

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 8338 of 2020
Date of decision: 10.11.2020

205

Sanchit Gautam

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Alok Mittal, Advocate,
for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing order dated 27.09.2019 (Annexure P-8) whereby the application for grant of license under the Punjab Travel Professionals Regulation Act, 2014 (in short '2014 Act') and the Rules framed thereafter had been rejected. The appeal filed against the order dated 27.09.2019 has been dismissed vide order dated 18.03.2020 (Annexure P-10) by the Additional Chief Secretary, Government of Punjab by upholding the order.

Counsel for the petitioner has submitted that the order passed by the Appellate Authority is non-speaking in as much as apart from the reproduction of the order under appeal and recording the fact that the appellant had been provided opportunity of hearing, the issue has not been legally redressed and, therefore, the said order is liable to be set aside on

this ground itself.

Counsel for the State, on the other hand, has submitted that the rejection was on the ground that the appellant could not submit the registered rent deed while applying for the license and, therefore, the Deputy Commissioner, Jalandhar had rightly passed the order.

A perusal of the impugned order passed by the Deputy Commissioner, Jalandhar (Annexure P-8) would go on to show that what prevailed with the said authority was that Rule 4 provided that the proof of space/accommodation had to be shown by way of ownership or a rent deed which shall not be of less than a period of 3 years from the date of making an application for license under these Rules. It was accordingly noticed that a show cause notice had been issued to the petitioner after his application on 26.06.2019 (Annexure P-4) and he had submitted detailed reply on 15.07.2019 (Annexure P-5). However, the registered rent deed had not been furnished and, therefore, in view of the said Rules, the license was not liable to be granted. Opportunity was, thus, granted to make another application after removing the above mentioned defects.

Counsel has submitted that as per the requirement under Rule 3 (2)(ii) of the Punjab Travel Professionals Regulation Rules, 2013, an application for grant of license under Section 4 is to be accompanied by the documents for obtaining a license as specified in Form 1-A. It is his contention that as per Form 1-A(5), the proof of occupancy of business place is to be given by five documents, which could be copy of ownership of the accommodation; rent deed (if available), Certificate from bank-certifying holding of a current account and the business address on record; copy of registration under Shops and Establishments Act (if available) or

copy of utility bills (Electricity, telephone/broadband or property tax receipts). It is, thus, contended that in alternative, the proof of occupancy can be shown and once there was a copy of registration under the Shops and Establishments Act, 1958 available, the proviso of Rule 4 was not mandatory as such of providing a rent deed which should not be of less than a period of 3 years from the date of making of the application, as has been noticed by the authorities. It is further submitted that as per the first proviso of Rule 4(vii), the space and accommodation is also to be located in the commercial area of a city or a town and easily accessible to any person without difficulty and is also to be registered under the Punjab Shops and Commercial Establishments Act, 1958 (in short 'the 1958 Act').

Counsel for the State, on the other hand, has justified the orders on the ground that the purpose of having such condition is to ensure that there is stability as such for the grant of a license under the 2014 Act as a lot of unfair practice as such is committed by fly by night operators who do not have any set office leaving the applicants high and dry.

A perusal of the paper book would go on to show that while applying for the grant of license, affidavit dated 27.02.2019 had been given that the petitioner is the Managing Partner of a company namely M/s. Skyways International Travel Services located at 578-New Jawahar Nagar Market, Jalandhar since April, 2018. The show cause notice dated 26.06.2019 (Annexure P-4) had been issued regarding submission of rent deed and Form F and Form B as per the 1958 Act. Resultantly, the petitioner had replied to the said notice that he was in possession of the said premises since 1986 and his rights were protected under the Tenancy Act.

