

(1994) 04 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 1183 of 1992

Pooran Chand

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Citation : (1994) 54 DLT 241 : (1994) 29 DRJ 428

Hon'ble Judges : R.L. Gupta, J;P.N. Nag, J

Bench : Division Bench

Advocate : A.K. Bajpai and M.M. Chopra, for the Appellant;

Judgement

P.N. Nag, J.

(1) By this petition, the petitioner has challenged the order dated 11.3.1992 (annexure A to the petition) whereby the petitioner has been directed to pay the license fee with effect from 16.2.1990 to 15.2.1991 @ Rs.1,690.00 per month and with effect from 16.2.1991 to 15.1.1992 @ Rs.3,380.00 per month in respect of Piao site measuring 81.05 sq. ft., Dtc block, Isbt complex subject to certain terms and conditions.

(2) The facts set out in the petition, in substance, are that the petitioner is a poor scheduled caste person and on the basis of compassionate ground, the respondent allotted 3.9 sq. metres (42 sq. ft. - approximately) Piao site at I.S.B.T. on 30.4.1985 on license basis at the rate of Rs.324.00 p.m.as license fee. Initially the.h1 Cw 1183/ 92 license was for 11 months and thereafter it was renewed from time to time, as referred to in para 2 of the petition.

(3) By the impugned letter/order dated 11.3.1992, the demand raised against the petitioner is wholly unreasonable, excessive and arbitrary and cannot be legally sustained.

(4) In the reply, the stand taken by the respondent-DDA is that the petitioner has suppressed the material facts. According to the respondent the true factual

position is that in the year 1985, the petitioner was allotted the Piao site in the form of an open platform on license basis for the sale of fruit items and a free Piao on a monthly license fee of Rs.324.00 ending 15.4.1986, which was renewed at the request of the petitioner from time to time and as per the policy on a gradual revision of the license fee, such license fee was fixed at Rs.566.00 for the period from 16.2.1989 to 15.2.1990. The last written license deed executed between the parties has been filed as Annexure F to the writ petition for the period 16.2.1989 to 15.2.1990. Before the expiry of the license period from 16.2.1989 to 15.2.1990, the petitioner made written representations dated 30.8.1989 and 16.10.1989 (Annexures R-1 and R-2 to the counter affidavit) for construction of a puce kiosk in lieu of open platform, which request was considered and a puce platform was constructed comprising an area of 81.05 sq. ft. as against 42 sq. ft. of the open platform and the same was handed over to the petitioner on 26.2.1990. The request of the petitioner for change of trade was also acceded to by the respondent. Vide annexures R-4 and R-5 (dated 27.1.1990 and 28.1.1991 respectively) to the counter affidavit, the petitioner requested for the renewal of the license period from 16.2.1990 to 15.2.1991 and from 16.2.1991 to 15.2.1992. The petitioner also submitted an undertaking to the respondent dated 20.2.1990 and a written letter dated 28.1.1991 agreeing to pay license fee at the current rate as may be determined by the authority for the year 16.2.1990 to 15.2.1991 and for the period 16.2.1991 to 15.2.1992. (Letters - Annexures R-6 and R-7 to the counter affidavit - refer to).

(5) We have heard the learned counsel for the parties. Counsel for the petitioner has submitted that the enhanced rate of license fee as demanded vide Annexure A by the respondent is exorbitant and arbitrary. Enhancement of the license fee should be reduced and he may be asked to pay only 5% increase in the license fee as has been done earlier.

(6) On the other hand, counsel for the respondent has submitted that the license fee has been enhanced having regard to the prevailing rates of market and the enhanced license fee is much below the market rates. Secondly, the petitioner himself has undertaken to pay the license fee as demanded by the respondent. Therefore, according to learned counsel for the respondent the enhanced license fee as demanded vide Annexure A by the respondent is fully justified in the facts and circumstances of the case.

(7) We have considered the rival contentions of the parties.

(8) It may be noticed that the averments of the petitioner in the petition that he is a Scheduled Caste and that he was allotted the Piao site on compassionate grounds, have not been controverted by the respondent in their counter affidavit and, Therefore, we take it that Piao site was allotted to the petitioner on compassionate ground being a Scheduled Caste. The last enhanced demand made from the petitioner for the period 16.2.1989 to 15.2.1990 was at the rate of Rs.566.00 p.m. However, the area of Piao site has since now been constructed by the respondent and handed over to the petitioner who is now in occupation

double the area allotted to the petitioner initially. In addition there to the respondent has also spent money on construction of the platform and has also allowed the petitioner to change the trade from fruit selling to Chhole Bhatura etc. Therefore, in our opinion, the increase in the license fee by the respondent is not unreasonable if the prevailing market rates are taken into consideration.

(9) However, since the Piao site was allotted to the petitioner on compassionate ground being a Scheduled Caste, in our opinion, it would be equitable and just to reduce the license fee fixed by the respondent vide impugned order/letter. In our opinion, ends of justice would be met if the petitioner is asked to pay the license fee from 16.2.1990 to 15.2.1991 at the rate of Rs.1,190.00 per month (i.e., double the license fee fixed earlier by the respondent plus 5% increase thereon as per the policy of the respondent). From 16.2.1991 to 15.1.1992 and onwards up to 15.1.1994 the petitioner should be asked to pay the license fee per month by enhancing the license fee at the rate of 5% per annum as per the policy adopted by the respondent. A copy of the new policy dated 10.11.1993 has been filed in court by the petitioner, which is taken on record. According to this policy where the allotment has been made on compassionate grounds, 5% annual increase in the license fee has been contemplated by the respondent. Although, strictly speaking, this policy is not applicable for the period aforementioned, but in our opinion, it would be equitable and just to extend this analogy to this case also as in this case allotment has been made on compassionate ground and being a Scheduled Caste.

(10) It may be noticed that the period of license granted to the petitioner has since expired and the petitioner cannot claim any right to continue as a licensee for further period. However, he may apply to the respondent who is the ultimate authority, for further renewal of licensee, who will decide the same in accordance with law.

(11) The next submission of counsel for the respondent is that the petitioner himself has given undertaking and written letter (Annexure R-6 and R-7 to the counter affidavit) agreeing to pay license fee at the current rate as may be determined by the authority. According to the learned counsel for the respondent in view of the undertaking and letter, it does not lie in the mouth of the petitioner to challenge the enhanced license fee as demanded by the respondent vide Annexure A.

(12) No doubt the aforementioned undertaking has been given and also a letter written by the petitioner but it appears to us that there was no means of livelihood for the petitioner and the question of his survival was in question. Therefore, in these circumstances, there was no option left to the petitioner except to give such an undertaking and write a letter and the respondent being an instrumentality of the State, should not be permitted to take advantage. This contention of the learned counsel is, Therefore, rejected.

(13) In the light of what is discussed above, we allow the petition and direct the

respondent to charge and realise the license fee in the manner indicated hereinabove with effect from 16.2.1990 to 15.1.1994 and the petitioner will pay the same within four weeks from today. Liberty is also given to the petitioner to approach the respondent for further renewal of the license with effect from 16.1.1994 within four weeks from today. The respondent will decide the same in accordance with law within six weeks thereafter.

(14) In the facts and circumstances of this case, we. make no order as to costs.