

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : January 10, 2007.
Date of Decision : January 22, 2007.

+ W.P.(C) 13456/2005 & CM 10432/2005

MOHD.SAYEED Petitioner
Through Mr. Bharat Bhushan
Bhatia with Ms. Iti Sharma and Ms.
Deepa Gupta, Advocates

versus

M.C.D. & ORS. Respondents
Through Mr. Shivinder Chopra,
Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

JUDGMENT

1. This writ petition seeks a writ of mandamus to quash the impugned notice dated 16.5.2005 issued by Veterinary Services Department, Municipal Corporation of Delhi,('MCD') Respondent No.2 herein which reads as under:

"Closure Notice U/S 407 (2),417,423 of DMC ACT 1957

Whereas you are carrying on the trade of storage and salting of skin (hide) at premises no. 11027 Gali Pipal Wali, Motia Khan without Municipal Trade License.

The Hon'ble Supreme Court of India in the case titled Buffalo Traders Association v. UOI and others in I.A. No 19 in CA No. 3769/96 has directed MCD that no activity of

storage and salting of skin shall be carried out within the area of Idgah, without proper License and if such activity is carried out, MCD will stop it.

I, Dr.Sunil Ranga VO/S.P.Zone MCD order you, to close down the trade of storage and salting of skin (hide) at above mentioned premises within 72 hours from the receipt of this notice, failing which further legal action will be initiated including sealing of the premises without any further notice.”

2. This writ petition also seeks issuance of writ of mandamus to the Respondents to desal the premises No.11027/B Motia Khan, New Delhi 110055 of Modern Overseas (P) Ltd. of which the petitioner is Director.

3. The facts leading to the filing of the petition are that the petitioner was dealing in raw hides and skins and for the purposes of storing and salting of skins was issued a licence, which was admittedly renewed only up to 3.8.2001.

4. It is also not in dispute that the activity of skinning of the hides of dead animals and salting, storing and curing the skins is incidental to the activity of slaughtering of animals. In Delhi the major slaughterhouse (abattoir) is at Idgah and the trades dealing in skins and hides were located in the Motia Khan and Quasavvpura areas near the Idgah slaughterhouse. On account of the environmental problems caused by the Idgah abattoir, certain directions came to be passed by the Hon'ble Supreme Court in a public interest litigation in ***Buffalo Traders Welfare Association v. Union of India*** (Civil Appeal No.3769/1996) and this Court in W.P.(C) No. 2802/2004 (***Mohd. Amjad v. Union of India***) pursuant to which a total of 58 godowns of

skins and hides traders in the area of Motia Khan and Quasavvpura were sealed.

5. As a result of the said intervention by the Hon'ble Supreme Court, the MCD proposed to shift the entire activity of slaughtering of animals from Idgah and it was proposed that a modern slaughterhouse would be constructed at Ghazipur by July, 2006. An affidavit was filed in November, 2004 in the Hon'ble Supreme Court seeking the enhancement of the capacity of the modern abattoir at Ghazipur from 2500 to 5,000 animals. In the said affidavit, as regards the dealers trading in skins and hides, it was stated as under:

“The corporation would be in a position to make arrangements for godowns for them in Ghazipur subject to their making payment for the space provided to them and their agreeing to pay the rent fixed by the Corporation from time to time. This would require construction of new godowns at slaughter house site”

6. By an order dated 30.11.2004, in regard to this specific prayer, the Hon'ble Supreme Court directed as under:

“The application for clarification is filed by the persons who are involved in the trade of skin and hide of animals. They contend that it is a trade incidental to slaughtering of buffaloes and hence, they have a right to carry on the said trade in the area where slaughtering of the buffaloes is presently being permitted, and thereafter at the place where the said slaughtering would be relocated. The MCD in its reply filed to this application has stated that the activities of skinning the hide of dead animals or curing the same is incidental to legally permitted activity of slaughtering of the animals. To that extent, they have no objection to this trade

being conducted in the vicinity of the slaughterhouse. In the said view of the matter this application is allowed and the salting and storage of skins of legally slaughtered animals near the present slaughterhouse is permitted until the same is shifted. However we make it clear that this permission is confined only to legally slaughtered animals and the authorities concerned are free to prevent and if necessary take such legal action in regard to the people who indulge in illegal slaughtering as well as those people who indulge in salting and storing of skins of such illegally slaughtered animals.”