The police verification had also been done by the office in his favour and he

had also submitted Form F and B as per Rule 13 of the 1958 Act. Form F and B which have been attached as Annexure P-6 would go on to show that the postal address of the petitioner was shown as 578, New Jawahar Nagar Market, Jalandhar and it is the same address of the applicant wherein he wants to be licensed as a travel agent. Counsel has also referred to the statement of the landlord recorded by the police authorities verifying the office accommodation as per communication dated 27.09.2019 (Annexure P-2) to show that the shop is of 300 square feet and situated in a commercial area. The same shop was in occupation of Smt. Sushma Gautam, w/o Rajinder Kumar Gautam, mother of the petitioner, who was running a beauty parlour at earlier point of time. The relevant Sections and Rules read as under:-

“Section-3. Regulation of profession of a travel agent.- No person shall undertake the profession of a travel unless he obtains a license under and in accordance with the provisions of section 4 of this Act.

4. License.-(1) A person, desiring to undertake the profession of a travel agent or who is already in this profession on the commencement of this Act, shall make an application to the competent authority in such manner alongwith such fee and containing such documents as may be prescribed.

(2) If the competent authority is satisfied that the application made under sub-section (1) is in order, it shall issue a license under such terms and conditions and in such form as may be prescribed:

Provided that if the competent authority is satisfied that the particulars given in the application are incorrect or are incomplete or that any evidence or information required for issuing the license is not furnished, it may, after necessary inquiry and after

giving the applicant an opportunity of being heard, reject the application for the reasons, to be recorded in writing:

Provided further that the person, whose application has been rejected for grant of license, may make another application to the competent authority for grant of license after removing the defects pointed out by it.

(3) No license shall be issued to a person under sub-section (2), unless the particulars and documents given by him, in his application, are verified by the police.

(4) The validity of a license shall be for a period of five years, which shall be renewable for the said period in such manner, as may be prescribed.”

“Rule 3. Application for grant of license (1) A person, who desires to undertake the profession of a travel agent or consultancy or of a ticketing agent, as the case may, under these rules, or a person, who is already in any of the aforesaid professions on the date of-commencement of the Act, shall make an application to the competent authority in Form-I.

(2) A person making an application under sub-rule (1):-

(i) shall enclose in the shape of a Demand Draft in favour of the competent authority:-

[a fee of rupees one lac, for the firms, which are running travel agency or coaching institutions of IELTS or consultancy, for a period of more than five years:

Provided that the consultancy firm may either deposit the said amount of rupees one lac in one installment or in five equal installments;

(b) a fee of rupees twenty-five thousand, for the firms, which are running Travel Agency or Coaching Institutions of IELTS or Consultancy, for a period of

less than five years:

Provided that the Consultancy firm may either deposit the said amount of rupees twenty-five thousand in one installment or an amount of rupees ten thousand in first installment and the balance amount in four equal installments;

(c) a fee of rupees one lac for the Ticketing Agents, who are in the business of ticketing, for a period of more than five years:

Provided that the Ticketing Agents may either deposit the said amount of rupees one lac in one installment or in five equal installments:

Provided further that the Ticketing Agents, shall have to submit a monthly chart of the tickets sold by them, either on domestic or international airlines, on internet to the Deputy Commissioner concerned;

(d) a fee of rupees twenty- five thousand, for the Ticketing Agents, who are in the business of ticketing, for a period of less than five years:

Provided that the Ticketing Agents, may either deposit the said amount of rupees twenty-five thousand in one installment or ten thousand in first installment and the balance amount in four equal installments:

Provided further that the Ticketing Agents, shall have to submit a monthly chart of the tickets, sold by them, either on domestic or international airlines, on internet to the Deputy Commissioner concerned;

(e) a fee of rupees one lac for the firms, which are running the business of general sales agents, for a period of more than five years:

Provided that the said general sales agents, may either deposit the said amount of rupees one lac in one installment or in five equal installments; and

(f) a fee of rupees twenty-five thousand for the firms, which are running the business of general sales agents,

for a period of less than five years:

Provided that the said general sales agents, may either deposit the said amount of rupees twenty-five thousand, in one installment or ten thousand in first installment and the balance amount in four equal installments.]

[(ii) shall submit the documents, for obtaining a license, as specified in form 1-A.]

