitioner and also physically stopping/removing the "jhoolas". Such power, according to the petitioner, was only vested in the Court, and not upon the SHO.

3. According to the petitioner, he was thereby totally prevented from the benefit of DDA's allotment in his favor, but on the other hand and instead, another party

who was not even having any permission at all from the DDA, was allowed to operate "jhoolas" at the same location by the active connivance or at least the kindness of the Police Authorities. The said joy rides of the said third party continued till only after the appointment of Local Commissioner by this Court, that the same came to be stopped.

4. According to the respondent however there are twin pre-conditional requirements for carrying on the said activity. Firstly a permission has to be obtained from the local bodies such as DDA or MCD, and over and above secondly for conducting an entertainment activity/amusement activity, a license has to be also granted by the DCP (Licensing).

5. It is the admitted position that no license was actually granted by the Licensing Department of the Delhi Police, in favor of the petitioner.

6. We cannot persuade ourselves to accept the contention that in the city of Delhi, the mere grant of permission by the local body such as DDA/MCD/NDMC would be sufficient by itself, or that simply the submission of an application to the office of DCP (Licensing), would sufficiently meet the requirements of Section 112 of the Delhi Police Act. Such a contention is absurd on the face of it and does not appeal to us.

7. Even otherwise on considerations of public interest and safety of the public including children, in relation to any amusement or entertainment activity, we feel that obtaining of license separately, and additionally from the police as well, must be a necessary pre-conditional requirement for actually running/ conducting the activity of "jhoolas".

8. Having held so we however do feel that in the facts and circumstances of the present case, it is necessary to convey a few observations, on certain unsavoury aspects of the matter which have disturbed us.

9. Whenever permission is granted by the local body for only a short period, and an application is made to the Licensing Department of the Police for the corresponding period, then it would be obligatory on the said Police Department to consider the matter most expeditiously as per well-formulated guidelines and rules.

10. In fact where the allotment is being considered for the first time, and the Police Licensing Department wants to go into it in detail, an interim/provisional license can be granted pending proper and detailed consideration of the matter. However, it would certainly not be open to the Licensing Department, to just sit on the application, or to delay it so much that delay causes irreparable prejudice. Nor can the police act in a totally arbitrary or whimsical manner.

11. When for the same site, a permission was granted to another party, as becomes evident from the perusal of the Status Report, prima facie it does appear that there was no objection inherently to the carrying on of the said activity at the said place.

12. It would then also appear that police was perhaps only trying to object to the particular person applying for permission, viz. in the instant case against the petitioner.

13. While in some appropriate cases and facts, a person-linked objection may be sustainable on "bad character" or other valid basis, however unwarranted discriminatory action on the part of the Licensing Department of the Police, would be clearly improper and liable to be struck down.

14. Whenever the police receives such a request of application for grant of license, the procedure should be streamlined by requiring the party to submit a copy of the application to the area SHO, and providing for the comments of the area staff and the local GHO to be forwarded to the Licensing Department at Police Headquarters preferably within 48 hours of the submission of the application. The officials of the Licensing Department at Police Headquarters, should then take a decision again preferably within a period of 3 to 5 days and communicate it to the party Along with a copy to the SHO for information and the necessary action of providing the local police arrangement if so required. In the event of the Licensing Officer feeling prima facie that the application is to be refused/declined, then the applicant should be called, and a hearing be given, before taking the decision, indicating reasons howsoever briefly covering the facts of each application.

15. In the present case, we find that by a stereotyped, non-speaking, short, cryptic and laconic order dated 29.2.2001, the application had been declined on the ground of generalisation viz. law and order problem.

16. Such a disposal is not appropriate considering the fact that a local body has considered it appropriate to grant permission, which fact was worthy of some credence to all concerned, and Therefore a request by such a party, is not to be lightly brushed aside in a mechanical or casual manner, as has been done in the present case.

17. It has also come on record in the form of Status Report dated 17.3.2002, that one M/s. Lion Services was running jhoolas in the said location. It has been mentioned by the Police Authorities that license for a period 25.11.2001 to 31.1.2002, was in fact issued in the name of Sh. Atul Gupta to operate jhoolas/ joy-rides after obtaining the NOC/reports from local bodies.

18. This period was the peak period from November, 2001 to November, 2002, and thus for a period over two months it was considered to be permissible to allow "jhoolas" to run at the same location. In such situation how could there be a question of law and order problem in relation to a period just few months earlier i.e. 6.7.2001 to 4.9.2001?

19. We have also noted that whereas the petitioner was arrested, as per the admitted stand of the Police, and action had been taken to stop the "jhoolas" in the petitioner's case, in the case of various other parties, whose references are

there at pages 3 and 4 of the Status Report dated 17.3.2002, either only daily diary report was recorded, or FIR was registered but similar steps to physically stop the further activity of "jhoolas" was not taken.

20. The learned Counsel for the petitioner has taken us through the provisions of Sections 112 and 28 of the Delhi Police Act, which restricts the jurisdiction to direct stopping of such activity if at all only by the orders of the concerned Court which is hearing the matter, and certainly does not vest in the Police Officers. We are drawing the attention of the Commissioner of Police and the Head of its Licensing Department to the above said aspects of the matter, with the hope that in the exercise of the function of granting or refusing of a license for entertainment/amusement activity, we may expect that the respondent will avoid any arbitrary or discriminatory disposition, and will be taking all such decisions in accordance with law and in a fair and proper manner, by acting only on relevant and germane considerations.

21. In view of the fact that the period for which the DDA had granted permission to the petitioner is now over, no relief can be granted in favor of the petitioner. The writ petition filed by petitioner has to be dismissed with liberty reserved to him, to take other appropriate proceedings in accordance with law. While penning down our concern for the public interest that all such activities of amusement and entertainment should be commenced and carried out only after obtaining all types of required licenses, including the license from the Police Licensing Department, we proceed to dismiss the writ petition but with no order as to costs.