

Sh. Vikas Goel & Ors vs North Delhi Municipal Corporaton ... on 5 October, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 7478/2020

SH. VIKAS GOEL & ORS.

.....Petitioners

Through:

Ms Somya Singh, Mr Mohd. Juned

Ms Sumera Anjum, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATON

(THROUGH ITS MAYOR)

..... Respondent

Through: Mr Chetan Sharma, ASG with Mr

Akhil Mittal, SC for North DMC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 05.10.2020 The hearing was conducted through video conferencing. CM APPL. 24960/2020 (Exemption)

1. Allowed subject to all just exceptions. The application stands disposed-off.

W.P. (C) 7478/2020& CM APPL. 24961/2020 (stay)

2. Issue notice.

3. Notice is accepted by the learned counsels for the respondent- North Delhi Municipal Corporation ('NDMC').

4. At joint request of the learned counsel for the parties, the petition is taken up for disposal.

5. The petitioners impugn the order dated 29.09.2020 individually issued to them under Section 79 (3) of the Delhi Municipal Corporation Act, 1957, ('DMC Act') thereby suspending them from the meetings of the Corporation for a period of 15 days.

6. The learned counsel for the petitioners submits that the said order is ex facie contrary to the provisions of the DMC Act which requires that in case the conduct of the councillor is classified as 'grossly disorderly' the said Councillor would in the first instance be required to withdraw immediately from the meeting. However, this was not so done in the present case. If within fifteen

days thereafter, the said councillor again engages in such 'grossly disorderly' conduct and is again ordered to withdraw from the meeting, it is only then that the Mayor or the person presiding over the meeting, can suspend the councillor for a period of 15 days. The learned counsel for the petitioners submits that the precipitate order bypassing the first requirement of asking withdrawal from the meeting, is ex facie illegal and needs to be quashed. She refers to section 79 of the DMC Act, which reads as under:

"...79. Maintenance of order at, and admission of public to, meetings; withdrawal and suspension of councillors and aldermen--(1) The Mayor or the person presiding over a meeting shall preserve order thereat and shall have all powers necessary for the purpose of preserving such order. (2) The Mayor or the person presiding over a meeting may direct any councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3] whose conduct is in his opinion grossly disorderly to withdraw immediately from the meeting, and any councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3] so directed to withdraw shall do so forthwith and shall absent himself during the remainder of the meeting.

(3) If any councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3] is ordered to withdraw a second time within fifteen days, the Mayor or the person presiding may suspend such councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3] from attending the meetings of the Corporation for any period not exceeding fifteen days and the councillor 2 [or persons referred to in clause (b) of sub-

section (3) of section 3] so suspended shall absent himself accordingly:

Provided that the Mayor may at any time decide that such suspension be terminated:

Provided further that such suspension shall not debar the suspended councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3] from serving on any committee of the Corporation of which he is a member.

(4) Subject to sub-section (5) every meeting shall be open to the public, unless a majority of the 3 [members and persons referred to in sub-clauses (ii), (iii) and (iv) of clause (b) of sub-

section (3) of section 3] present at the meeting decide that any inquiry or deliberation pending before the Corporation shall be held in private.

(5) The Corporation may make regulations for the purpose of admission of the member of the public to its meetings and for the removal by force, if necessary, of any member of the public admitted to a meeting for interrupting or disturbing the proceedings of the meeting.

(6) In the case of grave disorder arising in a meeting the Mayor or the person presiding may, if he thinks it necessary to do so, adjourn the meeting to a date specified by him...."

7. The learned counsel for the petitioners further submits that the impugned order has suspended the Councillors who were not even present in the House on the said date i.e. on 29.09.2020.

8. From a bare reading of section 79 of the DMC Act it is evident that the Mayor can suspend a councillor for fifteen days, if the councillor engages in 'grossly disorderly' conduct in two meetings within fifteen days of each other and has been asked to withdraw from the remainder of the meeting each time. What is 'grossly disorderly' conduct would depend upon the opinion of the Mayor or the person presiding over the meeting. the Councillor may be directed to withdraw immediately from the meeting and shall remain absent in the remainder of the meeting. The suspension for a maximum of fifteen days, would have be preceded by the councillor being asked to withdraw from two successive meetings within 15 days of each other. According to the petitioners, no such order is on record asking any of them to withdraw during any of the previous meetings. The Corporation is a statutory body and its functioning is governed is by the statute. Anything contrary to the rules would invite be subject to judicial review.

9. The learned ASG submits that complete facts of the case have not been brought on record.

10. The case was passed over for the learned Standing Counsel for the Corporation to obtain instructions. Having done so, he states, upon instructions from the Mayor, that the Meeting of the House shall not be held for the next 10 days i.e. neither a regular meeting nor a special meeting and the special meeting called for tomorrow i.e. 06.10.2020 shall stand deferred till 15.10.2020. Let it be so done.

11. However, the learned Standing Counsel further submits that the petitioners have been economical with the facts, and action has already been taken under section 79 (2) of the DMC Act, 1957, earlier.

12. However, no such records are shown to the court. The case was taken up for disposal with the consent of the parties. The respondent has advance notice.

13. Be that as it may, from the course of action proposed by the respondent -- as submitted by the learned Standing Counsel, the petitioners' right to espouse their cause before the House would remain unaffected and at best, this notice of suspension would be treated as the first suspension under section 79 (2) of the Act.

14. In view of the above, the period of 15 days would have expired by then and the petition would have become infructuous.

15. The writ petition, alongwith pending application, are disposed-off in terms of the above.

16.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J OCTOBER 05, 2020/rd/ab