

Madras High Court

K. Arunachalam Pillai And 3 Ors. vs The State Of Tamil Nadu ... on 27 June, 2001

Bench: P Dinakaran

ORDER

1. Aggrieved by the proceedings of the second respondent dated 8.6.1994, which is impugned in the above writ petition, temporarily suspending the licence of the petitioners to write documents, granted under the Tamil Nadu Document Writers' Licence Rules, 1982 (hereinafter referred to as the 'Rules') for having written the documents on spurious stamp papers, the petitioners seek a writ of certiorarified mandamus calling for the concerned records from the file of the second respondent in Ref.No.13946/13/93, quash the order dated 8.6.1994 in so far as it relates to the petitioners and consequently, direct the respondents to forbear from interfering with the profession of the petitioners, contending that the impugned order of temporary suspension of the licence, issued by the second respondent exercising the powers under Rule 16(2) of the Rules, without specifying the time limit is arbitrary, unreasonable, without jurisdiction, contrary to the principles of natural justice and violative of Articles 14 and 21 of the Constitution of India.

2.1 Mr. K. Chandru, learned senior counsel appearing for the petitioners invited my attention to Rule 16 of the Rules which deals with suspension and cancellation of the licence, and Rule 17, which provides for an appeal against the orders passed under Rule 16 of the Rules, which read as follows:

Rule 16 :- Suspension and cancellation of the licence:

(1) The District Registrar shall have the power to suspend the licence of the document writer in his district for a period not exceeding a month at a time for misconduct or unsatisfactory work.

(2) The Licensing Authority shall have power to suspend for any length of time the licence of a document writer for misconduct or unsatisfactory work.

(3) The Licensing Authority shall have the powers to revoke or cancel the licence of a document writer for misconduct or unsatisfactory work or for any disqualification prescribed in Rule 5 or for breach of any of the conditions of the licence, after giving him an opportunity to show cause against the action proposed to be taken against him.

Rule 17 Appeals:

(a) An appeal against an order passed by the District Registrar under Rule 16 shall be made to the Licensing Authority within two months from the date of the order.

(b) An appeal against the orders of the Licensing Authority shall be made to the State Government within two months from the date of the order.

2.2. Mr. K. Chandru, learned senior counsel appearing for the petitioners, contends that the District Register is empowered to suspend the licence of the document writers in his District for a period not

exceeding one month at a time, for misconduct or unsatisfactory work, by exercising the power under Rule 16(1) of the Rules. However, the Licensing Authority shall have the power to suspend the licence of the document writer for any length of time for misconduct or unsatisfactory work, by exercising the powers under Rule 16(2) of the Rules.

2.3 According to Mr.K. Chandru, learned senior counsel if the Licensing Authority proposes to revoke or cancel the licence of the document writer for misconduct or unsatisfactory work or for any disqualification prescribed in Rule 5 of the Rules or for breach of any of the conditions of the licence, it should be done only after giving them an opportunity to show cause against the action proposed to be taken. It is therefore contended that the Rules 16(1) and 16(2) of the Rules empower the District Registrar and the Licensing Authority respectively, only to pass an interim suspension order for the alleged misconduct and unsatisfactory work, which may be one of the grounds for revoking or cancelling the licence of the document writers, among other grounds, such as unsatisfactory work or disqualification prescribed under Rule 5 of the Rules, or breach of any of the conditions of the licence, as the case may be, and after giving a sufficient opportunity to the document writer to show cause against such action of revoking or cancelling the licence. As Rules 16(1) and 16(2) of the Rules could be invoked only for the purpose of passing an interim order of suspension the second respondent Licensing Authority, has no power and jurisdiction to suspend the licence of the petitioners permanently or for indefinite period of time, even though the words..... to suspend.... for a period not exceeding a month at a time, employed in Rule 16(1) of the Rules enable the District Registrar to extend the time of suspension or the words... to suspendfor any length of time, employed, indicate that the Licensing Authority may suspend the licence for more than a month at a time for misconduct and unsatisfactory work. In this regard, Mr.K. Chandru, learned Senior Counsel relied on the decision in Palani Co-op Sales Society v. Presiding Officer, (FB).

