

The Punjab
National Bank,
Ltd.
v.
Kirpa Ram
and others
—
Falshaw, J.

if in the figures shown in the bank's account books the value of the securities is found to be greater than the amounts advanced as loans, at the time when dealings ceased, it does not necessarily follow that the plaintiffs will be entitled to recover the difference. Obviously before the differences are calculated, the Court will have to decide such questions as what is bank's liability under the contract between the parties, and in the light of other circumstances, even if the goods pledged by the plaintiffs have been destroyed or looted during the rioting of 1947, or merely seized as evacuee property by the Pakistan authorities. In these circumstances I am somewhat surprised that the bank attaches such importance to upsetting the bare finding that suits lie in the present form. I accordingly dismiss both the appeals and leave the parties to bear their own costs in this Court.

CIVIL WRIT

Before Falshaw, J.

MESSRS. KALYAN SINGH NAND KUMAR,—*Petitioner*

versus

THE DIRECTOR, CIVIL SUPPLIES (GENERAL),—
Respondent

Civil Writ No. 82-D of 1953

1953
—
Dec. 11th

Constitution of India—Article 226—Disputed questions of fact—High Court whether will investigate—Licence—Cancellation—Whether can only be cancelled for good and proved reasons—Rule whether also applies to licences to deal in scarce and controlled commodities.

Held, that in a petition under article 226 of the Constitution it is obviously impossible for the Court to investigate disputed questions of fact.

Held also, that totally different considerations arise in the case of licences to deal in scarce and controlled commodities from those which arise to the routine licensing of vehicles for public conveyance. For one thing licences regarding such vehicles are no more than certificates of fitness issued regarding the vehicles themselves, which may be driven or pulled by different persons from time to time, and some care is taken in choosing persons to whom licences

should be issued for plying such vehicles. Obviously in the case of such commodities as cement and steel, with regard to which black-market activities are notorious, some regard has to be paid to the reputation of persons or firms who apply for these licences, and a suspicion of black-market activities is a sufficient ground for suspending or refusing to issue a licence.

Petition under Article 226 of the Constitution of India praying :—

- (i) *That a writ in the nature of mandamus be issued directing the respondent to take all necessary steps to enable the petitioner firm to apply for a licence and to obtain a licence to carry on business in indigenous cement according to the provisions of the Delhi Cement Control Order, 1953, and that the respondent should further be directed to grant the petitioner firm a licence in accordance with law.*
- (ii) *That such other appropriate writ and directions be issued as this Hon'ble Court may deem fit.*
- (iii) *That the petitioner firm may be awarded costs of this petition.*

A. N. GROVER, for—Petitioner.

BISHAMBAR DAYAL, for—Respondent.

ORDER

FALSHAW, J. This is a petition under Article 226 of the Constitution by the firm Messrs. Kalyan Singh-Nand Kumar Jain praying for an order by way of mandamus to the respondent, the Director of Civil Supplies (General) of Delhi, directing him to enable the petitioner firm to apply for a licence to deal in cement.

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The case of the petitioner is that the firm for some years held a licence issued by the respondent under the Delhi Cement Control Order of 1950, for dealing in cement, the last licence issued to the firm being valid up to the 15th of March 1953. Owing to certain events in December, 1952, however, an order was passed on the 16th of January 1953, suspending the licence, which was later cancelled by an order, dated the 14th of April 1953. The petitioner firm was not even permitted, when it tried to apply for a licence for 1953-54, to make

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the deposit of Rs. 25 in the treasury which is a necessary accompaniment of an application for a licence. The main burden of the petition appears to be that, whether the respondent in his discretion may refuse to issue a licence to the petitioner or not, he is at any rate bound to allow the petitioner facilities for filing his application for a licence.

Such a prayer seems to me to be almost meaningless, since it would be quite useless for this Court to issue an order such as is prayed for by the petitioner if the respondent will thereafter still be entitled to reject the application, and be justified in so doing. It is, therefore, necessary to examine the grounds on which the previous licence was cancelled and the petitioner's application for a fresh licence for 1953-54 not even entertained.

The petitioner's version of the facts is that in consequence of a statement made by the man named Krishan Kumar, who has nothing to do with the petitioner's firm, in connection with some criminal proceedings, the Police raided the godowns of the petitioner firm on the 28th of December 1952, and this was followed by a visit on the 29th of December by the Police accompanied by two Inspectors of the Civil Supplies Department. These raids revealed an alleged shortage of 151 bags in the stock of cement which the petitioner firm ought to have had in its godowns, the apparent inference from this being that the petitioner firm was selling cement in the black market. The petitioner alleges that in fact there was no shortage and that the Police and Officers of the Department only inspected two out of four godowns belonging to the firm, and if they had inspected all the godowns, they would have found the other bags of cement which were alleged to be missing. It was further alleged that in fact in due course persons holding permits issued by the Department were given quantities of cement which must have come out of the alleged missing bags.

