

(1985) 08 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Petition No. 399 of 1985

Uttam Chatterjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-1985

Acts Referred:

Citation : AIR 1986 Delhi 291

Hon'ble Judges : Yogeshwar Dayal, J;S. Ranganathan, J

Bench : Division Bench

Advocate : S.K. Bhattacharyaji, for the Appellant; Dalip Singh, for the Respondent

Judgement

Yogeshwar Dayal, J.—Petitioner, Uttam Chatterjee, has filed this petition to challenge an order dt. 15th Jan. 1985 whereby it has been decided to terminate the licence of the petitioner for the use of land as tourist counter at New Delhi Railway Station and he was requested to vacate the railway premises within one month of the receipt of the letter.

2. The case of the petitioner is as follows: In the year 1979, the petitioner applied for opening a tourist booth at the New Delhi Railway Station; the petitioner was allowed a space on the railway land at New Delhi Railway Station temporarily on 9th May, 1979 and after expiry of the term for running the booth, the petitioner was asked to hand over the booth vide a communication dt. 21st Jan. 1982) and the petitioner handed over possession of the said booth in pursuance thereof to the railway authority. On 8th Mar. 1982, petitioner submitted an application through Minister for Railways for granting space which was lying vacant along the Station building opposite the traffic police post, along with a D.O. letter dt. 8th Mar. 1982 from Sh. Ananda Gopal Mukherjee, Member of Parliament recommending the case of the petitioner. The petitioner, however, received no reply. However, later on Sh. A.B.A. Ghani Khan Chaudhary also recommended his case and again Sh. Pranab Mukherjee, Union Finance Minister also recommended his case to Sh. Jaffar Sharif, Minister of State for Railways

and requested them for restoring the tourist booth by granting space of about 5" X 8" to the petitioner. But nothing happened. Ultimately, Sh. A.B.A. Ghani Khan Chaudhary, Minister for Railways intervened and the Divisional Manager (vide letter dt. 30th May, 1983) intimated to the petitioner that it had been decided to allot a booth to the petitioner at New Delhi Railway station for imparting information to tourists and directed the petitioner to give an undertaking that the petitioner would pay cost of the booth, licence fee, security and other charges in advance if put in occupation of the booth and to sign an agreement. The petitioner complied with the same and filed an undertaking and also deposited Rs. 3810/- on 7th June, 1983 and also signed an agreement.

In the letter dt. 7th June, 1983, it was also directed that the licence fee has been fixed at Rs. 390/- for one year in advance and had to be increased by 10% every year for a period of 3 years and thereafter the licence fee would be reviewed again. The petitioner got possession on 21st June, 1983 and also signed an agreement. The agreement was not signed on behalf of the President or on behalf of the Railway authority. But in the column relating to the period, the period of licence was blank. The petitioner, however, paid the licence fee for one year for the period 21st June, 1983 to 20th June, 1984. The petitioner again deposited licence fee for the period 21-6-1984 to 20-6-1985. It was during the currency of second year that the impugned order was passed. The case of the petitioner in the writ petition was that he had paid his dues up to 20th June, 1985 for a land measuring 3.25 sq. meter and is running the booth which has been granted to him permanently.

3. The aforesaid agreement which was signed by the petitioner, inter alia, contains Clauses 2, 6, 8, 9, 15, 16 and 17 which provided as under: -

(2) That the licence unless cancelled in terms of the provision hereinafter contained shall remain in force for a period of one year...months Commencing from...and ending on, or that the licence unless cancelled in terms of provisions hereinafter contained shall remain in force for a period of one year commencing from...and ending on....

(6) That nothing herein contained shall be construed to create tenancy in favour of the Licensee of the said premises and the Administration may for mere motion determine this license and retake and absolutely retain possession of the land.

(8) That the Licensee shall at all times keep the Administration indemnified against and shall reimburse to the Administration & claims, suits, damages, costs, charges and expenses whatsoever which the Administration may sustain or incur.

(9) that the Licensee shall pay in advance to the Administration license fee of Rs. 390/-per annum. The license fee is subject to revision at the discretion of the Administration and the revised license fee shall become payable by the licensee on the expiry of 30 days notice of the intended revision. In case the license is cancelled and the Administration takes over the use of the land before the expiry

of the year for which the licence fee has been paid in advance the Licensee shall get a proportionate refund of the amount of the unexpired portion of the year.

