

Dalbir Malik Vs. Gnctd and ors.

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Court : Delhi

Decided On : Oct-01-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : [Delhi Municipal Corporation Act, 1957](#); Delhi Police Act

Appeal No. : W.P.(C) 7295/2011

Appellant : Dalbir Malik

Respondent : Gnctd and ors.

Advocate for Def. : Mr. Najmi Waziri; Ms. Zeenat Masoodi, Advs.

Advocate for Pet/Ap. : Mr. Sudhir Nandrajog; Mr. Abhay Kumar, Advs.

Judgement :

1. The writ petition has been filed impugning the oral order dated 28.09.2011 of the respondent No.2 SHO, Sultanpuri Police Station prohibiting the petitioner from running the Maruti Car Circus (Kuan) joyride in Ramlila & Dussehra Mela event at Indra Park, Jalebi Chowk, Sultanpuri, New Delhi. Contending that the said oral order had been issued by the respondent No.2 SHO at the instance of the respondent No.3 Deputy Commissioner of Police (DCP), Outer District, Pitampura, Delhi, and the respondent no.4 Consumer of Police, Delhi, they have also been impleaded as parties. Interim relief of restraining the respondents from prohibiting the petitioner from running the said joyride has been claimed.

2. The petition came up before this Court first yesterday when it was found that the Municipal Corporation of Delhi (MCD) (not impleaded as party in this petition) had in response to the enquiry made reported to the Additional Commissioner of Police (ACP) (Licencing) on 27.09.2011 that on inspection, the joyrides including the aforesaid Maruti Car Circus (Kuan) at the location aforesaid had been found to be satisfactory and in good working condition and further found that the ACP (Licencing) had on 28.09.2011 granted licence under the Regulation for Licensing & Controlling Places of Amusement (other than Cinemas) and Performance for Public Amusement, 1980, for the joyrides as per the Fitness Certificate issued by the MCD. The counsel for the respondents appearing yesterday had stated that a policy decision had been taken to not allow the said joyride also known as Maut Ka Kuan (MKK) at any place in Delhi. However since no decision / order in this regard was placed before this Court and finding that the licence granted to the petitioner was till 07.10.2011 only, interim order restraining the respondents from interfering in the petitioner setting up and operating the said joyride in accordance with the licence / permission given was granted leaving it open to the respondents to take proceedings in accordance with law for revocation of the licence / permission already given. Further, considering the safety / security aspects, the matter was posted for today.

3. The counsel for the respondents has today informed that an order has been issued by the ACP (Licencing) to the petitioner as well as to the others who had also been given licence for the same joyride, as under:

"It has been found that in the above mentioned Performance License issued to you for holding Ramlila & Dussehra Mela, you have taken the permission for the Joy Ride namely Maruti Car Circus, which has been reported during / after installation to be in fact a Joy ride, traditionally called as „Maut Ka Kuan, which is not permitted as it is deemed to be dangerous to the visitors as well as the rider himself. There are chances of the vehicles falling inside the well resulting in explosion which is dangerous to the life of spectators as well as the rider. The Motor Cycle / Car (engines) used in such performances are modified which make a lot of Noise pollution under which it is difficult to hear any other sound and may cause inconvenience, annoyance to the visitors. Therefore, on these grounds it

has been decided not to permit the Ride Maut Ka Kuan which may be called Maruti Car Circus or by any other name and your Licence No.194/11 issued vide No.1951-60/Addl.CP/Lic. (Amst.) dated 28.09.2011, as per "The Regulation for Licensing and Controlling of Public Amusement (other than Cinemas) and Performances for Public Amusement, 1980" is accordingly modified to such extent."

4. The counsel for the respondents has also placed before this Court the affidavit furnished by the petitioner while applying for the licence and in which the petitioner had agreed to abide by all the instructions of the Licencing Authority as may be given from time to time in public interest. He has further invited attention to Regulation 224 of the aforesaid Regulations of the year 1980 whereunder the respondents notwithstanding having issued the licence are in their absolute discretion at any time empowered to cancel or suspend a licence and to direct the licensee to close the premises. An order dated 29.09.2011 of the ACP (Licencing) revoking the said licence given to the petitioner is also placed on record. He has also shown the application made by the petitioner for the licence and has contended that the petitioner therein did not seek permission for the aforesaid joyride.