On the other hand it is alleged in the written statement of the respondent, the correctness of which is vouched for by Mr. N. Kaul, Deputy Director of Civil Supplies, that the Police and the Officers of the Department sealed and checked all those godowns in which the petitioner firm was permitted with the approval of the Department to store the cement in which it was dealing and that at the time of the visit of the Inspectors of the Department no suggestion was made by the petitioner that the firm kept any cement stored in any other godowns, and it was also alleged that this plea was only raised by the petitioner after the order of the Department suspending his licence had been communicated to him. The allegation that there could not have been any shortage because the petitioner firm was able to honour all the permits issued by the Department was met by the suggestion that the firm had subsequently obtained the necessary cement from elsewhere.

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In a petition of this kind it is obviously impossible for the Court to investigate fully disputed questions of fact such as arise on the allegations of the parties in this case, but I must say that on the whole I prefer the version of the respondent to that of the petitioner, and as long as the issuing of a licence is a matter of discretion, I consider that the department is entitled to refuse to issue a licence to a dealer who is even only suspected to have indulged in back-market sales in the past without conclusive proof on the point.

The learned counsel for the petitioner has contended that even where the issue of a licence is discretionary, the authority concerned should ordinarily issue a licence and should only refuse it for good and proved reasons. The cases he has relied on, however, do not seem to me to advance his argument very much. The first is *Gell v. Taja Noora* (1), in which the Commissioner of Police of Bombay was empowered to grant licences for public conveyances, and he had approved of a certain pattern of victoria carriage and refused to

(1) I.L.R. 27 Bom. 307

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license victorias which did not conform to that pattern. It was held by Batty and Sterling, JJ., that the discretion to issue licences was not absolute and was one which had to be exercised in each case after he had made himself acquainted with the particular conveyance to be licensed and considered whether it, as an individual carriage, was fit for the conveyance of the public. His refusal to issue certain licences was, therefore, held to be illegal and he was ordered to issue the licences. The other case, *Devareddy Paddayah v. Commissioner of Police, Rangoon* (1) also deals with licensing of vehicles, in this case rickshaws. Here again the Commissioner of Police had issued a general order about not licensing old rickshaws, and it was held that before refusing a licence he must see whether a particular vehicle was fit for use or not. The reason for which I do not think that these cases help the arguments very much is that in my opinion totally different considerations arise in the case of licences to deal in scarce and controlled commodities from those which arise in the routine licensing of vehicles for public conveyance. For one thing licences regarding such vehicles are no more than certificates of fitness issued regarding the vehicles themselves, which may be driven or pulled by different persons from time to time, and I can well imagine that with regard to public vehicles some care is taken in choosing persons to whom licences should be issued for plying such vehicles. Obviously in the case of such commodities as cement and steel, with regard to which black-market activities are notorious, some regard has to be paid to the reputation of persons or firms who apply for these licences, and as I have said a suspicion of black-market activities is a sufficient ground for suspending or refusing to issue a licence.

In these circumstances it would obviously be quite useless to grant the petitioner an order directing the respondent simply to allow him to file an application and deposit the Rs. 25 if the

(1) A.I.R. 1933Rang. 37

licence sought for is thereafter going to be justifiably refused. I accordingly dismiss the petition, but since on the technical matter of the order prayed for the petitioner might have succeeded, I order that the parties shall bear their own costs.

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APPELLATE CIVIL

Falshaw, J.

Before Bhandari, C.J.

MUNICIPAL COMMITTEE, DELHI,—Appellant

versus

JANKI DASS,—Plaintiff-Respondent

Regular Second Appeal No. 26-D of 1952

1953

Dec. 14th

Punjab Municipal Act (III of 1911) Section 195—Expression “erect” or “re-erect” meaning of—Replacement of a tin roof by a pucca structure, whether offends section 195 of the Act.

Held, that the mere re-roofing a building cannot be said to fall within the ambit of the expression “erect or re-erect any building” unless the premises are materially altered or enlarged. The replacement of a tin roof by a pucca structure does not amount to erection or re-erection of the building and does not offend section 195 of the Act.

Second Appeal from the decree of Shri Tek Chand Vijn, Senior Sub-Judge with enhanced appellate powers Delhi, dated the 22nd day of November 1951, affirming that of Shri Ram Lal, Sub-Judge, Ist Class, Delhi, dated the 15th January 1951, granting the plaintiff a decree for a permanent injunction restraining the defendant from demolishing the roof of the barsati and dismissing the plaintiff's suit with regard to the staircase and leaving the parties to bear their own costs throughout.

BISHAN NARAIN, for—Appellant.

PARKASH CHANDAR, for—Respondent.

JUDGMENT

A. N. BHANDARI, C. J. This second appeal raises the question whether roofing or re-roofing of a

A. N. Bhandari,
C. J.