2022:PHHC:173517-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
114

LPA-1002-2022 &
CM-2401-LPA-2022 &
CM-2402-LPA-2022

Date of decision: 15.11.2022

JAGDISH SINGH & ORS

.....APPELLANTS

Versus

THE CHANDIGARH ADMINISTRATION AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Mansur Ali, Advocate,
and Mr. Imran Ali, Advocate,
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J.

CM-2401-LPA-2022

C.M. is allowed subject to just exceptions. Filing of certified copy of impugned order dated 18.10.2022 passed by the Single Judge is dispensed with.

LPA-1002-2022

This Intra-Court appeal has been preferred by the appellants challenging the order dated 18.10.2022 passed by the learned Single Judge, vide which the writ petition preferred by the appellants/petitioners assailing the Notices dated 29.01.2019 (Annexure P-10 Colly.) served upon the appellants in pursuance to and on the basis of the decision taken by the Municipal Corporation, Chandigarh in its 265th Meeting dated 20.12.2018, has been dismissed.

Notice of motion.

Mr. Anil Mehta, Senior Standing Counsel along with Ms. Madhu Dayal and Ms. Irvanneet Kaur, Advocates, accept notice on behalf of the respondents.

Caveat discharged.

2. Learned counsel for the appellants, while assailing the judgment passed by the learned Single Judge, has submitted that the learned Single Judge has not taken into consideration the statutory provisions, as contained in Section 357 (2) of the Punjab Municipal Corporation Act, 1976 (as applicable to Chandigarh) (hereinafter referred to as '1976 Act'), which although confers powers upon the Commissioner to fix the fee to be charged for issuance of a license or written permission but the same has to be approved and sanctioned by the Corporation rather it is the Corporation which has fixed the fee by passing a resolution and sent the same to the Commissioner for compliance. He, on this basis, contends that the cart has been put before the horse, which is not permissible in law.

3. It is further submission of the learned counsel for the appellants that the decision, which has been taken earlier by the Municipal Corporation, was that there would be no e-auction of the taxi stands. Decision was also taken that preference will be given to the earlier taxi stand operators. The rates, which have been fixed of the taxi stands at the enhanced amount, are also excessive, which are not sustainable and above-all, it has been stated that if the consent is not given by any taxi stand

operator, the said taxi stand would be put to e-auction, which would amount to implementing a decision, which is contrary to the earlier decision of the Corporation, which is unsustainable. He, on this basis, contends that the impugned judgment passed by the learned Single Judge cannot sustain and deserves to be set aside.

4. Learned counsel for the respondents has referred to the reply, which has been filed to the writ petition, to contend that the Municipal Corporation is the final authority within the domain, as has been provided under the Statute. Referring to the contention of the learned counsel for the appellants on facts relating to the decision of the General House dated 24.05.2018 (Annexure R-11), wherein the House had resolved that there would be no e-tendering for allotment of taxi stands and a Committee be constituted to frame new policy keeping in view that the present taxi-stand operators be given preference. It is, thus, contended that it was not a blanket decision that there would be no e-tendering for allotment of taxi stands, rather the decision was kept in abeyance for framing a new policy.

5. In pursuance to the decision of the House, referred to above, it is contended that a Committee of Joint Commissioner, Superintending Engineer (B&R), Chief Accounts Officer, Law Officer and SDE (Parking) was constituted, which held its meeting on 14.08.2018, wherein a decision was taken for directing the Executive Engineer to conduct survey of illegal taxi stands. During the said meeting, the Committee fixed the reserved price/license fee for allotment of taxi stands with a proposal to increase the license fee @10% per annum. It was further recommended that consent be taken from all the taxi stand operators to continue with the running of the said taxi stands at the rates, as may be fixed, and in case, the taxi stand

operators fail to deposit their dues, the taxi stand be allotted through e-tendering. The rates were fixed as per the area of taxi stand. This recommendation of the Committee was put up before the General House of the Municipal Corporation, Chandigarh in its 265th meeting held on 20.12.2018, which was duly approved and it is in pursuance thereto that the Notices/Letters dated 29.01.2019 were issued to all license holders of the taxi stands.

6. As per Ms. Madhu Dayal, learned counsel for the respondents, 9 licensees have already submitted their undertaking/consent as per the increased rate of the General House on different dates. Out of the remaining 54 licensees, only 6 have challenged these letters. She contends that the terms and conditions of the allotment have not been changed except for the increase of license fee, which too has been done after a period of almost 7 years as the earlier license fee has been decided in the year 2012. She further contends that the amount to be fixed for the license fee is purely an administrative and executive decision, which may not be interfered with by the Court while exercising its power of judicial review. Assertion has also been made that the resolution passed by the General House of the Municipal Corporation dated 20.12.2018 in its 265th meeting, as such, has not been challenged and, therefore, the consequential Notices also cannot be challenged.

7. Learned counsel for the respondents, with reference to Section 357 (2) of the 1976 Act, contend that the requirement of the Statute has been fulfilled as the earlier proposal, which has been put forth by the Commissioner, relating to the increase in fee and the holding of e-tendering for allotment of taxi stands was under consideration and it is in pursuance

thereto that a final decision has been taken by the Municipal Corporation, which is the decision of the Corporation and the same is being implemented vide the impugned Notices. Counsel has submitted that there are no bye-laws specifically dealing with the aspect of fixation of fee except for the power given by the Commissioner to fix such fee with the sanction of the Corporation. She contends that the final decision, therefore, has to be of the Corporation which the Corporation has exercised vide its resolution dated 20.12.2018 passed in its 265th meeting. It is contended by her that the judgment passed by the learned Single Judge being in accordance with law does not call for any interference.

