

(2014) 01 GUJ CK 0140
In the Gujarat High Court

Case No : Letters Patent Appeal No. 992 of 2013

Arunaben Jamnadas Bhavsar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Citation : AIR 2014 Guj 127

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Percy Kavina, Sr. Advocate and Mrugen K. Purohit, Advocate for the Appellant; Uttkarsh Sharma, Govt. Pleader, Advocate for the Respondent

Judgement

V.M. Sahai, J.—Since, the order under challenge in both the letters patent appeals are common, they are heard together and disposed of by this common judgment. Both the appellants have challenged the judgment and order of the learned single Judge, dated: 25.07.2013, rendered in Special Civil Application Nos. 11770 & 11784 of 2013, whereby, the petitions filed by the appellants, herein, were summarily dismissed.

2. This Court passed following order on 23.10.2013, while admitting the appeals;

The present appeal is filed being aggrieved by order dated 25.07.2013 passed by the learned single Judge in SCA No. 11784 of 2013, whereby the learned single Judge is pleased to reject summarily the petition with cost of Rs. 10,000/-. In response to notice, learned AGP Mr. Rashesh Rindani appears for the respondent State and invites attention of the Court to para 4 of the order passed by the learned single Judge, which reads as under:

4. Upon hearing learned advocate for the petitioners, on perusal of the record and orders impugned, it is clear that the petitioners have failed to produce even an iota of record about submission of registers of vending of stamps to the authorities for the years 2005-2006, 2006-2007 and 2007-2008 and on the contrary by filing an additional affidavit before authority, burden is passed on to

the authority to issue receipt, to maintain the record and communicate to the petitioners of returning such registers upon renewal of licence. The assertion of the petitioners about duty of the authority to maintain the record falls flat on the ground that application submitted for the year 2012-2013 for renewal of application reveals that petitioners have obtained endorsement/acknowledgment of Mamlatdar, Mehsana on 1.4.2013 and therefore there is no reason to disbelieve that in the past in absence of submitting any relevant records the petitioners may have succeeded in getting renewal of licence. If the petitioners had followed and availed acknowledgment from Mamlatdar, Mehsana of submissions of Register of stamps for the year 2012-2013 in the past also the petitioner would have certainly obtained such acknowledgment from the authority. By filing an application under Right to Information Act, 2005 about status of register of stamps for the years 2005-2006, 2006-2007 and 2007-2008, the petitioners have made an attempt to fasten the liability upon the authority and failure on his part to produce the record as demanded by the authority. If registers for the relevant years were not submitted to the authority, in the past naturally such registers would not be available with the authority and therefore, a case is made out on the contrary to direct the District Collector, Mehsana to inquire into the aspect that in absence of register of stamps vending supplied by the petitioner for which no acknowledgment is received by him for the year 2005 to 2008 and licence was granted and detailed inquiry is to be initiated at his end and if necessary it will be open for him to take assistance of police authority.

2. The learned AGP is not able to point out as to in what circumstances the licence of the appellant-original petitioner was renewed by the authorities. If it is the case of the Department that without producing necessary registers the appellant-original petitioner got his licence renewed earlier it is for the authorities to take necessary action against such person. In absence of any action taken and the factum being recorded that the appellant-original petitioner was guilty for the same, withholding of renewal of licence, more particularly, when nothing adverse is reported or attributed against the conduct of the appellant-original petitioner as a stamp vendor, the matter requires consideration.

3. ADMIT.

3. Heard. We have gone through the record and it appears that the action of the Mamlatdar and the Collector, Mehsana, in exercise of powers vested in them, appears to be high-handed one. From the record it is borne out that the licenses of both the appellants were renewed up to 2012-2013. Thus, we are unable to accept the submission made by the learned AGP, Mr. Sharma, that the appellants did not supply the old registers, since, had the same been the case, their licenses would not have been renewed up to 2013. So far as the year 2013-2014 is concerned, the appellants would have produced the register etc.. The rules are silent on the aspect as to, for how many years, the register is to be kept, and therefore, the presumption is required to be taken that the old registers were

already supplied, at the time of earlier renewals, upon which their licenses were renewed in the past. From a perusal of the Rule 6 of the Gujarat Stamps Supply and Sales Rules, 1987, it cannot be said that the appellants have committed any breach, and therefore, the order of the learned single Judge dismissing the writ-petitions of the appellants, herein, cannot be sustained in the eye of law.

4. Under the circumstances, both the appeals deserve to be allowed and the same are allowed. The judgment and order of the learned single Judge dated 25.07.2013 is quashed and set aside. The respondents are directed to renew the licenses of both the appellants and to provide them fresh registers within a period of EIGHT WEEKS from today. Direct service is permitted. Since, appeals are allowed, civil applications shall not survive and they stand DISPOSED OF, accordingly.