
(2014) 07 CAL CK 0027
In the Calcutta High Court
Case No : Writ Petition No. 20942 (W) of 2012

Abdur Rouf

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 5 CHN 177

Hon'ble Judges : Ashim Kumar Roy, J.

Bench : Single Bench

Advocate : Salil Kumar Sarkar, for the Appellant; Sirsanya Bondyopadhyay, for the Respondent

Final Decision : Disposed off

Judgement

Ashim Kumar Roy, J.—The writ petitioner No. 1 is a Licensed Stamp Vendor attached to the Additional District Sub-Registrar Office, Pandua, Hooghly and the petitioner No. 2 is his son. It is the case of the writ petitioner No. 1 that although he has been running his business for last several years without any blemish but now due to his old age and the infirmity he acquired thereby, he was not in a position to run his business effectively and smoothly. Accordingly, he applied to the Licensing Authority to issue a new Stamp Vending Licence in favour of his youngest son, against his existing licence and after the grant of licence to his son, he undertook to surrender his licence. However, the respondent authority by their letter being Annexure "P-4" to this writ application without considering his such prayer asked him to surrender his original Stamp Vending Licence. The learned Counsel for the writ petitioner No. 1 vehemently contended that the approach of the respondent authority is totally erroneous and although the writ petitioner was asked to surrender his licence but nowhere he has been assured that after such surrender a new licence shall be issued in favour of his son, the petitioner No. 2. It is further submitted if after surrender of his licence by the petitioner No. 1, no licence is issued to his son, the petitioner No. 2, his entire family has to starve, which has no other source of income. He further argued

that in this case it would have been proper for the Licensing Authority without asking the petitioner No. 1 to surrender his licence, to first issue a fresh licence in favour of his son, the petitioner No. 2 and then to call upon him to surrender his licence. In this regard, the learned Counsel for the writ petitioner relied upon an unreported decision of a co-ordinate Bench of this Court in connection with W.P. No. 6012 (W) of 201.

2. On the other hand, Mr. Sirsanya Bandyopadhyay, learned Counsel appearing on behalf of the State opposed this application and submitted that there is nothing wrong in the order impugned. He vehemently urged the same is in consonance with the guidelines prescribed in this regard by the Finance Department, Government of West Bengal vide annexure P/1 and P/2 to this writ application. He contended according to the said guidelines only after surrendering of his existing licence the question of granting new licence in favour of his youngest son can be considered. He urged this writ application is liable to be dismissed.

3. Heard the learned Counsel appearing on behalf of the parties. Considered their respective submissions and, more particularly, the guidelines prescribed for granting new Stamp Vending Licence for sale of non-postal stamps being Annexure "P-1" to this writ application and the Office Memo issued by the Finance Department, Government of West Bengal relating to formulation of guidelines for granting a new Stamp Vending Licence for sale of non-postal stamps as also the unreported decision of this Court relied upon from the side of the writ petitioner.

4. The decision relied upon by the learned counsel of the petitioner is clearly distinguishable from the background facts of the present case. In the decision referred, the writ petitioner was the daughter of a licensed stamp vendor and after her father acquired disability due to illness she approached the concerned collector for issuance of a new stamp vending licence in her favour in place of her father's existing licence and when the collector sat tight over the matter and took no action, she approached the Writ Court and the Writ Court merely disposed of the said writ application directing the collector to consider the petitioner's application in terms of clause (c) of para 9 of the Government Order and in accordance with law after giving her a reasonable opportunity of hearing. However, this is not a case where the collector refused to consider the application of the petitioner No. 1 but while considering the prayer of the writ petitioner was directed to surrender his licence first. Therefore, the decision relied upon by the learned counsel of the petitioner has no manner of application in this case because there cannot be any case of inaction on the part of the respondent authority.

5. Now, going through the annexure P/1 and P/2, the guidelines for granting new vending license for sale of non-postal stamps prescribed therein, it is explicitly clear under such guidelines when an existing licensed stamp vendor died or acquired inability due to old age and permanent infirmity, the collector may at his

discretion, consider, granting of a new vending licence to the relations mentioned therein on compassionate ground. However, according to the said guidelines, the question of granting of new licence on compassionate ground to the relations of the stamped vendor will arise only after termination of the existing licence. Furthermore, in such case the relative of the existing stamped vendor has to fulfill all the eligibility criteria as prescribed in the guidelines and the existing vendor had to run his business continuously and satisfactorily for at least 10 years. In such case it is also necessary to show that such grant of licence is required for maintenance of the family of the deceased/disabled stamp vendor. Therefore, the question of granting new stamp licence to the relation of the existing stamped vendor on compassionate ground, as aforesaid would arise, only after the termination of licence. Now, in order to be eligible for new stamp vending licence on compassionate ground, the relation of deceased or disabled stamp vendor has to fulfill certain conditions prescribed in the guidelines. Although according to the guidelines the question of consideration of granting new stamp vending licence on compassionate ground would be at the discretion of the collector but it goes without saying the collector is always obliged to exercise its discretion judiciously and according to the norms prescribed therein and such decision must not be arbitrary, unreasonable and fanciful.

6. Accordingly, I do not find any mistake in the order impugned and this writ application stands dismissed and disposed of.

7. I further make it clear that this order of dismissal will not preclude the writ petitioner No. 2 to apply for grant of a new stamp vending licence against the termination of the stamp vending licence of his father on fulfillment of all eligibility criteria. I also make it clear since this is a question of livelihood, the respondent authority ought to have considered this issue on a priority basis and has to dispose of such application within two weeks from the date of making of such application. In such a situation the decision must be taken by the concerned respondent after giving reasonable opportunity of hearing to the writ petitioner. Office is directed to supply urgent xerox certified copy of this order to the parties, if applied for, as early as possible.