

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 09.03.2020

ORDERS DELIVERED ON 11.03.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.8419 of 2019
and
W.M.P.No.8941 of 2019

J.Nagarajan

...Petitioner

Vs.

1. The Chief Commercial Manager,
Southern Railway, Park Town,
Chennai - 600 003.
2. The Divisional Railway Manager,
Southern Railway,
Salem Division,
Salem - 636 005.
3. The Senior Divisional Commercial Manager,
Southern Railway,
Salem Division,
Salem - 636 005.
4. The Southern Railway,
rep. by its General Manager,
Park Town,
Chennai - 600 003.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the 3rd respondent in "No.SA/C 79/Catg/S&TAS/ED/SA02 dated 01.12.2018"quash the same and direct the respondents to renew the license for the stall snacks and Travel Accessories in Plat form No.1 Erode Railway Station in the petitioner's name.

For Petitioner : Mr.V.Selvaraj,
for Mr.Christopher Kishore Vincent

For Respondents: Mr.P.T.Ramkumar,
Standing Counsel

O R D E R

This Writ Petition is filed challenging the proceedings of the 3rd respondent dated 01.12.2018 rejecting the request of the petitioner for transfer of license in his name on the reason that the license period had already expired on 28.02.2015. Consequently, the petitioner seeks for a direction to the respondent to renew the license for the stall "Snacks and Travel Accessories" in Platform No.1, Erode Railway Station in the petitioner's name.

2. The case of the petitioner in short is as follows:

His mother namely, J.Radhabai was granted license on 18.12.2013 for running a stall in the name of Snacks and Travel accessories, Erode Railway Station at Platform No.1 and the license period was upto 28.02.2015. She applied for renewal of the license by letter dated 15.09.2014. Her request was not considered and the 3rd respondent attempted to grant licence to third parties through tender. Hence, the petitioner's mother filed W.P.No.5718/2015 seeking for renewal of license. His mother died on 11.04.2017 during the pendency of the said writ petition. Therefore, the petitioner herein is the only legal heir of the original licensee entitled for extension of license by way of transfer of the same. W.P.No.5718/2015 was dismissed on the reason that the licensee died after the expiry of the license period. The petitioner preferred Writ Appeal No.1040/2018. The Division Bench, by order dated 04.09.2018, directed the respondents to re-examine the matter as to whether the period of license granted to the original licensee was expired or not at the time of her death and that if the license period did not expire, then to consider the petitioner's claim. In pursuant to the order passed by the Division bench, the present impugned order was passed. Therefore, the present writ petition.

3. The respondents filed counter affidavit, wherein it is stated as follows:

The petitioner's mother was awarded license for running the stall for a period of five years from 01.03.2007 to 28.02.2012 and the licence was renewed thereafter, finally for further period of three years from 01.03.2012 to 28.02.2015. A tender notice was issued inviting tenders on 02.02.2015 and thus, the renewal of license of all units allotted earlier was not considered. The petitioner's mother filed W.P.No.5718/2015 challenging the said tender notification and sought for renewal of license. During the pendency of the writ petition, the petitioner's mother died on 11.04.2017 and the stall was closed on 16.05.2017 since the licence period already came to an end

and also due to the death of the licensee. Though the license granted to the mother of the petitioner expired on 28.02.2015, she was permitted to continue the business only in compliance of the interim order granted in W.P.No.5718/2015. However, W.P.No.5718/2015 itself was dismissed as infructuous since the tender notification dated 02.02.2015 was cancelled on 14.07.2017. The Railway did not receive any application for renewal of license from the petitioner's mother on 15.09.2014 as claimed by the petitioner. In pursuant to the direction given by the Division Bench, the issue was re-examined and a reasoned order was passed on 01.12.2019 by stating that license granted to the petitioner expired on 28.02.2015 and no renewal was granted nor agreement was executed beyond 28.02.2015. Since the petitioner's mother expired on 11.04.2017, after expiry of the original license period i.e., 28.02.2015, there was no license period remaining for transfer of license to legal heirs. As per paragraph 21 of the commercial circular No.3 dated 13.01.2012 transferring the license to the legal heirs would be allowed only in the case of death of the original licensee. The license can be transferred only for the unexpired period of the license. Therefore, the petitioner cannot have any vested right to seek for transfer of license. Subsequently, fresh tender notification dated 15.05.2018 was issued and the stall located at Platform No.1 Erode Junction, which is the subject matter of this writ petition, has already been allotted to a third party/ the successful bidder on 31.08.2018 for a period of 5 years.

4. Mr.V.Selvaraj, learned counsel for the petitioner reiterated the contentions raised in the affidavit filed in support of the Writ Petition and also further submitted that in view of the pendency of the Writ Petition filed before this Court in W.P.No.5718/2015, the license period cannot be said to have expired on 28.02.2015 as found in the impugned order. He further submitted that the Division Bench has clearly observed and directed the respondents to re-examine the matter and verify whether the period of license granted to the original licensee had expired or not at the time of death of the licensee. Therefore, he submitted that the impugned order cannot be sustained and consequently, the petitioner should be given transfer of license with consequential renewal of the same.

