

(2001) 03 AP CK 0098
In the Andhra Pradesh High Court
Case No : WA No. 288 of 2001

T. Dhanalakshmi	Vs	APPELLANT
Chief Commercial Officer, SC Railway, Sanchalan Bhavan, Secunderabad and others		RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 ALD 376 : (2001) 4 ALT 335

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. K.V. Subrahmanya Narusu, for the Appellant; Mr. G.S. Sanghi, for the Respondent

Judgement

S.B. Sinha, CJ.

1. The appellant was allotted a public telephone booth at Vijayawada booking office. Her husband was a handicapped person. It was originally granted in favour of her husband who died within three months after installation of the said booth whereafter the same was transferred in the name of the appellant.
2. The period of licence was from 1-3-1998 to 28-2-2000 which was renewed from 2-3-2000 to 28-2-2001. The appellant requested for further renewal of the said licence which was rejected on the ground that in terms of the new guidelines STD/ ISD booths shall be allotted on open bidding.
3. The learned single Judge dismissed the writ petition filed by the appellant herein holding that she does not have any legal right for a perpetual renewal. Feeling aggrieved the appeal has been filed.
4. Mr. K. V. Subrahmanya Narusu, the learned senior Counsel appearing on behalf of the appellant has raised a short question in support of this appeal. The learned Counsel would contend that the new policy has not yet come into force and as such there was no reason as to why the appellant's application for

renewal of the licence should be rejected. The learned Counsel would urge that the appellant was entitled to an opportunity of being heard keeping in view the fact that she had been running the telephone booth for a long time. In support of the contention strong reliance was placed on Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, .

5. Mr. Gowri Shankar Sanghi, the learned Standing Counsel appearing on behalf of the respondents on the other hand submits that a policy decision having been taken by the railways, the same could not have been ignored by the local authorities. It was submitted that in any event there exists an arbitration clause.

6. It is not in dispute that the appellant herein was permitted to install the telephone booth by reason of a licence. The said licence was for a fixed period which was also renewed for one year.

7. It has not been shown before us that the appellant herein had a legal right to get the licence renewed.

8. The matter, in our opinion, pertains to a private law domain.

9. In Mahabir Auto Stores", case (supra) the fact of the matter was entirely different. In that case the appellant before the Supreme Court had been given the permanent customer code which was done in due course pursuant to the agreement to supply lubricants. Lubricants were released by the respondent-company to the appellant from 1983. In that case the procedure adopted for supply of lube oil products was that the party requiring supply would write a letter to the company, whereupon the same would be processed and thereafter a challan will be made out. An argument was made before the Apex Court that supplies have been made to the appellant for more than Rs. 1,11,00,000/- continuously and uninterruptedly for a period of more than 18 years, the respondents therein who had a monopoly could not have refused to supply without any justifiable reason.

10. In the instant case the appellant knew that she could operate the pay phone only for a limited period. The decision of the Apex Court in Navjyoti's case (supra) on the doctrine of legitimate expectation cannot be said to have any application whatsoever inasmuch as it is now well settled that the said principle would apply only in a case where there exists a policy in that regard or promise had been made. In D. Wren International Ltd. and another Vs. Engineers India Ltd. and others, , it has been noticed that a contract qua contract cannot be enforced by the High Court in exercise of its power under Article 226 of the Constitution unless the same comes within the purview of public law remedy.

11. In Delhi Science Forum and others Vs. Union of India and another, , the Supreme Court held as follows:

"The question of awarding licences and contracts does not depend merely on the competitive rates offered, several factors have to be taken into consideration by

an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the Court that the ultimate decision in respect of the selection has been vitiated, normally Courts should be reluctant to interfere with the same."

12. In *R. v. Secretary of State for Transport, ex parte Richmond upon Thames London Borough Council* 1994 (1) All ER 577, it has been held:

"Mr. Gordon's submission is that these reference to the "overriding public interest" imply that where a public authority has effectively given an assurance that it would continue to apply a policy which it has adopted, there are two conditions which must be fulfilled before it may lawfully change track; not only that a right to be heard must be accorded to those affected, but also that the change must be justified by reference to the overriding public interest. But this latter condition would imply that the Court is to be the Judge of the public interest in such cases, and thus the Judge of the merits of proposed policy change. Thus understood, Mr. Gordon's submission must be rejected. The Court is not the Judge of the merits of the decision-makers policy."

13. There may be several other persons who if the same is put on auction offer a higher price. A policy decision that grant of pay booth would be subject to an auction cannot be said to be wholly illegal.

14. In *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, , it is held:

"10.....We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme....."

15. It is also not correct to contend that a policy decision pending framing of a rule cannot be given effect to. In *Vimal Kumari Vs. The State of Haryana and Others*, , the Apex Court held that draft rules can be given effect to if there is a clear intention of the Government to enforce the rules in near future.

16. This aspect of the matter has also been considered in *V. Rama Rao v. Municipal Council* 2000 (1) ILR 1.

17. For the reasons aforementioned there is no merit in this appeal which is accordingly dismissed. There shall be no order as to costs.