7. At the time of passing of the above Order, the Hon'ble Supreme Court, had not been informed that many of the dealers trading in hides and skins, like the petitioner herein, had been operating, without valid licence. Accordingly on 8.4.2005, the Hon'ble Supreme Court made the following further order in I.A. No.19 in CA No.3769/1996 (***Buffalo Traders Welfare Association v. Union of India***) :

“By our order dated 30th November, 2004 we permitted the applicants in Buffalo Traders Welfare Association in I.A. No.19 of 2004 to carry on trade of skinning and salting of skin of legally slaughtered animals withing the Idgah area under the impression that these Traders had valid licences from MCD to carry on the said trade. We are now informed that these Traders do not have any licence to carry on this trade. Therefore, we will have to modify our order dated 30.11.2004. We direct that no such activity of skinning and salting shall be carried on by any person without a proper licence for that purpose as required under law and under the conditions of the licence. If the applicants are entitled to do the trade they shall make the necessary applications to the MCD for obtaining the licences and if such applications are made the MCD will consider the same on merits and in accordance with law. Until such licence is obtained no such activity shall be carried on within the area of Idgah, if such activity is carried out, MCD will stop the same forthwith.”

8. It was consequent upon the above order dated 8.4.2005, that the notice dated 16.5.2005 impugned in the present petition came to be issued to the petitioner. According to the MCD, the petitioner, who was also a person whose licence had already expired way back on 3.8.2001, applied for the renewal of his trade licence on 3.5.2005 at the Citizen Service Bureau, SP Zone with the processing fee of Rs.250/-. This application was forwarded by the said Citizen Service Bureau to the Veterinary Officer of the MCD. However, the petitioner disputes that it applied for renewal. On the other hand, it is contended that after the issuance of the aforementioned closure notice dated 16.5.2005, the petitioner represented orally to the Respondent on 16.5.2005 and 30.5.2005. According to the petitioner, without waiting for a response to the oral representations, the petitioner deposited the trade licence fee along with arrears of late fees on 1.6.2005 with the Citizen Service Bureau. It appears that on receiving the late fees, a receipt was issued in form G8 A on 1.6.2005, which stated that it is a computerised receipt which does not require any authorised signatures. While the computerised receipt states "valid from 31.3.2002 valid up to 31.3.2006," it also states as "Unit Name: M/s. MODERN OVERSEAS PVT. L. TRADE RNWL: If info. found false, Action will be taken as per DMC Act."

9. It is stated by the Respondent No.2 Department, that in the meanwhile, it rejected the petitioner's application for renewal of its licence on 22.6.2005 on the ground that "no commercial activity of storing and skinning can be carried out in a residential area as the trade being pollutant." It is stated that the rejection letter was sent to

the petitioner on 24.6.2005, while this is disputed by the petitioner, what is not is that the petitioner's premises was sealed on 2.8.2005.

10. The present writ petition was filed on 22.8.2005 and on 29.8.2005 notice was directed to be issued. The records were asked to be produced. At the hearing on 6.9.2005, MCD produced the records and after perusing the same this Court passed the following order:

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Record has been produced by counsel for MCD. Counsel states that the procedure prescribed and followed for renewal of licence commences with the submission of requisite forms, these being processed and orders passed on the file to renew the licence, followed by receipt of the licence fee. Counsel states that in the present case the petitioner made online payment of the licence fee evidenced by Annexure P.3 itself. Counsel states that at no point of time any application was received and question of the same being processed and decision taken to renew the licence does not arise. Counsel further states that in view of the directions issued by the Hon'ble Supreme Court in a public interest litigation, in compliance with orders passed MCD is in the process of enforcing the directives of the Supreme Court.

Let a counter affidavit be filed bringing on record the stand of MCD. Needful be done within 10 days. Rejoinder be filed within 3 days thereafter.

List on 26.9.2005."

11. In its counter affidavit filed on 23.9.2005, the Respondent No.2 herein pointed out that the action taken to seal the premises of the petitioner, consequent upon the closure notice, was perfectly valid and

was by way of implementation of the directives of the Hon'ble Supreme Court in its order dated 8.4.2005. It was pointed out by the Respondent No.2 that the petitioner had deposited the trade licence fees along with arrears on 1.6.2005 "without waiting for the approval of the Veterinary Department." It was further pointed out by Respondent No.2 as under:

"The license of the Petitioner as claimed by the Petitioner is not renewed as per the law. Merely, depositing the processing fees and trade license renewal fees does not give the right to the Petitioner to carry on the pollutant trade from residential area. It is to mention herein that the computerised receipt issued to the Petitioner by Citizen Service Bureau has a rider that if information found is false, action will be taken as per the DMC Act."