5. Though during the arguments, the provisions of the [Delhi Municipal Corporation Act, 1957](#) i.e. Sections 417 & 422 empowering the MCD to grant licences were also discussed but no licence if any granted by the MCD is before this Court. The letter dated 27.09.2011 of the MCD to the ACP (Licencing) appears to be in response to the report sought by the ACP (Licencing) from the MCD. Thus need is not felt to discuss the provisions of the DMC Act.

6. The senior counsel for the petitioner has however cited Sections 28 and 120 of the Delhi Police Act, 1978. He has contended that Section 120 dealing with "Dangerous Performances" is dealing with only such performance in which or during which a person buries himself under ground or seals himself in any room or receptacle or other than in such manner as to prevent all access of air to him. It is contended that subject joyride is thus not treated as dangerous under the Delhi Police Act. With reference to Section 28 providing for making of regulations for

regulating traffic and for preservation of order in public places etc., it is contended that event such as the subject joyride can be said to be falling in none of the Clauses of the said provision except Clause (o) providing for licencing, controlling any risk, danger or damage. The argument is that what under Section 120 of the Act is not dangerous cannot be dangerous under Section 28 (o) of the Act and cannot be regulated.

7. The senior counsel for the petitioner has further contended that in the application submitted by the petitioner to the respondents for licence, one of the items mentioned is "Circus" and which can be nothing else except the Maruti Car Circus (Kuan) which is expressly mentioned in the letter aforesaid of the MCD. It is pointed out that the licence issued to the petitioner is with reference to the joyrides inspected and found satisfactory by the MCD in its letter dated 27.09.2011 and thus the respondents cannot urge that the licence was not sought for or issued for the subject joyride.

8. The senior counsel for the petitioner has further contended that though there can be no judicial review of the perception of danger but contends that in the present case there is absolutely no basis therefor. He contends that there is no change between 28.09.2011 and today for the respondents to have changed their perception about the danger from the subject joyride; that when MCD has inspected the site and accorded its satisfaction qua all safety parameters, without any subsequent event, no change could have been effected. It is further contended that the reasons given in the order of revocation are erroneous; the joyride Maut Ka Kuan is far different from Maruti Car Circus (Kuan); in Maut Ka Kuan a person rubs petrol on his body and enters into a ball of fire with water underneath, while the subject joyride is the driving of Maruti car by skilled driver on the walls of an artificial well; that there can be no danger to the spectators from the said event inasmuch as the vehicle even if falls, falls in the well and the danger is only to the driver thereof. It is also contended that there is no more noise in driving of the said car than in driving of any other vehicle on the roads; that the order proceeds on the erroneous premise that the vehicles are modified to make more noise; nothing of the sort is done. It is contended that when the country is on the verge of hosting its first Formula 1 Race, for the fear of a freak accident, the

petitioner should not be deprived of his business; that on the basis of the licence granted by the respondents not only this year but in the previous years as well, the petitioner has made investments, called the skilled artists from out of station and made payments to them. It is contended that the order ought not to be made effective immediately and the petitioner should be allowed to operate the subject joyride at least in this season.

9. The counsel for the respondents has contended that the permissions for the subject joyride were not granted in the last two years also though admits that were being granted earlier.

10. As far as the argument of the senior counsel for the petitioner of there being no reason for revocation is concerned, the predicament of the Police can be appreciated. They unfortunately face the public ire in either eventuality. If they are to wait for a calamity to happen, they are blamed for having allowed it in the first place. Now that they are taking preventive steps on their own perception of danger, they are being blamed for prohibiting without any loss to danger or life of any person. Long back Sardar Patel had said "the police have inherited a legacy of suspicion and dislike" - the predicament of police was also noticed by this Court in *Baldev Band v. UOI* 1985 Cr.L.J 787.

