
(1959) 06 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 271 of 1957

Babulal Gupta, Charcoal and Firewood dealer

APPELLANT

Vs

Cantonment Board

RESPONDENT

Date of Decision : 15-06-1959

Acts Referred:

Cantonments Act, 1924 — Section 210
Constitution of India, 1950 — Article 19(1)

Citation : AIR 1961 MP 361 : (1959) ILR (MP) 705 : (1961) JLJ 531

Hon'ble Judges : G.P. Bhutt, C.J;P.R. Sharma, J

Bench : Division Bench

Advocate : R.K. Varma, for the Appellant; R.S. Dabir and V.S. Dabir, for the Respondent

Judgement

Sharma, J.—This is a petition under Article 226 of the Constitution of India for the issue of a writ of mandamus or other appropriate direction to the respondent not to interfere in any way with the running of the petitioner's charcoal and firewood business in house No. 22 at Sadar Bazar, Cantonment, Jabalpur.

2. The petitioner's case is that he carries on the business of selling charcoal and firewood in house No. 22, and that he keeps his stock in bulk in premises outside the area of the Jabalpur Cantonment Board. Under Clause (1) of Sub-section (1) of Section 210 of the Cantonments' Act (No. II of 1924), hereinafter referred to as the Act, dealers in straw, wood, charcoal and other inflammable materials are prohibited from carrying on their trade unless they obtain a licence in this behalf from the Cantonment Board. The licence is granted for a period of only one year with the result that a fresh licence has to be obtained at the end of every year.

3. On 25-3-1957 the firm Munnalal Chhadami-lal of which the petitioner was a partner, applied for a licence for carrying on the business of selling charcoal and firewood in house No. 22. This application was rejected by the Cantonment Board under its Resolution No.2, dated 7-5-1957. No reasons for the rejection of the said application for licence were communicated to the applicant. Several

prosecutions were thereafter launched against the petitioner at the instance of the respondent u/s 213 of the Act. The shop of Munnalal Chhadamilal in house No. 22 had ultimately to be closed in the month of May, 1957.

4. The petitioner on 1-6-1957 again applied for a licence for carrying on the business of selling charcoal and firewood in house No. 22. This application also was rejected by the Cantonment Board by its Resolution No. 2, dated 31-7-1957, without any reasons being assigned therefor. The petitioner contends that Sub-section (2) of Section 210 of the Act is ultra vires Article 19(1)(g) of the Constitution of India and that since it is "not severable from Sub-section (1) thereof, the entire Section 210 is void and unenforceable.

His next contention is that even assuming the said provisions to be valid, the Cantonment Board acted arbitrarily in rejecting his application for the grant of a licence, It is contended that this action on the part of the Cantonment Board is mala fide and should, therefore, be quashed. Thirdly it is contended that the action of the Cantonment Board in refusing a licence is in excess of its powers under Sub-section (2) of Section 210 of the Act and the bye-laws framed thereunder. We shall deal with these contentions in the order in which they are stated above.

5. The learned counsel for the petitioner advanced reasons in support of his contention that the licensing authority has been given unguided and arbitrary power under Sub-section (2) of Section 210 of the Act. They are summarized below:

(i) the words "offensive" and "dangerous" used therein have nowhere been defined;

(ii) there is no provision entitling the applicant for a licence to be heard before a decision in respect of his application is reached;

(iii) there is no provision for an inquiry to be held in the presence of the applicant;

(iv) the licensing authority is not bound to give any reasons for rejecting the application for a licence; and

(v) the Act does not provide for an appeal against the decision of the Cantonment Board.

6. Sub-section (1) of Section 210 of the Act provides that no person shall carry on his trade, calling or occupation falling under any of the clauses thereto in, any part of a Cantonment unless he has applied for and obtained a licence in this behalf from the Cantonment Board. Clause (1) applies to all dealers in hay, straw, wood, charcoal or other inflammable materials. Then follows Sub-section (2) which lays down as under:

"A licence granted under Sub-section (1) shall be valid until the end of the year in which it is issued and the grant of such licence shall not be withheld by the

Board unless it has reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to the public or that the premises in which the business is intended to be established or maintained are unsuitable for the purpose."

7. So far as the validity of the provisions" of Sub-section (1) of Section 210 of the Act is concerned, it would be pertinent to state that Clause (6) of Article 19 of the Constitution authorises legislation which imposes reasonable restrictions on the right guaranteed by Articles 19(1)(g) thereof. It was observed by their Lordships of the Supreme Court in the case of Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in the trade.

Some occupations by reason of the dangers accompanying them require regulation as to the locality in which they may be conducted. In the case of Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, their Lordships of the Supreme Court while discussing Clause 3(i) of the Uttar Pradesh Coal Control Order, 1953, which is almost similar in terms to the provisions impugned before us, observed as follows;

"The provision contained in Clause 3(i) of the Order that "no person shall stock, sell, store for sale or otherwise utilize or dispose of coal, except under a licence granted under this Order" is quite unexceptional as a general provision."

8. It is also a well-recognized principle that it is not possible for the Legislature to state all the conditions or considerations governing the grant or refusal of a licence. Some discretion must necessarily be vested in the Licensing authority: see *People of New York v. Van De. Carr* (1905) 199 U.S. 552. A statute which prescribes licensing must, however, lay down sufficiently defined standards to guide the Licensing Authority in the exercise of its discretionary power.