2.4 Inviting my attention to Abdul Katam v. Govt. of Tamil Nadu, 1992 (1) MLJ 317, Mr. K. Chandru, learned Senior counsel, interpreting Rule 16(3) of the Rules contends that since the misconduct and unsatisfactory work are one of the grounds to revoke or cancel the licence as per Rule 16(3) of the Rules, which provides an opportunity to show cause to the petitioner against the proposed revocation or cancellation of licence, there cannot be a suspension without prescribing the period as proposed in the impugned proceedings invoking Rule 16(2) of the Rules, as the same is contrary to the very object and intention of the Legislature sought to be achieved under Rule 16(3) of the Rules.

2.5 Mr. K. Chandru, learned senior counsel further contends that, in any event, the impugned proceedings suspending the licence of the petitioner without any time limit is arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India and therefore, liable to be quashed.

2.6. Mr. K. Chandru, learned senior counsel, also contends that the alternative remedy provided by way of an appeal under Rule 17 of the Rules against the impugned proceedings, cannot be a remedy to the petitioner, as the impugned order cannot be considered as the final order made under Rule 16(2) of the Rules.

3.1 Per contra, Mr. E. Raja, learned Special Government Pleader, contends that the second respondent registered a case against the stamp vendors, in which, the petitioners were cited as witnesses and therefore, till the disposed of the above criminal cases pending against the stamp vendors, the petitioners document writers are liable to be placed under suspension in the larger public interest, invoking Rule 16(2) of the Rules.

3.2 The learned Special Government Pleader, further contends that even if the petitioners are aggrieved by the impugned proceedings, they can only approach the Appellate Authority for their appropriate relief, if they are so advised, invoking Rule 17 of the Rules.

4. I have bestowed my careful consideration to the submission of both sides.

5.1 The Tamil Nadu Document Writers, Licence Rules, 1982, are intended to regulate the profession of writing documents, by granting the licence to document writers on the condition incorporated therein. Generally speaking, the power to grant licence, vested on the authorities, includes the power of disciplinary action also, which again necessarily involves the power to suspend or revoke or cancel the licence, in appropriate cases. The power thus intended to revoke or cancel the license inflicts a punishment on the licensee for the violations, if established in the enquiry ; however, the power to suspend cannot be confined only to a substantial punishment, but also as an interim suspension pending an enquiry, before inflicting a punishment of cancellation, revocation or suspension of the licence.

5.2 In this regard, as rightly pointed out by Mr. K. Chandru, learned senior counsel, I am obliged to refer a decision of the Division Bench of this Court in Abdul Kalam case, 1992 (1) MLJ 317, wherein the Division Bench interpreting Rule 16(3) of the Rules, held that a bare reading of Rule 16(3) of the Rules goes to show that the Licensing Authority has enough powers to revoke or cancel a license of a document writer not only for misconduct but even for unsatisfactory work or for disqualification prescribed in Rule 5 of the Rules or for breach of any of the conditions of the license; but such revocation or cancellation of license could not be made without giving an opportunity to show cause against the proposed revocation or cancellation of the license and holding an enquiry in that regard, as contemplated under Rule 16(3) of the Rules. Once such a safe guard is provided under Rule 16(3) of the Rules, I am of the considered opinion, the petitioners cannot be placed under suspension without being provided any opportunity, as the same would be grave to the principles of natural justice.

5.3 A closer reading of Rules 16(1) and 16(2) of the Rules harmoniously makes it clear that, Rule 16(1) of the Rules empowers the District Registrar to exercise his powers within his district to suspend the license for misconduct or unsatisfactory work and such suspension shall not exceed a month at a time. The words at a time, as rightly pointed out by Mr. K. Chandru, learned senior counsel placing reliance on the decision in Palani Co-op Sales Society case, , signify or indicate that the power can be exercised by the District Registrar even beyond a period of one month, but, the same cannot be done at the same time. In other words, the suspension could be extended beyond one month, every time extending it only for one month, and in my considered opinion, even such period of extending the suspension beyond one month at a time, can be exercised by the District

