

(1987) 11 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1640 of 1987

Hamida Khatoon	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 27-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) RLW 761 : (1988) 1 WLN 78

Hon'ble Judges : K. Bhatnagar, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—In all these writ petitions similar questions of law and facts are involved, therefore, they are of by this common order.

2. For the convenient disposal of these cases the facts of the D.B. Civil Writ Petition No. 1640 of 1987. Hamida Khatoon v. Union of India and Ors. are taken in to consideration.

3. The brief facts giving rise to these cases are that petitioner's husband was granted a licence to erect his stall/table first in the year 1962 and thereafter an agreement was executed between the petitioner and the respondent Railway which is Ex. 1 and by his agreement he was granted a licence for selling eatables at Marwar Junction Station. After the death of her husband the petitioner was permitted to run this stall. The petitioner's licence was renewed from time to time and the last renewal was to expire on 31-3-1987 and the licence of the petitioner was terminated on 30-6-1987 (Annex-5). Aggrieved against this termination of the licence the petitioner approached this Court by filing the present writ petition.

4. Mr. Mridul, learned Counsel for the petitioner strenuously urged that the termination order Annex. 5 is in serious violation of the principles of natural justice and in support thereof he has relied upon the decisions in Raj Restaurant

and Another Vs. Municipal Corporation of Delhi, and Vishwa Niwas Mishra Vs. State of Rajasthan and Another, Learned Counsel next contended that the order suffers from the vice of discrimination as persons similarly situated have been treated differently i.e. their licences have not been terminated whereas the petitioners's licence has been terminated.

5. A return has been filed by the respondents and they contested the position. It has been submitted that the licence of the petitioner has been terminated in terms of the agreement i.e. clause 39 read with regulation 716 of the Indian Railway Code. It is alleged that the petitioner's services were not satisfactory. She has been repeatedly warned about her performance and it is found that the food samples of curd collected from the stall of the petitioner was found to be adulterated and a criminal case was launched against the petitioner. It has further been pointed out that at number of times she has been warned. The details thereof have been given by the respondents in their reply to the rejoinder which is on record as Schedule-A. It has been mentioned that her services were found consistently unsatisfactory and she has not improved inspite of repeated warnings, so far as the petitioner was concerned she has been being warned right from 1981 to 1987 i.e. 21 times and she has been fined at number of times. In 1984, 4 times she was warned and fined. In the year 1985, 7 times she was warned and fined from Rs. 50/- to 100/-. In 1986 she was again fined to Rs. 100/- and in 1987 she was again fined to Rs. 50/-. The respondents terminated the services of the petitioner being highly unsatisfactory and the tenure of the petitioner's licence had already been expired on 31-3-1987 and it was not further renewed. Therefore, she was informed on 30-6-1987 of this decision. In this back ground, learned Counsel has submitted that it is not a case of breach of the principles of natural justice and it is a case of termination as a result of efflux of time and she was not granted renew*al because of unsatisfactory performance.

6. In reply to the second contention of Mr. Mridul learned Counsel has submitted that although persons who were similarly situated has been dealt with similarly and persons like petitioner Omwati Devi (D.B. Civil Petition No. 1941/87) and Ram Kishan Agarwal (D.B. Civil Writ Petition 1642/87) fell in similar category. Therefore, their licences have also not been renewed. The other licensees whose performance is not hopelessly bad their licences have not been terminated, the details thereof have been mentioned in Schedule-A. Therefore, learned Counsel has argued that this is not a case of hostile discrimination.

7. In order to appreciate the contentions of both the learned Counsel, it would be relevant to refer to the regulation and terms of the agreement which have a bearing on the subject. Frist of all reference in this connection may be made to Regulations 716, 731, 733 and 734. The aforesaid regulations read as under:

716. Tenure of Contracts-All catering and vending contracts are to be awarded for a period of three years only and are terminable on one month's notice from either party without assigning any reason. It should however, be provided that contracts are liable to be summarily terminated in the event of a breach of the

conditions of the contract including unsatisfactory service, sub-letting or any other improper act, and the security deposit shall be forfeited to the Railway Administration and the contractor shall have no claim what so ever against the Railway Administration or any of its officials in consequence of such termination of the contract. The Chief Commercial Superintendent will be the authority to take the decision whether a particular contract should be terminated. After the expiry of the 3 year's tenure, the Railway Administration may at their discretion consider the renewal of a contract if the service is satisfactory and the contractor is willing to abide by the revised conditions, if any, of the contract.

