
(1999) 06 MP CK 0016
In the Madhya Pradesh High Court
Case No : L.P.A. No. 66 of 1999

Jagdish Prasad Shivhare

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Constitution of India, 1950 — Article 226
High Court of Madhya Pradesh Rules, 2008 — Rule 1, 14

Citation : (1999) 2 J LJ 209 : (1999) 2 MPLJ 247

Hon'ble Judges : S.P. Srivastava, J; N.G. Karambelkar, J

Bench : Division Bench

Advocate : R.D. Jain and N.K. Mody, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order dismissing his Writ Petition the petitioner has now come up in Letters Patent Appeal seeking redress praying for the setting aside of the same and further seeking a direction requiring the Municipal Corporation, Gwalior, the respondent No. 1, to renew the licence No. 19/1996-97 in Form FL-III for dealing in foreign liquor granted in his favour.

We have heard the learned counsel for the appellant and have carefully perused the record.

The facts in brief, shorn of details and necessary for the disposal of this appeal lie in a narrow compass. The petitioner claims to be a proprietor of Sangam Hotel and Restaurant, situate at Tansen Road, Gwalior, which has been established by him in a rented premises. He had applied for the licence in FL-III to deal in foreign liquor which had been initially granted for the period from 1st March, 1997 and was renewed for the period 1-4-1997 to 31-3-1998. Later on, it was further renewed for a period from 1-4-1998 to 31-3-1999 vide the order dated

21-4-1998 passed by the Ayukt, Nagar Palika Nigam, Gwalior. The operation of the renewal of the licence issued in favour of the petitioner in Form FL-III was stayed. Later on, vide the order dated 2- 6-1998 the Commissioner, Municipal Corporation, Gwalior, cancelled the aforesaid license. Feeling aggrieved by the order of cancellation of the licence the petitioner filed the writ petition giving rise to this appeal, on 17-6-1998. The petitioner had prayed for the quashing of the order dated 2-6-1998 cancelling the licence and had further prayed for a direction requiring the respondents not to take any action against him on the ground of irrelevant inquiry.

During the pendency of the writ petition an application being I. A. No. 2635 of 1999 was filed on 5-4-1999 seeking permission to amend the writ petition by adding a ground to the following effect:-

"(k) That, the present order Annexure-D is also based on the same direction of the State Government on the basis of which the order Annexure-P/1 was passed. There is no enquiry pending against the petitioner in the office of Lokayukt. There can be no such enquiry also. Thus, on this ground renewal cannot be challenged."

Another amendment sought for was for incorporating another relief by adding in the end of relief para "(ii)" the words "The order Annexure-D" may kindly be quashed.

Before the learned Single Judge the contesting respondents raised a preliminary objection that the petition had been rendered infructuous as the period of licence had expired on 31-3-1999 and there was no prayer for further renewal of the licence.

The learned Single Judge noticed that vide the order dated 12-3-1999 the petitioner's prayer for renewal of FL-3 licence for the year 1999-2000 had been rejected and the said order had not been challenged by the petitioner in the petition. It was submitted before the learned Single Judge on behalf of the petitioner that he had moved an amendment application praying for quashing of the order, Annexure-D. The learned Single Judge has further noticed that along with the amendment application no such order had been annexed. The annexures were filed with the application for the interim relief which had already been disposed of,

In the impugned order the learned Single Judge has observed that unless proper application for amendment in the petition narrating all the facts was filed, the question of cancelling document Annexure-D cannot be considered. It was further observed that in the absence of proper relief for quashing the order no relief could be granted to the petitioner. It was found that the writ petition as filed had been rendered infructuous as the period of FL-3 licence had already expired on 31-3-1999. In the aforesaid view of the matter the learned Single Judge came to the conclusion that no relief could be granted to the petitioner. The Writ Petition was accordingly dismissed.

The present appeal was filed on 1-5-1999. During the pendency of this appeal I.A. No. 3794/99 was filed on 10-5-1999 praying for amending the Writ Petition by incorporating therein various facts by adding Paragraphs 5.8, 5.9 and 5.10. The petitioner also prayed for permission to add various new grounds as Grounds No. K, L, M and N. The petitioner further prayed for amending the relief clause seeking the quashing of the orders, Annexures P-23 and P-24 seeking a further direction requiring the respondents to renew his licence.

As observed by the Allahabad High Court in its decisions in the case of L. Kashi Nath Seth Vs. Collector, Central Excise, Allahabad and Others, decided by a Division Bench in spite of the explanation inserted in Section 141 by the CPC (Amendment) Act, 1976 the salutary principles enshrined in the CPC governing the trial of civil suits may be applied to the proceedings excepting the cases of habeas corpus petitions under Article 226 of the Constitution of India. This decision was followed in a later Division Bench decision of the said Court in the case of Regional Manager v. Pradeep Goyal, reported in 1992 Allahabad Civil Journal 274. It seems to me that on the reasonings on which various other salutary principles enshrined in the CPC governing the trial or Civil Suits had been applied to the proceedings under Article 226 of the Constitution of India excepting the cases of habeas corpus petitions indicated hereinabove, the principles underlying the provisions contained in Order 6, Rule 2, CPC can be safely applied to the proceedings under Article 226 of the Constitution of India.

