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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1608/2007, W.P.(C) 1632/2007

1. W.P.(C) 1608/2007

VIG & KAUSHIK KOD Petitioner
Through Mr. R. Sudhinder, Advocate

versus

DY.COMMISSIONER (REVENUE) & OR Respondents
Through Mr. Kamaldeep, Advocate for R-1 to 3.
Mr. Anil Kumar Sangal, Mr. N. Sangal, Mr. Siddharth
Sangal, Advocates for respondent Jagdish Chander.

2. W.P.(C) 1632/2007

RAM K.O.D. Petitioner
Through Mr. Raghuvinder Verma, Advocate

versus

COMMISSIONER FOOD & SUPPLIES & Respondents
Mr. Anil Kumar Sangal, Mr. N. Sangal, Mr. Siddharth
Sangal, Advocates for respondent Jagdish Chander.
Mr. Habibur Rahman, Advocate for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER

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22.08.2007

1. Issue Rule. Mr. Kamaldeep, Mr. Habibur Rahman and Mr. Anil Kumar Sangal,

Advocates waive notice of Rule, in both these petitions. With consent of counsel for the

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parties, the matters were heard for disposal.

2. A kerosene oil vacancy was notified on 2.5.1994. Requests for several applicants, three of whom are parties here, were considered. The fourth Respondent Jagdish Chand (proprietor of M/s. Rahul KOD) was granted licence to run the oil depot on 3.1.1995. It is an undisputed fact that the said respondent continued to operate the licence till 28.8.1997. Apparently, the petitioner in W.P.(C) 1632/2007 (hereafter referred to as "M/s. Ram KOD") felt aggrieved and appealed to the Commissioner against grant of licence to Rahul KOD. It is also not disputed that another appeal by M/s. Nikki KOD was preferred. The grounds taken against the permit granted to M/s. Rahul KOD was that the proprietor was ineligible since he was not a resident of Delhi. The appeal of M/s. Nikki KOD was allowed. Subsequently, the appeal of M/s. Ram KOD was allowed on 29.8.1997. This resulted in cancellation of the permit. M/s. Rahul KOD approached this Court under Article 226 by filing CWP 4561/1998.

3. A learned Single Judge of this Court after considering the submissions of the parties including the official respondents, in a common judgment (in four connected writ petitions i.e. CWP 4364/97, 4376/97, 4561/98 & 1042/99 on 23rd January, 2003) dismissed all the petitions. M/s. Rahul KOD, the 4th respondent preferred an appeal to the

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Division Bench. The appeal was allowed inter alia in the following terms:

"14. In this view of the matter, we set aside the impugned judgment and order and also the orders of the learned Financial Commissioner and Commissioner (Food & Supplies) and remand back the case to the learned Commissioner (Food & Supplies) to consider the case of the appellant afresh in accordance with law. While doing so, the fact that the appellant was not a resident in the district for a period of one year should not be taken into consideration at all. The Commissioner (Food & Supplies) shall take a decision in the matter within a period of four weeks from today and the decision taken by him shall be communicated to the appellant. If in case the appellant is still aggrieved, he shall have the liberty take resort to the appropriate remedy provided for in accordance with law."

4. After the above order of the Division Bench, the Commissioner of Food and Civil Supply considered the matter and deemed it appropriate to remand the entire dispute for fresh consideration by the Selection Committee, through his order dated 26th December, 2006. The Commissioner also directed the Selection committee to keep the circumstances, the Rule position of 1994 and the directions of the Division Bench in mind while making its orders.

5. Pursuant to the remand by the Commissioner, the Selection Committee conducted an entirely fresh exercise whereby it notified all the applicants who were eligible according to the records. It is an admitted fact that originally 9 applicants had approached for the licence/permit. According to the records in this case, 7 were

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apparently served and the 5 such applicants were considered afresh but according to the eligibility conditions and the other circumstances as existing on the relevant date in 1994. On the basis of this exercise, the Selection Committee recommended grant of permit to M/s. Rahul KOD. That order has now been impugned in these proceedings.

6. Learned counsel for the petitioners in these cases sought to submit that the order of the Selection Committee suffers from various infirmities. It was urged that besides the issue of residence, the application of M/s. Rahul KOD could not be considered at all having regard to the location of the premises. The petitioner M/s. Vig & Kaushik KOD contended that its application was rejected without any reason and that the reasons adduced cannot be sustained. On the other hand, the petitioner M/s. Ram KOD contended that its application was rejected on flimsy ground and that the respondent No.4 should not have been granted the permit.

7. I have considered the various orders of the authorities including initial order of the Commissioner dated 29.8.1997 cancelling the permit of M/s. Rahul KOD as well as the orders of the single Judge and Division Bench. What is immediately apparent is that the Division Bench made a limited remand to the Commissioner to consider the appeal pending before him afresh but without taking into consideration, the non-fulfilment of the

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residence factor in respect of M/s. Rahul KOD. However, Commissioner in this case, in my view, proceeded further and remitted the matter afresh for appraisal on the entire facts. This, in my opinion, was not permissible. The Court had directed Commissioner to decide the appeal pending before him and not to remit the matter, for fresh administrative decision. It is settled law that once a matter is remitted on issuance of the certiorari the authority concerned is bound by the scope of the order and should not traverse beyond it. In these circumstances, the impugned order is not sustainable.

8. Accordingly, the impugned orders of the Commissioner and the consequential order of the Selection Committee are hereby set aside. The Commissioner is directed to strictly comply with the orders of the Division Bench and consider the appeals pending before him in the light of the appeal, and the records and after hearing the concerned parties to the appeal.

9. The writ petitions are accordingly disposed off, without any order on costs.


S. RAVINDRA BHAT, J

AUGUST 22, 2007

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