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

\+ W.P.(C) 2913/2020 & CM APPL. 10125/2020

PAYAL VERMA .....Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai Niyazi, Ms. Nehmat Sethi and Ms. Kirti Jaswal, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL AND ORS. ..... Respondents

Through: Ms. Kanika Agnihotri and Mr. Amer Vaid, Advocates for R-1.
Ms. Warisha Farasat, Advocate and Mr. Bharat Gupta, Advocate for Mr. Shadan Farasat, ASC for GNCTD for R-2, R-3 & R-5.
Mr. Avatar Singh, DFS, ADM.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 18.03.2020

CM APPL. 10126/2020 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

W.P.(C) 2913/2020 & CM APPL. 10125/2020

The petitioner is aggrieved by lack of response to her application for renewal of Health Licence for her restaurant, by respondent no. 1. It is the petitioner's case that other restaurants, which are identically placed, have been granted NOCs for the same but for some unknown reasons the application is being treated differently and unfairly.

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The learned counsel for the petitioner contends that the other restaurants, namely, M/s Wok in the Clouds and M/s Chatter House, whose access to the first and second floors have similarly-constructed staircase of similar width, elevation and floor areas, have been granted renewed licences, without the requirement of NOC from the Fire Department.

The learned counsel for respondent no. 1-NDMC refers to a letter dated 06.08.2019 of the Excise Department, GNCTD which in turn quotes a communication dated 14.06.2019 by the Delhi Fire Service, requiring NOC from the Fire Department, for restaurants having a gross floor area of 90 square metres or more.

According to NDMC, in the absence of such a fire clearance, it is constrained from issuing the requisite NOC to the petitioner. The petitioner, however, refers to a communication by herself as well as similarly placed restaurants as well as from the Khan Market Welfare Association, all of whom have over a period of three years been consistently writing to respondent no. 1, regarding statutory clearances which are required by them seeking not only clarity but expressing an element of willingness to comply with rules and regulations, regarding the legitimate running of their restaurants.

The learned counsel for the petitioner refers to various communications, such as a letter dated 17.07.2017 from the Department of Architecture & Environs, requiring the petitioner to get NOC from the Fire Department. In terms of this Court's order dated 27.10.2016 in W.P. (C) 3107/2013, an application was submitted by the petitioner duly certified by her architect, regarding her flat no. 66. Similarly, eight such letters were submitted by restaurant owners running their restaurants in Khan Market, to

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the NDMC apropos flat nos. 12, 17, 18, 26, 51, 53, 69 and 71.

Various documents were sent to the Office of the Addl. Commissioner of Police (Licencing). The requisite licence from the said office has already been received by the petitioner. The petitioner has been running the restaurant since 2012 and the licence has been renewed twice over for three years each, therefore, effectively the petitioner has been running the restaurant for seven years. No violation or complaint or any crime has been noticed. She only awaits the renewal of the Health Licence from the NDMC.

The learned counsel for the petitioner submits that the petitioner is duty bound to comply with all statutory requirements, especially apropos the public health and safety measures, as maybe applicable to all restaurant owners apropos any hazard.

The petitioner refers to various RTI communications to the effect that, restaurants having a seating capacity of fifty and more are required to seek NOC from the Fire Department and that too through the Statutory Authority i.e. the NDMC from whom the Health Licence is to be renewed.

It is the petitioner's contention that by a mere Circular dated 09.04.2019, the definition of Assembly Buildings, as specified in Unified Building Bye Laws for Delhi 2016 (UBBL 2016) as well as National Building Code 2016 cannot be altered. The former defines Assembly Building is as:

> *"1.4.75 Occupancy Or Use Group:*
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> .....
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> *d. Assembly Buildings: These shall include any building or part of a building where group of people not less than 50 congregate or gather for amusement,*

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recreation social, religious, patriotic, civil, travel and similar purposes; for example theatres, banquet hall, motion picture houses, assembly halls, auditoria, exhibition halls, museums, skating rinks, gymnasium, restaurants, places of worship, dance halls, club rooms, passenger stations, and terminals of air surface and other public transportation services, recreation piers and stadia....”

The petitioner has made a seating capacity of less than fifty persons in her restaurant area. The property is stated to have a floor area of 126 square metres, including the first and second floor, of which approximately 50% would be utilised for restaurant's administrative/billing area, kitchen, public utility, movement and other support areas. The second floor of the building is not a seating area but it is an art gallery, therefore, from the 126 square metres, a significant portion would need to be set-off for calculating the seating area or the area of 90 square metres, as noted in the aforementioned Circular dated 09.04.2019. It is argued, in any case, that the statutory definition cannot be altered by a mere circular. NDMC, however, insists that keeping in mind the larger public interest and fire safety of the patrons of a restaurant, it will seek clarification and/or clearance apropos the aforesaid circular.

Reference is also made to a decision of this Court in W.P. (C) 3107/2013 dated 27.10.2016, wherein the NDMC and the Delhi Fire Services were to take a decision apropos safety of visitors, regarding fire hazards in a building like the present one, in which only half of the building i.e. the first floor is used as a restaurant and the second floor is used as an art gallery. Admittedly, appropriate rules and regulations in this regard are yet to be formulated. The aforesaid judgment has already been referred to in the

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NDMC's letter dated 17.07.2017. Its own corollary action is awaited.

The petitioner is evidently constrained from doing anything more than submitting the documents which the petitioner had already submitted to the NDMC, for the latter to take a decision in the matter. It is the petitioner's case that since, at least, two restaurants having a similar seating capacity, floor area and staircase access have already received renewal of their Health Licence in April and May 2019 and that too after the issuance of the aforementioned circular of the Delhi Fire Service, the petitioner ought to be treated equally. However, NDMC states that it does not have to forward the application for fire clearance. The petitioner and the Fire Department refute the said contention.

In view of the above, for the present, the NDMC may forward the petitioner's case to the Fire Department, if it so deems necessary, to be considered on parity with the two restaurants, namely, Wok in the Clouds and Chatter House and others too who may be similarly placed.

Since the NDMC is yet to take action apropos the petitioner's application for renewal and also since the petitioner's position has remained undisturbed for the past one year, it would be fair that till it receives an appropriate response from the Fire Department, *status quo* be maintained. It is so ordered.

Issue notice.

The learned counsels named above accept notice on behalf of respondent nos. 1, 2, 3 and 5.

Issue notice to respondent no. 4 by way of ordinary process, approved courier, Speed Post, WhatsApp, E-mail, *dasti* and through counsel as well, returnable on 16.09.2020.

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Till the next date of hearing, no coercive measures shall be taken against the petitioner.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

MARCH 18, 2020
AB

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