731. Prompt and vigorous action to improve service--Cases of unsatisfactory service must be viewed seriously and adequate action taken promptly against the contractor responsible. When a contractor is given a final warning, is should also contain a notice that in the event of the desired improvement not being effected within a stipulated period, the contract would be terminated.

733. In the event of termination of contract/contracts of a contractor for grave reasons on one Railway, he should not be re-appointed anywhere else on any other Railway. If any employees of a contractor are like wine dismissed for good and sufficient reasons, they should be debarred from appointment by any other contractor on any Railway.

734. Every contractor should execute an agreement with the Railway in the standard form prescribed of the purpose

8. Mr. Mridul learned Counsel has emphasised that Regulation 731 clearly contemplates that in case of unsatisfactory service a notice should be given for improving the services before terminating the licence. Learned Counsel submitted that if any services of the licensee is terminated then it has a great bearing on his future livelihood as he is debarred from being re-appointed any where else. Since the incident of termination has a serious repercussion on the future livelihood of the licensee therefore the bare requirements of the principles of natural justice is a must. Learned Counsel submitted that no notice for such termination was given by the respondents. Therefore, the action is in violation of the principles of natural justice. In this connection, learned Counsel has invited our attention to the cases referred to above. But the case of the respondents is that the termination of the petitioner's licence is in terms of the agreement. The clause 39 of the agreement which has a relevant bearing reads as under:

39. In the event of unsatisfactory service on any failure at any time on the part of the Licensee(s) to carry out the terms and provisions of this Agreement to the satisfaction of the Railway Administration (we shall be the sole judge and whose decision shall be final) it shall be optional to the Railway Administration to make any substitute arrangement it may deem necessary at the cost and risk of the Licensee(s) or to forthwith terminate this Agreement without any previous notice to the Licensee(s) and in case of such termination the unappropriated balance of the amount of Rs. 793/-referred to in Clause I hereof and the security deposit

mentioned in Clause 34 shall be forfeited to the Railway Administration and the Licensee(s) shall have no claim what so ever against the Railway Administration or any of its officials in consequence of such termination of this Agreement. The licensee(s) agree(s) to make good all costs and expenses, if any incurred by the Railway Administration for making the substitute arrangements referred to above.

By virtue of Regulation 734, every contractor is required to execute an agreement in a prescribed form. In the instant case also an agreement has been executed by the petitioner's husband and the same is on the record as Ex. 1. As per this agreement clause 39 says that in the event of unsatisfactory service or any failure at any time on the part of the licensee the Railway Administration can terminate the licence without any previous notice. Regulation 716 clearly says that the tenure of the contracts shall be for a period of 3 years only and it would be the discretion of the Railway Administration not to renew the same if the services are not satisfactory. On a joint reading of both these provisions it transpires that a discretion has been given in terms of the agreement of the Railway Administration to terminate and not to renew the licence. From the narration of facts as mentioned above, it is clear that the licensee, i.e., petitioner has been found guilty of unsatisfactory work at number of times and she has been fined from time to time. Therefore, looking to the unsatisfactory services of the petitioner if the Railway Administration has exercised its discretion in not renewing the licence which has already come to an end on account of efflux of time as the tenure of licence has expired on 31-3-1987 then such exercise of discretion by the Railway Administration can not be said to be bad in the present case.

9. It is true that the principles of natural justice has to be read in consonance with the statutory rules provided that the statute prohibits specifically the principles of natural justice. This depends on case to case. In the present case we have found that the petitioner was guilty at number of times and she has been fined for the lapses on her part. It cannot be lost sight of that the stalls which are situated at the Railway Platforms have to provide catering services to the large travelling public. If the food of requisite standard is not supplied to public then it will play a great havoc with the public health. It is common experience that the food stuff which is served on the Railway Platform through these stalls is of very poor quality and if such vendors are not dealt with heavy hand then it will certainly have a very bad repercussion on the health of the public at large. It is expected of the Railway authorities to take stringent measures to check the adulteration and the standard of food displayed by the stall holders. It is a good step in that direction, Since the petitioner has been warned a number of times and she has been fined from time to time still her services were not improved. Therefore, it cannot be said that in the present case the discretion exercised by the Railway Administration in not renewing her licence in terms of Regulations 716 and clause 39 of agreement is bad in any respect. The petitioner has sufficient notice to improve and if she has not improved in spite of the bad record then this Court in its extra-ordinary jurisdiction will not

come to the rescue of such persons.

