(2006) 06 GUJ CK 0050

In the Gujarat High Court

Kirtikumar Indravadan Shah APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Gujarat Stamp Supply and Sales Rules, 1987 — Rule 14(2), 19, 21, 6(2)

Citation : AIR 2006 Guj 248 : (2006) 26 GLH 313

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Judgement

Ravi R. Tripathi, J.—The petitioner a Stamp vendor, having licences bearing licence Nos. SB/376/1998 and 377 of 1998 for sale of Non-Judicial Stamp Papers, Revenue Stamps, Share Transfer Stamps, Agreement Stamps, Hundi Stamps, Court Fee Stamp Papers, Court Fee labels under the provisions of Gujarat Stamp Supply and Sales Rules, 1987 (hereinafter referred to as "the Rule" for brevity) is before this Court.

2. The case of the petitioner is that he was issued aforesaid licences vide order dated 9-9-1998 by the respondent No. 3 i.e. Collector and Additional Superintendent of Stamps, Gujarat State. The petitioner was holding the licence for all these years and there was no complaint for his conduct during these years. On 27-7-2005 an incident is alleged to have occurred. The case of the petitioner is that on 27-5-2005, a customer came to him and asked for a stamp paper of Rs. 20/-. It is the case of the petitioner that at that time, he was taking lunch, and therefore, he requested the person to wait for some time. The person again approached the petitioner after 15 to 20 minutes and asked to give him the stamp paper. At that time, the petitioner was making entries of stamp papers sold to some other person, and therefore, he told the person to wait for a while, telling him that "I am giving you stamp paper after recording the same in the register". The person concerned in exceptional hurry, told the petitioner that as he has to reach the office, he should be given stamp paper immediately. The petitioner replied to him that he should not make such exceptional hurry as he

has to supply the stamp papers after making necessary entries. He also told that if the petitioner will make the entries in hot hurry, he is likely to commit mistakes. He told him that if there was such an urgency, he could have purchased the stamp paper on a previous day.

3. At this juncture, the person concerned disclosed his identity as an officer from the office of the Superintendent of Stamps. He showed his identity card to the petitioner. On demand, by the officer, the petitioner tendered his register and the stock to him.

The petitioner was then served with a show-cause notice dated 30-7-2005. The said notice was replied by letter dated 8-8-2005. By the said reply, the petitioner has tendered his explanation to the alleged irregularities. Thereafter, the authority passed order on 11-8-2005 and cancelled the licence of the petitioner.

4. The learned Advocate for the petitioner submitted that this is the case wherein the authorities have not considered the explanation of the petitioner to the so-called irregularities, alleged to have been committed by the petitioner, in true perspective. The learned Advocate for the petitioner submitted that in the show-cause notice, it is stated that the petitioner has committed breach of Sub-rule (2) of Rule 6, Sub-rule (2) of Rule 14, Rules 19 and 21 of the Rules. The learned Advocate invited the attention of the Court to Sub-rule (2) of Rule 6 which pertains to ''renewal of the licence'' which reads as under:

Every licence granted under Sub-clause (1) may be renewed in Appendix II for a further period of one year at the end of financial year.

The learned Advocate appearing for the petitioner submitted that the petitioner was holding a valid licence on the day on which the aforesaid incident took place i.e. on 27-7-2005. The learned Advocate submitted that Sub-rule (2) of Rule 14, provides for maintaining a register in the form provided in Appendix IV and making necessary entries in the register.

The learned Advocate submitted that it is true that the petitioner has admitted in his reply to ''show-cause notice'' that due to pressing circumstances, alleged irregularity has taken place. The allegation of the authority is that the petitioner did not make closing entries in the register, and did not draw the closing balance on 26-7-2005 and started making entries for the next date i.e. 27-7-2005.

The petitioner explained his conduct by saying that on 26-7-2005 in the evening hours he was required to rush to the school of his child as the rickshaw which was suppose to pick up his child and drop at the residence, had not to come. It is further stated that for his misfortune, his mother got ill in the morning of 27-7-2005, and therefore, he was required to take his mother to the hospital from where, he directly came to the place of business. There customers were waiting, and hence, he started selling stamp papers and made necessary entries for the same. The learned Advocate for the petitioner submitted that the authorities, without taking serious view of this minor lapse, ought to have taken into consideration the past record of the petitioner which is totally unblemished since 1998, that is the day from which the petitioner is holding licence.

5. The learned Advocate for the petitioner submitted that next is the allegation of ''non-selling of the stamp papers to the officer who visited the petitioner on 27-7-2005 at 1-15 p.m. The learned Advocate for the petitioner submitted that the say of the petitioner is that at the time when ''officer'' visited the petitioner, he was taking lunch, and therefore, he-the petitioner requested him to wait for some time instead of waiting there that officer went away. After he finished his lunch as there were other customers, he started selling the stamp papers to them after making the necessary entries. At that time, that officer again came and demanded the stamp paper. The say of the petitioner is that he asked him to wait for his turn and not to make hot haste which may cause an error to crept in.

