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

+ W.P.(C) 4857/2022

JSN INFRATECH LLP

..... Petitioner

Through: Mr. Vivek Kohli, Sr.Advocate with
Mr. Nalin Talwar, Ms. Perna Kohli,
Mr. Sunil Tyagi, Mr. Sandeep
Bhuraria, Mr. Yeshi Rinchhen,
Mr.Kustubh Singh and Mr. Vishnu
Anand, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Dr. Abhishek Manu Singhvi, Mr.
Rahul Mehra, Sr.Advocates with Mr.
Santosh Kumar Tripathi, SC (Civil)
GNCTD with Mr. Arun Panwar, Mr.
Chaitanya Gosain and Mr. Amanpreet
Singh, Advocates
Ms. Arunima Dwivedi, ASC with Mr.
Ved Prakash, Advocates for R-
4/SDMC

60

AND

+ W.P.(C) 3552/2022 & CM APPLs 10450/2022, 15539/2022,
15540/2022

MAGUNTA AGRO FARMS PVT. LTD

..... Petitioner

Through: Mr.Saransh Kumar, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Dr. Abhishek Manu Singhvi, Mr.
Rahul Mehra, Sr.Advocates with Mr.
Santosh Kumar Tripathi, SC (Civil)
GNCTD with Mr. Arun Panwar, Mr.
Chaitanya Gosain and Mr. Amanpreet
Singh, Advocates
Mr. Ajjay Aroraa, Standing counsel
with Ms. Kajal Dutta and Ms. Anuj

Bhargava, Advocates for
Respondent/NDMC
Mr. Manu Bansal, Advocate for
Respondent No.6/DDA

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AND

+ W.P.(C) 176/2022 & CM APPL. 468/2022

M/S ORIGIN APPLIANCES PVT. LTD Petitioner

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Tanmaya Mehta, Mr. Sanjay
Abbot, Mr. Prabhas Bajaj and Mr.
Ajay Sabharwal, Advocates
Mr. Siddharth Luthra, Sr. Advocate
with Mr. Kaushtaubh Seth and Mr.
Ayush Kaushik, Advocates
Mr. N.P.Singh, Advocate

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Dr. Abhishek Manu Singhvi, Mr.
Rahul Mehra, Sr. Advocates with Mr.
Santosh Kumar Tripathi, SC (Civil)
GNCTD with Mr. Arun Panwar, Mr.
Chaitanya Gosain and Mr. Amanpreet
Singh, Advocates
Mr. Ram Kumar, Advocate for
Respondent/DUSIB

62

AND

+ W.P.(C) 2102/2022 & CM APPL. 6037/2022

GLOW TRADEX INDIA PVT LTD & ORS. Petitioners

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Tanmaya Mehta, Mr. Sanjay
Abbot, Mr. Prabhas Bajaj, Mr. Ajay
Sabharwal and Ms. Mallika Bhatia
Arora, Advocates
Mr. Siddharth Luthra, Sr. Advocate
with Mr. Kaushtaubh Seth and Mr.
Ayush Kaushik, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Dr. Abhishek Manu Singhvi, Mr. Rahul Mehra, Sr. Advocates with Mr. Santosh Kumar Tripathi, SC (Civil) GNCTD with Mr. Arun Panwar, Mr. Chaitanya Gosain and Mr. Amanpreet Singh, Advocates
Mr. Achal Gupta, Advocate for R-5/DDA
Mr. Ajjay Aroraa, Standing counsel with Ms. Kajal Dutta and Ms. Anuj Bhargava, Advocates for Respondent/NDMC
Ms. Anjali Chauhan, Advocate for Respondent/EDMC

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **29.03.2022**

CM APPL. 15540/2020 (for exemption) in WP(C) 3552/2022

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 4857/2022

W.P.(C) 3552/2022 & CM APPLs 10450/2022 & 15539/2022

W.P.(C) 176/2022 & CM APPL. 468/2022

W.P.(C) 2102/2022 & CM APPL. 6037/2022

These writ petitions have challenged the validity of a circular issued by the respondents dated 17 November 2021 in purported implementation of the Excise Policy for the year 2021-2022.

The dispute itself arises in the context of the petitioners having been unable to open retail vends in “non-conforming” areas. Referring to the provisions made in the policy itself, learned Senior Counsels appearing in support of the writ petitioners would contend that the underlying thread of

the policy was based on the stated objective of ensuring equitable distribution of liquor vends across all wards with emphasis being laid on unserved as well as under-served areas. It was also submitted that while the 272 wards were divided into 30 zones, the licensees were mandatorily required to establish at least two vends in each ward falling in a particular zone. It was submitted that the Government had categorically held out that liquor vends would be established in all areas including those which may have been non-conforming. It was pointed out that it was based on the aforesaid promises and assurances that the petitioners had structured and submitted their bids.

