(1993) 07 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 9786 and 9791 of 1993

K.S Ammini and others — APPELLANT

Vs

K.S.R.T.C. and others — RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 25(1)

Citation : (1993) 2 KLJ 423

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : T.R.G. Warriyar and George Varghese Kannanthanam, for the Appellant; N. James Koshy, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—The petitioners in these two original petitions are in occupation of shop rooms at the premises of the Kerala State Road Transport Corporation in Kottarakkara. These shop rooms were given to the petitioners in 1970 for doing business and the petitioners have been conducting trade ever since that date. The petitioners have executed a deed of licence in favour of the first respondent Corporation. There had been periodical increase in the rate of licence fee. A provision also has been incorporated in the agreement'' to the effect that before the expiry of the term of licence, the licensee would be entitled to exercise option to extent the period of contract on condition laid down by the Corporation regarding the enhancement of rate of licence fee. These terms are incorporated in Clause 22 of the agreement. It is further stated in Clause 22 that if the contract is not renewed it will cease to exist and the licensee should stop the business on the expiry of the existing term. According to these petitioners, they exercised their option and exercised their willingness to continue to do business in the shop room. But the Corporation rejected those options and proceeded to give these shop rooms to others by inviting tender. Therefore, the petitioners seek to quash the proceedings leading to the calling of tenders. In the original petition No. 9786 of 1993 the petitioners have sought for quashing Ext. P11 order passed by the first respondent rejecting the option exercised by the petitioners. In O.P. No. 9791 of 1993, the petitioners have prayed for quashing the order rejecting the order rejecting the option and also to set aside the notification ordered u/s 25 (1) of Act 2 of 1965 whereby the buildings owned by K.S.R.T.C. are exempted from the provisions of the said Act. It is also prayed that the petitioners may be allowed to remain in possession for a further period of 3 years from 1-1-94. I beard the petitioners'' counsel in the original petitions and also the Standing Counsel for the Corporation. These petitioners filed two other original petitions on an earlier occasion. In those two original petitions, they contended that Clause 22 of the agreement was not being implemented by the first respondent Corporation and that the petitioners were not allowed to exercise option. The Corporation contended therein that Clause 22 of the agreement was deleted and therefore the petitioners were not entitled to exercise the option under the clause. This Court did not approve the unilateral deletion of Clause 22 of the agreement as legal and the Corporation was directed to consider the option exercised by these petitioners. As the last date for acceptance of tender was fixed as 24-7-93 the respondent corporation was directed to consider the option exercised by those petitioners before that date. Thereafter, the Managing Director of the Corporation passed orders and Exts. P5 and P11 are the orders passed in this regard. Exts. P11 and P5 are challenged in these original petitions.

2. The counsel for the petitioners urged several grounds against the order passed by the Managing Director of the Corporation. Shri T.R. Govinda Wariyar contended that the petitioners even though styled as licensees, are in fact lessees and they are entitled to continue in possession of these shop rooms for a further period of 3 years on the basis of Clause 22 of the agreement. It is further pointed out that Clause 22 gives a valuable right to the petitioners to exercise option and the Corporation was not entitled to reject that offer in an arbitrary manner violating the principles of natural justice According to the learned counsel by the impugned order petitioners are allowed to be in possession only if they pay the rate of fees offered by the highest tenderer. This according to the petitioners'' counsel is highly unreasonable and the petitioners would be subjected to the liability of payment of unconscionable rent. It is also contended that there may be false tenderers who may boost up the rate of licence fee without there being a liability on their part to defeat the claims of the petitioners. I am unable to accept this contention. The Corporation has invited sealed tenders and the counsel for the Corporation contended that in some cases the rate of rent has increased 400 times when the shop rooms were given on the basis of inviting tenders. It is pointed out that a public Corporation like K.S.R.T.C. cannot afford to incur loss on that account, It may be noticed that the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, held:

It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweetwill and, like a private individual deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant.

