

Gursharan Singh and others

Vs

New Delhi Municipal Committee and others

Civil Appeals Nos. 7499, 8887 and 8888 of 1983, 3019 of 1986, 4375 of 1988, 7503 of 1983, 565 of 1987, 7500 of 1983 and 4054 of 1986 with Writ Petn. No. 5331 of 1983

(N.P. Singh, Faizan-Uddin JJ)

02.02.1996

JUDGEMENT

N. P. SINGH, J.

1. These appeals along with a writ petition have been filed on behalf of the different licensees of the shops in the shopping complex known as Palika Bazar which was built by the respondent, New Delhi Municipal Committee (hereinafter referred to as the 'N. D. M. C.') in the year 1976. The whole complex is centrally air-conditioned. It appears that by a resolution dated 29-11-1977, N. D. M. C. decided to allot 98 shops to shopkeepers of Panchkuian Road because the space occupied by them at the said Panchkuian Road was required for widening of the said road. Again on 27-5-1978 the Delhi Administration directed the N. D. M. C. to allot shops to 98 stall-holders of Panchkuian Road on the conditions agreed. A plan of the said marketing complex was prepared and published showing 98 shops which had been reserved for the shopkeepers of Panchkuian Road on preferential basis. Tenders were invited for allotment of other 177 shops divided into four zones and further classified in seven groups for proper identification. In the advertisement it was stated that reserved shops were not being put to tender and preference for allotment of a particular shop in a group will be given to the highest tenders. It was also stated that only those tenders shall be considered which were above the reserved rate. One of the terms of allotment being term No. 9 was as follows :

"Only those trades such as mentioned in the trade zoning plan shall be permitted to be run in the shop. A copy of the details of the trade zoning is appended to this document as appendix 'A'."

The aforesaid zones were demarcated on the plan of the shopping complex which had been prepared by the N. D. M. C. The persons submitting tenders were required to state the trade which they proposed to run in the shops. In the application forms it had been clearly mentioned that "only such trades as mentioned in the trade zoning plan shall be permitted." The applicant was also required to give an undertaking that he had carefully read the memorandum of information and the terms and conditions of the allotment and that he had agreed to abide by the same. The shops were to be given on licence for a period of five years and thereafter the licence was renewable subject to increase in the licence fee by 10 per cent and on such terms and conditions as may be laid down by the N. D. M. C. Different reserved prices were fixed for different shops. The appellants in different appeals including the writ petitioner filed their tenders and indicated the trade which they wanted to run in the shops to be allotted to them. There is no dispute that the applicants while submitting the tenders,

offered the licence fee at a much higher rate than what was mentioned as the reserved rate of licence fee in respect of different shops. Thereafter letters of allotment were issued indicating the trade which such licensee could carry in the shops which had been allotted to them. In other words, the applicants whose tenders were accepted on the rates offered by them were not only required to pay the licence for offered by them and accepted by the N. D. M. C., but they undertook to occupy the shops in different trading zones and to carry on the trades which were specified to be carried on in the zones concerned.

2. So far the Panchkuian Road stall-holders were concerned, allotments of shops were made to them in the zones reserved for them, but they were not subjected to zoning restrictions, the only restriction which was imposed on them was that they had to carry on only the permissible trade specified in Appendix 'A' to the term and conditions of the allotment. They were to pay the licence fee also at a different rate which was admittedly at a lower rate than the licence fee which had been offered and accepted from the applicants who were allotted shops out of 177 shops referred to above. It is the case of the N. D. M. C. that special consideration in respect of licence fee as well as the zoning restriction in respect of Panchkuian stall-holders was made to induce and persuade them to move from Panchkuian Road to the Palika Bazar Shopping Complex so that the stalls occupied by them could be removed and the widening of the road was facilitated. Similar concession was offered to some Tibetan stall-holders at Janpath requesting them to move from Janpath to Palika Bazar where shops had been reserved for them in an area known as Mini Market. The total number of the stalls in the Mini Market was 58. It is an admitted position that the allottees of the stalls in the Mini Market were not subjected to any zoning system, but like Panchkuian Road allottees they were permitted to carry on only those trades which were permissible and had been enumerated in the aforesaid Appendix 'A'.

3. Later some of the allottees out of 177 shops which had been subjected to zoning system, so far the nature of the trade was concerned and who had specifically agreed in writing to carry on the trades which had been specified for the trade zones of the marketing complex, in which shops had been allotted to them, disregarded and deviated from the undertaking given by them and opened shops in those zones in respect of trades which had not been specified for those zones. In other words, they opened shops to carry on trades of their own choice was not permissible under the terms of the allotment made in their favour by N. D. M. C. Because of this, notices were issued to such shopkeepers who had violated the zoning system of the marketing complex.

