
(2006) 12 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 25909 (W) of 2006

Amlanabha Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 400
Constitution of India, 1950 — Article 226
Drugs and Cosmetics Rules, 1945 — Rule 65A, 68, 69, 71, 72
Petroleum Rules, 1976 — Rule 153(1)

Citation : (2007) 3 CHN 49

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kishor Datta and Sandipan Banerjee, for the Appellant; P.S. Bose, S.K. Mal and D. Basu for Respondent Nos. 4 and 5 and M. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—Respondent Nos. 4 and 5 are monthly tenants under the petitioner in respect of a property situate at 103/1, Basanta Lal Saha Road, P.S. Behala, Kolkata - 700 073 (hereafter the said premises). Respondent No. 4 is the holder of a licence, under the Drugs and Cosmetics Rules, 1945 (hereafter the said rules), authorised to manufacture for sale of drugs specified in Schedule C and C(1) (excluding those specific in Schedule X). The licence, on renewal by the licensing authority, is valid till 26.12.2006.

2. Alleging that the respondent Nos. 4 and 5 had been carrying on unauthorised construction in the said premises, the petitioner had approached the Kolkata Municipal Corporation (hereafter the Corporation) with the prayer to initiate appropriate action against them. The Corporation not having acted on the basis of the petitioner's prayer, Writ Petition No. 16602 (W)/05 had been instituted by the petitioner in this Court. By order dated 23.11.2005, the writ petition stood disposed of with a direction upon the Corporation to initiate a proceeding u/s 400

of the Kolkata Municipal Corporation Act and to conclude such proceeding after hearing the petitioner and the respondent Nos. 7 and 8 (Respondent Nos. 4 and 5 herein) within the time-frame fixed therein. Till such time determination was made by the Corporation in terms of the said order, the parties were directed to maintain status quo with regard to such construction.

3. In compliance with the aforesaid order, a proceeding was initiated by the Corporation under the appropriate law which culminated in an order dated 3.3.06 being passed by the Special Officer (Building) of the Corporation, whereby the respondent Nos. 4 and 5 were found responsible for raising unauthorised construction in the said premises and, accordingly, were directed to demolish the same at their own costs and risk within 15 days from date of communication of the order.

4. Having come to learn from the office of the Drug Controller, respondent No. 2 herein, that steps were being taken to issue Schedule M certificate in favour of respondent Nos. 4 and 5 in respect of the said premises, the petitioner appears to have lodged a series of representations calling upon the respondent No. 2 not to issue Schedule M certificate in favour of the respondent No. 4 in view of the fact that unauthorised construction has been raised by it in the said premises.

5. The respondent No. 2 did not respond. Feeling aggrieved by the inaction on the part of the respondent No. 2 in the considering the representations lodged by him, the petitioner has approached this Court once again with the present petition, now praying for Mandamus on the respondent No. 2 to consider and dispose of the representations of the petitioner, objecting to issuance of Schedule M certificate in respect of the said premises in favour of respondent Nos. 4 and 5. Additionally, a Mandamus has been prayed for on the respondent No. 2 to forthwith cancel/rescind/withdraw the decision taken, if at all, for issuance of a Schedule M certificate.

6. Mr. Bose, learned Senior Counsel representing respondent Nos. 4 and 5 has raised a preliminary objection with regard to maintainability of the writ petition. He has submitted that no legal right of the petitioner having been infringed by any action of the respondents, he is not entitled to maintain this writ petition and the same ought to be dismissed. He further submits that the writ petition has been filed with the intention of evicting respondent Nos. 4 and 5 from the said premises in an indirect manner, without instituting a suit for eviction before the competent Civil Court. In support of his submissions, he has relied on the following decisions:

- (i) State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo,
- (ii) Pravat Kumar Mukherjee Vs. State of West Bengal and Others,
- (iii) 2006(2) CLJ 637 : Surajdeo Singh v. Board of Trustees for the Port of Cal; and
- (iv) The Corporation of Calcutta and Others Vs. Dhirendra Nath Sen and Others,

7. He has also urged that the order passed by the Special Officer (Building) of the Corporation has since been assailed in an appeal before the Building Tribunal, and that the order of demolition has been stayed pending hearing of the appeal. It has been submitted that renewal of the license issued in favour of respondent No. 4 (due to expire on 26.12.2006) is yet to be granted.

