

(1990) 09 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3050 of 1988

Ganesh Lal Brick Kiln Owner

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Gold (Control) Act, 1968 — Section 27

Citation : (1992) 2 ILR (P&H) 427

Hon'ble Judges : G.S. Chahal, J;G.C. Mital, J

Bench : Division Bench

Advocate : B.S. Malik, for the Appellant; S.K. Syal, D.A.G., for the Respondent

Judgement

G.S. Chahal, J.—This order will dispose of Civil Writ Petitions No. 3050 of 1988, 3807, 4053, 8369, 8370, 9243 and 13025 of 1989. We will state the facts from CWP 3050 of 1988.

2. The Petitioner is a brick-kiln owner and prays for the issuance of a writ of mandamus, declaring the instructions dated 11th November, 1983, Annexure P5 and the impugned order refusing to renew the licence as void, since the same is in contravention of the principles of natural justice and violative of Articles 14, 19(1)(g) of the Constitution of India. He also seeks a writ of certiorari quashing the ex parte orders, dated 27th February, 1987 and 10th November, 1987 Annexure P-1 and P-4, respectively.

3. The Petitioner is carrying on the business of manufacture and sale of bricks in his kiln, situated in Kot Bhattu, District Bhatinda. This Kiln has been functioning much prior to the Punjab Control of Bricks Supplies of Order, 1972 (in brief "the Control Order") came into force. He obtained a valid licence under Clause 4(ii) of the Control Order of 1956 which was struck down by a Division Bench of this Court. Thereafter the Control Order of 1972 was promulgated and the Petitioner applied for the grant of licence for that site. The relevant provisions of Clause 4(ii) of the 1972 Control Order read as under:

4. (ii) Subject to the general of special instructions notified by the Government from time to time in this behalf, a licence may, if the site or the kiln is not detrimental to the health of the general public or to the crops, gardens or nurseries in close proximity thereto, be granted or renewed by the District Magistrate.

In accordance with the instructions from the Director, Food and Supplies and the District Magistrate, the site was inspected by the District Food and Supplies Officers (DFSO) and the Inspector, Food and Supplies. All the necessary measurements were done. It was found that the site was not detrimental to the health and fulfilled all the requirements of Clause 4(ii) of the Control Order. The Petitioner was then granted licence No. 33 under the 1972 Control order and the kiln had been functioning at that site since then. This site is situated outside the village Abadi and away from the prohibited distances. There was no complaint or grievance from any person. The licence of the Petitioner was renewed upto 31st March, 1987. However, the show cause notice, dated 29th October, 1984 was issued by the Respondent-authorities informing him that according to the report of the DFSO, Mansa, the Petitioner's kiln was surrounded by residential area at a distance of only 100 meters, and as such, the Petitioner had contravened Clause 4(ii) of the 1972 Control Order. The Petitioner filed reply, dated 9th November, 1984 and challenged the correctness of the show cause notice. No further notice or in taxation was received by the Petitioner, nor was he called upon to substantiate his allegations and no reasonable opportunity was given to him to explain that the kiln was situated outside the "lal Lakir" and far away from the village Abadi. The DFSO had made a wrong and false ex parte report for extraneous considerations. The report was made without inspection of the spot. In the show cause notice, no description of the abadi or any other specific particulars were given. On 22nd April, 1985, relying on the incorrect and false ex parte report, the DFSO passed orders Annexure P.2. This order suffers from the defect of non-application of mind and passed in a routine and mechanical manner. It is also alleged that the Petitioner's kiln was surrounded by residential area/municipal limits. As a matter of fact, the brick-kiln is situated in the village and there was no question of the land being within the municipal limits. Against order Annexure P.2, the Petitioner preferred an appeal Annexure P-3 and challenged the finding about the kiln, being situated in the village Abadi. The village Abadi was more than 500 meters away from the site of the kiln. He also attached copies of the certificates issued by the Parpanches of Kot Bhattu and Patwari Halqa that the kiln is situated at a distance of more than 500 meters from the village Abadi. The Petitioner also took the plea that there were rival brick-kiln owners, but their licences had been renewed. At the time of hearing of appeal, pressure was put on him to give an undertaking to the effect that he would close his kiln within a period of 6 months. The Petitioner explained to the appellate authority that it was not practicable as there was huge investment involved and there were also constructions of Jhugis for over 100 Labourers. On a subsequent date, the Petitioner also produced a stay order. The appellate

authority, however, without applying its mind and without referring to the evidence, confirmed the order and rejected the appeal.--vide Annexure P4. Vide Annexure P-I. dated 37th February, 1987, Respondent 3 had refused the licence to the Petitioner. The validity of this order is also under challenge.

4. The Respondent-authorities have contested the writ petition. It has been pleaded that according to the instructions issued under Clause 4(ii) of the Control Order, read with the proviso. dated 11th November, 1983, licence to a brick-kiln could not be renewed if the kiln was surrounded by a residential area. The order and notification being Annexure R.1. The kiln of the Petitioner was found surrounded by residential area which was in contravention of the above proviso and show cause notice Annexure Rule 2. as required by the Control Order, was issued to the Petitioner. He did not file reply to the show cause notice. Vide letter, dated 22nd April, 1985. he was allowed to continue his business upto 31st March, 1987, and not beyond that. By means of letter, dated 27th February, 1987. Annexure P-1 the Petitioner was informed that he was not permitted to work beyond 11th March. 1987. This letter was challenged in appeal which was duly heard. During hearing the appeal, the Petitioner sought 6 months time to close the kiln and to shift to some other site. Subsequently, he backed out from that promise and order Annexure Rule 4 was then passed, dismissing the appeal. Annexure Rules 5 was relied upon as the site plan with respect to the situation of the kiln.