4. The validity of such notices issued by the N. D. M. C. were questioned by them before the Delhi High Court. A learned Judge of the High Court came to the conclusion that the action of the N. D. M. S. was discriminator and arbitrary while insisting the writ petitioners to conform and abide the agreement in respect of trade zoning restrictions and to relax the same restrictions so far the stall-holders of Panchkuian Road were concerned who had been allotted shops in the same marketing complex. It was also pointed out by the learned Judge that when several allottees out of 177 shops had changed the trade and had not followed the trade zoning restrictions, there was no justification to insist others to follow the same trade zoning restrictions. On the aforesaid finding, the notices issued by the N. D. M. S. to different shopkeepers were quashed and the writ petitions were allowed.

5. On appeal being filed by N. D. M. S., the Division Bench set aside the judgment of the learned single Judge and reversed the finding that the action of the N. D. M. S. while insisting for the trade zoning restriction, was discriminatory and violative of Article 14 of the Constitution. According to

the Division Bench, the stall-holders of Panchkuian Road formed a class separate from the class of allottees who had been allotted shops out of 177 shops. On the finding aforesaid, writ petitions filed on behalf of the appellants were dismissed. However, three months time was granted to them to revert back to their trade zoning restrictions and to start the trade for which the shops has been allotted to them in different zones within the marketing complex.

6. In the counter-affidavit which had been filed on behalf of the N. D. M. S. (vide Civil Appeal No. 7503/83) it had been stated that since 1950 onwards stalls had been put up on roads mentioned in the said counter-affidavit including Panchkuian Road and Janpath. In Panchkuian Road 98 stalls had been put. It has been further stated that a decision was taken that shops be reserved for the stall-holders of Panchkuian Road in lieu of their surrendering the stalls, because the lands beneath these stalls were required for use of public convenience. They were occupying such stalls for more than three decades and as such a decision was taken after proper examination by the Delhi Administration along with the Government of India to allot 98 shops to such 98 stall-holders for their rehabilitation. They were offered the shops in the aforesaid marketing complex, which had been reserved for them and shown in the Plan also. The relaxation of the trade zoning restrictions was meant to induce them to move from the Panchkuian Road. For the same object even the licence fee in their case was reduced. Because of the same reason no tenders were invited for the 98 shops and tenders were invited only in respect of 177 shops, which were allotted to the appellants and others on basis of tenders submitted by them. It was pointed out that appellants and other allottees of 177 shops knew very well from the Plan published and the notice inviting tenders that 98 shops had been reserved for stall-holders of Panchkuian Road. In spite of that the appellants and others offered their tenders at different rates higher than reserved rates which were accepted by the N. D. M. C. and allotments of shops were made in their favour. In this background, it was not open to them to violate and contravene the trade zoning restrictions to which each one of them had specifically agreed.

7. The learned counsel appearing in different appeals took the same stand before this Court that there was no justification on the part of the N. D. M. C. to make allotments of the different shops in the same marketing complex not only on different rates of licensing fee, but even with different trade zoning restrictions which per se was arbitrary as equals had been treated as unequals, as such violative of Article 14 of the Constitution. According to the appellants, the Panchkuian Road stall-holders were in no way different from the appellants so far their claim for allotment of the shops in the said marketing complex was concerned. They should also have been subjected to the same trade zoning restrictions as are specified in the Annexure 'A' to the terms and conditions of allotment and should not have been allowed to carry on trades of their choice in the shops allotted to them. Similarly, there could not be any conceivable justification for charging from them the licence fee at a lower rate than what has been charged from the appellants and others similarly situated.

8. It appears the Panchkuian Road stall-holders were running the stalls on the lands for more than three decades which were later required for widening of the road and a question arose before the N. D. M. C. as to how to offer them some attractive proposal to rehabilitate them so that they can move from Panchkuian Road. This object was achieved after proper negotiation, discussion and decision having been taken in consultation with the Delhi Administration and Central Government to offer shops to them in the new marketing complex at a concessional licence fee and without trade zoning restrictions subject to the condition that they shall carry any of the trades specified in Annexure 'A' to the terms and conditions of offer. According to us, the allotment of 98 shops to the stall-holders of Panchkuian Road was made treating them as a separate class, on a reasonable and rational basis. The land occupied by their stalls were required by the N. D. M. C. for a public purpose i. e. for the

widening of the road. It was otherwise not easy for the N. D. M. C. to throw them out of Panchkuian Road and after proper deliberation a decision appears to have been taken to induce them to move out of Panchkuian Road to Palika Bazar. This object was achieved by lowering the licence fee and making relaxation in the trade zoning restrictions to some extent which cannot be held in any manner as irrational, partial or biased so as to be held to be unreasonable.

9. Apart from that even if it is assumed that concession was shown to such stall-holders by the N. D. M. C. the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are sanctioned by law in their favour on principles of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall-holders were impleaded as parties to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution.

10. The Division Bench of the High Court rightly dismissed the writ petitions filed on behalf of the appellants on the finding that there was proper justification on the part of the N. D. M. C. to make allotments of the shops which had been reserved for stall-holders of the Panchkuian Road.

