

M/s Raj Restaurant and Another

Vs

Municipal Corporation of Delhi

Writ Petition No. 1269 of 1982

(D. A. Desai, V. B. Eradi JJ)

21.10.1982

ORDER

1. Petitioner 2 and some other are running a restaurant under the name and style of petitioner 1 on the first floor of premises No. 23/3, East Patel Nagar, New Delhi, Since 1970. Petitioners had applied for a licence as required by Section 421 of the Delhi Municipal Corporation Act, 1957 ('Act' for short). In August 1976 petitioners were asked by the Municipal Corporation ('Corporation' for short) to deposit the licence fee from the date of application till March 31, 1977, in the total amount of Rs 166 which the petitioners duly deposited on August 17, 1976. A receipt acknowledging the payment of the licence fee was issued. Subsequently every year the licence fee was deposited from year to year with a request for renewal of licence and every year fresh receipt was issued which would tantamount to renewal of the licence. Such yearly renewal covered the period 1978-79. When the petitioners applied for renewal of the licence for the period April 1, 1979 to March 31, 1980, the Corporation as per its letter dated May 7, 1979, asked the petitioners to comply with certain requirements as set out therein. The Corporation did not accept the licence fee which was tendered by the petitioners. On May 8, 1981, an employee of the respondent Corporation visited the premises of the petitioners and served a notice purporting to be under Section 423 of the Act intimating to the petitioners that the petitioners' licence for eating house has not been renewed since March 31, 1979, because according to the respondent Corporation the restaurant was being run in a residential building. Consequently the petitioners were directed to close the business within 24 hours of the receipt of the notice failing which the trade premises would be sealed. On May 11, 1981, the premises in which the business of the restaurant was being carried on was sealed. A suit was filed by the petitioners for a mandatory injunction directing the respondent to grant licence for the year 1979-80 onwards. A notice of motion under Order 39, Rules 1 and 2 of the Code of Civil Procedure was taken out for an interim injunction for removal of the seals till the disposal of the suit. After the appearance of the respondent the notice of motion was discharged. A revision petition to the High Court met with the same fate and a petition to obtain special leave against the order of the Delhi High Court was rejected by this Court on May 3, 1982. Thereafter the present writ petition was filed.

2. Number of contentions have been raised in this petition but the only one of which were must take notice and which goes to the root of the matter is that the decision not to renew the licence was arrived at in violation of principles of natural justice and is liable to be quashed on that ground.

3. Section 421 of the Act provides that no person can keep any eating house, lodging house, hotel, boarding house, tea shop, coffee house, cafe, restaurant, except in conformity with the terms of a licence granted by the Commissioner in his behalf. Therefore, for carrying on the business of a restaurant obtaining licence under Section 421 is a prerequisite. It is not in dispute that the

petitioners did apply for such licence. In para 11 of the petition the petitioners have stated that the licence was renewed by acceptance of the licence fee for the years 1977-78 and 1978-79. In the affidavit in opposition with regard to the averments in para 11 the only thing stated is that these averments need no reply. Nowhere in the affidavit in opposition it is at all disputed that the licence fee was deposited from year to year and accepted by the Corporation. It may be that the licence in the prescribed form may not have been issued. Therefore, it is an inescapable conclusion that the petitioners were carrying on business of restaurant pursuant to a licence issued or deemed to have been issued by the Corporation.

4. The petitioners further aver that for the year April 1, 1979, to March 31, 1980, even though the petitioners offered the licence fee the same was not accepted and a letter dated May 7, 1979, was written by the Corporation to the petitioners. These averments are to be found in para 12 of the petition in respect of which only answer in the affidavit in opposition is that the averments are not admitted. This type of denial may attract the application of Order 8, Rule 5, Code of Civil Procedure, and the Court would be justified in proceeding on the assumption that the licence was renewed up to that year and subsequently the Corporation declined to renew the licence. But this position is not left in doubt because in the affidavit in opposition on behalf of the Corporation the following specific averments are to be found. They may be extracted :

13-14. ... The reasons for not accepting or granting licence to the petitioners are as under :

(i) The licence in the year 1976 was secured by making misrepresentation to the effect that the restaurant was being run in a commercial building.

(ii) That the licence for running a restaurant in residential building is not permissible....

It would thus appear that the licence was issued and the Corporation did not renew the licence.

5. Where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew the licence or canceling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must. It is not disputed that no such opportunity was given before taking the decision not to renew the licence though it is admitted that for reasons herein before set out the licence was not renewed. Such a decision in violation of the minimum principle of natural justice would be void. Now, it is true that no specific order is made setting out the reasons for refusal to renew the licence. But the action taken of sealing the premises for carrying on the business without a licence clearly implies that there was refusal to renew the licence and the reasons are now disclosed. And the action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed.

6. On this short ground this petition succeeds and the rule is made absolute.

7. It would be open to the respondent Corporation to proceed according to law before taking any decision resulting in refusal to renew the licence. The interim order made by this Court shall remain in operation till the Corporation takes its fresh decision.

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