9. One has, therefore, to look at the provisions of Sub-section (2) of Section 210 of the Act in order to decide if it lays down the standards according to which the licensing power is to be exercised. The impugned section lays down that the grant of a licence shall not be withheld by the Board unless it has reason to believe (i) that the business which it is intended to establish or maintain would be offensive or dangerous to the public, or (ii) that the premises in which the business is intended to be established or maintained are unsuitable for the purpose. Under this section, the grant of a licence is intended to be the rule and its refusal is to be confined only to those cases in which the licensing authority "has reason to believe" that the case falls under one of the two categories mentioned above, We are of opinion that this section lays down sufficient standards according to which the licensing authority is required to exercise its discretionary power. The words "dangerous" or "offensive" used in the section are not words of art. They are to be given their natural dictionary meaning.

10. It was observed by their Lordships of the Supreme Court in *Matajog Dobey*

Vs. H.C. Bhari,), in paragraph 15 of their judgment as follows :

"Abuse of power is not to be easily assumed where the discription is vested in the Govt. and not in a minor official."

In the present case, the power to grant the licence is vested in responsible body like the Cantonment Board constituted wider the Act. It cannot easily be assumed that the power vested in such a high statutory body will be abused. As observed by the Supreme Court in the case of Dr. N.B. Khare Vs. The State of Delhi, ,

"it would be improper to start with such an assumption to decide the illegality of an Act on that basis. Abuse of power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension."

11. It has to be remembered that the lands in the Cantonment area are held on special terms and it is desirable in public interests to invest the authorities consituted under the Act with wider powers of control and restriction on certain kinds of trade and occupation than might be considered as reasonable in the case of other areas.

12. We are of opinion that even though there is no provision in the Act that an applicant for a licence should be heard before a decision on his application, is arrived at by the Board, he will be entitled to a hearing on principles of natural justice, since the question of the grant a licence affects his fundamental rights to carry on a trade or business. The fact that no opportunity to be heard was given in a particular case will, therefore, be a ground for challenging the validity of the order but would not in itself suffice to invalidate the law under which) it was passed.

13. The next point urged in support of this contention is that there is no provision for an inquiry by the Cantonment Board to be held in the presence of the applicant. The Cantonment Board is not required to make a judicial approach in deciding an application for a licence. The inquiry on spot is usually made in such cases by some subordinate officer and the decision of the Cantonment Board is reached on its basis presumably after a discussion in a duly convened meeting of its members.

Even in America where the "due process" rule applies, the procedure leading to the denial of licence is not so rigid as in the case of revocation of an outstanding licence. The former gives the agency a wide discretion whereas the latter amounts to the taking away of a vested right, as it were, which comes more directly under the constitutional protection. (See Parker on Administrative Law, 1951 Ed., page 39).

14. In the case of laws governing the initial grant of a licence it has consistently been held to be sufficient if the applicant is allowed an opportunity to meet the grounds on which the report of a subordinate officer is based, before a final decision is reached. The absence of such a procedural provision would not,

however, affect the validity of the enactment.

15. The last two points urged in support of the argument challenging the validity of Sub-section (2) of Section 210 of the Act might well be dealt with together. It is contended that the law does not require the Cantonment Board to give any reason for its decision rejecting an application for a licence. We have already observed that the provisions of this section lay down sufficient standards according to which the licensing authority is required to exercise its discretionary power. Should the law, however, also provide for reasons to be mentioned in the order? Where an appeal is provided against the order it is obvious that the reasons upon which it is based must be stated in the order to enable the applicant to effectively exercise his right of appeal.

But where no appeal is provided for, the fact that the law does not require reasons to be given in the order will not render the law itself invalid. If the order in a petitioner's case is based on reasons, which are not relevant for refusing a licence, that would be a ground for the order being quashed. But the law cannot be held to be invalid merely because it does not require the reasons for the decision to be stated in the order refusing the grant of a licence.

Essentially this question is wound up with the question as to whether the absence of a provision for appeal against the order refusing the grant of a licence makes the law unreasonable. If the law is a reasonable law even in the absence of such, a provision, it obviously follows that the omission to provide for reasons to be mentioned in the order would not invalidate the law.

16. It was held by their Lordships of the Supreme Court in the case of Bashiruddin Ashraf Vs. The State of Bihar, that the mere fact that there was no provision for appeal against the orders of the Majlis, would not make the provisions of Section 58 of the Bihar Waqfs Act unreasonable. An order u/s 210 of the Act is passed by a responsible statutory body and the omission to provide for an appeal against it will not render the law invalid.

17. In view of the reasons set forth above, the provisions of Section 210 of the Act cannot be said to impose an unreasonable restriction on the exercise of the right guaranteed by Article 19(1)(g) of the Constitution of India,

It would, however appear that it was necessary for the Cantonment Board to grant an opportunity to the petitioner to be heard in support of his application and to meet the grounds upon which the refusal of a licence was recommended to the Board. The Cantonment Board should then have determined if the case of the petitioner fell under either of the two categories mentioned in Sub-section (2) of Section 210 of the Act; if it did not, then according to the provisions of the said section, the Cantonment Board could not refuse to issue a licence to him. As no hearing was given to the petitioner by the Cantonment Board before it passed Resolution No. 2, dated 31-7-1957, whereby the petitioner's application for a licence was rejected, we quash the resolution and direct the Board to reconsider the petitioner's application for grant of a licence and dispose it of in accordance

with law in the light of the observations made above. In the circumstances of the case, there shall be no order as to costs. The outstanding amount of the security shall be refund ed to the petitioner.