

(2008) 08 DEL CK 0253

In the Delhi High Court

Case No : Writ Petition (C) No. 3245 of 2002 and CM No's. 11982/06 and 761/07

M.K. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Authorisation of Railway Travellers Service Agents Rules, 1985 — Rule 4, 6, 7
Railways Act, 1989 — Section 142, 143

Citation : (2008) 153 DLT 220 : (2008) 105 DRJ 685

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : K.N. Kataria and K.P. Mavi, for the Appellant; Rakesh Tikku, Anurag Dubey and Meenesh Dubey, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner has filed this writ petition seeking, inter alia, a declaration that Section 142 and 143 of the Railways Act, 1989 is ultra vires of the Constitution of India. However, during the course of submissions, petitioner has not pressed his prayer and has confined his prayer in the writ petition for quashing of the orders dated 7th July, 2000, 13th September, 2000 and 18th June, 2001 which are annexed with the writ petition as annexure-J Colly. and annexure-L by which the petitioner's prayer for renewal of the licence granted under the Authorisation of Railway Travellers' Service Agents Rules, 1985 was declined.

2. The facts are in a narrow compass and may be briefly noted as under:

Petitioner had applied for a grant of licence in January, 1997, under the aforesaid Rules. Petitioner was duly granted licence on 06.01.1997 which was to expire on 5th January, 2000. As required the petitioner applied for renewal of licence on 28.09.1999. It is urged that renewal of the licence was to be granted as a matter of course. Only for non-renewal reasons were to be recorded as per Rule 7 which is reproduced below for facility of reference:

7. Renewal of Licence - A licence shall, unless the competent authority for reasons to be recorded in writing otherwise decides in any case be renewable for three years and shall be so renewable from time to time and the provisions of Rule 4 shall apply to the renewal of the licence as they apply to the grant thereof.

3. Petitioner had applied for renewal of licence on 28.09.1999. The said application did not find favour and was rejected on 13th March, 2000 by Chief Commercial Manager with the following intimation to respondent:

Your request for renewal of RTSA license has been regretted by the competent authority due to poor performance. You are, therefore, advised to please surrender the identity card and licence in original to this office immediately. However, this is without prejudice.

4. It is the petitioner's case that he protested against the said rejection dated 13.03.2000 and sent number of communications by way of appeals/representations. However, the same did not find favour and the same were rejected finally vide communication dated 19.5.2000. Petitioner preferred another appeal for reconsideration of the aforesaid order passed stressing upon his unemployment and having old parents to look after. Petitioner also claimed blemishless service. The said appeal was also rejected by the Competent Authority on 7th July, 2000.

5. The saga of making representations continued unabated with the authorities rejecting all such requests for renewal. Aggrieved with the rejection of these appeals, petitioner filed writ petition being WP(C) No. 6101/2001 before this Court wherein respondents took a preliminary objection that an appeal under the Rules before the General Manager of the Zonal Railways had not been preferred by the petitioner as such contended that writ petition was not maintainable. The said writ petition was disposed of on 04.03.2002 with direction that appeal, if any, preferred by petitioner under Rule 9 of the Authorisation of Railway Travellers' Service Agents Rules, 1985 will be decided within five weeks from the date of appeal.

6. The petitioner preferred an appeal before the General Manager, Northern Railway wherein opportunity of hearing was given and the said appeal was dismissed vide order dated 03.05.2002. Petitioner was, therefore, asked to surrender the licence, hence this writ petition.

7. The writ petition came up before the court on 22nd May, 2002 when notice to show cause as to why Rule Nisi be not issued in the matter. Petitioner's application for interim relief was dismissed.

8. During the course of proceedings petitioner amended the petition by giving certain additional facts. Respondents were given opportunities to file counter affidavit. However, respondent did not file the same. Ultimately on 17.07.2006, last opportunity was given to respondents to file counter affidavit on or before 25.09.2006. Despite that, same was not filed. On 25.09.2006, this Court passed

the following order:

We have noticed that on 17th July, 2006 the following order was passed:

Last opportunity is granted to the respondent to file counter-affidavit to the amended writ petition on or before 7th August, 2006 failing which the right to file the counter-affidavit shall stand closed.

In spite of the categorical order in the above terms, the counter affidavit was filed only on 23.8.2006 and the Registry has returned the counter affidavit. The right to file counter affidavit is accordingly closed.

CM No. 11982/2006

Issue notice, returnable on 17th January, 2007.

Reply be filed within six weeks. Rejoinder, if any, be filed within six weeks thereafter.

In the meanwhile, the respondent is restrained from interfering with the petitioner acting as an agent to purchase, cancel, obtain refund and journey postponement ticket on behalf of intending railway travelers from the reservation/ booking office at Railway Station, Meerut City of Northern Railway.

9. We may notice that CM No. 761/2006 for recall of the order dated 25.09.2006 is still pending. Therefore on going through the record it was felt that rather than disposing of CM No. 761/2006, it would be appropriate to take up the writ itself for disposal and it was directed to be heard on 21st July, 2008 as a regular item as part heard. It was in this background that the above writ petition has come up before the court for regular hearing.

10. We have heard the senior counsel Sh. K.N. Kataria who is assisted by Sh. K.P. Mavi, Advocate in support of the writ petition. The short submission made before us is that the respondents had issued a show cause notice dated 3.12.1999 to the petitioners. The contents of same are reproduced below for facility of reference:

1. M/s M.K. Sharma & Co, RTSA, Meerut Cantt. is/are hereby informed that competent authority proposed to take action against him/them under Rule 6 of the Authorisation of Rail Travellers Service Agents Rules, 1985, as amended without prejudice to any other action which may be taken under other provisions of the Indian Railway Act, 1989. A statement of the imputations of misconduct/irregularities/non-compliance of conditions of licence/contravention of Rules and Regulations/reasons on which action is proposed to be taken as mentioned above, is enclosed overleaf.

