
(1979) 05 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 636 of 1979

Smt. Laxmi Devi	Vs	APPELLANT
Trinath Misra, Executive Officer, N.A.C. and Another		RESPONDENT

Date of Decision : 15-05-1979

Acts Referred:

Orissa Municipal Act, 1950 — Section 337(8)

Citation : (1979) 48 CLT 155

Hon'ble Judges : S. Acharya, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : B.B. Ratho and S.K. Das, for the Appellant; P. Palit, J. Patnaik and R. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—The Petitioner is the owner of 20 cycle rickshaws in Aska.

2. The undisputed facts are as follows:

On the 4th April, 1979 the Petitioner made an application, as contained in Annexure 2, before the Executive Officer, Notified Area Council, Aska (opposite party No. 1) for the renewal of the licences of those rickshaws for the year 1979-80. The application was admittedly received by opposite party No. 1. Thereafter on 9-4-1979 the Petitioner sent Rs. 165/- by money order to opposite party No. 1 towards the renewal fee for those licences in respect of the said rickshaws. But that money order was not accepted by opposite party No. 1. Thereafter on 26-4-1979 six of the twenty rickshaws were seized under the orders of opposite party No. 1. Till now the application of the Petitioner for renewal of the licences has not, been rejected. The other facts alleged in the writ petition and the counter affidavit need not be stated in view of the following decision which we are going to take in this case.

3. Sub-section (8) of Section 337 of the Orissa Municipal Act (Act 23 of 1950) (hereinafter referred to as the "Act") inter alia provides that an applicant for the

renewal of a licence or permission shall, until communication of orders on his application, be entitled to act as if the licence or permission had been renewed and save as otherwise specifically provided in this Act if orders on the application for licence or permission are not communicated to the applicant within 30 days after the receipt of the application by the Executive Officer the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the applications and subject to the law, rules, regulations, bylaws and all conditions ordinarily imposed.

The Petitioner, as stated above not only made the application but also tendered the renewal licence fee by sending the same by money order to the Executive Officer, but the Executive Officer, for reasons best known to him, refused to accept the same. Accordingly, in view of the aforesaid provision under Sub-section (8) of Section 337, the Petitioner was entitled to ply the rickshaws after she made the said application. Moreover, her application for renewal of licence made on 4-4-1979 shall be deemed to have been allowed for the year 1979-80 on 4-5-1979, and the Executive Officer (opp. party No. 1) shall only be entitled to receive or realise the licence fee for the same from the Petitioner. Mr. Rath for the Petitioner states that the Petitioner is and at all times was ready and willing to pay the licence fee and had actually remitted the licence fee by money order as the said amount was not accepted by opposite party No. 1 when first tendered to him after the filing of the application for renewal. Mr. Rath further undertakes that the Petitioner shall again tender the renewal licence fee within seven days from today to opposite party No. 1. In view of the said, deeming provision in Section 337(8) of the act and the admitted fact that the Petitioner's application was not rejected within thirty days of the receipt of the same, opposite party No. 1 has to and is hereby directed to issue the licence in respect of the ricksha was in question to the Petitioner as soon as the renewal fee in full is tendered to opposite party No. 1. who shall have no option left but to accept the same. The Petitioner of course shall abide by all terms and conditions of the said licences, as prescribed by the proper authority. Issue writ accordingly.

4. In view of the above decision on the undisputed facts the other questions raised or contended are merely of academic interest, and we see no reason to advert to the same.

5 The writ petition is accordingly allowed. Parties to bear their own costs.

P.K. Mohanti, J.

6. I agree.