

(2018) 12 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No. 11098, 11099 Of 2018

Nirmala Vijaykumar Thakur

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 BOM CK 0113

Hon'ble Judges : S. S. Shinde, J;K. K. Sonawane, J

Bench : Division Bench

Advocate : G.K. Naik Thigle, S.B. Deshpande

Final Decision : Dismissed

Judgement

S.S. SHINDE, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Both these Petitions under Article 226 of the Constitution of India, have been filed with following substantive prayers:

"(B) Rule may kindly be made absolute by issuance of appropriate Writ or any other order or direction in the like nature thereby quashing and setting aside the impugned order/notice dated 28.9.2018 issued by Respondent No.4.

(C) Rule may kindly be made absolute by issuance of writ of Mandamus or any other appropriate writ, order or direction in the like nature to direct respondents to consider the application of the petitioner in accordance with the contemporary policy."

3. The issue raised in both these Petitions is same and similar and, therefore both these Petitions are being disposed of by this Common Judgment and order.

4. It is the case of the Petitioner that, husband of the Petitioner was allotted with

the tea stall license of Partur Railway Station, so also tea stall license for Selu Railway Station. Due to sad demise of husband of the Petitioner, as per the prevalent policy of 2010, the application for transfer of these two licenses in favour of Petitioner came to be filed. The Petitioner is running these two tea stalls on the aforesaid stations. It is the case of the Petitioner that the Petitioner has appropriate registration certificate under Food Safety and Standards Act, 2006, issued by the authorities of South Central Railway. Without hearing the Petitioner and without considering the relevant provisions of transfer policy of 2010, application filed by the Petitioner on 17th May, 2013 came to be turned down vide order dated 8th August, 2014.

5. It is the case of the Petitioners that, being aggrieved by those impugned orders, the Petitioner filed Writ Petition No.475 of 2015 and Writ Petition No.476 of 2015. In the said Petitions, after hearing the parties on merits, this Court (S.S. SHINDE and V.L. ACHLIYA, JJ.), by order dated 8th March, 2016 quashed and set aside the impugned order dated 8th August, 2014 and application filed by the Petitioner for transfer and renewal was restored to its original file. Accordingly, the Petitioner on 29th March, 2016 appeared before the Respondent authorities and has also cleared the entire dues till the said date. It is the case of the Petitioner that application filed by the Petitioner in the year 2013, is governed by the relevant policy which was in existence in the year 2013. However, for no reasons the Respondents have kept the application of the petitioner pending for more than three years even after passing of the order by this Court. It demonstrates that the Respondent authorities have no regard for orders passed by this Court and the Respondents have willfully committed breach of the orders passed by this Court.

6. It is the case of the Petitioner that the Petitioner being a widow, is without any support and is dependent upon the meager income. The Petitioner is deprived from the business of tea stalls on the two stations, namely Selu and Partur. These two stations are classified as "D" class Railway stations for the purposes of railway administration. The Petitioner is also required to take care of her son, who is taking education and is dependent upon the canteens for the livelihood of family. There are in all 16 families in addition to the family of the Petitioner, who are dependent on the canteens for their livelihood.

7. It is further case of the Petitioner that without considering all these aspects of the matter, on 30th September, 2018, in the mid-night, the Petitioner is served with the notice, by affixing the same on the front portion of the tea stall, that, the application filed by the Petitioner is turned down, and as such the Petitioner is instructed to vacate the premises. Hence both these Petitions are filed by the Petitioner challenging the impugned order/ notice dated 28th September, 2018.

8. Learned counsel appearing for the Petitioner in both the Petitions submits that the action of the Respondent authorities in issuing impugned order/ notice is not at all justified in view of the fact that application is filed on 17th May, 2013, by the Petitioner before the competent authority, however, Respondent authorities

have avoided to hear the Petitioner and pass appropriate orders in sheer non-compliance of the order passed by this Court in Writ Petition Nos.475 of 2015 and 476 of 2016. Learned counsel submits that without giving an opportunity of hearing to the Petitioner, the impugned orders are passed by the Respondent authorities. Learned counsel further submits that the Respondents have failed to comply with the directions issued by this Court in Writ Petition Nos.475 of 2015 and 476 of 2015, as the Respondents have not at all sought for extension of time limit which was fixed by this Court. Learned counsel therefore prays that both the Petitions deserve to be allowed. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Senior Divisional Commercial Manager, South Central Railways and others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another(2016)3 SCC 582.

