
(1976) 02 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 1449 of 1974

Jiwat Bai and Sons

APPELLANT

Vs

G.C. Batra etc.

RESPONDENT

Date of Decision : 03-02-1976

Acts Referred:

Citation : AIR 1976 Delhi 310 : (1976) RLR 374

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : C.G. Suri, O.P. Verma, R.H. Dhebar, B.V. Desai and Parveen Kumar, for the Appellant;

Judgement

H.L. Anand, J.

(1) Jiwat Bai's husband's father had a vending contract with Railway from 1920 to until his death in 1932 in Pakistan. Contract was then transferred to her husband which continued with him even after migration to India and till he died in 1961. After that it was transferred in the name of petitioner and was renewed from time to time. Last agreement was of 16.11.72 and it was signed by her son Hiralal. It was to expire on 31.7.74. By policy letter of 24.7.74, it was decided to renew licenses of individual, as distinct from contractors, without calling applications. On 26.7.74, petitioner was told that it was decided not to renew her license. After a temporary period, petitioners contract was terminated by letter dt. 22.11.76. Writ petition was filed on 28.11.74. During its pendency, there was a policy change per letter dt. 24.2.75 by which refugees were exempted from operation of current policy. The respondents raised a preliminary objection that the petition is by M/s Jiwat Bai and Sons" while petitioner had stated herself to be a widow and at places in the application "petitioners" is mentioned and hence there is no proper petition. That the agreement had been signed by Hiralal who had described the firm as his proprietary concern and license Jiwat Bai had no locus standi. After narrating above facts, judgment para 5a, onwards is :

5A.M/s Jiwat Bai and Sons was apparently a loose name and style to describe the family which consists of Jiwat Bai and Hira Lal. The various descriptions of M/s Jiwat Bai and Sons were apparently the result of linguistic inexactitude and it would be reasonable to treat the petition by the members of the family. I do not see why the widow and her son who are uneducated if not illiterate, should suffer because of legal procedures which involve unnecessary and cumbersome norms and because the counsel who drafted the petition did not or could not have precise instructions as to the status of the family and of the firm. It may be useful to remember that the practice and procedure of Courts is intended to further the course of justice and not to impede or obstruct it. I would, Therefore, treat this as a joint petition by Jiwat Bai and Hiralal and that is how the petition was heard on merits. Learned counsel for the petitioners sought to amend the petition so as to add the name of Hira Lal but I do not think it is necessary to have a formal amendment for the purpose. The objection is, Therefore, overruled.

(2) Whether there is any right to the renewal of the vending license either in terms of the agreement by virtue of the relevant policy, is the first question that requires consideration. Clause (2) (a) of the agreement provides that renewal of the license for further period would be at the "discretion" of the Railway Administration. There was, Therefore, no right to renewal under the agreement. The revised policy in the matter of renewal of vending licenses laid down by the Railway Board in its letter of July 17, 1974, as set in the Railway Board's letter of July 24, 1974, however, clearly confers a right of renewal on such of existing vendees who conform to the requirements for renewal in terms of the said policy. According to this policy, a vendor who was holding an individual license in his own name and was himself actually doing the work without any vendor, helper, assistant etc. under him, was entitled to the renewal of the vending license from time to time even though he might have held it for more than six years provided his performance had been found continuously satisfactory. The policy further lays down that it must be strictly complied with. The power conferred on the authorities to renew licenses which satisfy the requirement for renewal laid down in the policy must be construed as a power coupled with a duty that must be exercised in favor of the subject if the requirements for such exercise are satisfied. To quote the language of Lord Cairns in the case of *Frederic Guilder Julius* 1880 (5) A.C. 214 "there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something into the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power then called upon to do so." The principle was adopted by the judicial Committee in *Alcock Vs. Chief Revenue Authority* AIR 1923 P.C. 138 and had been approved by the Supreme Court. If the petitioners, being the existing licenses, satisfied the aforesaid requirement, they were certainly entitled, to the renewal in terms of the policy.

(3) The next question that requires consideration is as to the nature of such a

right. If the right to renewal conferred by the policy is contractual in nature, then obviously the petitioner would not be entitled to enforce that right in the present proceedings because Article 226 of the Constitution of India is not a forum for the enforcement of contractual rights. A regular civil action is the appropriate forum for such a relief. If, however, the right has its genesis not in the contract but in the policy and, Therefore, is an executive order, it would not be a contractual right but a right arising out of executive action. Mr. Dhebar, learned counsel for the "Railway Administration contends that when the policy confers a right of renewal, assuming that it does, it is in no way different from a unilateral amendment of the agreement as it were to confer an additional right on the other party to the agreement and that the right was in a sense still a contractual right because in the absence of the agreement confers no right of renewal whatever. This contention appears to me to be misconceived. The agreement confers no right of renewal whatever. The right of renewal, subject to certain conditions being satisfied, is conferred by the policy even though on persons who held the licenses. The foundation for the right is the policy decision of the Government even though the subsistence of the vending license is a qualifying condition for it. There can be no question of a unilateral modification of the agreement. It is benefit given to a vendor in addition to those to which he was entitled in terms of the agreement. The right could not, Therefore, be considered contractual in its origin so as to disentitle the petitioners to enforce it in the present proceedings.

(4) Shri Dhebar. however, contends that assuming that the policy confers a right and that the right was denied to the petitioners in contravention of the policy, the petition for a writ of mandamus would, nevertheless be not maintainable and the petitioners would not be entitled to any relief because the policy was not statutory in nature and a mere breach of non-statutory policy or instructions would not afford a cause of action for such a relief. Shri Dhebar further contends that a claim for a writ of mandamus must be founded on a legal right and that breach of a mere non-statutory instructions neither confers a right nor gives rise to any statutory obligation which alone could be enforced by a writ of mandamus. It is further contended that an administrative direction like the present policy could not confer any justiciable right upon a citizen which could be enforced in a Court by a writ or order in the nature of mandamus and that the foundation for the issue of a writ or order in the nature of mandamus being the existence of a legal right, and administrative order being incapable of conferring any justiciable right, no writ could be issued. It is true that the policy is not statutory in nature and is, at best, in the nature of executive instructions issued with a view to regulate the renewal of vending licenses, and may, in that sense, be likened to a Government scheme. It is equally true that when an executive authority commits breach of these instructions, it could not be said that a statutory obligation had been violated. It is also undisputed that ordinarily a claim for mandamus must be based on a legal right and such a writ is granted to compel the performance of a statutory duty. There are, however, well recognised

exceptions to this general rule. It has been recognised that there are administrative orders which confer right and impose duties and that Courts have a power in appropriate cases to compel performance of the obligation imposed by the non-statutory scheme or administrative instructions upon the executive authorities Union of India (UOI) Vs. K.P. Joseph and Others, , U.O.I. Vs Indo Afghan Co. Air 1963 S.C. 718 . At one time it was no doubt that the executive instructions did not bind the authorities, could not confer any right or obligation and could not, Therefore, be enforced, in a Court of law. Recent legal thinking has, however, recognised that where there is no statutory provision, executive instructions fill in the Sant Ram Sharma Vs. State of Rajasthan and Another, and are not only capable of conferring rights on the citizen and imposing obligations on the authorities, which are charged with the duty of carrying out the policy, but that in appropriate cases. Court may even compel the performance of such a duty.