8. Learned Advocate representing the State has also submitted that the issue regarding renewal of licence in favour of he respondent No. 4 is pending before the respondent No. 2.

9. Having regard to the admitted fact that no decision has yet been taken on the application for renewal of licence made by the respondent Nos. 4 and 5, prayer of the petitioner for a Mandamus on the respondent Nos. 2 to cancel/rescind/withdraw the decision to renew the licence of the respondent Nos. 4 and 5 does not require consideration, and has rightly not been pressed by Mr. Dutta, learned Counsel for the petitioner.

10. Mr. Dutta, has submitted that in view of the fact that the application for renewal is pending, he would only pray for a direction upon the respondent No. 2 to consider the representations of the petitioner prior to taking a decision to renew the license, as prayed for by the respondent Nos. 4 and 5.

11. Countering the point of maintainability as raised on behalf of the respondent Nos. 4 and 5, Mr. Dutta has submitted that unauthorised construction having been raised by the respondent Nos. 4 and 5 in the said premises they have no right to obtain renewal of licence in respect of a portion of the said premises where such unauthorised construction has been raised. He has referred to Rules 65A and 84AA of the said rules whereby the licensing authority has been empowered to seek additional information from an applicant for licence or from a licensee and has urged that if the respondent No.2 proceeds to grant renewal of licence in favour of the respondent Nos. 4 and 5 even in respect of the portion of the said premises where unauthorised construction has been raised, that would prejudicially affect the petitioners's right as an owner of the said premises and in such a case the petitioner as owner would have the right to maintain the writ petition. He has relied on the decisions reported in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *Jayanta Kumar Banerjee Vs. State of West Bengal and Others*, to buttress his contention that the writ petition is maintainable. He has also relied on the decision reported in *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, where it has been held that discretionary power ought to be exercised in a just, reasonable and fair way, and in a case of long inaction in exercising discretion, the Court had issued mandamus directing the Central Government to consider whether the discretion is to be exercised or not. Based on it, he has contended that it being the discretion of the respondent No. 2 to seek additional information from an applicant for licence or from the licensee as the case may be, he is bound to consider the fact of raising of unauthorised construction in the

said premises by the respondent Nos. 4 and 5, in respect whereof renewal of licence has been prayed for and this Court ought to direct him to exercise his discretion. By citing the decision reported in 87 CWN 616: Sailendra Lal Sengupta v. Administrator, Calcutta Corporation, he has contended that the respondent No. 2 being a statutory authority has a duty to speak when the petitioner had lodged representations before him urging him not to renew the licence of the respondent Nos. 4 and 5. The respondent No. 2 not having discharged his duty to speak, the writ petition was maintainable to activate him.

12. In course of hearing, the parties were requested to consider a recent decision of the Apex Court reported in C. Albert Morris Vs. K. Chandrasekaran and Others, which, in the opinion of the Court, was a judgement in a case involving a like issue. By placing reliance on paragraphs 3 and 44 of the said decision, Mr. Dutta submitted that the position on facts of that case was worse than the present case since a proceeding before the Collector was pending when the writ petition in question had been preferred by the writ petitioner before the High Court praying for a Mandamus on the respondents not to renew the licence of the respondents therein to carry on petrol bunk; yet, the Apex Court held the writ petition to be maintainable. Per contra, Mr. Bose submitted that in the case before the Apex Court alternative remedy was being pursued by the party approaching the Writ Court, yet, it was held that the writ petition was maintainable since the issues before the two for a were different and, as such, the said decision had no application in the facts and circumstances of the present case.

13. Learned Advocate representing the State did not advance any submission on the point of maintainability of the writ petition but submitted that the respondent authorities would act according to the directions to be passed on the writ petition by this Court.

14. This Court has heard the learned Counsel for the parties and has considered the various authorities cited at the bar, and particularly the provisions of the Drugs and Cosmetics Act (hereafter the said Act) and the said rules.

15. Before adverting to the rival submissions at the bar, it would be profitable to note the relevant statutory provisions which, in the opinion of this Court, would have a material bearing in deciding the preliminary objection.