4. Issuance of license. - (1) *If the Competent Authority is satisfied with the information provided by the applicant, he shall issue a license in Form-II within a period of ninety days, subject to the following terms and conditions, namely:-*

That the applicant:-

(i) is a citizen of India:

Provided that a N.R.I may also make an application for obtaining a license under these rules, subject to the following conditions, in addition to the conditions specified below in clauses (ii) to (viii), namely:-

(a) give his Social Security Number issued by the country, where he has immigrated, duly authenticated by the competent authority of such country;

(b) give due permission issued by the country, where he has immigrated, for carrying out the profession of travel agency or consultancy in India under these rules; and

(c) give permission issued by the Reserve Bank of India, if such N.R.I, takes the remuneration received as fee from the persons to whom such N.R.I, has rendered service, outside the territory of India;

(ii) is not of unsound mind at the time of making application for issuance of a license under these rules;

(iii) is not insolvent or a bankrupt;

(iv) has no involvement in any crime as per police records;

(v) does not hold an office of profit either under the Government of India or any State Government;

(vi) has not been barred from carrying out this profession by any agency regulating this profession;

(vii) has adequate space/accommodation, which shall not be less than [100 sq.ft] of size, either owned or is taken on 'rent, by such person, as the case may be, to carry on the profession under these rules:

Provided that such space/accommodation shall be located in the commercial area of a city or town or any other such area, accessible to any person without any difficulty, who approaches for services under these rules:

Provided further that for proof of such space/accommodation, the person shall attach with his application the ownership proof of such space or a rent deed which 'shall not be less than for a period of three years from the date of making an application for license' under these rules, as the case may be:

Provided further that such space/accommodation, shall duly be registered under the Punjab Shops and Commercial Establishments Act, 1958 (Punjab Act No. 15 of 1958); and

(viii) does not fall in any of the conditions as specified in clauses (b) to (g) of sub-section (I) of section 6 of the Act.”

Form 1-A (5) read thus:-

**“5. Proof of Occupancy of business place
(copy of any one of the following)**

*(i) Copy of ownership of the
accommodation or*

(ii) rent deed (if available); or

*(iii) Certificate from bank - certifying
holding of a current account and the
business address on record; or*

- (iv) copy of registration under Shops and Establishments Act (if available); or
- (v) copy of utility bills,
 - (a) Electricity; or
 - (b) Telephone/broadband; or
 - (c) Property Tax Receipts.

Thus, a perusal of the above would go on to show that the Rules itself provide that the space and accommodation is located in the commercial area of the city and is to be accessible to persons and the third proviso provides that it is to be registered under the 1958 Act. The petitioner, thus, is apparently fulfilling the first and third proviso but does not fulfill the second proviso in the absence of the rent deed for a period of 3 years. The purpose of the said provisions as such is to ensure that the license holder is running from a premises which can be identified and is in a commercial area. It is not the case of the respondents that the applicant does not fulfill any of the other clauses of Rule 4(1) or that he is insolvent, bankrupt or involved in any crime or has been barred by any agency from regulating the provision. This aspect was sought to be highlighted in appeal before respondent no. 1, which would be clear from the perusal of the appeal (Annexure P-9). Form 1-A mentioned in Rule 3 also talks about the proof of occupancy of business by various modes whether it is ownership of accommodation or rent deed (if any). The Rules itself, thus, provide that it is optional if the rent deed is available when there are other proofs regarding the occupancy of business. In spite of these grounds which have been raised before the Appellate Authority, the same have not been considered and the said order can be said to be non-speaking to that extent which has already been noticed.

Accordingly, this Court is of the opinion that the order passed

by the Appellate Authority is not justified in the facts and circumstances and reconsideration of the issue is required by the said Appellate Authority. Resultantly, the writ petition is partly allowed to the extent that the appellate order dated 18.03.2020 (Annexure P-10) is quashed. The Appellate Authority shall decide the appeal afresh keeping in view the observations made hereunder. The needful be done within a period of 3 months from the date of receipt of certified copy of the order.

10.11.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No