9. Pursuant to notices issued to the Respondents, Respondent Nos.1 to 6 have filed the reply. Referring to the reply filed on behalf of the Respondents, learned A.S.G. appearing for Respondents submitted that, as far as Selu Railway Station is concerned, teal stall was allotted to Musafir Singh. On his demise, the license was transferred to his adopted son - Vijaykumar. As far as Partur Railway Station teal stall is concerned, the contract was awarded to Vijay Singh for the period of 5 years i.e. from 16th July, 1991 to 15th July, 1996 and further extended/renewed upto 31st March, 2013. It is submitted that as per the prevalent policy, Petitioner was not entitled to claim transfer. It is denied that Petitioner is now running these two tea stalls on aforesaid stations. Learned A.S.G. further submits that Petitioner earlier filed Writ Petition Nos.475 of 2015 and 476 of 2015 and given certain directions.

Pursuant to the directions given in the said Petitions, the Petitioner appeared before the Respondent authorities on 29th March, 2016 and put forth her contentions.

10. Learned A.S.G. further submitted that Petitioner's family is running the tea stalls for last many years. The impugned order dated 28th September, 2018 is duly served upon the Petitioner, and the Petitioner was instructed to vacate the premises. It is submitted that aforesaid two tea stalls are situate at respective railway stations and the tea stalls are supposed to be open even during night hours, as the trains arrive and depart round the Clock. The authorities have accepted the license fees from the Petitioner, for the period which was already expired. It is submitted that pursuant to the orders passed by this Court in aforesaid two Writ Petitions, the Petitioner continued to run the tea stalls. It is submitted that after taking into consideration the provisions of legal heirs given in Para 21 of the Catering Policy of 2010, the impugned order was passed. It is submitted that the representation of the Petitioner was considered and thereafter impugned decision is taken, by keeping in view the relevant circulars/ policy. It is submitted that the Petitioner was given opportunity to make representation, which was duly considered by the authorities.

11. Referring to the additional say filed on behalf of the Respondents, learned

A.S.G. submitted that recently new catering policy came into force, and as per this catering policy, definition of legal heir is given. It is submitted that the Petitioner has not complied with the provisions of legal heir given in Para-21 of the Catering Policy of 2010. It is submitted that original license was in the name of Musafir Singh. Vide order dated 22nd July, 2014, the license was transferred in the name of Vijaykumar. In the Catering Policy there is no provision to further transfer the license in favour of heir of such licensee. Such benefit of license transfer to heir can be taken only once. It is submitted that the same is to ensure that license is for a specific period and not in perpetuity. It is submitted that even if such license is transferred, it can be done so only for unexpired period of license and in the present case the period of license already expired on 31st March, 2013. It is submitted that, the Petitioner cannot claim any right to get the license in her name. It is submitted that the Respondent authorities, after considering the provisions of Catering Policy and commercial circular, rightly decided not to transfer license in favour of the Petitioner. Hence, learned A.S.G. prayed that the Writ Petition is liable to be rejected.

12. We have carefully considered the submissions of the learned counsel appearing for the Petitioner and learned A.S.G. appearing for the Respondent authorities. With their able assistance, we have perused the grounds taken in the Petitions, annexures thereto, and the affidavit in reply filed on behalf of Respondent and its officials.

