

(1998) 01 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3818 of 1997

Om Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1998 Raj 181 : (1998) 1 RLW 577 : (1998) 3 WLC 347 : (1998) 1 WLN 107

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : H.R. Soni, for A.A. Khan, for the Appellant; Ravi Bhansali, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—The petitioner is a licensee for selling of Milk Burfi, Mawa Rasgulla and Gulabjamun at railway platform of Luni Junction. The petitioner was operating trolley from the date he held the licence with effect from 1-4-1974. The petitioner's licence was renewed from time to time. On 4-6-1997 an order was passed that the licence of the petitioner has expired on 31-3-1996 and the petitioner has not executed an agreement for renewal of the licence and therefore he be stopped from operating his trolley No. 16 at Luni Junction. The order passed against the petitioner was challenged in the writ petition. The writ petition was registered as S. B. Civil Writ Petition No. 2261/97 (Om Prakash v. Union of India and others). On 21 -8-1997 the order was passed by the Court.

It is directed that the petitioner shall present himself on 26-8-1997, before the respondent No. 2 the Divisional Railway Manager, Jodhpur Division Northern Railway, Jodhpur or before the officer nominated by him, for execution of the agreement in respect of trolley licence for the period 1-4-1995 to 31-3-1996. After the execution of the agreement as required by the respondent No. 2, the petitioner's application for renewal of the licence dated 31-3-1996 shall be

considered by the respondent No. 2 or by a officer nominated by him within a period of one month from today.

With this direction, the writ petition stands disposed of.

2. The petitioner executed an agreement 26-8-1997 as per directions issued by the High Court. As the respondent could not decide the matter within one month as directed by the Court on 21 -8-1997, an application was moved for extension of the period for one month. The matter was placed before the Court and on 26-9-1997 the Court has passed an order extending the period for further one month with the condition that the vendor's provisional licence shall be issued to Om Prakash, the petitioner so as to end on 20-10-1997. Although, the respondents have asked for extension of time which was granted by this Court on 26-9-1997 the petitioner's application for renewal of the licence was dismissed on 29-9- 1997 by issuing the following order :--

The application has been considered by the competent authority and it has been decided not to renew the licence of the trolley beyond 31-3-1996,

3. The order does not contain any reason as to why the petitioner was not granted renewal of his licence which was renewed from time to time in the past. Although, the order of refusal for grant of renewal does not contain any reason but, the learned counsel for the respondents has relied upon the reasons given in reply to the notice given by the petitioner.

Paragraph 1 of the reply contains that the petitioner, was although given licence to sale Milk Burfi, Mawa, Rasgulla and Gulabjamun, but, he used to sale -- only Rasgulla and Gulabjamun which is in breach of the agreement. That the petitioner did not execute the agreement for the period from 1-4-1995 to 31-3-1996 and moved the Court violating the Clause 39 of the agreement.

The order refusing the renewal is a non-speaking order and, it is contended by the learned counsel for the respondents, that the order passed by the Administrative Authority need not specify and reason for its action as in cases many a judicial orders in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), it has been observed by Subba Rao, J. "There is essential distinction between the Court and the administrative Tribunal the Judge is trained to look at things objectively, but, an Executive Officer generally looks at the things from the stand point of policy and expediency. Habit of mind of an Executive Officer so formed, cannot be accepted to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on Tribunals in the matter of passing orders affecting the right of the parties, and the least they should do is to give reasons for their orders." When the Administrative Authority passes an order which affects the livelihood of the persons, it would be essential on their part to give reasons, for the order, depriving the person from his livelihood.

4. Let us now consider the reason given in reply to the notice and to find out

whether they are relevant to the action taken by the respondents, of non-renewal of the licence of the petitioner. It is said that the petitioner was selling only Rasgulla and Gulabjamun whereas he was required to sell some other items mentioned in the licence. There is nothing on record to show that the petitioner was given any warning or notice to sell other items which is required to be sold under the licence granted to him. The petitioner sold some of the items from the items mentioned in the licence and no objection has been raised by the Railway Authority at the appropriate time. The authorities were required to bring to the notice of the vendor that he is not selling all the items and the vendor should have been directed to sell the items and if in spite of such directions, he fails to sell the items in compliance of the order, then and then alone that could have been construed aground adverse to the vendor moreover there is nothing on record to show that on what date or period, in the long period of licence being operated by the petitioner, he did not fulfil the requisite terms of the licence. The second ground is that the petitioner has not executed the agreement for the period from 1-4-1995 to 31-1-1996, the reason on the face of the record is incorrect, the High Court has directed to the petitioner to execute the agreement by 26-8-1997 and in compliance of the order of the High Court the agreement was executed on 26-8-1997, and thus it cannot be said that the petitioner did not execute the agreement as required of him. The respondents have no authority to take any decision, contrary to the decision of the High Court dated 21-8-1997 whereby the petitioner was permitted to execute agreement on 26-8-1997, particularly, when the respondents were party to the petition. Another reason given is that the petitioner has moved the Court in violation of Clause 39 of the agreement approaching the Court cannot be a ground for non-renewal of the licence. Every citizen of this country has a right to approach the Court if he feels that an injustice is being caused to him it is for the Court to consider whether the action proposed by the person is not maintainable because of certain terms in the agreement. The petitioner's approach to the Court, cannot be a ground for non-renewal of the licence

5. This Court feels that there must be a control over discretionary power of the administration so that there will be a Govt. of laws and not of men. It is the duty of the Court to see that discretionary power conferred on the administration should not be abused and the administration should exercise powers properly, responsibly and with a view to pass an order in public interest. It appears from the order passed that the authorities have exercised the power without applying its mind to the facts and circumstances of the case. There is clear non-application of mind on the part of the authority concerned. The authority has acted mechanically; without due care and caution, and or without sense of responsibility in the exercise of its discretion. There is a complete failure in exercise of the discretion, and action of the authority, of non-renewal of the licence, is had in law. The authority has not even cared to look at the decision rendered by the High Court thereby the petitioner was permitted to submit a agreement by 26-8-1997 and that, petitioner did submit the agreement on that

date. The action of non-renewal of the licence is unfair, arbitrary and cannot sustain in law. Normally, I would have sent the matter for reconsideration to the authorities for renewal of the licence, but considering the manner in which and the conduct in which the orders have been passed, giving scant regard to the Court's orders I do not feel it appropriate and necessary to send the matter back for reconsideration for renewal of the licence of the petitioner, and I direct, that the petitioner's licence for his trolley No. 16 for selling the Milk Burfi, Mawa, Rasgulla and Gulabjamun at Luni Junction platform shall be renewed for the further period of five years within period of ten days from the placement of this order before the respondent No. 2 the Divisional Railway Manager, Jodhpur, Northern Railway, Jodhpur after complying all the formalities. The writ petition is allowed.