

(1952) 08 CAL CK 0008
In the Calcutta High Court

Ram Padarat Shaw

APPELLANT

Vs

Commissioner of Police, Calcutta

RESPONDENT

Date of Decision : 28-08-1952

Acts Referred:

Calcutta Police Act, 1866 — Section 35, 39, 40
Constitution of India, 1950 — Article 19(1)(g)

Citation : 57 CWN 229

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Niharendu Dutt Mazumdar, for the Appellant; A.K. Sen, for the Respondent

Judgement

Bose, J.—This is an application under Art. 226 of the Constitution for an appropriate writ directing the respondent to recall an order of refusal of a license in respect of a Boarding House carried on by the petitioner at Bow Bazar Street and also for direction upon the respondent to renew or issue a license in favour of the petitioner in respect of the year 1952-53. The petitioner was the holder of a license granted by the Commissioner of Police, Calcutta, for carrying on a business of a Boarding House at 81-A, Bowbazar Street, Calcutta. Since 1950, the petitioner had been carrying on the said business under the name and style of "Kali Mata Hotel Restaurant and Boarding House". On March, 21, 1952, the petitioner made an application for renewal of the license but the respondent by his letter, dated April 17, 1952, refused to renew the said license. The relevant portion of the letter may be set out herein :

Dear Sir,

Reference your application, dated 21st March, 1952, for the renewal of your Boarding House license at 81-A, Bow Bazar Street, for the year 1952-53, I wrote to inform you that it has been refused. I would, therefore, ask you to close down the Boarding House on receipt of this letter.

Yours faithfully, Sd. A.K. Banerjee, For Commissioner of Police, Calcutta.

2. The petitioner thereafter made several representations for recalling the order of refusal and on or about April 28, 1952, the petitioner caused his solicitor to write a letter to the Commissioner of Police enquiring as to what were the reasons for which the Commissioner had refused to renew the license in favour of the petitioner but no reply was received to the said letter nor was any heed paid to the representations made for withdrawal of the refusal or cancellation order.

3. The Commissioner of Police has not affirmed any affidavit in answer to this Rule nor has Mr. A. K. Banerjee who has purported to sign the letter of April 17, 1952, come forward with any affidavit in the present proceeding. One Tapendra Mohan Chakrabarti, Sub-Inspector of Police, attached at present to Jorasanko Thana, has affirmed the affidavit-in-opposition. It is stated in this affidavit that the deponent was formerly attached to the Bow Bazar Thana, Calcutta, and while so attached during the period of April to October, 1951, he made enquiries concerning the Boarding House at 81-A, Bow Bazar Street, Calcutta. It is further stated that he had often received complaints while attached to the Bow Bazar Thana from local people against the petitioner as to the disorderly manner in which he had been running the Boarding House and causing serious nuisance to other people of the locality. The deponent further states that the reason for not granting renewal of the license by the Commissioner of Police was that the latter was satisfied upon the report of the enquiry directed by him that such license should not be renewed. But no particulars are given in this affidavit as to when the Commissioner of Police gave direction for making any enquiry and it is not at all stated in the affidavit as to how the deponent who was attached to the Jorasanko Thana came to know about what the Commissioner of Police did in April, 1952. It is not at all clear from the affidavit-in-opposition as to who made the alleged enquiry referred to in paragraph 6 of the affidavit and when was it made. The affidavit-in-opposition is totally devoid of all particulars. It is alleged that some complaints were made by local people but no particulars thereof have been given. It is further to be noted that all the statements in the affidavit are verified as true to the knowledge of the deponent, but I fail to see how can all the facts stated in the affidavit be true to the knowledge of the deponent as stated in paragraph 13 of the affidavit. The petitioner has affirmed an affidavit in reply and he denies that there was any enquiry made with respect to the Boarding House under the order of the Commissioner of Police. It is further denied that any complaint was lodged by local people as alleged and it is further denied that the petitioner was running the Boarding House in a disorderly manner or was causing any nuisance. It is further stated in this affidavit that the license for the year 1951-52 was actually issued to the petitioner in December, 1951, and this licence was deposited for the purpose of renewing on the 2nd March, 1952. If the case made on behalf of the respondent to the effect that upon enquiry made between April and October, 1951, it was found that the Boarding House was being run in a disorderly manner is true, it is difficult to

