(2007) 10 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 12697 of 2006

Indumatiben Indravadan Patel APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Gujarat Stamp Supply and Sales Rules, 1987 — Rule 10, 11, 14, 14(1), 14(2)

Citation : (2008) 2 GLR 1023

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Sonal R. Shah and Yatin Oza, for the Appellant; M.D. Mehta, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—The petitioner has invoked Articles 14, 19 and 226 of the Constitution with a prayer to set aside order dated 22-12-2005 of the Collector and Additional Superintendent of Stamps, whereby, in exercise of the powers under Rule 11 of the Gujarat Stamps Supply and Sales Rules, 1987, (for short "the Rules"), licence of the petitioner was cancelled in public interest. That order followed show-cause notice dated 21-10-2005 wherein 31 serious defaults on the part of the petitioner were mentioned as "innumerable errors and anomalies" amounting to violation of Rules 14(1)(2)(3), 16 and 21 of the Rules. On that basis, the petitioner was called upon to show-cause as to why her licence should not be cancelled for violation of the Rules and the conditions subject to which the licence was issued to the petitioner under the aforesaid Rules.

2. It is the case of the petitioner that the licence for selling stamps was issued to her since the year 1988, and after being renewed from time to time, it was lastly renewed for the period from 1-4-2005 to 31-3-2006. According to the petition, the mistakes alleged to have been committed by the petitioner were of a very minor nature and could at the most amount to negligence since the petitioner

had otherwise worked with utmost honesty. It is contended that the maximum penalty for violation of Rule 14 was prescribed in Rule 62 of the aforesaid Rules. It is submitted that there might have been occasions wherein entries might have been overlooked by the petitioner or, on some occasions, due to negligence, she might have forgotten to put the date on the stamp paper. However, if the stamp papers sold by her were verified with the sale register, it would be amply clear that no mistake alleged in the show-cause notice was deliberately committed by her to either misuse the stamp papers or to misappropriate them.

3. It was vehemently argued by learned Counsel Ms. Sonal Shah, appearing with learned Senior Advocate Mr. Yatin Oza, that the provisions of Rule 62 only provided for maximum fine of Rs. 500/- for breach of Rule 14, and in absence of any allegation of serious irregularity or misappropriation, the impugned order ought not to have been passed, even as in several other cases cited at the Bar, the authorities had taken a lenient view under similar circumstances. Learned Counsel also submitted written submissions reiterating the contentions raised in the petition and in the oral arguments. As for the allegation of not obtaining signature of purchasers on the stamp paper, it is stated in the written submission that such omission might have occurred due to heavy rush of purchasers, who were mostly Advocates, and such omission ought not to have been treated as an intentional irregularity and that every alleged mistake committed by the petitioner was always brought to the notice of the authorities in time by the petitioner. Learned Counsel relied upon orders dated 5-5-2006 in Spl.C.A. No. 15660 of 2005, 22-8-2006 in L.P.A. No. 1024 of 2006 and 29-3-2007 in Spl.C.A. No. 8282 of 2006 of this Court, wherein while allowing the petitions and setting aside the impugned orders of cancellation of licence, the Court directed the respondent authorities to revive the licence and renew it within a stipulated period. It was submitted that the petitioner was the sole bread-earner as her husband and three children had all expired within a period of nearly one year and that she had no other means of livelihood, and looking to her blotless record, the impugned order was required to be quashed.

4. Relying upon the affidavit of Additional Superintendent of Stamps, learned A.G.P. Ms. Mehta submitted that the petition was misconceived and thoroughly baseless- besides being devoid of any merit. It is stated that the respondent authorities had received copies of blank stamp papers issued by the petitioner wherein there was no signature of purchaser nor the date of purchase, and therefore, a surprise check was carried out on 7-10-2005 whereby records and registers maintained by the petitioner were inspected. It was then found that the petitioner had committed various irregularities and had violated the provisions of Rules 14, 16 & 21 of the Rules. Pursuant to the show-cause notice dated 21-10-2005, the petitioner had submitted her reply wherein the irregularities were admitted and sought to be explained away by pleading that the irregularities had occurred because of heavy workload. After considering the reply and finding that the irregularities were not pardonable, impugned order was made.

5. It is submitted that 31 irregularities mentioned in the show-cause notice could by no means be stated to be omissions. It is alleged in the affidavit that the petitioner had even tried to create documents only with a view to mislead the authority by obtaining signatures on the documents after issuance of stamp papers. In the register maintained by the petitioner, after Serial No. 6906, straightaway entry No. 6910 was made, leaving a gap of three numbers which could easily be misused, according to the allegation. It is also submitted that the facts of the present case were different from the other cases, and in any case, the licence of the petitioner was to expire on 31-3-2006 whereas the present petition was preferred in the month of June, 2006.

