

(2001) 05 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No"s. 890, 1178 and 1179 of 1999

Narasingh Padhiary, Basanta Kumar Panda and Gajendra
Behera

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 07-05-2001

Acts Referred:

Citation : AIR 2001 Ori 176 : (2001) 2 OLR 209

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : R.K. Prusty, B.C. Majhee and D. Das, for the Appellant; R.N. Acharya, Additional Government Advocate for O.P.s 1 to 4, D.C. Mohanty, Sr. Stg. Counsel (Central) for O.P. No. 51, A.K. Mohapatra and A.K. Das for O.P. No. 6, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The prayer made in these three writ, petitions being more or less identical, they are heard analogously and are being disposed of by this common judgment.

2. The petitioner in O.J.C. No. 1178 of 1999 was granted licence to run soft drink stall near departmental canteen inside Nandankanan Zoological Park for the year 1998-99. The petitioner in O.J.C. No. 1179 of 1999 was granted licence to run fruit juice stall inside Nandankanan Zoological Park for the year 1998- 99 and the petitioner in O.J.C. No. 890 of 1999 was also granted licence to run two soft drink stalls-one near Boat Ghat and the other at nocturnal house in Nandankanan Zoological Park, for the year 1998-99. Since the licences granted to the petitioners were not renewed, they have approached this Court for issuance of an appropriate writ, direction or order commanding the Nandankanan Zoo authorities to settle their respective stalls with them for the year 1999-2000 by negotiating the monthly rent/licence fee- on the basis of the licence fee for the year 1998-99. In addition to the above, the prayer in O.J.C. No. 890 of 1999

is for quashing of Annexure-4. order dated 23.12.1998 of the Government of Orissa whereby the prayer of the applicant for allowing him to continue with the Fruit Parlour in Nandankanan Zoological Park was rejected. His further prayer is for restraining the opp. party No. 6 - Orissa Tourism Development Corporation, Bhubaneswar "to operate any stall, hotel or eatable restaurant inside the Nandankanan Zoological Park".

3. Before proceeding further, it will be relevant to refer to the circumstances under which Annexure-4, the impugned order in O.J.C. No. 890 of 1999 was passed.

It appears that since the Zoo authorities were not considering the question of renewal of the soft drink parlour of Gajendra Behera (petitioner in O.J.C. No. 890/99). he had approached this Court by way of O.J.C. No. 11897 of 1998 for a direction .to the opp. parties for renewal of his soft drink stall at the Boat Ghat and at nocturnal house of Nandankanan Zoological Park. The said writ petition (OJC NO. 1 1897/98) was disposed of by this Court directing the opp.parties therein, i.e., State or any other competent authority to dispose of the petitioner's representation regarding renewal of his licence within a stipulated period. Accordingly, after due hearing, the representation was rejected. In his representation, the petitioner in that writ petition had alleged that though he had been running the stall for a very long period prior to 1998-99, he, as is clear from Annexure-4 was not able to produce any receipt showing payment of rent/licence fee to substantiate his claim. He was able to file receipt only for the period 1997-98 and, therefore, it was held that he was given a licence to run the stall only for that year. The State Government had also taken note of the recommendation of the Director, Nandankanan that private persons should not be allowed to run soft drink parlour inside Nandankanan Zoo from 1998-99. It also appears from the said order that earlier a Public Interest Litigation, namely. O.J.C. No. 5579 of 1998 was filed before this Court praying for issuance of a direction to the opp. parties therein to close all the authorised stalls/cabins inside the park and that only O.T.D.C. should be allowed to operate. In the said O.J. C. (OJC No. 5579/98), interim directions were issued on 18.9.1998 which read as under :

"In view of the statement made in paragraph 4 of the counter affidavit filed on behalf of opposite parties 1 to 4, we direct the Revenue Department to issue necessary instructions within fifteen days to the Collector, Khurda, to remove the encroachers from the lands measuring 20 acres in Plot No. 5 (Part) under Khata No. 751 in Raghunathpur mouza transferred to Nandankanan authority and this shall be done in accordance with law as orders were passed in O.J.C No. 7364/93 and 15899/97"

4. The Zoo authorities and the State do not dispute that the petitioners were running soft drink parlour/snacks bars inside the Nandankanan Zoological Park. But, it is denied that the petitioners were running the same since last many years. On the contrary, it is their case that the petitioners have" been granted

licences for running soft drink parlour/snacks bars for a limited period. It is, however, their case that in view of the communication received from the Principal Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden, Orissa, Bhubaneswar, objecting to or restraining the private parties from establishment of soft drink parlours/snacks bar inside the Nandankanan Zoological Park, neither the licences of the petitioners were renewed nor was any step taken to grant licences to other persons. It was contended that the restriction to open soft drink parlours/snacks bars was made in the interest of the animals.