follow why a licence was issued in December, 1951, instead of canceling it as would have been the most normal thing to do. It appears to me from the vague manner in which the case of the respondent is put forward in the affidavit-in-opposition and from the fact that neither the Commissioner of Police nor Mr. Banerjee who purported to communicate the order of refusal has come forward to support this case by their personal affidavits that the grounds set out for justifying the act of refusal of the licence are not true. On behalf of the petitioner one Sneha Kumar Chakma has also affirmed an affidavit and it is stated in this affidavit that this deponent has never found anything disorderly with regard to the running of the Boarding House between June, 1951, and 15th February, 1952. He denies that any nuisance was created as alleged. It may be noted that this affidavit is not verified as required by the CPC and the rules of this Court. This practice of not verifying the affidavit affirmed in Interlocutory Proceedings has been deprecated by this Court on several occasions in the past and it is really deplorable that in spite of repeated warnings this practice has not been given up. However, I do not propose to reject the affidavit for the purpose of the present proceedings.

4. The learned counsel appearing for the petitioner has challenged the order of refusal as arbitrary and illegal.

5. Mr. A.K. Sen, the learned counsel appearing for the respondent, has, however, submitted that the matter of granting a licence under the Calcutta Police Act or the matter of renewal of such licence is entirely in the discretion of the Commissioner of Police and the exercise of such discretion cannot be reviewed by this Court in the exercise of its jurisdiction under Art. 226 of the Constitution. The section of the Calcutta Police Act, 1886, dealing with the power of the Commissioner of Police in granting licences to the keepers of houses or places of public resort or entertainment is section 39. Section 40 of the Act provides that a licence can be forfeited or cancelled if the holder of the licence is convicted by a Magistrate for breach of any of the conditions of the licence.

6. It is true that the power of granting licence is a discretionary power, but there can be no doubt that this discretionary power is occupied with a duty. This power of issuing licences has been conferred for public benefit and in order to control or regulate the running of business or trade by persons engaged in such business. It is, therefore, expected that the Commissioner of Police will normally grant licenses to persons asking for such licenses unless justifiable grounds exist for refusing such licenses. The proper extent of such discretionary power has been very clearly defined in the case of *Julias v. Bishop of Oxford* (1) reported in 5 Appeal Cases 214 at p. 222 by Lord Cairns. The question of construction of section 39 and section 40 and other sections of the Police Act came up before this Court in the case of *The Commissioner of The Calcutta Police Vs. Rolla Ram Chopra . and Gentle, J.*, made the following observations at p. 839 which may be set out hereunder :

A citizen has an unrestricted right to carry on a bona fide trade, including the

business of a Boarding House Keeper. Section 35 takes away that right by making it an offence to conduct a Boarding House without a license. Section 39 gives a right to a person to keep a Boarding House, to whom the Commissioner grants a licence under the section. If, under the Act, the licence can be forfeited or cancelled at the will of the Commissioner, then the Act takes away with one hand what it has given with the other hand. If the Commissioner could cancel or forfeit the licence at his will and pleasure, in the absence of conviction for breach of a condition of a licence, the latter part of section 40 would be nugatory.

These observations apply with stronger force after coming into force of the Constitution of India. Under the Constitution, Art. 19(1)(g), all citizens have the right to carry on any occupation, trade or business. To refuse licence to the petitioner except for valid reasons will be to interfere with this fundamental right of the petitioner as guaranteed by the Constitution. The discretionary power which has been conferred on the Commissioner of Police was meant to be exercised in a reasonable manner and unless proper grounds are forthcoming to justify an act of refusal of the licence it must be held that the act of the respondent is an arbitrary exercise of the power vested in him u/s 39 of the Act. No satisfactory reasons have been set out for justifying the act of the respondent and, in fact, there are no reliable materials before the Court which can support the action of the respondent. In my view this petition should succeed and the rule is made absolute to the extent that the respondent is directed to recall the order of refusal of the licence in favour of the petitioner, and he is directed to deal with the petitioner's application for renewal according to law. The petitioner is entitled to costs of the present proceedings.