

## CIVIL MISCELLANEOUS

*Before H. R. Sodhi, J.*

RAM DAYAL, —Petitioner

*versus*

REGISTRAR OF REGISTRATION,—Respondent.

**Civil Writ No. 1720 of 1968**

December 17, 1968

*Punjab Document Writers Licensing Rules (1961) Rules 5 and 11(4)—Cancellation of the license of a Document Writer without notice—Principles of natural justice—Whether violated.*

*Held*, that the profession of a document-writer is as much a profession which a person is entitled to carry on and for which a guarantee is enshrined in Article 19 of the Constitution of India as any other, subject to reasonable restrictions which any competent authority may impose by way of laying down conditions of eligibility, academic qualifications, etc. No person desiring to carry on a trade or a profession can be left to the whim and caprice of the Licencing Authority which cannot be permitted to exercise unfettered, unguided and uncontrolled power. The administrative authorities must also act in conformity with the principles of natural justice when their orders involve civil consequences for a citizen. If the license of a document-writer is cancelled by the Licensing Authority without notice and without affording him an opportunity of producing all relevant evidence, the principles of natural justice are violated and the order cancelling the license suffers from serious infirmities and errors of law.

(Para 6)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, Mandamus, or any other appropriate writ, order or direction be issued quashing the order, dated 24th April, 1968, passed by the respondent by which the petitioner's licence has been cancelled and directing the respondent to issue a licence of Document Writer to the petitioner under the 1961 Rules and also holding that the Proviso to Rule 5 is unconstitutional and ultra vires Article 14 and 19 of the Constitution of India and also directing the respondent not to prohibit the petitioner from carrying on his profession of a Document Writer.*

RAJINDER SACHER, ADVOCATE, for the Petitioner,

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL, (PUNJAB), for the Respondent.

**JUDGMENT**

SODHI, J.—The petitioner has alleged that he is a resident of Sirhind City and started working as a document-writer in village Harlalpur, Tehsil Sirhind, District Patiala, sometime in the year

1954. The case as further laid in the writ petition is that after working in village Harlalpur for four years, he shifted to Sirhind and continued in his profession of a Document writer. The Inspector-General of Registration, Punjab, in exercise of the powers conferred on him by clause (bb) of sub-section (1) of section 69 of the Indian Registration Act, 1908 (Act XVI of 1908), framed the Punjab Document Writers Licensing Rules, 1961 (hereinafter called the Rules). The Rules came into force with effect from 5th January, 1962. Rule 4 lays down the condition of eligibility for licence to practise the profession of a document-writer. It is in the following terms :—

“4. Eligibility for licence.—No person shall be eligible for being licensed as a document-writer or, if licensed, to continue as a document-writer, if such person—

(a) is less than 18 years of age ; or

(b) is in the employment of Government or Local Authority or any other person ; or

(c) is of unsound mind ; or

(d) is an undischarged insolvent; or

(e) has been dismissed from the service of Government or any Local Authority; or

(f) has been convicted of any offence involving moral turpitude.”

There is then Rule 5 according to which certain academic qualifications are necessary for getting a licence but clause (a) of this Rule makes exception in the case of a person who has been practising as a document-writer for seven years or more on the date of enforcement of the Rules. The relevant Rule 5 may here be quoted *in extenso* :—

“5. Academic qualifications for obtaining licence.—No person shall be licensed under these rules unless he has passed Matriculation or Higher Secondary Examination or any other examination of an equivalent standard and has qualified in the special examination held under rule 6;

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**Provided that—**

- (a) the provisions of this rule shall not apply to a person who has been practising as a document-writer for seven years or more on the date of enforcement of these rules;
- (b) the Licensing Authority may, in deserving cases of candidates belonging to any backward class or scheduled caste or scheduled tribe, relax the minimum educational qualification prescribed above and allow any such candidate, who has passed the Middle School Examination to sit in the special examination referred to in this rule."