13. At this juncture, it would be apt to make reference of the directions issued by the Division Bench ((S.S. SHINDE and V.L. ACHLIYA, JJ.) in Writ Petition Nos.475 of 2015 and 476 of 2015, on 8th March, 2016. In the said order, it was observed that, Respondent authority while rejecting prayer of the petitioner for renewal of contract/ transfer of license, has not kept in view the circular and without assigning any reasons, rejected the prayer of the petitioner. Therefore, in the interest of justice, Respondent No.3 therein was directed to reconsider the prayer of the petitioner for transfer/renewal of the license. Such reconsideration was made subject to depositing entire dues by the petitioner with the respondent authority. By the said order, the impugned communication therein, was quashed and set aside and the application filed by the petitioner for transfer and renewal was restored to its original file. The Petitioner was directed to appear before the Respondent authorities on 29th March, 2016. The Petitioner was directed to deposit entire due amount as communicated by the Respondent authorities, and on deposit of such amount, Respondent No.3 was directed to consider afresh the application filed by the Petitioner for renewal/ transfer of the license, within eight weeks from the date of appearance of the Petitioner before Respondent No.3. Till decision afresh is taken, interim protection which was granted in favour of the Petitioner, was directed to be continued and accordingly the Petition was disposed of.

14. We cannot approve the laxity of the Respondents in not taking decision within eight weeks from the date of appearance of the Petitioner before

Respondent No.3. The Respondents in their reply, have made reference that the Petitioner approached before the concerned Respondent authority on 29th March, 2016. Therefore, it was incumbent upon the Respondents to take the decision within eight weeks from 29th March, 2016. In case it was not possible for the Respondents to take the decision within eight weeks, in that case the Respondents should have applied for extension of period to adhere to the directions issued by this Court contained in the aforesaid order dated 8th March, 2016. Since the Petitioner was allowed to run both the tea stalls, due to connivance of the Respondents, the Petitioner continued to run the tea stalls for more than three years. Therefore, we direct Respondent No.1 and Respondent No.2 to cause the enquiry of concerned officers who did not adhere to the directions issued by this Court in its order dated 8th March, 2016, and on the contrary facilitated the Petitioner to run the tea stalls for more than three years, when direction was given to decide the application of the Petitioner afresh within eight weeks from 29th March, 2016. Needless to observe that, such enquiry should be conducted by Respondent Nos.1 and 2 after following due procedure, and if the procedure contemplates, after giving opportunity of hearing to the concerned officers.

15. So far as the challenge of the Petitioner to the impugned notice dated 28th September, 2018, is concerned, we have carefully gone through the reply filed by the Respondents. Now, there is change in the policy. The Respondents have filed additional say, referred herein above and therefore, no directions can be issued to consider the Petitioner's case under the old policy. Admittedly, the period for which the license were issued in favour of the Petitioner, stood expired in the year 2013 itself. As already observed, pursuant to directions issued by this Court, the Petitioner did cause appearance before the Respondent authorities and authorities have also considered the detail representation of the Petitioner. Therefore, it cannot be said that there was no adherence to the principles of natural justice. We find considerable force in the submission of learned A.S.G. that, such right of the licensee cannot be in perpetuity and that too in the present case there were two license in favour of the Petitioners.

16. We do appreciate the contentions of the Petitioner that the Petitioner may face the hardship. However, while exercising writ jurisdiction, direction cannot be issued contrary to the existing policy of the Respondents. In that view of the matter, we are unable to persuade ourselves to grant any immediate relief to the Petitioner. However, we grant liberty to the Petitioner to file comprehensive representative to the concerned Respondents for renewal/ transfer of license in the light of new policy of the Respondents, of which reference has made herein above and reply filed by the Respondents. In case such representation is made, the Respondents to consider the same in view of the existing policy decision of the Respondents, and if the Petitioner's claim is found to be genuine, the Respondents may take appropriate decision in accordance with law, as expeditiously as possible, however, within three months from the date of filing such representation/application by the Petitioner. Needless to observe that it

would be open for the Petitioner to bring to the notice of the concerned Respondent authorities the Judgment of the Supreme Court in the case of Senior Divisional Commercial Manager, South Central Railways and others vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another, cited *supra*.

17. In the light of above discussion, we decline to interfere in the impugned orders. Accordingly, both the Writ Petitions are rejected. Rule stands discharged.