6. It appears that the ego of the officer got hurt he showed his identity card and then acted as is on the record.

7. The show-cause notice then referred to Rule 19 which reads as under:

Every licenced vendor shall, without delay, deliver any stamp which he has in his possession for sale, on demand by any person tendering the proper value thereof the licenced vendor is forbidden to demand or accept any consideration exceeding the value of the stamp.

Rule 19 is enacted with a definite object. The object is that a stamp vendor should not create scarcity of a stamp paper of particular denomination and then charge/recover an excess amount than the value of the stamp paper. In the present case, the stamp vendor is conducting his business at a Shopping Center, situated in the city of Ahmedabad, where he is not the only stamp vendor having monopoly of selling the stamp papers like a stamp vendor in a remote village/ town or a Taluka place who by delaying the sale of a stamp paper can charge some extra money from the person concerned. This particular aspect is missed by the authority who has passed the order under challenge.

8. Next what is referred to in the show-cause notice is Rule 21. This Rule relates to ''maintaining of accounts by a licensed vendor''. It reads as under:

The accounts to be kept and rendered by licensed vendors shall be in accordance with the forms prescribed by the State Government.

It is not the case that the stamp vendor did not maintain and render the accounts in the forms prescribed by the State Government.

9. Though, order dated 11-8-2005, is described to be a reasoned order in Paragraph 9 of the affidavit-in-reply filed by one Ms. Bijal Ashokkumar Shah, Additional Superintendent of Stamps, Gujarat State. But then on perusal, it is found to be a good example of non-application of mind. This Court is at pains to record that the deponent a responsible officer of the State has not bothered to peruse the order which he is expected to before swearing an affidavit before this

Court. This is clear from the fact that the deponent has referred to Rules 9, 14(1), 19 and 21 in Paragraph 10 of the reply. The deponent has not bothered to look at as to which rules are mentioned in the show-cause notice. Besides, he has not taken care to see whether there is factual background for referring to these rules.

10. In affidavit, Rule 6(2) which is referred to in the show-cause notice is not referred to. Whereas Rule 9 which is not referred to in show-cause notice, is referred to. Rule 14(1) is also not referred to in the show-cause notice but is referred to in the affidavit. This shows the extent of care with which a responsible officer of the State files an affidavit before this Court.

This Court, therefore, directs the office to send a copy of this affidavit along with a copy of this judgment and order to the Principal Secretary, Revenue Department for perusal and for taking appropriate action against the officer who has filed this affidavit without being careful about the correctness of the contents of the same.

11. Order dated 11-8-2005 is passed by the Collector and Additional Superintendent of Stamps. He has referred to Rules 6(2), 14(2), 19 and 21. There is no discrepancy so far as referring of the rules is concerned, but then the concerned officer has not bothered to know as to whether these rules will have any application to the facts of the case. Rule 6(2) pertains to licence, there is no question of any breach being committed of that Rule. So far as Rule 14(2) is concerned, it is rightly referred, because there were same entries which are alleged to have been found missing in the register. So far as Rule 19 is concerned, it is discussed hereinabove. So far as Rule 21 is concerned, there is no question of not maintaining the account and not rendering the same in the form prescribed by the State Government. This shows that even the authority while passing a drastic order of cancellation of licence of a stamp vendor from which, he is earning his livelihood and supporting his family, did not take sufficient care and thus, failed in its duty in appreciating the facts of the case.

12. Non-application of mind on the part of the authority while passing the order is also reflected from the fact that the authority did not mention the factum of the petitioner having told Shri P.D. Thakar, who posed himself as a customer in the first instance and later on as an officer of the office of Superintendent of Stamps that please wait for some time as the petitioner was taking lunch. This lapse on the part of the officer shows that the officer did not take pains to read even the reply and guided by an officer who got his ego hurt, passed the order of cancellation of licence.

13. It is clear from the aforesaid discussion that the officers who are otherwise owe a duty to pass a speaking order with application of mind, have failed to discharge the same and have exercised the power in a manner which does not befit to them. It is a fact of which judicial notice can be taken that, ''higher the officer, higher the responsibility, higher the duties and higher is the care required

while discharging the higher duties''.

In this case, the order contains 6 pages, but of those pages, only half a page is assigned for recording the conclusions. In four and half pages, only narration of facts is found. Thereafter, by recording the popular sentence, "having taken into consideration the written submissions and the statements," the guilt is recorded. The officer concerned has not bothered to record a single reason as to why the explanation rendered by the petitioner, which is said to have been taken into consideration is not found satisfactory. It is then recorded that the Rules 6(2), 14(2), 19 and 21 are found to have been clearly breached. This shows that the officer before recording, did not even bother to read the Rules. Rule is made absolute with no order as to cost.

