

(2009) 04 DEL CK 0259

In the Delhi High Court

Case No : Writ Petition (C) 3842 of 2007 and C.M. No's. 7246 of 2007 and 1180 of 2008

Chandro Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0259

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Mahipal Singh, for the Appellant; Abhinav Bajaj, for Rakesh Tikku, for the Respondent

Judgement

S. Ravindra Bhat, J.—Heard counsels for the parties. The petitioner seeks a direction for quashing of a letter dated 24.06.2004 whereby her request for transfer of catering/vending license in her favor was rejected.

2. Briefly the facts are that the petitioner's husband was operating a stall in the Nangloi Railway Station. The license was issued by the respondents in terms of a policy which existed between 1968 and 1999. Apparently, on 24.06.1999, the respondents, (Indian Railways) issued a letter directing all Railways to charge License Fee at 12% on sales turn-over. The policy was challenged as arbitrary and the petitioner's husband preferred CWP 5542/2000. When proceedings were pending, the respondent Railways unveiled its new Catering Policy for 2000. In terms of the new policy, existing licenses of all shops and vending contractors could be renewed for a period of 5 years or upto October 2005. It is claimed that the petitioner's husband sought for renewal of the license, scheduled to expire on 30.11.2000. Apparently, the respondents did not indicate their position and when the matter stood thus, the petitioner's husband died on 22.11.2001.

3. The petitioner claims that the respondents closed down the stalls and trolleys which were operated by her husband, on 13.12.2001. She approached the respondents on 15.12.2001 asking for transfer of the licenses in her favor. She

adverts to several letters written by the respondents requiring her to clear the arrears of license fee to enable them to process the request for transfer. The first such letter written by the respondents in December 2001 is in the following terms:

Northern Railway

New Delhi DRM Office Date : 12.01 N. Rly. New Delhi smt. Chandro devi,

W/o Late Shri Deep Chand,

Vending Contractor,

Nangloi

Through SS/NNO

Sub: Deposit of revised L/FEE and reopening of Stall/Trolleys

Ref: your Request No. Nil Dated 21.12.01.

Your request for re-opening of holding has been considered after depositing the revised L/Fee arrears w.e.f. 1.7.99.

Please deposit the arrears of revised L/fee first. After clearing of outstanding, transfer process will be initiated.

Sd/-

For D.R.M.

N. Rly. New Delhi.

Copy to: SS/NNO for information and n/action. Please recover the arrears of revised L/fee w.e.f. 1.7.00 from Smt. Chandro Devi W/o Late Deep Chand, Vending Contractor, NNO first.

4. The petitioner contends having deposited various sums of money claimed by the respondents to be arrears and eventually on 24.06.2004 receiving the following letter:

Northern Railway

No. 23/AC/187/NNO/PT.II Divisional Office

Dated/3/2004/24.6.2004 New Delhi. Smt. Chandro Devi,

W/o Late Shri Deep Chand,

R/o 14-A, Tyagi Vihar,

Nangloi, Delhi-110 041.

Sub: Catering/Vending contract of NNO Railway Station.

Ref: Your request dated 2.2.2004.

In reference to your mentioned request, it is informed that the catering/Vending contract of NNO Railway Station held by your husband Late Shri Deep Chand had been expired on 30.11.2000 before his death. The contract at this stage can be neither renewed nor transferred in your name as per the catering policy.

You are, therefore, hereby directed to stop the sale, handover the peaceful possession and remove your belongings.

Sd/-

For Sr. Divl. Comml. Manager

New Delhi

Copy to SS/NNO for information and necessary action.

5. The respondents submit that the order declining to renew the license is neither arbitrary nor unreasonable. According to it, initially the license was to and did expire on 30.11.2000. At that time, the petitioner's husband, who was alive, was airing his grievance with regard to the new catering policy which enhanced the fee payable by 12.5%. The writ petition was pending and the license was not renewed; the petitioner's husband too did not apply for its renewal. The respondents contests that having received any request for renewal of license on 11.10.2000, as alleged by the petitioner. It states that the requests were made after the death of the petitioner's husband in 2001. Learned Counsel also submitted that having received the rejection letter in 2004, the writ petitioner has approached the Court belatedly in 2007 and preferred the present proceeding.