16. Rule 65A, referred to by learned Counsel for the petitioner is part of Part VI of the said rules, titled "Sale of Drugs other than Homoeopathic Medicines" and hence has no application in this case since the respondent Nos. 4 and 5 are engaged in manufacture for sale of drugs, and not merely in sale of drugs.

17. Part VII of the said rules titled "Manufacturer for Sale of Drugs [or for Distribution] of Drugs other than Homeopathic Medicines" contains Rules 68 to 85 which, inter alia, is applicable in the present case, for the for the respondent Nos. 4 and 5 have been issued licence in Form 28 in terms of Rule 76 of the said rules and, as noticed earlier, is due to expire on 26.12.2006.

18. Rule 76 of the said rules envisages the form of licence to manufacture drugs specified in Schedules C and C (1), excluding those, inter alia, in Schedule X, and the conditions for the grant or renewal of such licences. It contemplates that prior to renewal, conditions laid down therein shall have to be complied with by the licensee. One of the conditions is that the factory premises shall comply with the conditions prescribed in Schedule M of the said rules.

19. Rule 78 of the said rules lays down that a licence, inter alia, in Form 28 shall be subject to the general conditions laid down therein.

20. Rule 83 of the said rules governs renewal of licence. On an application being to the licensing authority in this behalf, he may after causing an inspection and on being satisfied that the conditions of licence and the rules under the said Act are being observed issue a certificate of renewal under Part VIII.

21. Rule 84A of the said rules provides a forum for appeal. An appeal in terms thereof shall, inter alia, lie to the State Government at the instance of a person who is aggrieved by an order of the licensing authority rejecting an application for licence or an application for renewal of licence.

22. Rule 85 of the said rules deals with cancellation and suspension of licences and enumerates that a licence may either be suspended or cancelled after following the procedure laid down therein if the licensee has failed to comply with any condition of licence, or the provisions of the said Act or the said rules.

23. Form 27 is the statutory form for making an application for grant or renewal of a licence, inter alia, to manufacture for sale of drugs specified in Schedules C and C(1) excluding those specified in Schedule X. In the form, the address of the premises in which the specified drugs are to be manufactured has to be furnished with a further declaration, inter alia, that the premises and plant would be or are ready for inspection.

24. Form 28 is the statutory form of licence containing the conditions of licence where also, inter alia, the address of the premises where the specified drugs are to be manufactured is to be indicated.

25. Schedule M appended to the said rules relates to "Good Manufacturing Practices and Requirements of Premises, Plant and Equipment for pharmaceutical products, inter alia, it provides that the building(s) used for the factory is/are to comply with the requirements laid down therein.

26. From the conspectus of the statutory provisions referred to supra, it appears that a number of conditions have to be complied with by an applicant for a licence as well as a licensee who seeks renewal of his existing licence. If the applicant for a licence or for renewal of licence does not comply with the various conditions laid down in the said rules or the factory premises do not comply with the requirements as laid down in Schedule M, the authority concerned would be well within its right to reject the application or to refuse renewal. The issue of granting licence or renewing a licence is thus totally dependant on due

compliance with the statutory requirements.

27. Further, it appears that a right of appeal has been conferred on a person who is immediately aggrieved by a refusal to grant licence to himself or to renew licence, and not on one who is consequently aggrieved. There is no provision for appeal to the State Government against an order of the licensing authority granting a licence or renewing a licence. At least, no statutory provision has been brought to the notice of this Court on behalf of the petitioner which confers a right of raising objection by a person who feels aggrieved as a consequence of grant of licence or renewal thereof. Also, attention of this Court has not been drawn to any provision of the said Act or the said rules which casts a duty on the licensing authority to consider any representation that is made by a person objecting to a licensee's prayer for renewal of licence. In the absence of a right conferred by statute on the petitioner to object and in the absence of any legal duty cast on the respondent No. 2 by the statute to consider an objection from a so-called aggrieved party, can it be contended that a Mandamus ought to issue commanding him to consider the representations/ objections although he may not be bound by any statutory provision in this respect? The answer, in the humble view of this Court, in the circumstances of this case would necessarily be in the negative.

