

Revti Devi Vs. Ndmc and ors.

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Court : Delhi

Decided On : Aug-26-2013

Judge : Sudershan Kumar Misra

Appellant : Revti Devi

Respondent : Ndmc and ors.

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + WRIT PETITION (C) No.769/2013 REVTI DEVI Through Petitioner Ms. Rani Chhabra, Advocate. versus NDMC & ORS. Through Respondents Dr. Ritu Bhardwaj, Additional Standing Counsel, NDMC. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA SUDERSHAN KUMAR MISRA, J.

1. This Writ petition has been filed by Ms. Revti Devi praying that the impugned order issued by the Section Officer, (Enforcement), NDMC, on 8th January, 2013 be quashed. By that order, the NDMC withdrew and cancelled a previous order dated 16th June, 2011 permitting the petitioner to change the trade which she was plying at a Tehbazari site, from that of pressing clothes, to that of, Pan Biri Cigarette. The sole ground for the impugned order was that, upon reconsideration, the NDMC has concluded that the relevant Resolution No.28, dated 10th November, 1989, of the NDMC permits only a change of, trade, whereas the petitioners activity, as originally permitted, amounts to a, vocation, and not a trade; and, therefore, the change sought could not have been permitted.

2. The petitioner, who sought a change of trade under the aforesaid Resolution, is a widow. Her late husband, namely, Sh. Kanchi Lal, was originally allotted Tehbazari site behind Shop No.1, P.R. Market, New Delhi, in terms of a communication bearing Reference No.185/___/Enforcement. Thereafter another letter was issued to her late husband on 9 th May, 1974 once again informing him that he had been allotted the aforesaid temporary site on the condition, inter alia, that, he will be permitted only the trade of ironing (Presswala). Before a Judicial Committee constituted by the Supreme Court of India, she had produced evidence of her presence at the site from 6th March, 1974 and the site was also inspected by that Committee on 21 st January, 1993 when it was found that the petitioner was engaged in the business of pressing clothes. Consequently, the Committee recommended that her claim for stall or kiosk in which she can ply her trade should be allotted to her.

3. Obviously, with advancing age and physical infirmity, the petitioner has found it difficult to carry on her current occupation and, therefore, applied for a change of trade. Initially, this was permitted by an order passed by the NDMC on 16th June, 2011 and she was allowed to now carry on the trade of Pan Biri Cigarette at the allotted site instead of the original trade of, ironing (Presswala), which was originally permitted to her husband by the aforesaid communication of 9 th May, 1974. This was thereafter cancelled on 8th January, 2013 by the respondent for the reason that the aforesaid Resolution No.28, dated 10th November, 1989 permits only a change of trade and not vocation; and since, according to the respondent, the activity originally permitted happens to be a, vocation and not a, trade, the benefit of the said resolution cannot be extended to the petitioner. According to the respondent, . the iron press on a press thara is vocation and not a trade ..

4. During the course of hearing, the respondent was also asked to place on record any other rules or regulations which prohibit the change sought by the petitioner. In response, an additional affidavit was filed. However, the said affidavit merely reiterates the background of the matter; and the respondent has taken the bald stand that the activity of the petitioner is, a vocation and not a trade hence it does not come within the purview of trade. hence the present case does not covered by

the said resolution. No effort has been made to demonstrate, under what rules and regulations or byelaws, the activity being carried out by the petitioner is considered different from a trade. It appears that this expression vocation, as distinct from trade, has been used for the first time in the impugned order on 8th January, 2013 and does not have any factual basis. Of course, a position has been taken by the respondent that under the Rules of the NDMC, the petitioner is barred from change of vocation. However, on being asked to produce any rule which creates such a bar, counsel for the NDMC has failed to show the same; and merely refers to the aforesaid policy of NDMC which contemplates change of trade of Tehbazari holders.