5. An affidavit has also been filed on behalf of the O.T.D.C. pointing out that it was selling cooked food inside the restaurant which is situated near the main entrance gate towards Botanical Garden and not the Zoo. From the affidavit, it appears that the O.T.D.C. is not operating any soft drink parlour or snacks bar inside the Zoological Garden.

6. The case of the Zoo authorities and the State is that in view of the hazard to the animals because of the plastic packets, poly-bags and tetra packets, it has been decided to prohibit the sale of food items and soft drinks inside the Zoo premises and that no licence/lease was to be granted to any private party to establish such counter inside the Zoo.

7. From the document on record marked as Annexure-K to the affidavit of the Chief Conservator of Forests (Wildlife) and the Chief Wildlife Warden, Orissa, it is clear that the authorities had also taken note of the fact that the lessees were not taking any care for sanitation of the park and that soft drink parlour were loaded with tetra packets which was in clear contravention of the lease conditions. The authorities had also considered that the licensees/lessees had started to cook and sell many fried items and fruits which were not to be sold inside the Zoo. Such averments, however, are denied by the petitioners and it was stated on their behalf that they were operating the soft drink parlours/snacks bars in accordance with the terms and conditions.

8. Having considered the matter and the rival contentions of the parties, the Court is of the opinion that the relief claimed by the petitioners cannot be granted,

9. To begin with, the petitioners have not been able to substantiate their contentions that they have been running the soft drink parlours/snacks bars for a considerable length of time. Be that as it may, the licences were for a fixed period and the same have not been renewed for reasons, which, in the opinion of the Court, cannot be said to be unreasonable. It is incumbent upon the Zoo authorities to ensure the health and welfare of the animals and birds inside the Zoo and also to ensure that the area remains clean. If the authorities are of the view that sale of cooked food and soft drink in tetra packets, poly-bags and such other containers is not to be permitted inside the Zoo because there is a risk of the animals allowing the empty tetra packets and poly bags in which soft drinks and food items are packed, one fails to understand as to how their decision can

be said to be unreasonable. That apart, it is for the authorities in charge of the Zoo and the State to decide or lay down a policy as to whether or not sale of food stuff, soft drinks and cooked items inside the Zoo is to be permitted. A decision has been taken to prohibit sale of food stuff and soft drinks inside the Zoo which, in our opinion is reasonable and proper. It was, however, pointed out by the learned counsel for the petitioners that since the O.T.D.C. has been permitted to run a restaurant near the main entrance, they (petitioners) should also be given permission to do so. This, however, is not a matter to be decided by the Court. Whether to permit private persons to run stall inside the main entrance is not for the Court to direct since it is the specific case of the Zoo authorities and the State that no soft drink parlours/ snacks bar shall be permitted to operate inside Zoological Garden in the interest of the animals and birds. It is expected that such restrictions shall continue to remain in force and shall be strictly enforced by ensuring that no slackness is shown in that regard.

As regard the restaurant run by the O.T.D.C. it is clear from its affidavit that it is not selling food items and snacks in paper packets or poly-bags and it is only selling cooked food and that too, inside the restaurant. The items which are put up for sale have been mentioned in Annexures-A/6 to the affidavit filed on behalf of the opp. party No. 6 - O.T.D.C. wherein it was specifically indicated that the food items are served inside the restaurant in plates and not in packets. That apart, there is no complaint regarding the function of the restaurant of the O.T.D.C. by the Zoo authorities. Therefore, in our opinion, there can be no harm if it continues to function subject, however, to the conditions that it shall not sell any soft drink or food items in tetra packets, poly-bags and that, whatever is sold, would be in plates for being consumed inside the restaurant. Items like Ice Cream and other sweet dish shall not also be sold in paper or plastic.cups. Not only it is for the Zoo authorities to ensure but it is also the responsibility of every visitor that he/she does not carry, soft, drinks/eatables in tetra packets and/or poly-bags inside the Nandankanan Zoo considering its hazardous impact on the animals and birds of the Zoo.

10. For the reasons aforesaid, we find no merit in these writ petitions which, subject to the observations made above, stand dismissed. Incidentally, it may be mentioned that the period for which renewal was sought has also in the meantime run out. However, in case any security amount has been deposited by the petitioners and they are entitled to refund thereof, the same shall be refunded to them.

P.K. Mohanty, J.

11. I agree.