

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 2280 OF 2016

- Ajit Jain, aged about 52 years, S/o Pukhraj Ji Jain, Ex. Mayor of Rajnandgaon City, R/o Ganj Line Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)

... Petitioner

versus

1. State of Chhattisgarh, through: Secretary Urban Development Department and Administration, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. The Director, Urban Development and Administration Department, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. Collector, Rajnandgaon, Police Station- Rajnandgaon, Civil and Revenue District- Rajnandgaon (C.G.)
4. The Commissioner, Municipal Corporation Rajnandgaon (C.G.)
5. Inspector under the Chhattisgarh Shops and Establishments Act, 1958, Rajnandgaon (C.G.)
6. Indian Broiler Farm, Juni Hatri, Rajnandgaon, a partnership firm registered under the Indian Partnership Act.

... Respondents

For Petitioner	:	Mr. Rakesh Thakur, Advocate.
For Respondents 1 to 3 & 5	:	Mr. D.R. Minj, Dy. Govt. Advocate.
For Respondent No.4	:	Mr. Sourabh Sharma, Advocate.
For Respondent No.6	:	Mr. Rajeev Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/10/2017

1. The present writ petition under Article 226 of the Constitution of India has been filed by the Petitioner seeking for the following relief(s):

“10.1] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, direction/directions, order/orders to the Respondent authorities to remove the shop of the Respondent No.6 from Juni Hatri area situated in Rajnandgaon city.

10.2] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, direction/directions, order/orders and respondent no.6 may kindly be directed to transfer his shop to allotted premises situated in notified area.”

2. According to the learned Counsel for the Petitioner, the Respondent No.6 has been running a poultry business from his shop which is owned by Respondent No.6 at Juni Hatri. The grievance of the Petitioner was to the unhygienic conditions prevailing at the shop and the foul smell which is

emanated from the said shop as a result of sale of dressed and undressed chicken by Respondent No.6.

3. Brief background of the case which would be relevant for the disposal of the case is the fact that Respondent No.6 had earlier filed a writ petition before this Court vide WPC No. 2157/2007 where they had questioned the rejection of the application for grant of licence to sell dressed and undressed chicken for the year 2006-07. The contention of Respondent No.6 was that they were operating the business of selling of dressed and undressed chicken from the said shop since about 40 years. The said writ petition finally stood allowed vide order dated 11.3.2008. It would be relevant to refer to certain findings of the writ Court in the said order, which read as follows:

“12. Respondent-Municipal Corporation has not filed any document to show that the corporation by any resolution, regulation or bye-laws has earmarked any specific area for the purpose of fish/meat market within the limits of municipal area. On the contrary, on the application of the petitioner under Right to Information Act, 2005 the information regarding the details of earmarked area for dressed & undressed chicken was not furnished. From the report of the Court Commissioner also it is clear that there was no map available with the respondent corporation wherein particular area of corporation has been earmarked for the above purpose. The fact that the petitioner was granted license for selling dressed & undressed chicken from the shop in question vide Annexure P-5 and renewal fee was also obtained vide Annexure P-7 goes to show that the license to sell dressed & undressed chicken was being issued beyond the alleged earmarked area.

13. After careful examination of the Commissioner's report it is observed that number of other persons apart from the present petitioner are pursuing their business and trading in dressed & undressed chicken in the various parts of the respondent-Municipal Corporation area and in these circumstances the grounds taken by respondent No.6 for rejecting the application of the petitioner for grant of license is not born out from the documents available on record. Refusal to give license would visit civil and pecuniary consequences to the petitioner, as the business cannot be carried on without license, and it would also affect the livelihood of the petitioner.

14. Since this Court has already held that the reasons assigned for refusal of the license are not made out from the documents available on record, therefore, in the considered

opinion of this Court the order of Annexure P-18 dated 27.12.2006 whereby the application of the petitioner for grant of license to sell dressed and undressed chicken has been rejected cannot be sustained and the same deserves to be quashed.

15. In the result, the petition is allowed, impugned order dated 27.12.2006 (Annexure P-18) is hereby quashed and the respondents are directed to consider and decide the application of the petitioner for grant of license to sell dressed and undressed chicken from the shop in question afresh in accordance with law after giving opportunity of hearing to the petitioner and keeping in view the observations made in this order.”

4. The said order of the writ Court was put to challenge in Writ Appeal No.130/2008. The Division Bench of this Court vide its order dated 3.12.2013 after elaborately discussing the issues involved, dismissed the said writ appeal. Thus, the order of the writ Court stood affirmed, wherein a direction was issued for considering the case of Respondent No.6 herein for grant of licence for selling of the chicken from the said shop.