6. Perusal of the relevant provisions of the Rules would show that by Rule 6, the Collector or any other Officer, empowered by the State Government in that behalf, is empowered to appoint certain persons to be licensed stamp vendors for the period of one year. According to Sub-rule (2), licence could be renewed for a further period of one year at the end of financial year; provided that when licensed vendor has committed breach of any of the rules or has failed to maintain adequate stocks of stamps or has refused to sell particular kind of denomination of stamps in spite of its stocks lying with him or has failed to deposit the stock register as provided in Sub-rule (3) of Rule 14, the authority competent to renew the licence may refuse to renew the licence. By virtue of the provisions of Rule 10, any person who desires to have a stamp vendor licence has to apply to the Collector in Form-A and the Collector is empowered to grant licence in the Form at Appendix-1. Under Rule 11, every licence so granted is liable to be revoked at any time by the State Government or by the authority granting it. The provisions of Rule 62, falling in Part-V, entitled "Punishment for the breach of these Rules by the licensed stamp vendors" read as under:

62. The Collector or any Officer authorised by the State Government in this behalf shall after giving opportunity of being heard to the licensed vendor impose fine not exceeding five hundred rupees for committing any of the breach of Rules 8, 14, 18, 19, 26, 39, 46, 47 or 49 of these Rules by the licensed vendor.

It may be noted here that the conditions subject to which licence is granted, inter alia, stipulates that the registers to be maintained for sale of stamps have to be certified and that condition is also alleged to have been violated by the petitioner.

7. In view of the above facts, contentions and legal provisions, the first argument for the petitioner is found to be misconceived and misleading insofar as cancellation of the licence is different from penalty or punishment for violation of any of the Rules. There is nothing to indicate in the Rules that the procedure and power prescribed in Rule 62 are the exclusive provisions for dealing with violation of the conditions of licence or the Rules. It is the discretion of the Government to exercise the powers under Rule 11 or Rule 62 or both. Once the powers are statutorily conferred upon an authority and a quasi-judicial order is made, admittedly after affording an opportunity of being heard to the petitioner, that

order could not be lightly interfered in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution. In view of the number of defaults and in view of unacceptable defence of bona fide mistake under pressure of work and in absence of any illegality or perversity in the impugned order, it could not be interfered or substituted by this Court only on the ground that in some other cases the same authorities had taken a lenient or different view under the circumstances which were alleged to be similar.

8. It was rightly pointed out on behalf of the respondent that, in any case, the licence given to the petitioner was expiring on 31-3-2006 and its renewal would have been refused on account of established breach of the Rules and the irregularities found at the time of making the impugned order.

9. It may be pertinent to note here that, after the petitioner approached this Court in June, 2006, adjournments were sought by the petitioner for moving a draft amendment and getting further instructions and notice was issued after learned Advocate for the petitioner submitted an additional affidavit. In that additional affidavit, it was, inter alia, stated on oath as under:

...I say that in the said reply I have stated that the alleged mistakes if at all committed by me have been committed unintentionally as I am a patient of High Blood Pressure and have ailments like paralysis and heart disease....

...I say that I am also a patient of anemia and reports to that effect is annexed hereto and marked as A-2....

...I say that all these certificates, prescriptions and echo cardiogram go to show that since 1989, I have been a constant patient of High Blood Pressure and heart disease and at one point of time even paralysis, and therefore, I state without admitting that the alleged mistakes as stated in the above show-cause notice, if at all committed by me are unintentional on account of my health problems.

Thereafter, on 14-12-2006, even as the matter was to come up for final hearing on 27-12-2006, the petition was pressed for grant of interim relief and that prayer was rejected with the observation that, "Looking to the number of irregularities, it was in the interest of the society at large that the order may not be stayed".

10. It appears from the above record that instead of meeting the serious charges, the petitioner has resorted to evoking sympathy on irrelevant grounds and sought by way of interim relief an order which would have amounted to not only allowing the petition but an order to renew the licence which had expired long before even filing of the petition.

11. In the order dated 11-9-2006 of this Court in Special Civil Application No. 10284 of 2006, the petitioner therein had withdrawn the petition with permission to make a representation. That order itself recorded the learned A.G.P''s submission that there was no legal right vested in the petitioner in the face of 42 lapses enumerated in the order impugned therein. However, after making of the

representation, by order dated 9-7-2007, the Collector and Additional Superintendent of Stamps had practically reversed his own order on the baseless ground that the matter was remanded to the authority. Such administrative orders prima facie smacking of dishonesty cannot be pressed into service or relied upon as precedent for deciding other cases by this Court. Therefore, in the facts and for the reasons discussed hereinabove, the petition is dismissed and Rule is discharged with no order as to costs. (HSS) Petition dismissed.