2. Shri/M/s M.K. Sharma & Co, RTSA, Meerut Cantt. is hereby given an opportunity to show cause why action against him/them under Rules 6 of the Authorisation of Rail Travellers Service Agents Rules 1985, as amended may not be taken. The representation if any, should be submitted to the undersigned, so

as to reach this office within 30 days of receipt of this show cause Notice or 37 days of date of issue of this letter, which ever is earlier.

3. Shri/M/s M.K. Sharma & Co, RTSA, Meerut Cantt. fails to submit his/their representation within the period specified in para2, it will be presumed that he/they has/have no representation to make and orders will be liable to be passed against him/them ex-parte.

Reply to the show cause notice was given by petitioner on 10.1.2000. It is the petitioner's contention that all objections and points raised in the show cause notice except the one relating to "poor performance" stood duly answered and addressed. Remedial action as required has also been taken by petitioner. Mr. Kataria, learned senior counsel, submits that the only ground for "non-renewal" was the assertion of the respondent of alleged "poor performance". It is submitted that the finding of "poor performance" is contrary to the respondent's own record and stands belied by the same.

11. We find that in the show cause notice, one of the grounds taken was that there were just three or four requisitions/bookings daily. This was an elaboration of "poor performance". Response of the petitioner was that the bookings were more and it was dependent upon the season and that the petitioner was making every effort to improve his performance.

12. To substantiate his contention, learned Counsel for petitioner had relied upon Para 9A of the amended writ petition showing his performance of six months prior to renewal, i.e. from August 1999 to 5th January, 2000 by comparing it with two other travel agents namely, Prakash Travels and Gopal Travels functioning from Meerut. He contended that the petitioner's performance was better than the other two who had been granted the benefit of renewal, whereas vide impugned order petitioner's licence is cancelled on the basis of poor performance. In support of the tabulated form given in Para 9 of the petition, petitioner has relied on a daily diary of respondents filed as annexure-P.

13. We had called for the original records pertaining to present petition and find that the order passed by the General Manager dated 17th April, 2002 is in the following terms:

I have examined the appeal of M/s M.K. Sharma & Co., RTSA, Meerut Cantt. I find that the RTSA licence was granted for a period of three years from 06.01.1997 to 05.01.2000 and was due for renewal for further period on satisfactory performance of the RTSA. However, during an inspection of the RTSA, the performance was not judged to be up to the mark and a show-cause notice was issued. On consideration of reply to the show-cause notice, the renewal of the licence was regretted by the competent authority. An appeal to CCM against these orders was also regretted by the CCM.

As per the orders of the court, I have considered the appeal of the RTSA and have decided that;

As per the inspection report, the RTSA was dealing with only four requisitions per day. This indicated that the RTSA was not really functioning as an RTSA and using this as a side-business and is not serving the purpose for which such licence is given i.e. for providing facilities to the passengers for obtaining reservations/tickets, without any inconvenience. CCM has rightly concluded that the RTSA licence is not the main stay of his livelihood and, therefore, the licence may not be renewed. Therefore, I find no grounds for renewal of the licence.

14. It would be seen from the foregoing that the General Manager, Northern Railway has found four requisitions per day as poor performance and was of the view that the RTSA was not really functioning and was using the same as a side-business and was not serving the purpose for which the licence was granted.

We may point out that petitioner in appeal before the authorities or in the unamended writ petition had not taken the plea of any discrimination or poor performance by other agents or that his performance was better than other agents. It was only in the amended writ petition that such a ground has been taken. Accordingly, in all fairness to the General Manager when the appeal was heard, the above was not the ground urged before him. This, however, in our view does not absolve the Railway authorities of applying a uniform standard or criteria for judging performance of their agents for approval for renewal of their licence. Petitioner has produced photocopies of bookings from August, 1999 to 5th January, 2000 by the other two agents in Meerut city to show that the petitioner had a far better performance both of them.

15. We may also notice the factual matrix here. The petitioner was aggrieved by the non-renewal of the licence in January, 2002. From January, 2002 to September, 2006, petitioner's licence was not renewed. It was only in September, 2006 that the interim order had been passed restraining the respondents from interfering with the petitioner acting as an agent. Unfortunately, even at that time, it was not brought to the notice of the concerned Division Bench that the licence stood already expired. Be that as it may, from September 2006 the petitioner has been functioning as an agent. In these circumstances, we are of the view that the challenge to the order of non-renewal passed on 3rd May, 2002 has become academic also because of the efflux of time. We accordingly set aside the impugned orders under challenge by which licence of petitioner has not been renewed. In these circumstances, we are of the view that the directions and relief to be granted in this case deserve to be moulded after taking into account the subsequent developments.

16. With the consent of parties, we direct the Chief Commercial Manager, Northern Railway, to review the performance of the petitioner considering the period from September, 2006 till date as also the earlier period of the licence and consider the question of grant of further renewal by applying a uniform standard or performance criteria and other parameters as may be determined by the Railways in their best interests. Needless to mention that the same criteria would also be applicable to other agents for grant of renewal of licence functioning in

Meerut City Cantt. from whom the petitioner claims to have performed better. Writ petition is disposed of with the above directions.

17. With a view to comply with formalities the petitioner would apply for grant of renewal of licence within ten days from today and within a month the Chief Commercial Manager, Northern Railway would take a decision thereon and during this period the interim order passed on 25.9.2006 would continue.