

M/S Oddly Yeti vs New Delhi Municipal Council & Ors on 23 December, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

KAMLESH KUMAR

23.12.2020 22:56

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 11042/2020 & CM APPL. 34491/2020

M/S ODDLY YETI

.... Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai
Niyazi, Ms. Kumud Nijhawan and Ms.
Nehmat Sethi, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.....Respondents

Through: Mr. Anil Grover, Standing Counsel along
with Ms. Noopur Singhal and Mr. Rahul
Khurana, Advocates.
Mr. Ajay Kumar Pandey and Mr. L.N.P.
Singh, Advocates for R-2 & R-3.
(Ph.:9312982075 and 8923164174).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 23.12.2020 The hearing was conducted through video conferencing. CM APPL. 34492/2020 (Exemption) 1 Exemption allowed, subject to all just exceptions. 2 The application stands disposed-off. W.P.(C) 11042/2020 & CM APPL. 34491/2020 3 The petitioner seeks grant of Health License for its restaurant being run at B-41, 1st and 2nd Floor, Connaught Place. The petitioner's position is identical to that of the petitioner in W.P.(C) 8978/2020. On 19.11.2020, the following order was passed in that petition:

" Order dated 19.11.2020 The hearing was conducted through video conferencing.

1. The learned counsel for the petitioner states that the petitioner has a No Objection Certificate („NOC ") from the Fire Department, GNCTD, for running the restaurant from the New Delhi Municipal Council („NDMC ") premises; the application was routed through the NDMC. It also has the GST registration, FSSAI registration, a clearance from the DPCC regarding pollution and requisite permission from the Labour Department. Permission from the Delhi Police is awaited because the Health Licence is yet to be issued. Once the latter is issued, the Delhi Police is likely to issue

the licence to the petitioner to operate.

2. If a restaurant with seating capacity of more than 50 persons is to be set up a prior clearance from the Fire Department is requisite. This and other clearances have been granted to the petitioner. The building in which the restaurant is housed is not unauthorised. The Health Licence would essentially requires inspection by the Inspector concerned apropos the hygiene conditions in the restaurant. However, ostensibly, the health licence has not been issued for the petitioner's premises because sanctioned plan apropos the building is not available. It is not in dispute that the building has been in existence much before NDMC came into existence. Possibly, at that time, many buildings in Connaught Place did not have a sanctioned building plan or the same are currently not available.

3. According to the petitioner, the L&DO itself admits that the sanctioned building plan of the petitioner's building, like many other structures in Connaught Place, is not available. The NDMC is the successor in interest of the L&DO. Once the L&DO itself admits that the sanctioned building plans were not in existence or not available, surely, the NDMC cannot insist upon production of a non-existent document. It would be akin to searching for nothingness in the void.

4. The learned counsel for the petitioner submits that an application from for grant of a Health Licence itself makes sufficient leeway for properties of the present nature; the applicant has an option to provide a site plan or a sanctioned building plan, in the column for submission of documents, it says „site plan/sanctioned plan“.

5. The petitioner submits that his building has been categorised as a „heritage property“. Requisite permission was sought from the Heritage Conservation Committee of the NDMC. The layout plan provided by the petitioner was duly considered and permission was given by the said Committee to carry-out renovations. It is argued that, once a Heritage Committee has itself looked into the matter and did not insist upon the sanctioned plan, the Council cannot now ask for a document which did not ever exist or is not readily available. The Heritage Conservation Committee was mindful that the heritage value of the building should be maintained, and it has so ensured while granting the permission to renovate the said premises.

6. The petitioner seeks to be treated on a par with the other property owners such as the CPWD which has been granted permission to run a restaurant in the NDMC area, despite the non-availability of a sanctioned building plan. In particular, reference is made to Serial no. 11 of the Minutes of the High Empowered Committee Meeting of the NDMC (Health Licencing Department) held on 03.12.2018 and 07.12.2018. CPWD was granted a Health Licence and allowed to run a restaurant in Connaught Place, despite non-availability/non-submission of a sanctioned building plan of its premises. It is argued that there cannot be any special equities in favour of CPWD

vis-à-vis private citizens. Reference is also made to the directions of this Court in the order dated 06.08.2020 passed in W.P. (C) 5038/2020, which has been quoted in the previous order. The relevant portion of the said order reads as under:

"...

At this stage, Mr. Grover submits that Respondent No. 1 be given liberty to inspect the premises with respect to Hygiene and other conditions. Although inspecting premises is the Statutory Duty of the NDMC and no permission/liberty is required from the Court, nonetheless, it is clarified that in the meantime, if the NDMC wants to inspect the premises, it is open for the NDMC to do so. Mr. Niyazi submits that since this is the duty of the NDMC and they are bound to do it, he can have no objection to such Inspection."

7. In view of the above, the petitioner too shall be treated similarly by the NDMC as the CPWD and the petitioner in the aforementioned writ petition. The premise shall be inspected to ascertain its conditions of hygiene and other similar requirements.

8. At this stage, the learned Standing Counsel for the NDMC submits that there is confusion apropos the application made by the petitioner. Albeit, the property is shown in the New Delhi Municipal Council area, the municipal authority is shown as North Delhi Municipal Corporation.

9. The said error is evident and the North Delhi Municipal Corporation would have no jurisdiction. It is the New Delhi Municipal Council which would have jurisdiction on the property and it should accordingly treat the petitioner's application for grant of health licence. Rs. 1,000/- as licence fee shall be deposited by the petitioner with the New Delhi Municipal Council within a week from today.

10. The learned counsel for the petitioner submits that the application was made on the MHA portal where default options were limited; therefore, for it to show North Delhi Municipal Corporation is a technical error, which cannot be levelled or apportioned to the applicant.

11. The learned Standing Counsel for the NDMC further submits that since the restaurant was started without a health licence and a notice was issued, to which the reply furnished by the petitioner is under consideration.

12. The petitioner states that it shall file a fresh hard copy of its application, along with all documents and the requisite application fee, before the New Delhi Municipal Council within a week from today. The same shall be looked into by the Council within 2 weeks thereof. The petitioner may be heard, if it is so required, through counsel and through video-conferencing or in a physical hearing, if the parties so desire. The decision of the Council shall be communicated to the petitioner within 8 weeks from today.

13. Interim orders to continue.

14. Renotify on 28.04.2021.

15. Reply and rejoinder, if so instructed, may be filed before the next date."

4 The present petitioner's restaurant also is located in the same building.

5 In the circumstances, para 1 to 7 of the aforesaid order shall apply to the present petitioner as well, while paras 8 to 12 shall not apply. No coercive measures shall be taken against the petitioner. 6 The petitioner's request for a Bar Licence has not been processed by the Excise Department, on the ground that the Health License has not been issued by the Municipal Council. The petitioner is otherwise running the restaurant and claims that it meets all the requirements. 7 The learned counsel for R-2 and R-3 seeks time to obtain instructions and/or consider the petitioner's application for grant of liquor license, especially in view of fact that in the interim, no coercive measures are to be taken by the Council.

8 List on 28.04.2021.

9 The order be uploaded on the website forthwith.

NAJMI WAZIRI, J DECEMBER 23, 2020 RW