It was additionally urged that the Government had itself held out in the tender notice that if the proposed premises fall in a non-conforming area, the same would be considered with the prior approval of the Government. This according to the petitioners constituted an unequivocal assurance by the Government to aid and assist them in the establishment of vends. According to the petitioners, their applications for opening of retail vends in non-conforming areas places them under the additional and unforeseen burden of approaching the respective Municipal Corporations and that in numerous cases those permissions have been refused resulting in the petitioners being placed under tremendous financial strain as well as the spectre of facing huge losses.

The issues with respect to the problems being presently faced by the licensees on account of various proposed locations falling in non-conforming areas came to be noticed by the Court while considering a challenge to the provisions of the policy in a batch of writ petitions with the leading matter being WP(C) 13668/2021. On 9 December 2021 while

considering the prayer for interim directions, the learned Judge noticed that there existed a dispute with respect to the total number of non-conforming areas. There was also a question raised with respect to the number of wards which would fall in non- conforming areas. The Court in its order of that date took note of the fact that the respondents had been able to identify 67 wards which fell in non- conforming areas. It also noticed the contention of the petitioners who argued that the number of such wards could be much higher. It also took note of the assertion of the petitioners that various wards had come to be wrongly classified as being in conforming areas when in fact they would fall in the category of non- conforming areas. The Court at that stage proceeded to frame interim directions for a pro rata reduction of license fee in respect of vends in the 67 identified non-conforming wards.

The respondents on the other hand have urged that the terms and conditions on the basis of which offers were invited did not hold out any promise or guarantee to the petitioners enabling them to establish retail vends even in non-conforming areas. According to learned Senior Counsels appearing for the respondents, the Government had only held out that it would be obliged to facilitate the licensees in the establishment of liquor vends. They would contend that the Government had at no stage held out any promise that the establishment of retail vends would be permitted without the requisite approvals and permissions of the concerned Municipal Corporations or the DDA being obtained.

The attention of the Court was also invited to the subsequent circular of 9 February 2022 which while recognising the constraints faced by the licensees with respect to retail vends falling in non-conforming areas had accorded permission for opening of additional vends in conforming areas.

Reverting to the order of 9 December 2021, the Court notes that at the interim stage the learned Judge proposed a *pro rata* reduction in the license fee with respect to vends which fell within the 67 non-conforming wards which had been identified by the respondents. However, the issue of whether the aforesaid list was comprehensive and authoritative was not ruled upon finally. The issue of a final and comprehensive determination appears to have been left over for consideration at a later stage. It is also pertinent to note that apart from the restrictions on the establishment of a retail vend which may stand attracted in terms of the rules or the relevant bye-laws framed by the individual Municipal Corporations, the policy itself places various restrictions with respect to the location of liquor vends.

In the considered opinion of this Court, in order to lend a quietus to the controversy which has arisen as well as to evaluate the merits of the rival contentions, it would appear appropriate to request the Government to consider the constitution of a committee which may examine the factual situation prevailing in different wards and the localities forming part thereof so that an authoritative list of conforming and non-conforming wards is duly prepared after due verification. The identification of non-confirming wards would enable the Court to rule on the rival submissions addressed as well as to consider the final directions that may be warranted.

The proposed committee could comprise of representatives of the Department of Excise, the four Municipal Corporations, DDA and such other stakeholders as may be deemed appropriate by the Government. The committee could also be charged with dealing with any representations that may be submitted by licensees asserting wards to be non-conforming. The committee could also consider the receipt of representations by such of the

licensees who may have an objection to the inclusion of certain wards in the list of conforming areas. The committee which the Government is being requested to consider constituting would be obliged to draw up a list of conforming and non-conforming wards and locations falling therein based not just on the restrictions which flow from the statutory rules or the bye-laws framed by the respective Municipal Corporations but also bearing in mind the locational restrictions which stand imposed in terms of the policy itself.

Regard must be had to the fact that the identification and classification of conforming and non-conforming wards would clearly require examination of various factual aspects which may not be feasible for this Court to undertake in the exercise of its jurisdiction under Article 226 of the Constitution. The comprehensive exercise for identification of conforming and non-conforming wards would ultimately place for the consideration of the Court an authoritative list on the basis of which the legal questions which are addressed may be decided.

In order to enable learned senior counsels appearing for the respondents to take appropriate instructions as also to convey the request of the Court to the Hon'ble Lt. Governor to consider the constitution of an appropriate committee on lines suggested above, let this petition be called again on 31.03.2022 to be placed on the top of the Main List.

YASHWANT VARMA, J.

MARCH 29, 2022/mw