IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.251

CWP-8176-2019 (O&M)

Reserved on : 11.10.2022

Pronounced on: 18.10.2022

Jagdish Singh and others ..... Petitioners

VERSUS

The Chandigarh Administration and others ..... Respondents

CWP-8981-2019 (O&M)

Kiran Kumar and others ..... Petitioners

VERSUS

The Chandigarh Administration and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Mansur Ali, Advocate and
Mr. Tushaar Madaan, Advocate
for the petitioners in both petitions.

Mr. Anil Mehta, Sr. Standing Counsel with
Ms. Madhu Dayal, Advocate and
Ms. Iravanneet Kaur, Advocate,
for respondents No.1 to 4 in both petitions.

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SUDHIR MITTAL, J.

The petitioners are operating taxi stands in various sectors of the City Beautiful. For the said purpose, licenses have been issued in the year 2003 under the signatures of Additional Commissioner, Municipal Corporation, Chandigarh. The license was for a period of 03 years. It appears that the said licenses were extended from time to time. New terms and conditions were prescribed w.e.f. 22.03.2012, copy of which is annexed as Annexure P-3. License fee was also increased and allegedly, the petitioners started paying the enhanced fee. In the year 2012, some of the licenses were cancelled and this action was challenged by filing CWP-4722-2013 titled as Jagdish Singh Vs. Chandigarh Administration and others & connected cases. The same were disposed of vide order dated 15.07.2013 as an affidavit dated 12.07.2013 was filed by the Commissioner, Municipal Corporation, Chandigarh stating that *status quo* regarding the cancellation order would be maintained and the taxi stand operators would be permitted to make representations before a Committee to be constituted. No further action was taken for 05 long years. On 01.01.2018, a communication was issued to the taxi stand operators that taxi stands would be allotted through E-tenders to be invited and that the licensees would be permitted to operate their taxi stands only for another 03 months. The petitioners, accordingly, submitted a representation, copy Annexure P-8, to the local Member of Parliament. On 20.08.2018, a communication was issued to one of the petitioners stating that the Municipal Corporation, Chandigarh had resolved not to resort to E-tendering and that a Committee would be constituted to frame a new policy. This was followed by communication dated 29.01.2019 in which reference was made to the 265th Meeting of the General House of the Municipal Corporation, Chandigarh held on 20.12.2018 resolving to continue with the allotment of taxi stands to the operators on existing terms and conditions subject to revision of monthly license fee. Accordingly, consent was demanded within 15 days from the issuance of the letter failing which E-auction would be resorted to in respect of the taxi stand the operator of which failed to submit consent/undertaking. These notices are under challenge in the present writ petition.

Learned counsel for the petitioners has argued that according to the Section 43 of the Punjab Municipal Corporation Act, 1976 (as extended to Chandigarh) (hereinafter referred to as the Act), the Municipal Government vests in the Corporation subject to the provisions of the Act & Rules, Regulations and Bye-Laws made thereunder. Section 357 (2) thereof stipulates that a fee may be charged for a license at such rates as may be fixed by the Commissioner with the sanction of the Corporation. Rates have been fixed by the General House of the Municipal Corporation, Chandigarh in its 265th Meeting held on 20.12.2018 as is evident from communication dated 29.01.2019 and the same have been communicated under signature of the Additional Commissioner-II of the Corporation. Thus, the said Resolution is without jurisdiction and communication dated 29.01.2019 (Annexure P-10) is illegal. The same may, accordingly, be quashed.

Learned counsel for the respondents has submitted that jurisdiction to fix the fee lies with the Municipal Corporation, Chandigarh and thus, the impugned Resolution cannot be termed to be without jurisdiction.