In fact, Rule 1(a) of Part II, Chapter II of the Rules framed by this Court regulating the proceedings under Article 226 of the Constitution of India read with the Form prescribed thereunder clearly indicates that the writ petition must contain a concise statement of facts in chronological order in separate paragraphs and the grounds on which the reliefs are claimed and as envisaged under Rule 14(a) of the said Rules all questions of facts arising for determination are to be decided ordinarily upon affidavits providing that the Court may direct that such other evidence be taken as it may deem fit. Of course, as provided under Rule 13 of the aforesaid Rules, if the Court at any time finds that the facts furnished are insufficient or further and better particulars of any matter shall be furnished, the Court may, of its own motion, or on the application of any party, order any party to furnish such facts or particulars supported by an affidavit.

It is, therefore, abundantly clear that in a writ petition, the petitioner is required to set out all the material facts clearly on the basis whereof the relief is sought and that the Court is required to decide the question which arises for determination in the case. Obviously, the emphasis is on the questions which arise in the case for determination taking into account the pleadings of the parties in regard to material facts.

A distinction must be made between omission to state material facts and omission to give full particulars. If material facts are omitted, a party should not be allowed to raise a contention on a particular point even if, some materials are available in the evidence. If on the other hand material facts have been pleaded

but full particulars have not been given the Court may permit the points to be raised on the basis of the evidence unless the opposite party is thereby materially prejudiced. The first obviously relate to a question of jurisdiction and the second to one of procedure.

It is settled law that though liberal consideration to the pleadings is to be given so as to allow any question to be raised and discussed covered thereunder yet a petitioner cannot be deemed to be entitled to a relief upon the facts and documents neither stated nor referred to in the pleadings relied upon. It was observed by the Privy Council in the case of *Saddik Mohamed Shah v. Mt. Saran and Ors.*, reported in 1930 Privy Council 57(1) that where a claim has never been made no amount of evidence can be looked into upon a plea which was never put forward. A decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It should, however, not be lost sight of that consideration of form cannot override the legitimate consideration of substance. If a plea is not specifically made and yet it is covered by an issue by implication and the parties know that said plea was involved, in that event, a mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.

In the present case what we find is that the scope of the writ petition was confined to the validity or otherwise of the order cancelling the license granted to the petitioner. The license ceased to be operative automatically w.e.f. 31-3-1999. The present appeal is a Letters Patent Appeal envisaged under Clause 10 of Letters Patent of Nagpur. Although the powers of this appellate forum has to be taken to be co-extensive with the powers vesting in the original forum enabling it to examine the legality and propriety of the judgment passed in the original forum yet it has to examine and consider the same taking into account the evidence and the materials brought on record before the learned Single Judge. The remedy envisaged under Article 226 of the Constitution of India is a discretionary remedy. We are of the considered opinion that in a Letters Patent Appeal the appellate forum should ordinarily be slow in interfering with the discretion exercised by the learned Single Judge.

In the aforesaid connection it may be noticed that Hon^{ble} the Supreme Court in its decision in the case of *Corporation of Calcutta Vs. Mulchand Agarwalla*, , had observed that "It is a well-settled principle that when the legislature entrusts to an authority the power to pass an order in its discretion, an order passed by that authority in exercise of that discretion is, in general, not liable to be interfered with by an Appellate Court, unless it can be shown to have been based on some mistake of fact or misapprehension of the principles applicable thereto."

It must not, however, be lost sight of that in the appropriate cases if it is found that the exercise of the discretion by the learned Single Judge stands vitiated in law, arbitrariness or perversity, and has the effect of resulting into manifest miscarriage of justice, there can be no impediment in interfering in such an order/

judgment in appeal. The mere possibility of different conclusions on the same facts and evidence will not justify an interference. It may be noticed that in its decision in the case of Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad, , while dealing with a Special Appeal directed against a judgment disposing of a writ petition under Article 226 of the Constitution, rendered by a Full Bench, it had been observed that if two views are possible on the question, then also the Court of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it. The exercise of discretion should manifestly be wrong.

A perusal of the record of Writ Petition No. 1013 of 1998 indicates that even in the application, I.A.No. 2635/99, no factual foundation had been laid for the proposed ground sought to be added as Ground No. (k) in the writ petition. The relief sought to be added was for quashing of "Annexure-D", the details of which had neither been given nor a copy of the same had been sought to be made a part of the writ petition. In fact, no such copy was even annexed along with the application itself. It may further be noticed that the petitioner knew that his licence was to expire on 31-3-1999 in spite of this fact no effort was made by the petitioner to seek a relief for getting the matter in regard to the renewal of the licence expedited. The application for renewal of the licence was rejected on 12-3-1999. No effort was made by the petitioner to challenge the said order by amending the writ petition or filing a separate writ petition challenging the same.

During the pendency of the appeal an application seeking various amendments in the writ petition was filed seeking to enlarge the scope of the writ petition. The application seeking amendment in the writ petition at the appellate stage was filed on 7-5-1999 although the petitioner knew that the order dated 12-3-1999 furnished a fresh cause of action.

Taking into consideration the facts and circumstances brought on record we are not inclined to permit the amendments in the writ petition as sought for at this belated stage. The application seeking amendments in the writ petition is, therefore, rejected.

Considering the facts and circumstances as brought on record as well as noticed hereinabove, we do not find any justifiable ground for interfering in the discretion exercised by the learned Single Judge in dismissing the writ petition.

This appeal is accordingly, dismissed in limine.