8. The original records have been produced by the counsel for the respondents. We have gone through the same with the assistance of the counsel for the respondents and on considering the submissions made by the counsel for the parties, we do not find any ground for interfering with the judgment passed by the learned Single Judge, which has been impugned.

9. The issue involved in this case revolves around the powers of the Commissioner, as provided for under Section 357 of the 1976 Act. Section 357 (1) deals with the authority which is entitled for issuance of a license or written permission, which is the Commissioner or the officer empowered under the Act or the bye-laws made thereunder or any Corporation officer authorized by the Commissioner or such person, as may be additionally specified. Sub-section (2) of Section 357 prescribed the rate of license fee which is to be fixed by the Commissioner with the sanction of the Corporation. Sub-section (3) of Section 357 specifies the officers who can cancel the license or suspend the same upon certain contingencies whereas sub-section (4) gives consequence of such cancellation/suspension

of license. Sub-section (5) mandates a licensee to produce the same when called upon to do so. For the purpose of the present case, therefore, Section 357 (2) would be essential which deals with the rate to be charged as may be fixed by the Commissioner as fee for issuance of a license or written permission with the sanction of the Corporation.

10. What has been asserted by the learned counsel for the appellants is that it is the Commissioner who fixes the fee which is to be charged or also rate and it is thereafter that the sanction has to be granted by the Corporation. The Corporation, as such, cannot fix the fee or the rate thereof without there being any initiation from the Commissioner nor can the Corporation, on its own, fix such fee to be charged and at what rate.

This contention of the learned counsel for the appellants is unsustainable in the light of the language, as has been used in the statutory provisions i.e. Section 357 (2), which reads as follows:-

> "(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."

The above sub-section (2) makes it amply clear that the fee to be charged and the rate would be fixed by the Commissioner, as may be fixed from time to time but the same is governed by the term 'with the sanction of the Corporation'. The final authority, thus, would be the Corporation.

11. It is not in dispute that the Municipal Government vests in the

Corporation and the powers under Section 399 are conferred upon it to make bye-laws for any matter in respect of which, the Act makes no specific provision. Reference in this regard can be made to sub-section (1) J (6) of Section 399 of the Act.

12. It is an admitted position that no specific bye-laws have been framed by the Municipal Corporation for fixation of license fee for operating taxi stands. The power, therefore, where there are no bye-laws framed, vests with the Corporation. Had the bye-laws been framed, those would have been the guiding principles but in the absence thereof, it cannot be said that the Corporation has no power to proceed to fix license fee for operating taxi stands.

13. Sub-section (2) of Section 357 does confer power to fix fee to be charged as also the rate, at which it has to be charged upon the Commissioner but it further says that it is after the sanction of the Corporation. Mere fixing of the fee or the rate by the Commissioner *ipso facto* would not entail or fulfil the mandate of the Statute unless it is sanctioned by the Corporation. The sanction thereof by the Corporation is mandatory. The final authority, therefore, would be the Corporation and not the Commissioner. This would also mean that the Corporation would have the power to impose license fee/written permission as the Corporation has the overall powers to levy such fee which may not be specified under the Statute when there is no specific provision provided under the Act. The intent of the legislature was to confer the power on the Commissioner to make a recommendation to the Corporation with regard to the rate and nothing beyond that, which may be fixed and sanctioned by the Corporation alone. The Commissioner, therefore, acts as an advisor to the Corporation,

which is the final authority, in which all powers are conferred under the Statute.

14. Learned Single Judge was right in observing that the jurisdiction vests by virtue of the statute and not by virtue of a manner of doing a particular act. Section 357 (2) of the Act does not, in any way or manner, divest the jurisdiction of the Corporation to fix the fee for the license or written permission nor is it couched in such a manner which would mandate that it is the Commissioner and Commissioner alone who would fix the fee and the rate to be charged and thereafter, the Corporation would act as a sanctioning authority.

15. This interpretation, as is being sought to be projected by the learned counsel for the appellants, is unsustainable and nor was it the intention of the legislature. The reason, as to why such a language has been used by the legislature, is that the benefit of the advice/recommendation of the Commissioner can be taken note of. In any case, as is apparent from the reply which has been filed by the respondent-Corporation, the Corporation has not taken a decision that there would be no e-auction, rather what was stated was for framing a new policy by giving preference to the taxi stand operators in allotment of the taxi stands, which aspect has been taken care of when the recommendation of the Committee, so constituted, was put up before the Municipal Corporation, Chandigarh in its 265th meeting held on 20.12.2018, which recommendation was accepted by the resolution of the Corporation where apart from increase in the rate, the other conditions were also imposed.

With the power being duly conferred upon the Municipal Corporation in this regard, the decision of the Municipal Corporation cannot be faulted with both on jurisdiction as well as on the procedural aspect especially when the resolution passed by the Municipal Corporation on 20.12.2018 is not under challenge in the writ petition preferred by the appellants.

16. In view of the above, the present appeal stands dismissed.

CM-2402-LPA-2022

In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

15.11.2022 **(VIKRAM AGGARWAL)**
PJ **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*