11. It may be mentioned that the appellants in some of the appeals had filed writ petitions before the High Court making a grievance that although they were making payments at the agreed rate in terms of the acceptance of their tenders and were also observing the trade zoning restrictions, still they were suffering because of the other shopkeepers who had violated the trade zoning restrictions. A direction was sought for on the N. D. M. C. that they should not allow the change of the trade, to those allottees who were violating the scheme of trade zoning restrictions. This writ petitions were allowed by learned single Judge along with others. But the Division Bench dismissed even such writ petitions.

12. It appears that writ petitions were filed as early as in the year 1980 which were allowed by the learned single Judge on 29th May 1981. The appeal filed on behalf of the N. D. M. C. against the said judgment was allowed on 18th March 1983. This Court while granting leave passed orders

regarding maintenance of status qua in respect of the trades being carried on by the appellants. Interim directions were given also in respect of payment of licence fee at the reserved rates instead of agreed rates in many appeals. Because of these interim orders passed by the High Court as well as this Court in most of the cases only payment of the licence fee has been made to the N. D. M. C. at the reserved rates and not at the agreed rates. After the dismissal of the appeals and the writ petition, the appellants and the writ petitioner are liable to pay the balance amount of arrears which runs into lakhs of Rupees in different appeals. As such at the close of the hearing of the appeals an alternative submission, was made on behalf of the appellants that in the event of dismissal of appeals and writ petition, this Court should direct payment of the arrears by reasonable instalments. On behalf of the N. D. M. C. claim was made for interest over such arrears contending that N. D. M. C. should not suffer because of the interim orders passed by the High Court as well as by this Court.

13. In view of the legal maxim "actus curiae neminem gravabit" which means that an act of Court shall prejudice no man, N. D. M. C. is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court. This aspect of the matter has been examined by this Court in the case of Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398 : (AIR 1987 SC 2195). Although in the interim orders it has not been stated that in event of dismissal of the appeals and the writ petition, the appellants and the writ petitioner shall be liable to pay interest over the arrears of the licence fee, but that shall not debar this Court from passing any order in respect of payment of reasonable interest over the said amount.

14. Taking all facts and circumstances into consideration including the lapse of more than 12 years since the appeals were filed before the this Court and the equities arising in favour of one party or the other, we direct :

- (1) The allottees will pay licence fee at the agreed rate subject to revisions as per the terms of the licence deed.
- (2) If the agreed rate has not been paid either due to interim order passed by the Court or otherwise and payment has been made on the basis of reserved rate, then for the period when the interim order was operative, so far the allottees who have deviated from trade zone shall be liable to pay simple interest over the arrears for that period at the rate of 12 per cent per annum and at the rate of 15 per cent simple interest for the remaining period.
- (3) Allottees who have not deviated from the trade zone and have paid at the agreed rate throughout except the period when interim orders of the Court were operative, shall pay the balance amount of the arrears of the agreed rate with simple interest at the rate of 6 per cent.
- (4) Arrears amounting up to Rs. 2.25 lacs shall be paid in four equal quarterly instalments on or before 31st December, 1996. But if the arrear is in excess of Rs. 2.25 lacs and up to Rs. 5 lacs, then it shall be paid in six equal quarterly instalments on or before 30th June, 1997. In case, where the arrears is above Rs. 5 lacs, it shall be paid in the eight equal quarterly instalments on or before 31st December, 1997. The arrears shall be calculated in terms of the above order for period up to 31st December 1995 by the respondent - N. D. M. C. against each allottee and notice will be served on such allottees within six weeks from today.

(5) From the month of January 1996 the licence fee as revised in terms of the licence deed shall be paid.

(6) The allottees who have deviated from the trade zoning restrictions, shall revert back to the trade zone, allotted to them on or before 31st December, 1996.

(7) No damage shall be paid as claimed on behalf of the respondent - N. D. M. C. on account of cancellation of licence.

(8) All notices of cancellation shall be deemed to have been withdrawn after the directions aforesaid are complied with by the allottees or the allottee concerned. But in the event of failure to comply with any of the aforesaid directions it shall be open to the N. D. M. C. to proceed with the cancellation of the licence of allottee concerned.

(9) This order shall not cover the dispute in respect of the resolution of the respondent - N. D. M. C. dated 12-9-1991 revising licence fee from 10 per cent to 30 per cent on the expiry of the licence and payment of interest over the arrears from 15 per cent to 24 per cent.

(10) In respect of the grievance made on behalf of the allottees that sales are being made from the show windows. Mr. Ranjit Kumar, appearing for N. D. M. C. pointed out that before the learned single Judge, N. D. M. C. took a clear stand in their affidavit filed that no persons shall be allowed to sell any article through the show window, it shall be used only for display purpose and N. D. M. C. shall not implement the resolution No. 33 dated 15-1-1985 allowing the persons displaying their articles in the show windows to sell the articles.

15. Accordingly the appeals and the writ petition are dismissed subject to the direction given above. In the facts and circumstances of the case, there shall be no orders as to costs. Appeal dismissed.