(15) The Administration reserves the right to cancel this licence at any time on giving thirty days notice in writing of its intention to do so and the Licensee shall on expiry of the period of notice vacate the land, remove all materials and structures, if any belonging to the licensee and restore the land to its original state without any claim for compensation whatever on the part of Licensee. If any structure is not required to be dismantled by the Administration, the Administration shall pay compensation for the same which shall be determined by the Chief Engineer, Northern Railway whose decision shall be final and binding. In case the Licensee fails to restore the land to its original state as required the Administration, the Administration may do so at the risk and cost of the licensee and the expense so incurred shall be recoverable from the security deposit and/or any other money due to the Licensee from the Administration.

(16) If on the expiration of this license the licensee continues to use the land he shall be liable to pay wharfage charges prevalent at the station and the Licensee shall be entitled to remove the goods only when he has paid all the charges due to the Administration.

(17) After expiry of the license period, the licensee should immediately vacate the plot and hand over the possession to the person authorised by the Railway Administration in this behalf or apply for renewal of the license within 30 days from the date of expiry of license. In the event of failure on the part of licensee, at this to vacate the premises on the expiry of the license period or failure to apply for renewal of the licence within 30 days of the expiry of the license period, the Railway Administration shall be entitled to recover without prejudice to other rights of the administration under this Agreement or the law for the time being in force, the rent at the rate of double the normal rent already agreed to in the licence for such period the plot remains in the possession of the Licensee.

4. It is, thus, clear from this agreement which was inchoate in the sense that nobody has signed it on behalf of the Respondent, the period of licence was one year, and it appears from the conduct of the parties that it commenced with effect from 21st June, 1983 It expired on 20th June, 1984 when it was renewed on payment of licence fee for one year viz. 21-6-84 to 20-6-85. Therefore, at the stage petition was filed, the licence was current till 20th June, 1985. On the filing of the (sic) petition, we gave show cause notice to the Respondents as to why the petition should not be admitted and also stayed the dispossession of the petitioner. The matter came up for bearing on various dates and on 4th Mar., 1985 the Division Bench consisting of B.N. Kirpal & Sunanda Bhandare, JJ. adjourned the hearing to 8th July, 1985 and stayed the dispossession of the petitioner up to 20th June, 1985. On that day, the stay of dispossession would stand automatically vacated. This order apparently was passed on the ground that the petitioner had paid licence fee in any case till 20th June, 1985, and he should be allowed to retain possession till that date.

5. The petitioner had not along with the petition filed any copy of the alleged agreement. The aforesaid clauses which we have reproduced above were filed much later by learned Counsel for the Respondent on or about 16th July, 1985. When the matter came up again on 8th July, 1985 during the hearing, learned Counsel for the petitioner brought to our notice a receipt of money No. 075619 at 2nd May, 1985 purporting to be payment of licence fee for the period 21-6-85 to 20-6-86 the original receipt was given to the learned Counsel for the Respondent to find out the circumstances in which the receipt had been issued. It was in these circumstances that an affidavit was tiled of Sh. Shadi Lal, Head Clerk (Commercial) office of the Divisional Railway Manager, New Delhi, stating, inter alia that instructions had been issued vide letter dt. 1-1985 by the Divisional Railway Manager, New Delhi to the Station Superintendent, New Delhi that the staff should not accept any money in token of licence fee for the tourist corner from the petitioner and the Station Superintendent had further issued instructions of the Staff vide his letter No. SC/SS/NDRS/85 dt 2-5-1985. The copies of the instructions issued by the Divisional Manager to the Station Superintendent had been filed with this affidavit, It was in contravention of these instructions that the amount tendered by the petitioner appears to have been accepted.

6. It appears to us that the licence granted to the petitioner ensured for only one year at a time. It is clear from the agreement on which the petitioner relies that it was only for one year and it was liable to be cancelled at any time and only right given to the licensee was that if the licence was cancelled before the expiry of the year, he was entitled to get proportionate refund of the licence fee. It is clearly contemplated by Clause 15 of the agreement that the Administration has a right to cancel the agreement at any time after giving 30 days notice. Even if the agreement is left out of account as it was not signed on behalf of the Respondent the conduct of the parties shows that the licence was only on an annual basis. There is no order extending or, renewing the licence after 20-6-1985. The unilateral payment by the petitioner cannot create any right nor can it nullify the impugned order. It appears to us that the petitioner has surreptitiously managed to deposit a sum without the appropriate authority accepting it. The appropriate authority had to be a person who could act on behalf of the President. There is no extension whatsoever in favour of the petitioner, in any case, after 20th June, 1985. No application was even filed by the petitioner for renewing the licence for another year. The licence, therefore, came to an end on 20th June, 1985 and the Respondent's calling upon the petitioner to vacate the site is in order. learned Counsel for the petitioner referred to a decision reported as Raj Restaurant and Another Vs. Municipal Corporation of Delhi, . In our opinion, that principle has no application to a case of an annual licence which has come to an end on efflux of time. This petition consequently fails and is dismissed.