

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

Decided on: 01.10.2013

LPA 2505/2005

MCD

..... Appellant

Through: Ms. Amita Gupta, Advocate.

versus

Jaipur Golden Transport Co.

..... Respondent

Through: Sh. Rahul Viradhani for Sh. Arya
Girdhari, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S.RAVINDRA BHAT(Open Court)**

1. This appeal, preferred by the MCD challenges the order of 5th September, 2005 allowing the respondent's writ petition. Briefly, the facts are that, the respondent (hereafter referred to as 'petitioner') is engaged in transportation of goods on interstate routes. Apparently, the MCD Inspector issued a challan against the petitioner for storing goods at Kishan Garh without possessing a municipal trade licence. This action, which was pursuant to a circular / office order dated 24th January, 1983 / 19th February, 1983 was challenged. The petitioner contended that the office order of 24th January, 1983 / 19th February, 1983 issued by MCD office had been preceded by an office order of 3rd October, 1977, which was quashed by this Court in its judgment and order dated 21.05.1980 in CW No. 1100/1979. It was submitted (by the petitioner) that the circular of 1983 merely revised rates for the 1977 circular without curing the defects noticed in the judgment in the CW No. 1100/1979, which had quashed the circular on the ground of

lack of *quid pro quo* on part of the MCD to recover the charges. MCD in its counter-affidavit had argued before Ld. Single Judge that since the 1983 circular had not been quashed by this Court and since the said circular prohibited storing of goods without municipal trade licence, the actions of the petitioner in so storing its goods without a licence is in violation of the law. It was contended that petitioner had in fact applied for trade licences for 17 sites but submitted the applications in Karol Bagh zone, which Zone's applications were processed and the others were returned.

2. The Learned Single Judge, while allowing the writ petition, noticed the provisions of Section 417 of DMC Act as well as the observations in the order dated 21st May, 1980, which allowed CW No. 1100/1979. The said order had observed that in 1962, the Commissioner, MCD had mooted a proposal to license the trade of transporting of goods by trucks in Delhi *inter alia* since loading and unloading of the trucks was found to be generally done on public streets causing inconvenience to users of the roads and pavements. Though the proposal to licence the activity was mooted in 1962 itself, the MCD issued an office order incorporating the Commissioner's recommendation only on 30th April, 1976. The charges were revised by the 1977 circular, which were challenged in CW No. 1100/1979. The said challenge was on two grounds : (a) That the MCD cannot charge fees for transportation of goods by road, or the temporary storage that occurs during the same; and (b) for a license to be issuable upon payment of fees, there ought to be some element of *quid pro quo* which was alleged to be lacking in that case.

3. Ld. Single Judge after analyzing the facts and circumstances present before him and the previous judgment of this court in CW No. 1100/1979 disposed off the writ petition by the impugned judgment, observing as follows :

"11. The first challenge failed in as much as it was held that decision of the Commissioner brought out public nuisance resulting due to the manner in which

trade of transportation and temporary storage of goods was being effected. Second challenge succeeded on the plea of 'quid pro quo'. As a consequence thereof, the impugned orders issued by the Commissioner of the Corporation were quashed.

12. In view of the decision of this Court in CW NO. 1100/79, which decision has become final, I am afraid MCD cannot enforce the office order dated 24.1.1983/19.2.1983.

13. I am surprised that the MCD continues to act in defiance of the decision of the Court without rectifying the illegality found by the Court. Nothing prevents the MCD from removing the illegality found, namely, lack of 'quid pro quo' in levying fee while rendering no services. MCD can regulate the trade by charging nominal amount as processing fee for considering grant of license or not. Be that as it may, I am not to advise the Corporation. The Corporation has a team of legal advisors. I expect them to put their heads together and guide the Corporation.

14. The impugned office order is accordingly quashed. As a consequence thereof, the challan filed against the petitioner before the Municipal Magistrate is also quashed.

15. However, that would not bring the curtains down for the reasons in a public interest litigation being W.P.(C) NO. 5239/2002. Division Bench of this Court had issued certain directions pertaining to transporters who have got their office at Roshnara Road. My present decision would not affect the directions issued by the Division Bench, which I note pertains to offices maintained by transporters at Roshnara Road."

4. It is argued by the MCD that Single Judge wrongly appreciated the order in CWP NO. 1100/1979 and concluded that there was no *quid pro quo* in support of the impugned 1983 circular. It argued that the Ld. Single Judge failed to consider any of the submissions of the parties or to make any reference to the overall conspectus of facts in the petition. It is submitted that office order of 24.01.1983 / 19.01.1983 which has not been quashed by this Court in any proceedings, is hence binding on all persons including the petitioner. In view thereof, it is submitted, the petitioner had acted in an illegal manner by storing goods in the residential area without license therefor. Consequently, submitted the Ld. Counsel for MCD, the challans were issued to the petitioner under the 1983 circular which was valid, subsisting and in force at the relevant period of time and hence cannot be found fault with.

5. This Court having considered the submission of the MCD as well as grounds urged in support of the appeal notices that the relevant provisions of law, as well as the circumstances as existed at the time of the earlier circular impugned in CW No.

1100/1979 remain unchanged. In view thereof, the Single Judge is right in holding that the office order / circular of 1983 could not have bettered the previous circular or order in as much as neither the Act nor any rule granted any power to or authorized the MCD to so grant licenses upon payment of charges. This Court is of the further opinion that by no stretch of imagination can the transient unloading of goods whilst in transit, (as in the present case) be regarded as amounting to 'storage'. Furthermore, this Court notices that the prosecution initiated in the present case, which is based on the impugned office order / circular, although ordered by the MCD, is not supported by any provisions of the Act. In the absence of any such authorization, this Court finds no reason to differ from the impugned order or its reasoning.

The appeal, being devoid of merits, is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

OCTOBER 01, 2013
VG