

(1990) 01 DEL CK 0027
In the Delhi High Court
Case No : Civil Writ Appeal No. 409 of 1989

Janta Travels

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-01-1990

Acts Referred:

Citation : (1990) RLR 210

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : A.K. Sinha and Ram Kapur, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition u/Art. 226 of the Constitution of India, the petitioner has prayed that an order dt. 9.1.89 terminating its license as an agent under the Authorisation of Rail Travellers Service Agent Rules, 1985 (the Rules) be quashed.

(2) The petitioner was granted a license u/R.4 of the Rules authorising it to act as a rail travellers service agent.

(3) By a notice dt. 19.8.88, the petitioner was called upon to show cause why its license may not be terminated. It was alleged that during surprise check of 41 Dn Mussoric Express on 17.4.88, "it was found that only 19 passengers against reservation of 69 were traveling in coach No. S-2 and S-4 out of these 19 passengers were found traveling in other names on transferred reservation. The reservation of 69 passengers was procured by the representation of an unauthorised travel Agency of Bombay (Kesari Travels) through your agency. A perusal of reservation slips tendered for this party indicate that it has been sponsored by you. It was, Therefore, inferred that these reservations were "procured by you for unauthorised travel agency in monetary consideration". Further, it was alleged that two "warnings" dated 16.6.87 and 11.5.88 were issued but inspire of this, the petitioner "again indulged in unauthorised trade of procuring reservation thereby violating terms and conditions laid down for the

grant of license".

(4) By a reply dt. 17.7.88, the petitioner explained that M/s. Kesari Travels, Bombay arc tour operators and they undertake package tours throughout the country, that the said M/s. Kesari Travels asked the petitioner on 12.2.88 to reserve 69 passenger berth from Delhi to Dehradun by Mussorie Express of 17.4.88 for which they enclosed a list of 69 passengers. Accordingly, the petitioner arranged reservation for the 69 named passengers, it raised bill for charges in accordance with the conditions of the license, and it received payment in advance by way of a demand draft. It was explained that the petitioner duly performed its part of the obligation and its responsibility came to an end as soon as it handed over the tickets to the party on 23.2.88. It was farther averred "We have no responsibility to verify whether the passengers who got the reservation for a particular date had actually undertaken the journey on that day. It is up to the travellers either to undertake the journey according to their programme or cancel the reservation at a later stage and the travel agents do not come in the picture.....we had no monetary benefits apart from the service charges approved by the Railways". With regard to the two letters dt. 16.6.87 and 11.5.88 it was stated that neither of them was in fact a warning. In the former, certain lapses were pointed out, although there were none, and the petitioner had no objection to strictly follow the instructions given in it. With regard to the latter, it was stated that no lapse on the part of the petitioner was pointed out despite a request made by the petitioner by a letter dt. 9.5.88 specifically asking for it. Therefore, the petitioner contended that it had not violated any of the terms and conditions of the license or the Rules, and it requested that the show cause notice be recalled and the proceedings be dropped.

(5) By the letter dt. 9.1.89 the petitioner was informed "it has been decided by the Competent Authority to terminate your license... due to your Explanation being unsatisfactory".

(6) The petitioner has challenged the cancellation of its license, primarily on the ground that the Competent Authority has not given any reasons for cancelling its license and it is, Therefore, arbitrary, unjust and invalid. The respondents have controverted this plea. On their behalf, it has been contended that the license has been cancelled on the grounds that were duly communicated to the petitioner by the show cause notice dt 19.8.88. Further, learned counsel for the respondents has relied upon a plea taken in the counter affidavit that M/s. Kesari Travels could not be said to be a "client" for the purpose of Condition No. (ix) of Rule 5 as the term "client" could only mean a person who desires to travel by train.

(7) Before dealing with law on the subject, it would be appropriate to refer to the relevant Rules. Rule 4 provides for issue of a license. Rule 5 lays down 14 conditions on which a license may be granted. Condition No. (ix) requires "the purchase of tickets and securing of reservation by the agent shall be on a written request from his client". Rule 6 empowers the Competent Authority to cancel at any time the license for violation of any of the conditions under the Rules with

regard to purchase of tickets and securing reservation etc. The Proviso to this Rule prohibits the exercise of this power unless an opportunity to show cause is given to the Agent. Rule 9 provides for an appeal against every order of the Competent Authority made under the Rules to the Central Govt. A bare perusal of Rules 6 and 9 show that the order of cancellation of a license is quasi-judicial and is subject to an appeal to the Central Govt.

(8) In *Bharat Raja Vs. The Union of India (UOI) and Others*, , a Constitution Bench of the Supreme Court, while dealing with two appeals by special leave arising out of an order of the Central Govt. rejecting a revision u/R. 55 of the Mineral Concession Rules, 1960, emphasised upon the need for speaking orders to be made by Tribunals as the same are subject to the supervisory powers of the High Courts u/Art. 227 and to the appellate powers of the Supreme Court u/Art. 136 of the Constitution.