Under Rule 11(4) a person who has been practising as document-writer for seven years or more on the date of enforcement of the Rules was required to apply to the Licensing Authority for the issue of a licence and if the said authority was not satisfied the licence could be issued after the applicant had deposited a fee of Rs. 20. It is not disputed before me and could not indeed be disputed in view of documentary evidence on the record that the petitioner made an application for the grant of the necessary licence under the Rules on the basis of his being eligible for the same on account of his having been working as a document-writer for a period of seven years or more. The petitioner after he made the application was called upon by the Registrar to appear before him in order to satisfy the latter that the petitioner had been in the profession for more than seven years. A licence was accordingly issued to the petitioner on 13th August, 1965, which, as conceded before me by both the learned counsel, was for one year.

(2) It is also a common ground before me that this licence was renewed for the years 1966 and 1967. After the renewal for the year 1967, a communication, copy whereof has been filed as Annexure A-3 with the writ petition, was received by the petitioner informing him that there was an allegation that he had obtained the licence in the year 1965 on misrepresentation of facts to the Registrar inasmuch as he had not completed seven years in the profession which could make him eligible for the licence. The petitioner was further called upon to bring the necessary documentary evidence to rebut the allegation against him. He was also required to send a

reply which was to reach the office of the Registrar within fifteen days. The petitioner submitted his explanation on 27th March, 1967, copy whereof has been appended as Annexure A-4 with the writ petition. The petitioner reiterated that he had been practising for more than seven years and that the Registrar was satisfied with the proof furnished by the petitioner before the licence was issued. No further enquiry seems to have been held after the receipt of the explanation and the Registrar by the impugned order, dated 24th April, 1968, copy whereof is Annexure A-5, cancelled the licence of the petitioner by holding that the latter was not eligible for the grant of a licence according to Rule 5 and Rule 11(4). It is against this order that the present writ petition has been preferred.

(3) Mr. Rajinder Sachar, learned counsel for the petitioner challenged the *vires* of the Rules in the writ petition but has confined his submissions before me only to one aspect of the matter relating to the infringement of the rules of natural justice. It is contended by the learned counsel that whether the function relating to cancellation of the licence is *quasi* judicial or administrative, the Registrar was bound to act in accordance with the well-established norms of natural justice. The contention is that the petitioner was not informed before the impugned order was passed as to what was the source of information on which the Registrar believed that the petitioner did not fulfil the necessary qualification of being in the profession for seven years or more and nor was any enquiry held affording an opportunity to him to rebut the allegations made against him.

(4) The return filed by the Registrar is almost evasive and drafted in a manner so as to only admit or deny the allegations without trying to assist this Court by giving proper information. In para 19 of the writ petition, the petition specifically alleged that no notice or opportunity had been given to him by the Registrar or any other authority before cancelling the licence. The reply of the respondent Registrar to this averment is that the allegation is not admitted. At the same time it is asserted that no notice was required to be given in cancelling the licence. The assertion is that it is only when there is violation of the conditions of the licence as enumerated in Rule 14 that a notice is to be sent to the defaulter before taking action.

(5) The contention of Mr. Sachar that the principles of natural justice have been violated must be accepted.

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(6) The profession of a document-writer is as much a profession which a person is entitled to carry on and for which a guarantee is enshrined in Article 19 of the Constitution of India as any other, subject to reasonable restrictions which any competent authority may impose by way of laying down conditions of eligibility, academic qualifications, etc. No person desiring to carry on a trade or a profession can be left to the whim and caprice of the Licensing Authority which cannot be permitted to exercise unfettered, unguided and uncontrolled power. The administrative authorities must also act in conformity with the principles of natural justice when their orders involve civil consequences for a citizen. A reference in this connection may be made to observations of their Lordships of the Supreme Court in *State of Orissa v. Dr. (Miss) Minapani Dei and others* (1) In the instant case, the petitioner was not informed as to what was the information with the Registrar which necessitated reviewing his earlier decision taken in the year 1965 when he felt satisfied that the petitioner was eligible to obtain a licence on the ground that he had been in the profession for seven years or more on the date of the enforcement of the Rules. A licence was in fact issued and even renewed twice. The petitioner in his explanation positively asserted that he had furnished the necessary proof already and reiterated that he was entitled to the licence. No further enquiry seems to have been held and in the impugned order all that is said is as follows:—

“After enquiries it is revealed that you are not eligible for the grant of a licence for Wasiqa Nawis, according to Rule 5 and Rule No. 11(4), Wasiqa Nawisi and Licensing Rules, 1961.”

