(2008) 03 OHC CK 0049

In the Orissa High Court

Sri Krushna Chandra Routray APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:
Orissa Supply and Sale of Stamps and Stamped Paper Rules, 1990 — Rule 17(3)

Citation : AIR 2008 Ori 100 : (2008) 105 CLT 654 : (2008) 1 OLR 948

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—The Petitioner calls in question the validity and legality of the Order Dated 10.07.2007 passed by the Additional District Magistrate (Revenue), Cuttack, (for short the ''ADM''), refusing to renew the Stamp Vendor Licence of the Petitioner on the ground of pendency of Criminal case against him.

2. The brief facts of the case is that the Petitioner is a Stamp Vendor and he had been granted licence since April, 1985 for sale of stamps and stamp papers, both judicial and non-judicial in the premises of Orissa High Court, Cuttack. Subsequently with the coming into force of the Orissa Supply & Sale of Stamps and Stamped Papers Rules, 1990 (for short "Rules"), his licence No. 09/1997 (Renewal No. 11 of 2002) was renewed upto 31.12.2006. On the strength of the said licence, the Petitioner was authorized to procure and sell stamps and stamped papers, both judicial and non-judicial and whether impressed or adhesive, to be sold in the premises of the Orissa High Court at Cuttack. During the validity of the Petitioner''s licence as a Stamp Vendor, an F.I.R. was lodged against the Petitioner vide Lalbag P.S. Case No. 133 of 2006, corresponding to G.R. Case No. 1082 of 2006, on the allegation of selling forged Advocate''s Welfare Stamp. Though no licence is required, as per the Rules, for the purpose of selling Advocate''s Welfare Stamp, which is sold only by the Orissa State Bar Council and which can be procured by any person and there is no restriction for sale of such stamps, the Petitioner was arrested in connection with Lalbag P.S.

Case No. 133 of 2006 and was subsequently released on bail.

3. Subsequently as the Petitioner''s Stamp Vendor Licence, to operate in the premises of Orissa High Court, Cuttack was due to expire on 31.12.2006, he submitted application on 19.12.2006, for renewal of his Stamp Vendor Licence along with requisite fees for renewing the same from 01.01.2007 till 31.12.2011, i.e., for a period of five years, as per the provisions of the Rules.

4. The Opposite Parties on receipt of the Petitioner''s application for renewal, the same was duly processed and was put up before the A.D.M. (Revenue), Opposite Party No. 3, who vide Order Dated 10.07.2007 refused to renew the Stamp Vendor Licence in favour of the Petitioner on the ground of pendency of criminal case against him, i.e., G.R. Case No. 1082 of 2006, pending in the Court of Learned S.D.J.M. (S), Cuttack. The said order of the A.D.M. (Revenue), Cuttack has been assailed in this Writ Petition.

5. In the counter affidavit filed on behalf of Opposite Parties 2, 3 and 4, it has been submitted that the case relating to renewal application of the Petitioner has been kept in abeyance as per the Order Dated 10.07.2007 of the A.D.M. (Revenue), Cuttack, due to pendency of G.R. Case No. 1082 of 2006 and hence the Petitioner''s renewal application has not been rejected or cancelled. It is further contended by the said Opposite Parties that the grant of renewal of Stamp Vendor Licence is the discretion of the Licensing Authority and while granting such renewal, it is for the Licensing Authority to consider the antecedent of the applicant along with the ability of carrying out the work of a Stamp Vendor and therefore, in the instant case, the Petitioner''s application for renewal has not been considered and the same has been kept in abeyance till conclusion of the criminal proceeding in the aforementioned G.R. case pending against him. Accordingly, it has been submitted that there is no violation of the Rules since the licence of the Petitioner has not yet been cancelled by the Licensing Authority.

6. The sole contention of the Petitioner is that in view of Rule 17(3) of the Rules, no licence can be granted to a person only if he has been convicted by a Court for any offence relating to documents under Chapter XVIII of the Indian Penal Code. Accordingly, the Petitioner submits that in the present case, since the application for renewal of Stamp Vendor Licence of the Petitioner has been kept in abeyance and/or rejected, solely on the ground of pendency of the aforesaid G.R. case, the same is unjust, improper and illegal. It is further contended by the Petitioner that as no licence is required under the Rules for the purpose of selling Advocate''s Welfare Stamps and the only allegation against the Petitioner being with regard to selling of such Stamps, the action of the A.D.M. (Revenue), Cuttack, Opposite Party No. 3, in refusing to renew the Petitioner''s Stamp Vendor Licence and keeping the application pending till conclusion of the aforesaid G.R. Case is illegal and without jurisdiction.

7. Rule 12 of the Rules provides for sale of stamps, both judicial and non-judicial and whether impressed or adhesive, which shall be sold to the public through ex

officio or licensed vendors in the manner prescribed under the Rules. Rule 13 of the said Rules provides that the stamps and stamped papers shall be sold only at Treasuries, Special Treasuries and Sub-Treasuries and all such Treasury Officers, Special Treasury Officers and Sub-Treasury Officers shall be ex officio vendors. Similarly, Rule 15 of the Rules provides that licences may be granted to private persons for sale of stamps and stamped papers in the manner prescribed under the Rules.

