

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10115 OF 2021

Narendra Hiralal Kadam,
Age 48 years, Occ. Business,
R/o. Shahada, Tq. Shahada,
Dist. Nandurbar.

... **Petitioner.**

VERSUS

- 1) State of Maharashtra,
Through its Secretary
Department of Transport,
Mantralaya, Mumbai.
- 2) Maharashtra State Road Transport
Corporation, through General
Manager (Planning and Marketing),
Central Office, Maharashtra Vahatuk
Bhavan, Anandrao Nayar Marg,
Mumbai-08.
- 3) Divisional Controller,
Maharashtra State Road Transport
Corporation, Dhule Division, Dhule.
- 4) Depot Manager,
Shahada Depot, M.S.R.T.C.
Shahada, Tq. Shahada, Dist.
Nandurbar.

... **Respondents.**

...

Advocate for the Petitioner : Mr. S.V. Natu.

A.G.P. for the respondent No. 1 : Mr. P. K. Lakhotiya

Advocate for Respondent Nos. 2 to 4 : Mr. A.M. Reddy h/f Mr.B.S. Deshmukh

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 21.02.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. The Rule is made returnable forthwith. The learned A.G.P. waives service for the respondent No. 1 and the learned advocate Mr. Reddy waives service for respondent No. 2 to 4.

2. As the petition was originally filed, the petitioner who was running a canteen in the premises of respondent No. 2-Maharashtra State Road Transport Corporation (Corporation) in its bus stand at Shahada, which was extended from time to time till 30.09.2018 had sought its extension by another 14 years in view of its policy dated 20.09.2019. During pendency of the petition, his request was rejected by the impugned communication dated 04.08.2022. By way of amendment he has also challenged that communication/order.

3. Mr. Natu learned advocate for the petitioner would vehemently submit that the petitioner was not seeking any extraordinary relief. Since the Corporation was trying to evict him without following due process, he had filed Regular Civil Suit No. 90/2018. His application for temporary injunction was rejected by the trial court. He preferred a Misc. Civil Appeal challenging that order. While the appeal being pending, the respondent-Corporation sealed the premises on 22.07.2009. While allowing the appeal partly, by the order dated 08.08.2019, the District Court had remanded the matter for decision afresh on the application for temporary injunction and further granted *status quo ante*. The respondent-Corporation has challenged that order in Writ Petition No. 13165/2019.

4. He would submit that the respondent-Corporation had taken a conscious decision to grant extension for a period of 14 years to all the commercial licence holders operating within its premises throughout the State except couple of businesses like pan stalls, sugarcane juice vendors etc. It was to be granted initially for nine years and on satisfactory completion of the period it was to be extended by five years. It was also resolved that wherever the litigation was pending or there was a default in payment of dues such extension would be granted after withdrawal of the suit or clearance of the dues. Accordingly, the petitioner applied for the benefit. He was also called upon for discussion, undertook to withdraw the suit and requested for extension. In spite of his persuasion nothing was coming forth

from the respondents and the petition was filed.

5. Subsequently, under the pretext that the petitioner's licence had expired in 2018 and on the ground that his establishment was already closed and was not functioning, by the impugned communication his application was rejected. The decision is illegal, arbitrary and discriminatory. Similarly placed person who was running an establishment in Solapur division whose term had also expired and who had also filed a legal proceeding seeking injunction was subsequently granted the benefit of the scheme. There is violation of Article 14 of the Constitution.

6. The learned advocate Mr. Reddy for the respondent-Corporation referring to the affidavit in reply filed on behalf of the respondent Nos. 2 to 4 would submit that the petitioner's licence had expired in the year 2018. There was no agreement between the parties for its continuation, still he filed a suit. His application for injunction was rejected and still he was holding over possession and the respondents had to take over possession of the demised premises on 22.07.2019. He would submit that it is thereafter that a policy had come into being on 20.09.2019. It was applicable only to the then existing and functioning establishments. Since the petitioner's establishment was already closed and even possession was taken over he was rightly declined any benefit.

7. He would also submit that the petitioner has not been discriminated. The other establishments which were granted extension were functioning and were not dispossessed like the petitioner. He would submit that as per the policy of the respondent-Corporation auction process would be conducted for allotment of the premises at Shahada and the petitioner can opt for it.

8. We have considered the papers and the rival submissions. As it emerges from rival stands and the facts which stand admitted, the petitioner is being deprived of the benefit of a scheme of the respondent-Corporation

regarding extension on the sole ground that his establishment was not functioning when the policy had come into being. Pertinently, there is no other reason or ground mentioned by the respondents to deprive him the benefit of a policy decision which enables an establishment to continue the licence for a further period of 14 years. We are, therefore, called upon to consider the petitioner's entitlement to the benefit of the scheme.

9. Apart from the copies of the scheme placed on record, no dispute has been raised about the fact that even in respect of the establishments whose licence had expired have been made entitled to renewal of the licence provided their establishments are running. Even where the licencees have filed suits or were in arrears of the licence fees have been made entitled to its benefit provided they withdraw the suits or clear the arrears.

10. Conspicuously, the policy decision so far as the stipulation regarding pendency of suit is concerned is not clear and specific restricting its scope to a suit expressly praying for extension of tenure of the licence/renewal of licence.

11. There is no dispute about the fact that the petitioner had filed a suit and though temporary injunction was refused by the trial court, his appeal was allowed albeit remanding the matter for decision of his application for temporary injunction (Exh. 5) afresh. More importantly, the fact of petitioner's dispossession in the meantime was also brought to the notice of the appellate court which *inter alia* also directed the possession of the premises to be restored so as to bring about the *status quo ante*. Though, admittedly, the respondent Nos. 2 to 4 have challenged that order in this Court, nothing is brought on record to demonstrate that its operation was stayed. Therefore, though the respondent-Corporation was in *de facto* possession one will have to assume that the *de jure* possession vests with the petitioner. At least this could not have been taken benefit of by the respondents-Corporation to deprive him of the benefit of its policy regarding

renewal of licences.

12. Admittedly, there is at least one instance of one Arun Prabhakar Gandewar who was running a canteen in the premises of the respondent-Corporation at Vairag District Solapur whose licence had expired but he had filed a suit against the Corporation and was held to be entitled to the benefit of its policy dated 30.08.2019 with a condition that he would withdraw the proceeding. If such is the state of affairs, it would indeed be discriminatory to deprive the petitioner of the benefit of the very same policy merely because during pendency of the suit he has been dispossessed and in spite of a direction of the appellate court to restore the possession it was not restored to him. It is clearly violative of Article 4 of the Constitution.

13. Perhaps in order to obviate any further objection, the petitioner has already withdrawn the suit.

14. The writ petition is allowed. The impugned communication dated 04.08.2022 is quashed and set aside. The respondent Nos. 2 to 4 are directed to consider the petitioner's case afresh for extension of the benefit of policy dated 20.09.2019 but shall not reject it on the ground that his establishment was not running/functioning as on the date on which the policy dated 20.09.2019 came into being. The decision shall be taken as expeditiously as possible and in any event within four weeks from today.

15. The rule is made absolute in above terms.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-