5. Annexure Rule 1 provided,--vide instruction No. 2, that licence shall be granted subject to the condition that the brick-kiln shall not be installed within a radius of 750 yards from the residential area in the cities mentioned in the schedule and 500 meters from the residential areas in other towns/villages. The radius from the residential area shall be determined from the revenue record ("lal lakir") or the municipal limits whichever is near shall form the basis for measuring this distance. In instruction No. 4, it is provided that these conditions were not to apply in respect of the licences already issued for the brick-kilns which were in operation.

6. On 11th November. 1983 a notification, adding a proviso to Clause 4 of the instructions, issued under Control Order was added and the instructions along with the proviso reads as follows:

The conditions laid down in Clauses 2 and 3 above shall not apply in respect of the licences already issued for kilns in operation except that Clauses 2(a) and (b) and 3 shall apply at the time of shifting of kiln site by old licences.

Provided that the licence of a brick kiln shall not be renewed if a brick kiln is surrounded by a residential area".

7. Clause 2 of the instructions provided with respect to issuing of fresh licences which had to be installed more than 750 meters from the residential area in the cities mentioned in the schedule and 500 meters from the residential areas in other towns/villages. Instruction No. 3 laid down certain restrictions to the

issuing of licences to a minor, a person whose licence had already been cancelled, and also a person who wanted to install a brick kiln adjoining to the land in which already brick kiln exists. These instructions, however, did not refer to refusal of renewal of licence if the residential area had developed around the brick kiln already in existence.

8. A challenge in these writ petitions is made to Annexure Rule. 1--vide which the proviso was added. It is urged on behalf of the Petitioners that this clause, being vague and uncertain, was incapable of an objective assessment by the officers who were to decide the matter of renewal of the licence. For these reasons, these instructions were bad in law.

9. In *Hawa Singh v. State of Haryana etc.* 1973 cur LJ 382, Mr. Sharma. J. had the occasion to consider the phrase "close proximity" as it occurred in the Haryana Control of Bricks and Supplies Order of 1972 and held that this clause suffered from vagueness inasmuch as the words "close proximity" do not give a clear idea to those officers who were charged with the duty of administering this order.

10. In *Harkchand Ratanchand Bantia and Ors. etc. v. Union of India* AIR 1970 SC 1458, their Lordships were dealing with the provisions of Gold Control Act. Section 27 thereof laid down conditions with respect to the issuing of licences. The Section inter alia provided that in the matter of issuing or renewing of licence, the Administrator shall have regard to the number of dealers existing in the region in which the Applicant intended to carry on business as a dealer. This section also required the Administrator to have regard to the anticipated demand estimated by him for ornaments in that region. The terms "anticipated demand" and "region" were not decided in the Act. Their Lordships accepted the argument that the section, as it stood, suffered from vagueness, uncertainty and was unintelligible and consequently wide unfettered powers were conferred upon the statutory authorities in the matter of grant and renewal of licences.

11. These principles are attracted to the present case. The proviso is vague in the sense that it does not provide as to what sites were to be considered as surrounded by a residential area. It does not specify if licence is not to be renewed if the kiln is surrounded by residential areas on all or some of the sides. It also does not specify the distances between the kiln and houses surrounding site of the kiln which will deprive the licence from running the kiln and which will deprive him of the right to have the licence renewed. Obviously, a citizen has a right to run a trade or business guaranteed under Article 19(1) (g) of the Constitution of India. The authorities who are to issue and renew licences must be guided by clear terms which may be reasonable and in the public interest. The Administrative Authorities charged with the duty to renew the licences cannot be given unfettered powers which will obviously give them the chance of abusing the same. Once licence may be preferred, by the concerned authorities, to another by taking the advantage or vagueness of the instructions in question.

12. The powers to grant or renew the licences have to be vested in certain public officers or bodies. Such officers or bodies have to be left with some discretion in such matters. If the powers vested are limited to that extent, no exception can be taken. A mischief, however can arise when the power conferred on such officers or bodies is arbitrary, unregulated by reason or principle and it is left entirely to their whim and fancy. If a rule provides such a sort of discretion, the same has to be struck down.

13. In the light of the foregoing discussion we agree with the contention of the Petitioners that the proviso added to Clause 4 of the Control Order,--vide notification, dated 11th November, 1983, suffers from vagueness and as such, is liable to be struck down. We allow the writ petitions, with the directions that the licenses of the Petitioners shall be renewed in accordance with the Control, order, without reference to the exception created by the instructions Annexure Rule 1,--vide notification, dated 11th November, 1983. We also such quash the orders Annexure P-1 & P-4, of the Authorities in refusing the renewal of licences of the Petitioners. No order as to costs.