Thus, the dispute revolves around interpretation of Section 357 of the Act. The same is reproduced below for ready reference:-

‘357. Signature, conditions, duration, suspension, revocation, etc., of licenses and written permissions. - (1) Whenever it is provided in this Act or any bye-law made thereunder that a licence or a written permission may be granted for any purpose, such license or written permission shall be signed by the Commissioner or by the officer empowered to grant the same under this Act or the bye-laws made thereunder or by any Corporation Officer authorised by the Commissioner or such officer in this behalf and shall specify in addition to any other matter required to be specified under any other provision of this Act or any provision of any bye-law made thereunder-

(a) the date of the grant thereof ;

(b) the purpose and the period (if any) for which it is granted ;

(c) restrictions or conditions, if any, subject to which it is granted ;

(d) the name and address of the person to whom it is granted ; and

(e) the fee, if any, paid for the licence or written permission.

(2) Except as otherwise provided in this Act or any bye-law made thereunder, for every such licence or written permission a fee may be charged at such rate as may from time to time be fixed by the Commissioner with the sanction of the Corporation and such fee shall be payable by the person to whom the licence or written permission is granted.

(3) Save as otherwise provided in this Act or any bye-law made thereunder any licence or written permission granted under this Act or any bye-law made thereunder may at any time be suspended or revoked by the Commissioner or by the officer by whom it was granted, if he is satisfied that it has been secured by the grantee through misrepresentation or fraud or if any of its restrictions or conditions has

been infringed or evaded by the grantee, or if the grantee has been convicted for the contravention of any of the provisions of this Act or any bye-law made thereunder relating to any matter for which the licence or permission has been granted :

Provided that-

(a) before making any order of suspension or revocation reasonable opportunity should be afforded to the grantee of the license or the written permission to show cause why it should not be suspended or revoked;

(b) every such order shall contain a brief statement of the reasons for the suspension or revocation of the licence or the written permission.

(4) When any such licence or written permission is suspended or revoked or when the period for which the same was granted has expired, the grantee shall, for all purposes of this Act or any bye-law made thereunder, the deemed to be without a licence or written permission until such time as the order suspending or revoking the licence or written permission is rescinded or until the licence or written permission is renewed.

(5) Every grantee of any licence or written permission granted under this Act shall at all reasonable times, while such licence or written permission remains in force if so required by the Commissioner or the authority by whom it was granted, produce such licence or written permission.'

Sub-section 1 of the aforementioned provision states that a licence shall be signed by the Commissioner or Officer empowered under the Act/Bye-Laws made thereunder, or by an Officer authorized by the Commissioner/Authorized Officer. Sub-section 2 prescribes that rate of licence fee may be fixed by the Commissioner with the sanction of the Corporation. The licence can be cancelled or suspended under sub-section 3 by the Commissioner/Authorized Officer, if, the Officer is satisfied that a term/condition of the licence has been infringed or fraud has been practiced/licencee had been convicted for violating the provisions of the Act or Bye-Laws made thereunder. Sub-section 4 provides for consequences of suspension/cancellation of the licence and sub-section 5 makes it incumbent upon the licensee to produce the licence on demand.

It is not in dispute that Municipal Government vests in the Corporation. Section 399 confers powers on the Corporation to make Bye-Laws and sub-section (1) J (6) authorizes framing of bye-laws for any matter in respect of which the Act makes no specific provision. No specific bye-laws have been brought to the notice of the Court regarding fixation of licence fee for operating taxi stands. Even though, the bye-laws may not have been framed, the jurisdiction for the purpose undoubtedly vests with the Corporation. Thus, whether the Corporation approves the rates after they are recommended by the Commissioner or otherwise, the Resolution dated 20.12.2018 cannot be held to be without jurisdiction. Jurisdiction vests by virtue of the statute and not by virtue of manner of doing an act. Interpreting Section 357 (2) of the Act as suggested by learned counsel for the petitioners would imply that the Corporation is divested off its jurisdiction simply because the Commissioner has not made a recommendation for its sanction. Such an interpretation would be absurd and an interpretation resulting in absurdity cannot be adopted.

In view of above, the writ petitions have no merit and are dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

A photocopy of this order be placed on the file(s) of the other connected case(s).

(SUDHIR MITTAL)
JUDGE

18.10.2022
Ramandeep Singh

Whether speaking / reasoned Yes

Whether Reportable Yes