
(1973) 03 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1706 of 1972

Hawa Singh B.K.O.

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 04-03-1973

Acts Referred:

Citation : (1973) 03 P&H CK 0020

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : B.S. Malik, for the Appellant; S.P. Jain for Advocate-General (Haryana), for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—The petitioner is a resident of village Sindhwi Khera in District Jind and is engaged in the business of manufacture and sale of bricks. He had obtained a licence under the Punjab Control of Bricks and Supplies Order 1986. It is alleged that Shri Ranbir Singh, District Food and Supplies Officer, being inimical towards him, got his licence cancelled on 11th February, 1972. The petitioner filed a writ petition which has today been allowed on the ground that the orders passed under the 1986 Order could not be sustained in view of the decision of this Court in Civil Writ No. 1632 of 1971 (M/s Vaksons Brick Kiln Owner, Sonapat v. State of Haryana etc. CW 1632 of 1971) decided on 20th March 1972.

2. The State of Haryana issued a fresh order known as the Haryana Control of Bricks and Supplies Order. 1972 (hereinafter referred to as the Order). Clause 4 (iii) of the said Order lays as follows:

4(iii) A licence may, if the site of the kiln is not detrimental to the health of general public or to the crops, gardens or nurseries in close proximity thereto, be granted or renewed by the District Magistrate or he may refuse to grant or renew the same for reasons to be recorded in writing:

Provided that before refusing to grant or renew a licence a reasonable opportunity of being heard shall be afforded to the person concerned.

The petitioner filed an application for the grant of licence under the new order. Vide his letter dated 26th April, 1972, the District Food and Supplies Officer, Jind, informed him that the site of his brick kiln was near the village population, school and nursery, "which is not good for health and is against Clause 4 of the Haryana Control of Bricks Supplies Order, 1972." He was asked to appear in the office of the said officer and to say what ever he had to say in that behalf. On 4th May, 1972, the District Food and Supplies Officer informed the petitioner that the explanation given by him was unsatisfactory and so he could not be given a new licence. The petitioner has challenged this order in the instant petition. The return on behalf of the respondents has been filed by respondent No. 3. He has admitted that the application of the petitioner had been recommended by him in routine. But respondent No. 2 observed that spot verification had not been made in accordance with the Government instructions dated 21st March, 1968. The site was inspected on 19th April, 1972 and it was found that the distance between the school and the brick kiln was 225 meters and that of the village abadi was 200 meters. But according to the said instructions of the Government, the distance of brick kiln from the school should be 500 meters and that from the village abadi 1 kilometer. Consequently, the application filed by him was dismissed.

3. Clause 4(iii) of the Order says that the Licencing Authority shall not allow the brick kiln to be set up if the site of the kiln is detrimental to the health of the general public or the crops, gardens or nurseries or in close proximity thereto. This provision does not lay down any express terms that a kiln should not be allowed to be set up within a particular distance of village abad. The phrase "the general Public" conveys no sense because "general public" is not supposed to be a static thing. At a given moment a large number of members of the public may be standing near the site of the kiln and if this phrase is literally applied then the kiln should not be allowed to be worked. In any case, there is a vast difference between the use of the words "proximity" and "close proximity". The show cause notice served on the petitioner shows that the site of the brick kiln is near the village abadi the school and nursery. The name of the school and the name of the nursery has not been mentioned therein. It has nowhere been mentioned that the site of the brick kiln was in close proximity of the village abadi and the school etc. In short, a reading of the notice served on the petitioner, shows that the notice itself was not in conformity with the provisions of the statute. Even if the petitioner did not show any cause against such a notice, the impugned action could not have been taken against him.

4. The legality of the earlier order on the subject issued in the year 1956 was challenged in Civil Writ No. 1632 of 1971 (supra). The operative judgment of the Division Bench reads as under:

In view of the statements and undertakings given by the respective Advocates-

General for the States of Haryana and Punjab, The Control Order, 1956, is held to be invalid. All the notifications issued thereunder automatically fall. Since, however, the States have themselves undertaken not to enforce any notification issued under the Control order, and not to issue any fresh notification thereunder, It is not necessary to issue any particular writ. These petitions have in view of the statements and undertakings given by the State Governments, become infructuous, and are dismissed as such though without any order as to costs.

It is obvious that all the statutory instructions regarding the distance at which the kiln could be located from the village abadi and from the school etc., automatically fall with the order. In this view of the matter, it was not open to the respondents to rely on the executive instructions issued under the dead order while deciding his case under the new order. Furthermore, had these distances been mentioned in the show cause notices, the petitioner would have been in a position to say something against them. In the circumstances of this case, the show cause notice served on the petitioner appears to be an empty formality.

5. I may also mention that clause 4 (iii) of the Order suffers from vagueness inasmuch as the words "close proximity", do not give a clear idea to those who are charged with a duty of administering this order. In a matter like this, the lacuna cannot be properly filled in by issuing executive instructions. In my considered opinion, the Government will be well advised to give some indication of the distances at which the kilns are to be located in the order itself.

6. For the reasons mentioned above, this petition deserves to succeed and I order accordingly.