28. The Apex Court in *Ram Chandra Dev (supra)* has in clear terms held that:

Before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226 of the Constitution of India.

29. The Apex Court in its decision reported in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , while dealing with a civil appeal arising out of a writ petition seeking Certiorari, has held as follows:

This takes us to the further question who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him.

To have a "standing to sue", which means locus standi to ask for relief in a Court independently of statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded. "Legal wrong" requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person

has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action. Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect."

30. In the decision reported on *Mani Subrat Jain and Others Vs. State of Haryana and Others*, , following its earlier decisions reported in *The State of Haryana Vs. Subash Chander Marwaha and Others*, law has been laid down by the Apex Court in the following terms:

It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.

31. Law, which has been laid down by the Apex Court in the aforesaid decisions with regard to locus standi to present a writ petition for, inter alia, a writ of mandamus, is clear. It is only on denial of a legal right of a person by someone who has a legal duty to do something or to abstain from doing something that a person can be said to be a "person aggrieved" entitled to maintain a petition seeking mandamus.

32. The respondent No. 2, who is required to discharge duties and perform functions within the four-corners of the said Act and the said rules, is not obliged to take into consideration any and every representation which might be lodged with him, objecting to renewal of licence. If a representation is made in pursuance of a statutory provision, the respondent No. 2 would be bound to consider it. But, upon receipt of a representation containing a prayer not to renew a licence, like the present case, which is not made in exercise of any right conferred by statute, it would be entirely the discretion of the respondent No. 2 whether to consider the same or not prior to taking a decision for renewal of licence. Of course, a licence can be renewed only after complying with the requisite formalities. It would be open to the respondent No. 2 in course of considering an application for renewal to cause such inspection as is necessary (in terms of Rule 83) to ascertain whether the conditions as required to be complied with by a licensee for renewal of his licence has at all been complied with or not. In the absence of any legal right of an objector like the petitioner to raise objection, and in view of non-existence of any legal duty which the respondent No. 2 can be said to owe to the petitioner to do something or to abstain from doing something in the light of the extant statutory provisions, the petitioner in the considered view of this Court cannot lay a valid claim that that he is entitled to a Mandamus on the respondent No.2 for consideration of his representation prior to disposal of the application for renewal of the respondent Nos. 4 and 5.

33. On the petitioner's own showing and as has been admitted on behalf of the

respondent Nos. 4 and 5, renewal of licence by the respondent No. 2 in favour of respondents 4 and 5 yet to be effected. The issue is pending before the respondent Nos. 2. Information, by way of representation, urging the respondent No. 2 to take note of the fact that certain unauthorised constructions have been raised by the respondent Nos. 4 and 5 in the said premises which have been directed to be demolished has already been laid. In view of Rule 84AA of the said rules, it is for the respondent No.2 to seek additional information from the licensee if he considers it necessary for verification that information disclosed in the application for renewal is correct or not. There is no dispute that the respondent Nos. 4 and 5 are monthly tenants under the petitioner and in terms of Rule 84AA, as referred to on behalf of the petitioner, documentary evidence can be sought for in respect of occupation of the said premises, on rental basis or otherwise, to verify the correctness of these statements. What effect the unauthorised constructions would have on the issue of renewal of licence cannot be comprehended at this stage since the respondent No. 2 is in seisin of the same. But, simply because the respondent No.2 has not responded to the call of the petitioner to consider the representations made by him would not warrant a presumption that in the process of renewal of licence as prayed for, the conditions required to be complied with would either be ignored or strict compliance thereof would not be insisted upon. In such circumstances, to hold that the petitioner has a right of consideration of his representation would amount to conferring of a right on him which the legislature in its wisdom has thought fit not to confer.

34. This Court has considered Rule 85 of the said rules which deals with cancellation and suspension of licences. A licence in terms thereof can either be cancelled or suspended if the licensee has failed to comply with any of the conditions of licence or with any provisions of the said Act or the said rules. However, it does not appear that licence, once issued, can be cancelled even in a case where the licensee ceases to have any right over the property in respect whereof the license has been issued, as was the case in *C. Albert Morris* (supra).