5. It has also been put to counsel whether there is any definition which has been accorded to the expression vocation under any statute, rule or regulation of the NDMC, or whether there is any material at all on the record of the NDMC that can be said to constitute a validly created distinction between the expressions trade and vocation for the purpose of Tehbazari license, and further, if any such distinction has indeed been created; what is the rational basis on which that distinction rests so as to save that distinction from the vice of arbitrariness in terms of Article 14 of the Constitution of India; and lastly, it was put to counsel for the respondent, that in any case, everything must begin by the NDMC first demonstrating the activity being carried out by the petitioner amounts to a, vocation in contra distinction to a, trade. The only reply to all this is that, when the allotment was given to her husband, it was only for ironing and she cannot be allowed to do anything else. In other words, according to counsel for the respondent, no change whatsoever can be permitted merely because it was given originally for the trade of ironing (Presswala). Unfortunately, that is not the reason given in the impugned order and indeed, no such reason could have been given because it would have been in direct contravention of the aforesaid Resolution 28 of the NDMC itself which permits change of trade of Tehbazari holders. The reason given clearly is that the activity being carried out originally amounts to a vocation and not a trade; and hence the application for change cannot be construed to be one seeking a change of trade; or to put it differently, according to the NDMC, the petitioner was seeking to change the activity being carried out at the site from that of a vocation to a trade and therefore, the request does not fall

within the ambit of aforesaid Resolution of the NDMC obliging it to consider applications for change from one trade to another trade.

6. Counsel has also tried to support the impugned order for a number of extraneous reasons, none of which have been mentioned in that order, such as some requirement of a license to carry on the trade of, Pan, Biri Cigarette, or that in fact, the Judicial Committee directed that the petitioner be only permitted to carry out work of pressing clothes and nothing else. Although all these submissions are irrelevant, and clearly after thoughts, since they do not find any mention in the impugned order, and have obviously not weighed with the Authority while passing that order; I need only observe that the submission with regard to the recommendation of the Judicial Committee is clearly based on a misreading of its finding and recommendations in the petitioners case. A perusal of the said recommendations dated 10th February, 1993 shows that the Committee has examined the factual circumstances of the petitioner and then concluded as follows: Therefore, in a case like the applicants, I find that the applicant should be considered for the grant of relief of stall/kiosk after the squatters who have been personally squatting since 1971 and are considered as per resolution number 28. This conclusion that the petitioner is entitled to be considered for allotment of an appropriate stall for carrying out the business of pressing clothes is only a corollary to the peculiar facts found demonstrating the trade that the petitioner was already engaged in, and nothing more. It merely means that since the petitioner was found ironing clothes at the site, she must be permitted the wherewithal to do so; and not that her case should be singled out and restricted to the same trade forever notwithstanding any policy permitting change of trade for Tehbazari holders. In fact, that Committee has found that the petitioner had a superior right because she is an original allottee through her husband, carrying on the same activity throughout and, therefore, she should be given preferential consideration.

7. Counsel thereafter tried to rely on paragraph 4 of the original letter of 9th May, 1974, in support of her proposition that the petitioner cannot be permitted to carry out any other activity at the site in question. I am afraid that on the contrary, this paragraph only goes to demonstrate the correctness of the petitioners case and not that of the respondent. That paragraph, which has also been reproduced

above, states as follows; 4. He will be permitted to do only the trade of ironing (Presswala). Here, counsel has tried to suggest that the use of the word, only qualifying the words, . the trade of ironing (Presswala), shows that the change sought cannot be permitted. Such an argument is utterly without merit. The word only used on the original permission granted in 1974 was obviously limited to the context. It merely meant that the allotment/license was for that specific purpose alone, and the licensee/allottee was not permitted to carry out any other trade of his choosing instead. It is precisely this limitation that obliged the petitioner to apply to the NDMC to permit a change in the trade specified; and also prompted the NDMC to frame a uniform policy in terms, inter alia, of the aforesaid resolution No. 28, for permitting change of the trade originally permitted. If such a limitation on the trade permitted was not there originally, the question of framing a policy to permit a change would not have arisen. To my mind, the real matter of interest in this paragraph is the use of the words, the trade of ironing (Presswala). It shows unequivocally that even the NDMC itself considered the activity of, ironing (Presswala), to be a trade and nothing more. I might add that nothing has been shown that might enable this Court to conclude that right from 1974 onwards, when the license was originally issued by the respondent, any distinction has been maintained between a trade and a vocation for the purpose of grant of Tehbazari rights or that, by the aforesaid Resolution No.28 while a, trade, is permitted to be changed, a vocation is not.

