
(2021) 03 SIK CK 0009
In the Sikkim High Court
Case No : Writ Petition (C) No. 01 Of 2019

Amirun Nisa & Anr

APPELLANT

Vs

Singtam Nagar Panchayat & Ors

RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:

Sikkim Trade License And Miscellaneous Provision Rules, 2011 — Rule 5, 6, 7, 10A, 12
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 SIK CK 0009

Hon'ble Judges : Jitendra Kumar Maheshwari, CJ

Bench : Single Bench

Advocate : A. Moulik, Ranjit Prasad, J.B. Pradhan, D.K. Siwakoti

Final Decision : Disposed Of

Judgement

Jitendra Kumar Maheshwari, CJ

This petition under Article 226 of Constitution of India has been filed seeking numerous reliefs but the question involved in the present case to grant of license is in very narrow compass.

Md. Mansoor Alam, who was running a shop in the name of M/s Good Luck Tailors was having a valid license issued by the respondent no.1, who died on 07.03.2016. After his death, his wife submitted an application for renewal/transfer of license/grant of fresh license. It is not in dispute that on 30.03.2016 the license was renewed up to 31.03.2016 but later the respondent no.1 made a correspondence with the son of the deceased i.e. petitioner no.2 that the application dated 22.03.2016 was submitted in the name of deceased though he was not survived on that date, therefore, the license, so granted, be deemed to be cancelled. In any case the facts remain that the license which was in the name of Late Md. Mansoor Alam in the name of M/s Good Look Tailors was ceased to expire on 31.03.2016. Thereafter, there is no fresh license or renewal issued by the respondent no.1 on the applications submitted by the petitioner

no.1. It is also not in dispute that the house owner made several recourses for taking the possession of the shop, with the deceased Md. Mansoor Alam that includes the proceedings under Section 145 and 146 and other recourses but the wife/son of the deceased late Md. Mansoor Alam is in possession of the said shop. In the said sequel of facts the issue as involved in the present case regarding grant of license is required to be looked into.

After hearing learned Counsel for the respective parties and on perusal of the Rules known as Sikkim Trade License and Miscellaneous Provision Rules 2011 it is clear that Rule 5 deals with the procedure eligibility for obtaining trade/hawker license. Rule 6 is for inspection of premises before issue of license and under Rule 7 trade license would be issued on an application submitted in Form No.1. Rule 12 deal with the conditions for renewal of license and Rule 10 A amended as on 25.07.2012, the license may be transferrable only in the case of death of the licensee having a valid trade license, if the legal heir submits a documentary proof, no objection certificate from the family members and other required documents within three months. In the aforesaid legal position the fact is required to be noticed that Md. Mansoor Alam who was a licensee died on 07.03.2016 but at the time of his death valid trade license was not in existence. An application was submitted on 22.03.2016 in the name of the deceased which was granted up to 31.03.2016. Later by a correspondence made by respondent no.1 it was observed that said license deemed to be cancelled because the application was submitted in the name of dead person on 22.03.2016 though he was died on 07.03.2016.

In the aforesaid situation, the only recourse of grant of fresh license appears to be justifiable and it has rightly been prayed by the petitioner in relief no.1. The recourse of taking up of renewal of license and transfer of license is not at all available to petitioners, looking the provisions enumerated in the rules. In view of the said factual and legal position the submission made by respondent no.1 appears to be just looking into the stand so taken in their counter affidavit. Taking note of the said stand it is to observe that the petitioners of this case must first apply to respondent no.1 for grant of license in Form No.1 of the rules and thereafter, the application may taken into consideration by respondent no.1 and the final order would be passed by them within timeframe.

At this stage it is suffice to observe that requirement of non submission of the NOC from the house owner of the premises shall be considered objectively, in terms of the rules and in particular looking to the dispute which is prevailing with the deceased / petitioners of this case and the house owner, therefore, the objectivity of the grant of submission of the NOC is to be looked into by the Authorities while disposing the application. It is to also observe that the application submitted in Form No.1 may not be rejected merely because NOC by the house owner has not been given.

In view of the foregoing discussion this Writ Petition is disposed of with the direction to the petitioners to submit a fresh application under Sikkim Trade

License and Miscellaneous Provision Rules 2011 in Form No.1 within a period of two weeks from the date of receipt of certified copy of this order and on submission of such application, it shall be considered and decided by respondent no.1, in view of the foregoing observation, in the matter of grant of the fresh license as per law.

The Writ Petition stands disposed of.