

(2012) 01 AHC CK 0039
In the Allahabad High Court
Case No : Misc. Bench No. 8223 of 2011

M/s R.N. Pathak Duni Chand Katayal and Co.

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0039

Hon'ble Judges : Devi Prasad Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Advocate : Abdul Moin, Abhinav N. Trivedi, for the Appellant; Pankaj Srivastava, Prashant K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and Shri Prashant Kumar Srivastava, learned counsel representing Union of India. Affidavits have been exchanged. Hence, with the consent of learned counsel for parties, we dispose of the writ petition finally at the admission stage.

2. The petitioners are involved in the business of catering and vending with the Indian Railways. They were allowed catering and vending units at different Railway Stations like Barabanki including Sultanpur since 1993. Controversy relates to Tea Stall running on a platform at Sultanpur Railway Station, for which the license was granted on 27.03.2009. The license granted to the petitioners was extended from time to time. However, the pleadings with regard to extension of license has been denied while submitting reply to para 21 of the writ petition. In para 22 of the writ petition the petitioners have specifically pleaded that Railway Board has changed the catering policy, 2010 and decision was taken to take over the management of all catering units from IRCTC, which has extended licence to the petitioner.

3. Admittedly, the license was granted to the petitioners again to run the Stall at the platform of Railway Station, Sultanpur before the laying down of the Catering

Policy of 2010. According to paragraph 22 of the writ petition, it is pleaded that Railways provided that during the process of taking over the management by the Zonal Railways in a phase manner, there shall be no disruption of service to the passengers in view of Catering Policy dated 21.07.2010 (copy of which has been annexed as Annexure No. 9 to the writ petition).

4. The submission of petitioners' counsel is that the petitioners are entitled to continue with the catering work till it is taken over by the Railways in terms of Policy 2010. By the impugned order dated 10.08.2011, on the basis of instructions issued by the Senior Divisional Commercial Manager (hereinafter referred to as the "Sr. DCM"), the petitioners' Stall has been removed with immediate effect. The order dated 10.08.2011, contained as Annexure No. 1 to the writ petition, is reproduced as under:-

5. The submission of petitioners' counsel is that the impugned order has been passed on the basis of oral instructions issued by Sr. DCM (opposite party no. 3). According to Shri Abhinav N. Trivedi, learned counsel appearing for the petitioners, the impugned order suffers from substantive illegality on two grounds. Firstly, it is violative of principles of natural justice since it directly affects the petitioners' civil right to continue with the catering work. Second limb of argument of petitioners' counsel is that no decision could have been taken by the respondents orally to remove the Stall, keeping in view the Policy decision of 2010, under which the petitioners were entitled to continue with their Stall at Railway Station, Sultanpur.

6. Learned counsel for Railways defended the impugned order on different grounds with submission that petitioners having no right to continue the Stall at the Railway Station keeping in view the license granted to the petitioners on 27.03.2009 (a copy of which is annexed as Annexure No. 8 to the writ petition).

7. Since the petitioners are continuously depositing the requisite fees and were continued in terms of policy of 2010, it was not open for the respondents to remove the Stall without following the process of law. It is settled proposition of law that a citizen cannot be deprived of from civil rights in violation of principles of natural justice. In case, respondents were intending to remove the Stall, then it was incumbent upon them to serve a show cause notice inviting objection to it. The decision taken thereon should have been communicated to the petitioners. The removal of Stall by oral instructions is against the constitutional mandate.

8. The averments made in paragraph no. 22 of the writ petition has not been denied. In reply to para 22 of the writ petition, merely it is stated that it is a matter of record. The petitioners took specific plea while preferring the writ petition that under the Catering Policy 2010, petitioners were entitled to continue with the Stall till the Railway took over the charge. It was incumbent upon the respondents to reply paragraph no. 22 of the writ petition. It is also submitted that in pursuance of policy decision of 2010 other Stalls are continuing. In the absence of specific denial on the part of respondents while filing counter

affidavit, the only inference may be drawn is that the petitioners were having right to continue with the Stall.

9. Apart from above, the impugned order does not assign an reason for removal of Stall. Now, it is settled proposition of law that every order passed by the authority effecting the civil rights must stand on its own legs. It can not be defended by supplementing through affidavits in view of the Constitutional Bench Judgment of Hon''ble Apex Court in a case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Since the impugned order does not reveal the reason for removal of Stall, hence suffers from vice of arbitrariness, hence shall not be sustainable.

10. It appears that petitioners have suffered for no fault on their part, on account of high handedness of the authorities of the Railways. The removal of petitioners'' Stall from the Railway Station causing mental pain and agony and financial loss makes out a case for imposing cost while allowing the writ petition.

11. The writ petition is allowed.

12. A writ in the nature of certiorari is issued quashing the impugned order dated 10.08.2011 (contained in Annexure no. 1 to the writ petition) with consequential benefits. The petitioners shall be permitted to continue with the Stall forthwith subject to taking over the management of Railway in terms of Catering Policy, 2010 or any other law time being enforced. The cost is quantified as Rs. 25,000/-, which shall be deposited within one month by the Railway authorities. In case, the cost is not deposited, the District Magistrate shall recover the same as arrears of land revenue. Registry to take follow up action. It shall be open to the Railway authorities to recover the amount from the officers, who are involved in passing the order. It shall be open to the petitioners to withdraw the cost.