

(1953) 11 AHC CK 0021

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 873 of 1953

Mohammad Yasin

APPELLANT

Vs

The Dist. Magistrate, Kanpur and
Another

RESPONDENT

Date of Decision: Nov. 18, 1953

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 226

Citation: AIR 1954 All 317

Hon'ble Judges: Sapru, J; Mootham, J

Bench: Division Bench

Advocate: Mirza Hameedullah Beg, for the Appellant;

Final Decision: Dismissed

Judgement

Mootham, J.

This is a petition under Article 226 of the Constitution which, in my opinion, is misconceived. The petitioner is a petition-writer who held a licence Issued by the Collector of Kanpur which permitted him to exercise his profession within the Collectorate at Kanpur. For this licence the petitioner made a quarterly payment of five rupees. Suspicion arose earlier in the year that the petitioner had been responsible for the typing of an anonymous letter addressed to the District and Sessions Judge, Kanpur. An enquiry of some kind was held and on the 1st September, 1953, the petitioner's licence as a petition-writer was cancelled by an order which reads as follows :

"The typing licence No. 17 issued to Sri Mohammad Yasin, a typist of the Collectorate Court Compound, Kanpur, has been cancelled for a period of five years with effect from 26-8-1953 for having worked in an objectionable manner. No application or papers written by him should be entertained in any court."

2. The petitioner has come to this Court from which he seeks a writ in the nature of "certiorari" to quash this order of the 1st September. He claims that he has a fundamental right to carry on his profession of petition-writer in the Collectorate compound and that his licence can be cancelled only upon proof of the contravention of one of the conditions subject to which it was issued.

3. Sri Hamid Ullah Beg, who has strenuously argued the case for the petitioner, has however been wholly unable to satisfy me that the petitioner has any legal right, let alone a fundamental right, to carry on his profession or business in the Collectorate compound.

The petitioner's case is I think wholly distinguishable from that of a person who is required by law to obtain a licence as a condition of carrying on his business or profession at all. Where the law lays down that a particular occupation cannot be carried on save under a licence, then the withdrawal of a licence has the obvious consequences of wholly preventing the person concerned from carrying on that business, and the question may very well arise whether there has been contravention of the provisions of Article 19(1)(g) of the Constitution. That appears to me very far from the position in the present case in which it is not in dispute that the petitioner is free to carry on his occupation in any place other than in the Collectorate. The petitioner has, in my opinion, no right to carry on his business in the Collectorate compound save with the permission of the Collector, and if that permission is withdrawn the petitioner may have a grievance, but I cannot see that he has any legal remedy unless it can be founded on breach of contract. The remedy for breach of contract is of course by way of suit. The petitioner must satisfy this Court that he has a legal right and that there has been an infringement of that right; this in my opinion he has failed to do.

4. The order of the 1st September, contains, however, one provision which though no objection to it has been taken in the petition, and no argument has been addressed to us on it on behalf of the petitioner, cannot, it is conceded, be sustained. I refer to the provision that "No application or papers written by him should be entertained in any court." Although it was no doubt intended to be effective only within the Collectorate this provision is clearly one which is in excess of the powers of the officer making the order, and the learned Standing Counsel has very properly given the Court an undertaking that this sentence will be deleted from the order.

5. The petition must be dismissed, but in the circumstances I would make no order as to costs.

Sapru, J.

6. I concur. The petitioner was the holder of a licence for working as a steno-typist petition-writer in the court compound, Collectorate, Kanpur. His licence was cancelled by the Officer-in-charge Nazarat, Collectorate Kanpur. We understand that

this officer is the City Magistrate, Kanpur. The order directs that the typing licence of the petitioner should be cancelled for a period of five years and that no application or papers written by him should be entertained in any court. The petitioner has come to this Court under Article 226 of the Constitution and the relief that he seeks is that of "certiorari" quashing the order of the 1st September 1953. Certain other consequential reliefs have also been claimed.

7. Mr. Hamid Ullah Beg who appears for the petitioner contends that the petitioner has a fundamental right under Article 19(1)(g) to carry on his business, trade or profession and that right has been interfered with by the order in question. I cannot understand how the petitioner can be said to have a fundamental right to carry on business in a place belonging to some other person and in this case the State. The Collectorate compound is the property of the State Government and as far as I can see the proper person to look after it is the Collector. The order cancelling the licence was passed by the City Magistrate as he was the officer deputed by the Collector to look after the Collectorate compound.

Before the petitioner can come to this Court for relief under Article 226 of the Constitution, it is incumbent on him to show that he has a legal right and that there has been an infringement of that legal right. In this case I can see no infringement of any legal right. The petitioner has not been able to establish what legal right he had to the unrestricted use of the Collectorate compound for working as a petition writer. There is no analogy between this case and that of a person who cannot carry on his profession, trade or business at all without a licence. The cancellation of a licence in a case of that nature would deprive a person of the means of his livelihood. In this case, the cancellation of the licence involves no such consequences for it is still open to the petitioner to carry on his business elsewhere than in the Collectorate compound. No person has a right to carry on his profession, business or trade in the premises of some other person and it strikes me, therefore, that the argument which has been advanced by Mr. Beg has no force.

8. Mr. Beg contends that the petitioner has been deprived of his licence on grounds extraneous to those on which the licence had been granted to him. He had invited our attention to those terms. But here again it is well to remember that a licence can be revoked for misbehaviour, (see on this point the cases of -- "Hurst v. Picture Theatres Ltd." (1915) 1 KB 1 (A); --" [Arpan Ali alias Arfan Ali and Another Vs. Jnanendra Kumar Pal Choudhury and Another](#), and --"Dominion of India v. R. B. Sohan Lal AIR 1950 EP 40 (O). Learned counsel for the petitioner has not been able to point out that the petitioner had any right under any statute or statutory rule to carry on business in the Collectorate compound. For a contractual right or liability the remedy is not a petition under Article 226 but a regular suit. No reason has been advanced why this Court should exercise its powers under Article 226 of the Constitution in favour of the applicant.

9. There is, however, one aspect of the case which frankly I do not like. The concluding part of the order of the City Magistrate is that "no application or papers written by him. (i.e. the petitioner) should be "entertained in any court". It may be that the City Magistrate had good reasons to be annoyed with the petitioner's behaviour. But it must be remembered that we are not living in the days of Nadir Shah but in a State which is subject to the rule of law. It was, in my opinion, grossly improper on the part of the magistrate to give expression to his feelings of annoyance by incorporating in his order something which he had clearly no right to incorporate. It was not open to him to prevent the petitioner from earning his livelihood by typewriting in places other than the Collectorate compound. The cancellation of the licence allowing him to work in the Collectorate compound for a period of five years for misbehaviour was in itself a severe punishment and I cannot understand how the City Magistrate thought that it was right or proper that he should go out of his way to pass an order which is highly unjudicial in tone and spirit.

Had it not been for the fact that the learned Standing Counsel has very properly given as an assurance that this part of the order will be expunged from the order, I might have considered the question whether we should not interfere with that part of the order passed by the city Magistrate. The learned Standing Counsel has given us the assurance that this part of the order will be expunged and I have no doubt that the undertaking will be honoured.

10. Having regard to the fact that the petitioner has not been able to make out a case for the infringement of any legal right, there is no alternative for us but to dismiss the application. But, in the circumstances of this case, I would make no order as to costs.