Registrar only if the situation warrants action under Rule 16(3) of the Rules for revoking or cancelling the licence by the licensing authority for the alleged misconduct or unsatisfactory work. Consequently, the power exercised under Rule 16(1) of the Rules could only empower the District Registrar to pass an interim order of suspension in a case where an enquiry is contemplated under Rule 16(3) of the Rules, but not by way of a substantial punishment, suspending the licence indefinitely, without specifying the period, either not exceeding a month at a time or every time restricting it only to one month. Therefore, suspending the petitioners' licence without prescribing the period of suspension even by invoking the powers under Rule 16(2) of the Rules, or otherwise, will be a great violation to the settled position of law in service jurisprudence that the petitioners were deprived of the right to earn their livelihood on account of such arbitrary, unguided powers sought to be exercised by the second respondent invoking Rule 16(2) of the Rules and hence, the second respondent is required to adopt a fair play in action in a just and reasonable manner.

5.4. Eventhough under Rule 16(2) of the Rules, the Licensing Authority has got power to suspend the licence of document writers throughout the Slate of Tamil Nadu, for the misconduct or unsatisfactory work, the same may be exercised only for suspending the licence for a period of one month or more, or for a specific length of time, either by way of substantial punishment for the misconduct or unsatisfactory work, or pending an enquiry without inflicting punishment, or to place the licensee under suspension pending an enquiry contemplated under Rule 16(3) of the Rules before revoking or cancelling the licence for such misconduct or unsatisfactory work, and therefore, the same is arbitrary and unreasonable.

5.5. In any event, if suspension of licence is intended for pending an enquiry, enquiry should have been initialed under Rule 16(3) of the Rules, for such misconduct or unsatisfactory work, which provides an opportunity to the licensee to show cause against the proposed revocation or cancellation of licence.

5.6. Even in a case where the alleged misconduct or unsatisfactory work is proved after giving an opportunity to the licensee and the Licensing Authority proposes to suspend the licence exceeding a period of one month inflicting a substantial punishment, the words, viz., 'to suspend for any length of time', employed under Rule 16(2) of the Rules, requires the Licensing Authority to prescribe the length of time specifically, but shall not empower the Licensing Authority to suspend the licence indefinitely, and while suspending the licence for a specific length of time, for an alleged misconduct or unsatisfactory work, again, as rightly pointed out by Mr.K.Chandru, learned senior counsel, the Licensing Authority has to give an opportunity to the licensee to show cause against the proposed punishment or substantial punishment.

5.7. On the other hand, if the Licensing Authority proposed to place the licensee under suspension pending an enquiry, under such circumstances, of course, it is difficult to specify the length of time; but such order of suspension should disclose the pendency of an enquiry on the alleged misconduct or unsatisfactory work. In the instance case, the impugned order does not refer to any such disciplinary action proposed under Rule 16(3) of the Rules, nor any pendency of criminal case against the petitioners with regard to the alleged use of spurious stamp papers, and therefore deprived the right of the petitioners to work for their livelihood by writing documents, arbitrarily

and unreasonably, which certainly attracts Article 14 of the Constitution of India, and also violates Article 21 of the Constitution of India which clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence, as observed in D.K. Yadav v. J.M.A. Industries Ltd., .

5.8. Admittedly no enquiry was initiated by the second respondent against the petitioners for any such misconduct or unsatisfactory work, nor any show cause notice was given to the petitioners before placing them under suspension, nor any time is specified for such suspension to be in force, even as a substantial punishment, nor could it be contended that the petitioners are placed under suspension pending an enquiry, as no enquiry was initiated under Rule 16(3) of the Rules for the alleged misconduct or unsatisfactory work and therefore, the impugned order is, in my considered opinion, arbitrary, unreasonable, perverse, capricious, violative of principles of natural justice and suffers for want of fair play and hence, I am obliged to quash the same.

6. This writ petition is ordered accordingly. No costs, consequently W.M.P. No.17539 of 1994 is closed.