(9) In *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , while dealing with a case where a license under the U.P. Sugar Dealers' Licensing Order, 1962 had been cancelled by the District Magistrate, Shah, J. observed :

"...The order passed by the District Magistrate cancelling the licenses was quasi-judicial, it could be made only on a consideration of the charges and the Explanation given by the appellants... The relevant rules granted a right of appeal to the State Government against that order, and that aggrieved party must have an opportunity to convince the State Government that the order passed by the District Magistrate was erroneous. That right could be effectively exercised if reasons were recorded by the District Magistrate and supplied to the aggrieved party. If he is not supplied the reasons, the right to appeal is an empty formality..."

"OPPORTUNITY to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law

was correctly applied and the decision was just."

(10) In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , Bhagwati, J. observed that it is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes and that every quasi-judicial order must be supported by reasons. Further, it was declared that the rule requiring reasons to be given in support of its order is, like the principles of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process.

(11) In the present case, the impugned letter dt. 9.1.89 merely states the conclusion that the Explanation given by the petitioner was unsatisfactory. It does not disclose any reasons on which this conclusion could be reached by any reasonable person. It is not clear from the impugned order as to what prevailed or what did not in the mind of the Competent Authority to influence its decision to cancel the petitioner's license. It betrays application of mind. The purported exercise of power to cancel the license of the petitioner is, Therefore, arbitrary. For want of reasons, I fail to see how the right of appeal, as also the appellate power, u/R. 9 can be effectively exercised in the present case. The cancellation of the petitioner's license is, Therefore, arbitrary and unjust.

(12) The order of cancellation is a statutory order. The reasons in support of such an order should be apparent from the order itself. In reply to the W.P. in the counter-affidavit filed on behalf of the respondents, it has been pleaded that M/s. Kesari Travels of Bombay did not fall within the description of "client" as envisaged under Condition No. (ix) of Rule 5 inasmuch as a client would mean only a person who desires to travel by train. This reason was not stated in the order of cancellation and is now sought to be advanced by way of justification of the order in the counter-affidavit.

(13) In *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, . Bose, J. explained that public orders publicly made, in exercise of a statutory authority, cannot be construed in the light of the Explanation subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do, and that public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Relying upon these observations, Krishna Iyer, J. pointed out in *Mahinder Singh Gill vs. C.E.C.* AIR 1978 S.C. 951 that when a statutory functionary makes an order, its validity must be adjudged by the reasons mentioned in it and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

(14) It is, Therefore, clear that the bad order of cancellation cannot be now validated by the reason sought to be advanced in the counter-affidavit filed in this Court. Indeed, it is impermissible to justify the impugned action by resort to

a reason which was not disclosed at the time when the order was made.

(15) On behalf of the respondents, reliance was placed upon *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , to contend that the grounds on which the petitioners license has been cancelled are clearly discernible from the show cause notice dated 19.8.88 and the order of the Competent Authority cancelling the license cannot be struck down merely on the ground that the order itself does not disclose the reasons on which it is based.

(16) In the case of *M. P. Industries (supra)*, an application for grant of a mining lease was rejected by the State Government and a revision application against that order was rejected by the Central Government under Rule 55 of the Mineral Concession Rules, 1960. With regard to the requirement of a Tribunal to give reasons, Subba Rao, J. observed "The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal." On facts, however, his Lordship found that neither the State Government nor the Central Governments order disclosed the reason for rejecting the application of the appellant. Bachawat, J. (with Mudholkar, J.) agreed with all the other points discussed by Subba Rao, J. but came to the conclusion that the Maharashtra State Government's order gave full reasons and because the Central Government agreed with the reasons given by the State Government, it was not necessary for the Central Government to give in its order "fuller reasons" for rejecting the application. A perusal of this judgment clearly shows that the test of a speaking order has to be applied keeping in view the nature of the order. Where the original order gives the reasons on which it is based, the revisional authority need not give the reasons for rejecting a revision against it.

(17) The judgment in the case of *Shri Sachidanand Pandey (supra)* also is of no avail to the respondents. In that case, the Supreme Court was dealing with an administrative action involving allotment of Government land to a private party. In that context it was pointed out that the reasons for the decision could only be gathered by looking at the entire course of events and circumstances stretching over the period of initiation to the final decision. It is pertinent to point out that in this case the Supreme Court clearly indicated the difference between an administrative action as against a case where the Court may be dealing with a statutory order made by a statutory functionary.

(18) In the present case, as noticed above, we are concerned with a statutory order made by a statutory authority and not with an administrative action. As such, reliance upon these two decisions on behalf of the respondents is misplaced.

(19) The absence of reasons in support of the order of cancellation of the petitioner's license, in my opinion, shows that there has been no proper consideration of the Explanation given by the petitioner in its reply dated 17.9.88 to the show cause notice dated 19.8.88. Petition allowed.