3. The counsel for the Corporation further points out that after the acceptance of the tenders the Corporation is prepared to make negotiation with the petitioners and if the petitioners are willing to give the rate of licence fee offered by the highest tenderer the Corporation would consider their claim and pass appropriate orders. I do not think that the stand taken by the Corporation is either arbitrary or irrational. The Corporation being a public authority is entitled to take a stand and see that the right to do business in their premises is given to the person who offers the highest amount. The Corporation is in no way encouraging an unhealthy practice for enhancement of rent. The corporation is certainly entitled to took for the best deal with regard to its properties. So I do not find any reason to quash Exts. P11 and P5 orders.

4. The counsel for the petitioners in O.P. 9786 of 1993 seriously urged before me that these petitioners are entitled to continue in possession of those shop rooms as they have been doing business right from 1970. The petitioners based their rights on the principles of "legitimate expectation" and placed reliance on the decision of the Supreme Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, . The counsel for the petitioners contended that on the basis of the principles of legitimate expectation the petitioners have got a right to be in possession as they have been in possession of these shop rooms and they legitimately expected that these shop rooms would be given to them for a further period of 3 years.

5. At the outset, I may state that the principles of legitimate expectation have no application to the facts of this case. The concept of legitimate expectation is closely connected with ''a right to be heard. This concept traces its origin is the observation of Lord Denning in Schmidt v. Secretary of State for Home affairs 1969 2 Ch. 149. Schmidt was an alien who had been given leave to enter the United Kingdom for a limited period. Once that period came to an end, Schmidt applied for an extension but this was refused by the Home Secretary without he being given the right to make representations, Schmidt sought a declaration that he ought to have been afforded a hearing. The Court of Appeal rejected this contention. Lord Denning M.R. enunciating the general principle held that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest or some "legitimate expectation" of which it would not be lair to deprive him without hearing what he has to say. A detailed discussion of these principles is found in C.C.S.U. v. Minister for the Civil Service (1985 A.C. 374) wherein Lord Diplock held that in order to get the benefit of the principles of legitimate expectation the petitioner

should prove that he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until it has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment or he has received assurance from the decision maker it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

The Supreme Court in P.C.I. v. Kamdhenu Cattle feed Industries (1993) 1 SCC 73 held :

A public authority possessed powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ''fairplay in action''. Due observance of this obligation as a part of good administration raised a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumental tits, with this element forming a necessary component of the decision-making process in all State actions........... The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and given due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law.

(Emphasis supplied)

6. From the above dictum of the Supreme Court it is clear that the principle of legitimate expectation form part of the procedural law and has not been extended for the enforcement of substantive right.

7. In the instant case, the petitioners were allowed to exercise their option and their option was considered and an order was passed in that matter. Petitioners have no case that they were denied the opportunity of being beard. The petitioners did no allege any violation of the procedural law. They do not challenge the decision-making process. Except, clauses 22 in the agreement, there is no case for the petitioners that the first respondent had given an assurance that the petitioners would be given the right to conduct business for another period of 3 years, It is well established principle of administrative law that a public body cannot fetter its future executive action by contract or estoppel. Moreover, it is clear that no person can make a claim arising out of the frustration of his expectations which results from a change of policy adopted by a public body. Such expectations, although they may have been reasonably held, do not constitute "legitimate expectations" so as to attract the safeguards of judicial review principles. Therefore, I do not find any support from these principles to set aside Exts. P11 and P5. in O.P. Nos. 9786/93 and 9791/93 respectively. The petitioners in O.P. 9791 of 1993 have also sought for a prayer to set aside the Notification dated 23-4-1971 whereby the buildings owned by the Corporation were exempted from the purview of Act 2 of 1965. The

notification was published as early as on 23-4-1971 and the petitioners were occupants of the buildings owned by the Corporation. The belated attempt of the petitioner to quash this notification is not sustainable. More over, the Corporation is a public body. I find no illegality in exempting the buildings owned by the Corporation from the purview of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965). Buildings owned by the Government are exempted from the purview of Act 2 of 1965. The petitioners are not entitled to that prayer also.

Original Petitions are without any merit and they are dismissed.