12. The petitioner filed a rejoinder maintaining that the petitioner's licence had in fact been renewed on 1.6.2005 and was valid up to 31.3.2006 and therefore the premises could not have been sealed. It was also contended that Motia Khan falls under Zone B, which is a special area. As per the Master Plan of Delhi mixed land use is permitted and therefore a non-residential activity like storing of skins and hides could be carried on even in residential premises.

13. It is submitted by Mr. Bharat Bhushan Bhatia, learned counsel for the petitioner that by depositing the licence fee along with the arrears, the petitioner had been granted a renewal of the licence up to 31.3.2006 and therefore it is incorrect to state that the petitioner was carrying on the activity of storing hides and skins without a valid licence. In that view of the matter, the petitioner was not in violation of order dated 8.4.2005 of the Hon'ble Supreme Court and the premises

ought not have been sealed. In reply it is pointed out by Mr. Shivinder Chopra, learned Advocate for the MCD that the petitioner was fully aware that his licence had already expired in August, 2001 itself. The mere deposit of licence fee, cannot tantamount to renewal of licence and what was issued was only a computerised receipt which was always subject to the verification and approval of the Veterinary Department. In that view of the matter it was stated that there was no merit in the writ petition.

14. The narration of facts hereinabove reveals that the petitioner indeed had no valid licence beyond 3.8.2001. It is a matter of concern that persons like the petitioner were permitted by the Respondents to continue carrying on the activity of dealing in raw hides and skins, without a valid licence beyond the said date. It was only after the Hon'ble Supreme Court ordered on 8.4.2005 specifically directed that no such activity would be carried on without a proper licence, that both the petitioner and the MCD got activated from their complacency. The petitioner simply went and deposited the arrears of licence fee on 1.6.2005, without any prior approval of the MCD.

15. Although the fact whether the petitioner applied for renewal of its licence is not evident, this much is clear that the petitioner did not possess a valid licence after 3.8.2001.

16. There is merit in the submission of the MCD that by merely depositing the arrears of late fees at the Citizen Service Bureau on 1.6.2005, the petitioner cannot claim that his licence was renewed. This is particularly so since the Hon'ble Supreme Court has been

monitoring the situation as is evident from its orders dated 30.11.2004 and 3.4.2005 (extracted above). The grant of license would, therefore, require application of mind by the Respondent to the facts and circumstances and particularly to the aspect of environmental pollution. In other words, in this type of a case the renewal cannot be said to be automatic by the mere deposit of arrears of late fees. The question of any mixed land use being permitted by the Master Plan does not arise when a decision has already been taken to shift the abattoir itself and the entire shifting is being monitored under the directions of the Hon'ble Supreme Court. In the circumstances, the explanation by MCD that the receipt issued on 1.6.2005 to the petitioner for the deposit of arrears of the late fee did not in the facts and circumstances of the present case tantamount to an automatic renewal of licence, is a reasonable and valid explanation and merits acceptance. The submission of the petitioner to the contrary is hereby rejected.

17. In view of the above facts and circumstances, the closure notice dated 16.5.2005 issued by the Respondent, which was consequent upon the orders of the Hon'ble Supreme Court, is valid and does not call for an interference. The sealing of the petitioner's premises on 2.8.2005 was also consequential upon the aforementioned closure notice and since the petitioner's licence already stood expired on 3.8.2001, no fault can be found with the sealing of the premises in question.

18. Mr. Bhatia, finally submitted that since the petitioner has been in this trade since 1970, he should, in equity, be given an alternative space at Ghazipur in or around the modern abattoir that would become operational there. As regards this prayer, the only direction that can be

given is that it would be open to the petitioner to make an application for grant of a licence for dealing in skins and hides in the Ghazipur area in accordance with the procedure prescribed, and as and when so made this application would be dealt with by the Respondent in accordance with law.

19. With the above observations, the writ petition is dismissed with no orders as to costs. The application stands disposed of.

(S. MURALIDHAR)
Judge

January 22, 2007
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