10. Now, coming to the cases cited by the learned Counsel for the petitioner i.e. M/s Raj Restaurant (supra) and Vishwa Niwas Mishra (supra). In Mis Raj Restaurant's case (supra) their Lordships of the Supreme Court have held that refusal to renew the licence without notice and opportunity to represent is against the principles of natural justice. In Raj Restaurant's case (supra) the licence was not renewed by the Delhi Municipal Corporation on the ground that the petitioner has been running the restaurant in a residential building. Therefore, the petitioner was asked to close the business within 24 hours of the receipt of notice. In this connection, their Lordships have observed that before giving this notice and closing the restaurant at least the incumbent should have been given a notice before sealing the restaurant. The Ms Raj Restaurant case (supra) cannot provide any useful assistance in the present case. If the petitioner is guilty of serving sub standard or adulterated food on the stall at the railway platform and she has been fined number of times still she did not improve. The Railway Administration had no option but to decline to renew the same. Likewise, in the case of Vishwa Niwas Mishra (supra) the licence of the tourist guide was not renewed. In that connection, it was observed that since the tourist guide's livelihood has been dependent on the licence and the same has been refused and no reasons what so ever has been given for not renewing the same in these circumstance this Court has held that the incumbent should have been given a notice before not renewing the licence. This case also cannot provide any useful assistance to the petitioner as there were no reasons given for not renewing the licence of the tourist guide. But in the present case the Railway Administration has given sufficient reasons as to why the licence of the petitioner was not renewed because her services to the public at the railway platform was not upto the standard as she was found to be serving sub-standard food and so much so a criminal case was also launched against her for serving adulterated curd. In these circumstances we are not inclined to accept the contention of Mr Mridul that there is a breach of the principles of natural justice in the present case.

11. Now coming to the second question which the learned Counsel has submitted that large number of persons who were similarly situated have not been dealt with like the petitioner. The Railway Administration has given a Schedule containing names of persons who were found wanting as pointed out by the petitioner, from the Schedule when has been placed on record shows that the persons who have been found wanting have been dealt with and some of them could not be dealt with because of the intervention of the Court. If some of the licensees who have not been dealt with then that should not be a ground to permit the petitioner to sell poison to the public at large. If some of the black-sheep are still at large then it is expected of the Railway Administration to bring them to book also. After all it is health of the public which is being jeopardised by such persons who are under licence selling poison or adulterated food stuff to the public at large. Such persons cannot take shelter under the plea that some similar black sheep are thriving. If such an agreement is accepted then that would mean

to give a licence to such known delinquent to play with the lives of public at large. Therefore, we are satisfied that the Railway Administration has rightly taken the action against these petitioners who have been found wanting and we expect that the Railway Administration shall take similar action against other persons who are selling such adulterated stuff on the railway platform expeditiously.

12. Before parting with the case we may also refer to the fine and penalties imposed against the remaining two petitioners. The petitioner Ram Kishan Agarwal has been fined in 1981, 1982, and 3 times in 1984 and in 1985 1986 and 1987. Similarly the petitioner Smt. Omwati has also been fined in the year 1984, 1985, 1986 and 1987. In view of this conduct of the petitioners, they are not entitled to claim any relief by this Court.

13. It has also been brought to our notice that other persons like Keshav Bhai, Atma Singh Advani, Rajendra Kumar Dubey and M/s IRCCS and like other persons have been found wanting. It is expected of the Railway Administration to take stringent measures against such persons who are found wanting for supplying sub-standard food stuff at the railway platform for the benefit of the public at large.

14. Learned Counsel for the Railway Administration has raised a preliminary objection that this is contractual matter, therefore, the remedy under Article 226 of the Constitution of India is not available to the petitioners. He has also submitted that the petitioners are guilty of material concealment of facts in para 5. Since we have disposed of the matter on merits, therefore, we need not give any finding on these contentions.

15. In the result, we do not find any merit in all these three writ petitions and the same are dismissed. The parties are left to bear their own costs.