11. The joyride in the present case is inherently / per se dangerous. In the said joyride a vehicle instead of plying on horizontal surface for plying whereon it is manufactured, is made to ply on in a near vertical wall for plying whereon it is not manufactured and meant. The same is possible only with the highest degree of skills and owing to the scientific principle of centrifugal force. A smallest error or negligence be it on the part of the driver or be it on the part of those erecting the said temporary well or in tightening the nuts and bolts thereof can have disastrous consequences. We are a country of masses. For any small accident on a road a large number of people gather to witness. The possibility of a stampede in the event of any accident even if in the well cannot be ruled out. The photographs shown during the course of hearing show PVC sheets being used for creating a well. PVC is inherently inflammable material. The possibility of outbreak of a fire even in the event of the vehicle falling inside the well resulting in explosion can

also not be ruled out. I am thus of the opinion that even if the respondents have misconstrued the subject joyride as a Maut Ka Kuan, the subject joyride nevertheless remains an inherently dangerous one.

12. Once a conclusion is reached that the subject joyride is inherently dangerous, in my view merely because the respondents had earlier granted the licence and merely because no accident has happened in the interregnum would not be a reason for interfering with the change of hearts of the respondents. Sufficient reasons have been stated for such change of decision. Undoubtedly in the application made to the respondents there was no mention of Maruti Car Circus (Kuan). What was mentioned was only circus which could very well be understood as acrobatic exercises. Though MCD in its report mentioned Maruti Car Circus (Kuan) but in the circumstances the possibility of a misunderstanding cannot be ruled out and this Court would not come in the way of correction of mistake committed by the respondents in understanding and the petitioner cannot have any benefit of such mistake. We are living in tumultuous times. The burden on the authorities especially the Police to ensure the safety, security and peace is at the optimum.

13. I do not find any merit in the agreement that except for what is mentioned in Section 120 DPA, nothing else can be dangerous. The need for licence from the respondents is evident and in compliance therewith only the petitioner approached the respondent for licence. The matter is squarely covered by Regulations aforesaid. The satisfaction report of MCD does not help the petitioner in as much as MCD was not granting any permission or licence and merely reporting to the police and the application of mind and decision was to be of the ACP licencing only.

14. Though it is often said that Executive Authorities do not have the power of reviewing their decision but in the matters such as this, in my view no such limitation can be placed. There is no bar to the Licencing Authority to change its own mind / opinion and in admitting an earlier action to be erroneous. That precisely appears to be the purport of the Regulation aforesaid empowering the Licencing Authority to revoke a licence earlier given.

15. Though the senior counsel for the petitioner has not expressly argued the aspect of revocation being in non compliance of the principles of natural justice but in my view, if the procedure as issuance of a show cause notice and hearing to be granted were to be followed, it would make the power of revocation redundant. The said power of revocation has to be seen contextually. The licence in the present case is for a few days only and an event which is dangerous cannot be permitted to run / operate pending a hearing.

16. Though the senior counsel for the petitioner had also vaguely suggested that the order is in violation of the fundamental right of the petitioner to carry on business but the business sought to be carried on in the present case is as aforesaid an inherently dangerous business and the law is amply clear that there is no right to carry on such dangerous activities and the State is empowered to control / recall the same.

17. As far as the argument of the counsel for the petitioner of the petitioner owing to the licence earlier granted having incurred expenses is concerned, the same though cannot entitle the petitioner to challenge the said order but may certainly entitle the petitioner to make a claim for damages.

18. Thus while dismissing the writ petition, it is clarified that the petitioner shall have liberty to make claim for damages against the respondents.

19. Though the revocation order has been issued to all those who had earlier been granted licences but still it is deemed expedient to while dismissing the petition direct the respondents to ensure that the order is strictly complied with without discrimination. During the course of hearing a newspaper of today with pictures of the said joyride operating at some other venue were shown. It thus appears that while the petitioner was prohibited and made to dismantle the well, at some other venue joyride was permitted. Such discrimination can lead to avoidable heartburn.

20. The petition therefore fails and is dismissed with directions aforesaid to the Police and liberty aforesaid to the petitioner. No order as to costs.