

CASE SUMMARY

Complaint against the Urban Services Department (USD), the Home Affairs Department (HAD) and Land Development Corporation (LDC) for maladministration in regard to the reprovisioning arrangements for the business stalls in a street affected by a LDC re-development program

THE COMPLAINT

A number of ex-street vendors who operated business stalls at a public street where clearance and redevelopment had recently taken place, complained against the USD and the LDC for -

- (a) lack of adequate consultation/information on guidelines about how street vendors at that street could be resettled before redeveloping the area;
- (b) ambiguous and ill-defined criteria employed to exclude the complainants from the reprovisioning exercise;
- (c) arbitrary, unreasonable and prejudicial allotment of stalls in the new Theme Bazaar leading to the rejection of complainants' applications; and
- (d) inadequate removal allowances or other forms of compensation or ex-gratia allowance.

Upon review of the available information, The Ombudsman decided that the scope of our investigation should also be extended to cover the HAD.

OBSERVATIONS AND FINDINGS

Complaint point (a)

2. This Office notes that the working group on the reprovisioning arrangements for the business stalls in the concerned street (WG) had never consulted/informed the

traders on the eligibility criteria for reprovisioning. After considering that in this re-development project the LDC had no responsibility on the clearance of the traders, The Ombudsman concludes this complaint point against the USD and HAD substantiated but unsubstantiated against the LDC.

Complaint points (b) and (c)

3. We note that in this reprovisioning exercise, the non-selected types of traders had not been treated equally vis-a-vis the selected type of traders. On the fairness of the eligibility criteria adopted for the reprovisioning of the selected type of traders, this Office notes that the USD had an established set of criteria to determine the eligibility of a hawker for reordering through a series of surveys.

4. It is noted that in this case, the USD had made preparation for the survey, but suddenly decided to use the LDC 1994 informal survey for the drawing up of the first list of eligible bidders despite the LDC's expressed reservations on the use of it.

5. On the part of the HAD, we are unable to find the District Officer (DO) who served as the WG chairman had steered the WG to prudently examine the eligibility criteria proposed by the USD. Instead, the WG heeded and agreed whatever the USD had recommended. We also find that the DO had not clearly defined the respective role of each participating department/ organization when members of the WG first met.

6. The Ombudsman therefore considers that complaint point(s) (b) and (c) against the USD and HAD are substantiated but unsubstantiated against the LDC.

Complaint point (d)

7. This Office notes that unlicensed hawkers are not entitled to any form of compensation or reprovisioning. The Ombudsman thus concludes that complaint point (d) against the LDC, the USD and the HAD is unsubstantiated.

CONCLUSION

8. Overall, the complaint against the USD and HAD is partially substantiated but unsubstantiated against the LDC.

RECOMMENDATIONS

9. In the light of this investigation, this Office considers that the USD and HAD had adopted an ill-conceived basis for drawing up the eligibility list for reprovisioning. The Ombudsman therefore recommends the Director of Urban Services (DUS) to reconsider the claims of the complainants and offer them appropriate remedies, including reprovisioning or financial redress, if their claims are justified.

10. To avoid recurrence of similar incidents in future clearance/resumption exercises, The Ombudsman further recommends that the Director of Home Affairs (DHA), DUS and the Chief Executive of LDC should review the procedures and arrangements with a view to clearly defining the terms of reference and membership (with their respective role) of any inter-departmental/organizational working groups.

RESPONSE FROM THE URBAN SERVICES DEPARTMENT

11. The DUS disagreed with our findings and conclusion and made the following comments -

- (a) The USD can exercise only the powers delegated to them by the Provisional Urban Council (PUC); it has no authority to act as a central government department independently of the PUC. As such, neither the LandsD nor even the Government can require the PUC/USD to clear the hawkers on Government land.
- (b) The PUC's policy in this case is that it does not resite hawkers affected by LDC projects.
- (c) The role of the USD in the WG was only an adviser.

12. The DUS did not accept our recommendations. However, she is prepared, on a no commitment basis, to submit the complainants' cases to the Markets and Street Traders Committee (MST S/C) of the PUC for the latter's consideration as to whether,

on an exceptional basis, the complainants should be allowed to bid for a market stall/fixed pitch site or waitlist for a stall in the Theme Bazaar.

RESPONSE FROM THE HOME AFFAIRS DEPARTMENT

13. The DHA had reasons to believe that the vendors in the concerned street had a fair understanding of the deliberations of the WG through the non-official members who were in close contact with them. The DHA also stressed that the DO did not have the power to force the USD to conduct the freezing survey.

FINAL REMARKS

For the Urban Services Department

14. In concluding complaint points (a) to (c) as substantiated, we had considered the complaint in its totality. The following considerations are crucial -

- (a) The USD is considered as the department responsible for regulation and control of hawkers, as the Department has all along been doing. Since the declaration of this investigation, the USD had never informed us that the PUC had decided that "it does not resite hawkers affected by LDC clearances" .
- (b) The USD had all along been considered as a member of the WG as evidenced by comments we received from the DHA and the DUS.

15. Having regard to this belated argument, this Office considers that there is obvious maladministration on the part of the USD, if it is really the PUC' s policy that it does not resite hawkers affected by LDC projects, to have taken part so actively in the WG, contrary to the policy of the PUC. We also consider that the USD' s activities in the WG went far beyond its claim of being only the adviser to the WG.

For the Home Affairs Department

16. This Office is of the view that even if the non-official members of the WG had kept in close touch with the traders, their activities should not absolve the HAD's responsibility from consulting/informing the affected traders. We also consider that if the DO had taken up his/her role properly by defining clearly the terms of reference of the WG and the respective role of each department/organization in the first instance, the situation of the USD turning back at a late stage that it would not carry out a freezing survey would not have happened.

17. In sum, having carefully considered the comments from the DUS and DHA, The Ombudsman is of the view that the findings, conclusion and recommendations of this investigation should remain unchanged. He is pleased to note that the DUS would submit the complainants' cases to the MST S/C of the PUC for consideration.

Office of The Ombudsman

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