8. Rule 17 of the Rules prescribes the criteria for grant of licences for sale of stamps and stamped papers, relevant portion of which is extracted below:

17. (1) In granting licences in pursuance of the foregoing rule, Collectors and Sub-Collectors should keep in view the fact that while the number of vendors should be such that there is no inconvenience to the public in readily obtaining stamp and stamped papers, it should not be so large that vendors do not obtain a moderate income.

(2) No person who is of unsound mind, or who is incapable of writing documents with facility on account of any physical handicap or who has been convicted in a criminal offence involving moral turpitude or who is known to be, a habitual litigant or a tout or who is an undischarged insolvent (or, being a discharged insolvent, has not obtained from the Court which adjudged him an insolvent a certificate that his insolvency was caused by misfortune without any misconduct on his part) shall be granted a licence.

(3) No licence should also be granted to an Advocate (including a person whose licence for practice has been cancelled or suspended in accordance with law) or to a person

(a) who, having been in employment of Government, or an undertaking owned or controlled by Government, or a firm, was removed, dismissed or compulsorily retired from such employment as a result of misconduct, or

(b) whose licence at any time has been cancelled and the order canceling the licence has not been rescinded or set aside or

(c) who has been convicted by a Court for any offence relating to documents under Chapter XVIII of the Indian Penal Code.

9. Rule 21 of the Rules provides for suspension and cancellation of the licence which reads as under:

21. (1) A licence granted under these rules may be cancelled, if the licensee-

(i) fails to maintain the registers prescribed under these rules 3 regularly and correctly; or

(ii) sells stamps of any description at any place other than the place mentioned in the licence; or

(iii) charges any amount in excess of the real face value of stamps and stamped papers; or

(iv) frequently and without sufficient reason suspends sale, or is habitually unpunctual in opening sale or frequently closes sale before the end of office hours; or

(v) is found, without sufficient reason, to be without stocks or with meager stocks; or

(vi) is discovered to have incurred any ineligibility referred to in Sub-Rule (2) or (3) of rule 17 or not possessed any condition of eligibility referred to in Sub-Rule (4) thereof; or

(vii) contravenes any of the provisions of these rules or any of the conditions of his licence or is found guilty of disobedience of any lawful order passed under these rules.

(2) Before an order canceling the licence in pursuance of Sub-Rule (1) is passed, the licensee shall be given an opportunity to show cause against the proposed cancellation. If he does not show satisfactory cause, or fails to show cause within such time as may be specified by the Licensing Authority, the licence shall be cancelled.

(3) If the Licensing Authority is of the opinion that there is a prima facie case of serious lapse on the part of the licensee, he may suspend the licence for such period as he deems proper.

(4) The Vendor shall, immediately on cancellation of the licence, return the unused stamps and stamped papers to the Treasury/Special Treasury/Sub-Treasury Officers specified in the licence and shall be entitled to be refunded the value thereof less ten paise per rupee.

10. On a reading of the aforesaid provisions of Rule, especially Rule 7(3) of the Rules, it is abundantly clear that no licence is to be granted to a person who has been convicted by a Court for any offence relating to documents under Chapter XVIII of the Indian Penal Code. Admittedly, in the instant case, the G.R. Case No. 1082 of 2006 has been initiated against the Petitioner on the allegation of selling torged Advocate''s Welfare Stamps, which does not come within the definition of stamps defined Section 12 of the Rules. The alleged forgery of such Advocate''s Welfare Stamps would at best be an offence under Chapter XVIII of the Indian Penal Code which deals with offence relating to documents and to property marks. As the allegation against the Petitioner for selling of forged Advocate''s Welfare Stamps is pending adjudication in trial before the Learned S.D.J.M. (8), Cuttack in G.R. Case No. 1082 of 2006, the renewal of the Petitioner''s Stamp Vendor Licence cannot be denied or withheld on the ground of pendency of the said case.

11. For better appreciation, the relevant portion of the impugned Order Dated 10.07.2007 passed by the A.D.M. (Revenue), Cuttack, is quoted herein below:

Since he has been alleged that Sri K.C. Routray, Stamp Vendor has been involved in sale of forged Advocate''s Welfare Stamps and a G.R. Case bearing No. 1082 of 2006 is pending against him at this stage, it is not proper to renew the stamp vendor license in favour of Sri K.C. Routray. The file regarding renewal of Stamp Vendor License may be put up after the above mentioned G.R. Case is closed.

12. In view of the discussion made above, the impugned Order Dated 10.07.2007 of the A.D.M. (Revenue), Cuttack, deciding not to renew the Stamp Vendor License of the Petitioner and keeping the same pending till conclusion of G.R. Case No. 1082 of 2006 is neither proper nor legal and the same being in contravention of Rule 17(3) of the Rules, said decision of the A.D.M. (Revenue), Cuttack, Opposite Party No. 3 is hereby quashed. The A.D.M. (Revenue), Cuttack, Opposite Party No. 3 is directed to consider the Petitioner''s application for renewal of the Stamp Vendor Licence in accordance with provisions of the Rules and pass appropriate order thereon, without being influenced by the pendency of G.R. Case No. 1082 of 2006 pending against the Petitioner in the Court of Learned S.D.J.M. (S), Cuttack.

The Writ Petition is accordingly allowed.

I.M. Quddusi, J.

13. I agree.