6. Before considering the correctness of the respondents' stand, rejecting the petitioner's request for extension of the license, it would be useful to notice paras 14.10 and 15.3 of the Catering Policy, under which the claim is now made. The said policy was issued on 20.10.2000. The relevant provisions are as follows:

14.10 Application of New Policy to existing licences

New Catering Policy will take effect from the date of issue of this policy in case of all new catering/vending licences. This will also apply in case of award of fresh licence in the event of termination, non-renewal, vacation etc. of the existing licences. However, in the case of existing licences, which continue to provide satisfactory services, the licensees will be allowed to complete their present term subject to application of all other policy directives issued from time to time. Thereafter licences of such existing licensees shall be renewable for such periods so that the total period of operation from the date of issue of New Catering Policy is five years on uniform basis. For instance in case of an existing licence which is expiring, say in October, 2001, the licence shall be renewable for a further period of 4 years beyond October 2001 i.e. upto October, 2005. If a licence is expiring, say in October 2003, the same shall be renewable for a further period of 2 years i.e. upto October 2005. However such renewals should not be automatic and

railways will ensure continuous monitoring of performance as per provisions contained in para 14.6.2 and para 14.6.4. All existing licensees may be advised in this regard.

15.3 Tenure

Tenure of licensees of all small units will also be 5 years. Railway may renew the licences after every five (5) years subject to satisfactory performance. The monitoring of performance will include prompt payment of all railway dues, complaints of serious nature against licensee regarding quality of food and services, reasonable increase in sales turnover during the period of licence, and inspection reports of senior railway officers during the term of licence.

The enhancement of licence fee at the time of renewal should be based on actual sales turnover. The increase in licence fee should not be less than 10% of the prevailing licence fee at the time of renewal. This should be suitably incorporated in the agreement.

Renewal may be considered by Divisional Railway Manager on the recommendation of a Committee of three junior administrative grade officers for class "A" and "B" stations. Renewal of licences at all other stations may be done by Sr. DCMs on the recommendations of three Senior/Junior scale officers.

7. The averments and contentions do not show any dispute on the facts pertaining to the petitioner's husband being a licensee as on the date when the policy became effective, i.e. October 2000. Apparently, the said licensee had some grievance and had approached the Court principally questioning the quantum of increase of license fee. During the pendency of these proceedings, apparently, the license period ended. There is no doubt about the fact that the petitioner's husband had applied for renewal of license, being disputed, the fact however remains that even according to the respondents, soon after the licensee's death, a request was made in December 2001 for extension of license; the respondents required the petitioner to clear the arrears before the application could be considered. The petitioner has placed on record several receipts to say that all the arrears and amounts payable by the late licensee were actually paid and that there was no impediment in the consideration of the application. The respondents are silent on this. However, eventually, in the impugned order, they say that since the license itself ended on 30.11.2000, there was no question to transfer it to her.

8. Now, it is well-settled that every facet of state functioning has to be fair, reasonable and non-arbitrary. These are bed-rock principles integral to the Fundamental Right to equality that each citizen is entitled to enjoy under the Constitution of India. The respondent, as a public agency, is bound by these standards. In the present case, the petitioner's husband was agitated about increase of license fee when the license tenure ended. According to the averments, a matter not disputed ? the stall was allowed to function till 13.12.2001. In this background, even if one ignores the allegation that a request

was made for extension of license in October, 2000, the fact remains that the respondents were aware about the petitioner's request for transfer of the license fee and its renewal; that which is clear from their letter of December 2001 advising her to deposit the arrears of license fee. In these circumstances, after having led the petitioner to believe that the request would be processed duly in accordance with the policy, the respondents could not have, about three years later completely turned around and stated that the renewal was not possible since her license expired on 30.11.2000, before her husband's death.

9. The Court is also of the opinion that having almost lured the petitioner to deposit arrears of license fee on the belief that the request for transfer of license fee would be acceded to on its merits in terms of paras 14.10 and 15.3 of the policy, the respondents' action in denying that the benefit completely is contrary to their norms. The intent of para 14.3 is to enable existing operators the benefit of extension of license; a tenure is also indicated.

10. In view of the above, the writ petition deserves to succeed; accordingly the respondents are directed to process the petitioner's case and issue the necessary renewal of the license fee to the name of the petitioner in accordance with the Catering Policy of 2000. The directions shall be complied within a period of eight weeks from today.

11. The writ petition and the accompanying applications are disposed of in the above terms.