This order is clearly arbitrary and contrary to the basic concept of justice. There is nothing known what impelled the Registrar to reopen the matter and the whole thing seems to have remained in the dark so far as the petitioner is concerned.

(7) It is a fundamental rule of natural justice that the petitioner should have been given an opportunity of producing all relevant evidence if his explanation and the earlier proof given in the year 1965 were not found to be satisfactory. No material could be used against the petitioner of which he was not informed. As a matter of fact, the Registrar seems to have been under the impression that

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(1) A.I.R. 1967 S.C. 1269.

no notice was required to be given in view of section 19 of the Central General Clauses Act, 1897, to which a reference has been made in para 19 of his written statement. He probably intended to rely on section 19 of the Punjab General Clauses Act, 1898 (Punjab Act I of 1898), which is in the following terms :—

“19. Where, by any Punjab Act, a power to issue notifications or make orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued or made.”

The corresponding section in the Central General Clauses Act is 16 and this Act is of the year 1897. In the return filed by the respondent, the year quoted is 1898 whereas the section referred to is 19 of the Central General Clauses Act. Shorn of all this confusion created in his return by the respondent, the main stand seems to be that the respondent Registrar who has an authority to issue a licence has also an authority to revoke the same. There can be no quarrel with this proposition but both these sections are wholly inapplicable to the situation as the present one. The respondent could revoke the licence but subject to the conditions as laid down in the Indian Registration Act, 1908, and the Rules to which a reference has already been made. The Rules authorise the cancellation of a licence by the Licencing Authority only on certain conditions. It is needless for the respondent to depend on the provisions of either of the General Clauses Acts. These provisions only enunciate the well-established rule of general law that an authority with power to appoint a person can also suspend or dismiss him but in each case we have to look to the Act or the rules under which an appointment has been made or conditions prescribed for an appointment, suspension or dismissal. These provisions are not intended to abrogate the rules of natural justice when action is sought to be taken affecting the civil rights of a citizen.

(8) It must, therefore, be held that the impugned order cancelling the licence of the petitioner as a document-writer suffers from serious infirmities and errors of law which are quite apparent. No proper opportunity was given to the petitioner before his licence was cancelled.

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(9) In this view of the matter, the impugned order cannot be sustained. The writ petition is, therefore, allowed with costs and the order of the Registrar, Annexure A-5, passed on 24th April, 1968, cancelling the licence of the petitioner, is quashed. The petitioner can carry on his profession as document-writer subject to the terms and conditions of the licence issued to him and subject to the provisions of the relevant rules and the Act. The costs of the petitioner are assessed at Rs. 100 which will be payable by the respondent.

K. S. K.

FULL BENCH

Before Mehar Singh, C.J., Harbans Singh, D. K. Mahajan, Gurdev Singh and Bal Raj Tuli, JJ.

SADA KAUR,—Appellant.

versus

BAKHTAWAR SINGH AND ANOTHER,—Respondents

R.S.A. 1456 of 1964.

*Custom—Jats of Punjab—Widow's re-marriage with her husband's brother in Karewa form—Forfeiture of her life estate in husband's property—Universal Custom barring forfeiture—Whether exists—Such Custom—Whether admits of exceptions among Dhaliwal Jats of Muktsar Tehsil in Ferozepur District. . . . .*

*Held, that there is no Universal Custom among the Jats of Punjab by which a widow does not forfeit her life estate in her husband's property by reason of remarriage in Karewa form with her husband's brother and the same holds good with regard to Dhaliwal Jats of Muktsar Tehsil in Ferozepur District.*

(Para 4)

*Case referred by the Hon'ble Mr. Justice Tek Chand on 5th September, 1967 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Bal Raj Tuli again referred the case to a Full Bench, on 31st July, 1968 and the case was finally decided by a Full Bench consisting of Hon'ble the Chief Mr. Mehar Singh, the Hon'ble Mr. Justice Harbans Singh, The Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice Bal Raj Tuli on 3rd November, 1969.*