5. On the other hand, Mr.P.T.Ramkumar, learned counsel for the Railways, after reiterating the contentions raised in the counter affidavit submitted that the impugned order was passed strictly in compliance with the direction issued by the Division Bench of this Court and the license having been expired on 28.02.2015 and when the original licensee, namely the mother of the petitioner, admittedly, died only on 11.04.2017, the question of transferring the license in favour of the petitioner

and for renewal of the same do not arise in this case. He also submitted that subsequently, the stall is allotted to a successful bidder in pursuant to fresh tender notification dated 15.05.2018. Therefore, he submitted that the Writ Petition is liable to be rejected.

6. Heard both sides and perused the materials placed before this Court.

7. Admittedly, the petitioner was not the licensee under the Railway in respect of the subject matter stall and on the other hand, his mother got the license and such license period originally granted was subsequently extended upto 28.02.2015. It is not the case of the petitioner that after 28.02.2015, the license was either extended or renewed in favour of the petitioner's mother at any point of time. After expiry of the said license period, the Railway wanted to invite fresh tenders for issuing license to various stalls. The said tender notification was put to challenge in W.P.No.5718/2015 by the petitioner's mother also by seeking renewal. During the pendency of the writ petition, the petitioner's mother died on 11.04.2017. The said writ petition was dismissed by observing that the license period of (5+3) eight years had expired on 28.02.2015, apart from the fact that the prayer sought for in the writ petition had become infructuous. No doubt the petitioner herein and two others got impleaded themselves before the Writ Court as the legal heirs of the deceased writ petitioner. They filed writ appeal against the order made in W.P.No.5718/2015. The Division Bench disposed of the Writ Appeal by observing at paragraph Nos.11 to 13 as follows:

11. Insofar as W.P.No.5553 of 2015 is concerned, no affidavit has been filed by the petitioner, therefore, the writ petition stands dismissed.

12. Insofar as W.P.No.5311 of 2015 is concerned, the 2nd respondent has taken a stand that stall awarded to the petitioner has already been closed and possession has been taken by the Railways few months back and the wife of the petitioner filed a impleading petition in W.P.No.5311 of 2015 and the procedure for transfer of license is governed by the Circular issued by the Railway Board and it can be transferred only for unexpired period of the license. Whereas, in the case of the petitioner, the license period of (5+3) eight years expired on 28.02.2015. In the light of the above, the prayer sought for having become infructuous, no further order can be passed. Accordingly, this writ petition is dismissed.

13. Insofar as W.P.No.5718 of 2015 is concerned,

the 2nd respondent submitted that the petitioner's licence expired on 11.04.2017 and the petitioner's son has filed an impleading petition in the writ petition. The license period of (5+3) eight years has expired on 28.02.2015. That apart, the prayer sought for in the writ petition having become infructuous, no further order can be passed in the writ petition. Accordingly, this writ petition is dismissed.

8. A careful perusal of the above observations made by the Division Bench would show that the legal heirs of the licensee are entitled to transfer of the license in their name, if the licensee expired before the expiry of the license period and if the period of license has expired already, then the legal heirs have no right to claim for transfer of the license in their name. Therefore, the Division has directed the Railway to see whether the period of the original license expired or not at the time of the death of the licensee namely, the petitioner's mother. The Railway has categorically found that the license period got expired on 28.02.2015 and the mother of the petitioner namely original licensee expired later on 11.04.2017. Therefore, it is evident that as on the date of the death of the petitioner's mother, there was no existing license. On the other hand, the license period got expired more than two years ago, namely on 28.02.2015 before her death. Learned counsel for the petitioner sought to contend that the period during which the writ petition was pending before this Court is to be considered as excluded from the duration of license. I do not think that the above submission is sustainable since neither the writ court nor the Division Bench has given any such observation. On the other hand, it is the categorical view of the Division Bench that the legal heirs of the licensee are entitled to transfer of the license only if the licensee expired before the expiry of the license period. As already stated supra, the licensee namely, the petitioner's mother expired two years after the expiry of the license period viz., 28.02.2015. Therefore, the impugned order was rightly passed, rejecting the request of the petitioner, with which, I find no infirmity or irregularity. Moreover, in this case, the license to the said stall has been granted subsequently, in favour of a third party, pursuant to a fresh tender notification issued on 15.05.2018. It is stated that the said successful bidder has come into picture from 31.08.2018. Under such circumstances, I find that the petitioner is not entitled to succeed in this writ petition as he has not made out any case for interfering with the impugned order. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

- 1.The Chief Commercial Manager,
Southern Railway, Park Town,
Chennai - 600 003.
 - 2.The Divisional Railway Manager,
Southern Railway,
Salem Division,
Salem - 636 005.
 - 3.The Senior Divisional Commercial Manager,
Southern Railway,
Salem Division,
Salem - 636 005.
 - 4.The General Manager,
Southern Railway,
Park Town,
Chennai - 600 003.
- +1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.21906
- +1cc to Mr.Christopher, Advocate, S.R.No.21363

Pre-delivery order made in
W.P.No.8419 of 2019
and
W.M.P. No.8941 of 2019

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