8. Furthermore, the right which has been recognized at law and is sought to be licensed by the respondent is of Tehbazari. The latter is an Urdu/Persian expression which may be loosely translated to mean a market held on the floor or the ground. Over time, it has attained unique connotations and is now taken to include the use of a kiosk or a receptacle also. The expression trade is known to have various shades of meaning, including a, a business conducted for profit (esp. as distinct from a profession)(a butcher by trade) (The Concise Oxford Dictionary of Current English, 8 th Edition); course, way, or manner of life; (refer the Shorter Oxford Dictionary on Historical Principles, 3rd Edition) and also, the practice of some occupation, business, or profession habitually carried on, esp. when practiced as a means of livelihood or gain; a calling (ibid). Furthermore, from the year 1650 onwards, it has been understood to denote, anything practiced for a

livelihood (ibid). It has also been shown to have been used as a verb meaning, to occupy oneself in something (ibid). In the activity permitted, the use of the word, presswala is also significant. It is a commonly used expression in the vernacular to indicate someone who is engaged in the work of pressing clothes as an occupation. Clearly therefore, when the petitioners late husband was issued a license stating that he will be permitted, to do only the trade of Ironing (Presswala); it was clearly intended to indicate that the holder of the license is expected to occupy himself in pressing clothes for monetary returns, i.e. as a business or an occupation.

9. Since the respondent has denied the change sought by the petitioner on the ground that what was permitted in terms of the license in question amounted to a, vocation and not a, trade, it must be pointed out that in the case at hand, whether the work, which is permitted to be carried out, amounted to either, a trade or, a vocation, makes no significant difference to the outcome. This is because even the expression, vocation which has its origins in the Latin vocationem (nominative vocatio) appears to have been employed in the early Fifteenth century to denote a spiritual calling, it has since been employed to denote, a persons employment, esp. regarded as requiring dedication. (The Concise Oxford Dictionary of Current English 8 th Edn.). It also means, a trade or profession (ibid). In other words, under certain circumstances, the expression, vocation can be used to denote even a trade. It is possible that the respondent has confused the word, trade when used as a noun in the expression, a trade or, the trade of...; with the use of the same word as a verb, denoting the activity of barter of goods and later, even a simple buying and selling of goods. In this context, it might be appropriate to refer to Cassells Modern Guide to Synonyms and Related Words (1971 Edn.) which, inter alia, has placed the words, profession, field, job, occupation, specialisation, trade, vocation and, work, together in a group as words referring to, the long term duties that someone takes on as a livelihood or as his main interest in life. It further goes on to state, inter alia, that the word vocation when used in a less specific or generalised sense, can be merely a neutral reference to ones form of employment; as such, it may or may not include the professions, . Significantly, it further goes on to state that, Trade, work, and job by contrast may suggest range of occupations from skilled labour to the most menial positions. Of the three, trade

implies the dignity of learned skills in which inventiveness and manual labour are combined. It follows, therefore, that by labelling the petitioners occupation of, Ironing (Presswala) a, vocation, after first defining it as, the iron press on a press thara, the respondent has merely attempted to create an artificial and meaningless distinction where none exists. It appears to have been employed merely to deny the petitioners request for reasons unknown to law.

11. Lastly, one might also refer to an observation of the Supreme Court in *Sodan Singh vs. NDMC & Ors.* (1989) 4 SCC 15. which also dealt with the question of fundamental rights of citizens engaged in Tehbazari or street trading to the effect that; 3. Street trading is an age old vocation adopted by human beings to earn living. This also shows clearly that even the Supreme Court has also thought fit to treat, street trading itself as a vocation in a similar context. It follows therefore that there can be no distinction between a trade and a vocation in this case; and that the expression, trade used in the license in question has indeed been used in a manner synonymous to the expression, vocation as understood in a more general sense, and nothing else.

12. Under the circumstances, it would appear that the distinction sought to be drawn by the respondents to deny change of trade to the petitioner has no basis whatsoever either in fact or in law; and the petitioner, who obviously belongs to a marginalized strata of society, has been compelled to run from pillar to post; and to ultimately approach this Court, on a mere whimsical notion, capriciously entertained by an officer of the respondent while dealing with her case.

13. Therefore, and for all these reasons, the writ petition is allowed, and the impugned order dated 8.1.2013 is quashed. As a consequence, the previous order of the NDMC dated 16.06.2011 whereby, in terms, inter alia, of the aforesaid NDMC Resolution No. 28, the petitioner was permitted a change of trade stands resurrected and shall be given full force and effect forthwith.

14. The petitioner shall also be entitled to costs quantified at Rs.25,000/-. CM No.1475/2013 (Stay) In view of the orders passed in the main petition, this application does not survive and the same is disposed off as such. SUDERSHAN KUMAR MISRA (JUDGE) August 26, 2013 dr/rd