35. Rule 153(1) of the Petroleum Rules, which fell for consideration in *C. Albert Morris* (supra), empowered the licensing authority to cancel a licence if the licensee ceased to have any right to the site for storing petroleum. Alleging that the licensee had lost its right to the site, the landlord approached the High Court in its writ jurisdiction for a Mandamus on the respondents not to renew the licence, and succeeded. The writ petition filed by him was held to be maintainable.

36. In the present case it is not in dispute that occupation of the said premises by the respondent Nos. 4 and 5 is lawful. The decision of the Apex Court in *C. Albert Morris* (supra) would, thus have no application in advancing the cause of the petitioner.

37. The decision of the Apex Court in *Calcutta Gas Company* (supra), *Gadde Venkateswara Rao* (supra) and *Jayanta Kumar Banerjee* (supra) relied on by Mr. Dutta for the petitioner which lay down the law that a writ petition is

maintainable at the instance of a person who claims to be prejudicially affected by any action or order would also have no application in the facts and circumstances of the present case inasmuch as the petitioner has not been able to spell out the prejudice he would suffer if, even are disclosure of raising of unauthorised construction by the respondent Nos. 4 and 5, the respondent No. 2 in its discretion decides to renew the licence issued in favour of respondent Nos. 4 and 5. If ultimately the construction raised by the respondent Nos. 4 and 5 is held liable to demolition, it would be a subject of enquiry as to whether after demolition of such unauthorised construction the respondent No. 4 would be entitled to continuity of the licence. It is not the case of the petitioner that excluding the portion on which alleged unauthorised construction has been issued, the respondent Nos. 4 and 5 are not entitled to renewal. Licence had been issued in their favour at a point of time when the unauthorised construction was not there. To apply the law laid down in the decisions referred to *supra*, a strong case of prejudice has to be made out. Prejudice is an question of fact which has to be pleaded. If it is not pleaded, Court cannot import it on its own. The pleadings in the petition are inadequate to extend application of the law laid down therein, and hence are of no help to the petitioner.

38. The decision in *Aeltemish Rein* (*supra*) has been referred to on the point of exercise of power by an authority which is discretionary and Court's power to direct the authority to exercise such direction. In the humble view of this Court, the facts of the said case was entirely different and hence has no application here. In involved a case conceived in the interest of the public, relating to non-issuance of notification by the Central Government for long 27 years to enforce Section 30 of the Advocates Act, 1961. The Central Government was called upon to consider the question of exercising discretion one way or the other having regard to the circumstances narrated in paragraph 6 and also because the jurisdiction of the Court to issue the writ in the manner indicated was not seriously disputed by the learned Attorney General. With respect, this Court is unable to read in the decision any law being laid down, which has the force of a binding precedent, to the effect that Writ Court is possessed of the power to activate a statutory authority when it is inactive on receipt of a representation which is non-statutory.

39. The decision in *Sailendra Lal Sengupta* (*supra*) was rendered in a case involving a dispute related to service. In the circumstances of that case, it was held by this Court that the concerned respondent had a duty to speak after receipt of representation from the petitioner employee seeking permission, and having failed to respond to it, it was hit by estoppel and like principles. Here also, this Court has not found any proposition of law being laid down in general terms that whenever an authority receives a representation, he is bound to answer it. The said decision also is of no help to the petitioner.

40. On the contrary, the Bench decision of this Court in *Provat Kumar Mukherjee* (*supra*) cited on behalf of the respondent Nos. 4 and 5 appears to this Court to

be applicable in the facts and circumstances of this case, and based on it the inevitable conclusion is that the writ petition is not maintainable.

41. For the reasons aforesaid, the preliminary objection is upheld. The writ petition is dismissed, but without any order for costs.

42. Dismissal of the writ petition, however, shall not mean that the respondent No. 2 is absolved of the duty of satisfying himself that the conditions required to be fulfilled for renewal of licence in accordance with the provisions of the said Act and the said rules, as also provisions of Schedule M have in fact been fulfilled by the petitioner, and it is expected that he shall proceed to consider the issue of renewal strictly according to law, but without being influenced by any observation made in the preceding paragraphs.

43. Urgent certified copy of this judgment, if applied for, be furnished to the applicant within 3 days from date of putting in requisites therefor.