5. It would be trite at this juncture to also refer to the observations made by the Division Bench in its order dated 3.12.2013, rejecting the writ appeal, where in paragraphs 9, 10 & 11 it was held as follows:

“9. On the above observations in the two reports submitted by the Commissioner, it is clear that in the maps which were shown to the Commissioner by the Corporation on two different occasions, there was no earmarked area to sell dressed and undressed chicken. Other observations are also there as above in the Commissioner's reports.

10. Mr. Sharma has argued that since the Corporation wants that the meat/chicken shops should be in the earmarked area, which was shown by the Authorities of the Corporation to the Commissioner at the time of inspection, therefore, a decision was taken that no person would be granted license for running chicken shop outside that area and for this reason, the application of Respondent No. 6 was rejected vide order date 27/12/2006.

11. We note that it is in the above circumstances, when there was no earmarked area in the map for selling chicken in the market, the writ Court thought it better to quash the order dated 27/12/2006 and send the matter back to the Corporation for taking a decision afresh. Nothing has been adjudicated. The matter has been simply remanded. The order is well founded. We find no infirmity or illegality in the impugned order. The writ appeal deserves to be dismissed.”

6. Subsequently, it is said that Respondent No.6 had moved an application for grant of licence which till date has not been decided by any of the subsequent orders. Meanwhile, the Municipal Corporation had issued a notification on 3.3.2014 whereby it has been notified that the sale of meat and fish would be permitted in the notified area as per the notification in addition to the earlier notified area of Gol Bazar and that no such sale would be permitted from any other area and in case it is found so, penal action would be initiated.

7. The Petitioner herein subsequently on 1.9.2016 has filed the present writ petition claiming for the relief mentioned in the preceding paragraph. The only grievance seems to be that of the Respondent No.6 selling/operating the shop in spite of the Corporation having issued a notification on 3.3.2014.

8. This Court in the present writ petition vide its order dated 14.9.2016 has passed an interim order, restraining the Respondent No.6 from operating the shop from an area outside the area earmarked by the Municipal Corporation, Rajnandgaon, vide notification dated 3.3.2014.

9. At this juncture, it would be relevant to take note of the fact that the procedure for regulating markets and slaughter places has been envisaged under Chapter XIX of the Municipal Corporation Act, 1956. Sections 253 and 254 of the said Act deal with the opening of a private market. Section 255 deals with selling animals meat etc., which further envisages that without a licence from the Commissioner no person shall be able to sell or expose for sale any animal or any meat or fish intended for human food in any place other than a Corporation or licensed market. This by itself would reveal that the licence from a Commissioner is must for a person to sell any animal or any meat or fish intended for human food.

10. In the instant case, the writ Court while allowing WPC No. 2157/2007 vide its order dated 11.3.2008, had directed the Respondents to consider and decide the application of Respondent No.6 herein for grant of licence. From the documents which have been furnished before this Court by either of the parties it seems that no such order has been passed by the Respondent-Corporation on any application moved by the Respondent No.6 till date, except for issuance of notification dated 3.3.2014.

11. What is further relevant at this juncture is that Section 427 of the Municipal Corporation Act, 1956, i.e., Chapter XXXVII, deals with framing of by-laws and clause 24 refers to the management of municipal markets etc. A plain reading of Section 427 would make it clear that for the purpose of regulating different kinds of markets and other civic amenities which are necessary for the Corporation, there has to be by-laws framed by a Corporation. Section 429 onwards of the said Act deals with the manner in which by-laws are framed or enacted by the Municipal Corporation.

12. In the instant case, it has been fairly admitted by the learned Counsels appearing for the parties that no such by-laws have been framed by the Municipal Corporation till date for regulating the markets within the municipal areas, including the markets pertaining to the sale of animals, meat and fish etc., inclusive of poultry items. Though from the note-sheet which has been enclosed with the writ petition it shows that the proceedings have been earlier initiated by the Municipal Corporation, Rajnandgaon for the framing of the by-laws, but till date the same have not been framed.

13. Be that as it may, this Court is of the opinion that ends of justice would meet if the present writ petition at this juncture is disposed of with a direction to the Municipal Corporation to ensure that by-laws are framed as

per Section 427 in accordance with the requirement of law under the Municipal Corporation Act, 1956 in respect of the regulation of the markets in the municipal areas under the Municipal Corporation, Rajnandgaon. It is ordered accordingly.

14. In the given facts and circumstances of the case, the interim order passed by this Court on 14.9.2006, since the writ petition is being disposed of, shall stand vacated and the position would stand restored to as it stood prior to the issuance of the said interim order by this Court. It is expected that the Respondents shall take appropriate steps in that regard at the earliest.

15. The writ petition stands disposed of with the aforesaid observations/directions.

Sd/-
(P. Sam Koshy)
Judge