

BEFORE

HON'BLE MR JUSTICE I A ANSARI

Heard Mr. A. K. Goswami, learned Senior counsel, appearing on behalf of the petitioner, and Mr. S. Bora, learned Standing counsel, Guwahati Municipal Corporation, appearing on behalf of the respondents.

The petitioner has, with the help of this writ application, made under Article 226 of the Constitution of India, challenged the legality of the order, dated 19.06.2008 (Annexure 2 to the writ petition), issued by the respondent No. 2, namely, Commissioner, Guwahati Municipal Corporation, whereby the respondents have declined to renew the petitioner's trade licence for the year 2008-09.

For the purpose of better appreciation of the issues involved, the relevant portion of the impugned order is extracted below:

With reference to your letter dt. 04.03.08, I am to inform you that GMC granted trade licence to M/s Bhumi Jal, F.C. Road, Uzanbazar, Ward No. 34 for supply of mineral water and pure drinking water only, instead, you have extracted water through deep tube well, for which Guwahati Municipal Corporation has not issued No Objection Certificate.

Hence, your prayer for renewal of trade licence for the year 2008-09 does not arise.

From a bare reading of the contents of the impugned order, it becomes clear that the petitioner's licence was refused to be renewed on the ground that the petitioner had been granted licence to supply, amongst others, pure drinking water, but what the petitioner has done is that he has been extracting water through deep tube well, though the Guwahati Municipal Corporation (in short, 'the GMC') has not issued any No Objection Certificate, in this regard, to the petitioner.

At the time of admission hearing, it is conceded by the learned Standing counsel for the GMC that no law has been enacted, or rules have been framed, or policy has been adopted requiring the person, who intends installing deep tube well, within the city of Guwahati, to obtain, as a condition precedent, for installing deep tube well or for extracting water, a No Objection Certificate from the GMC. Situated thus, it becomes clear that the ground, on which the respondents had refused to renew the petitioner's licence is untenable in law. The impugned order cannot, therefore, be sustained.

It is, however, worth pointing that in their affidavit-in-opposition, the respondents have assigned, broadly speaking, four grounds, at paragraph 8 of their affidavit-in-opposition, in order to justify their refusal to renew the licence of the petitioner. These grounds read as under:

- a. M/s Bhumi Jal has not obtained any No Objection Certificate for boring and installing deep tube well.
- b. Public complaint against M/s Bhumi Jal received from citizens of Uzanbazar.
- c. M/s Bhumi Jal and other similar units in and around Uzanbazar causing sound and environment pollution, lowering the underground water table of the neighbouring area thereby causing drying up of other conventional water sources such as hand pump and ring wells etc.
- d. Last and not the list the view expressed by the Hon'ble High Court in pending P.I.L. No. 65/2005 (Chanaki Path Pragati Parishad and Others -vs- The State of Assam and others) in its order dated 07.05.07, wherein the same issue is taken care of by the Hon'ble High Court.

As far as obtaining of No Objection Certificate is concerned, it has already been pointed out above that there is no requirement, in law, to obtain No Objection Certificate from the respondents.

So far as the question of pendency of the P.I.L. is concerned, it is not in dispute that in the P.I.L., the GMC authorities have themselves conceded that no regulation has been framed so far prohibiting installation of deep tube well, or extraction of water, in the city of Guwahati, without permission from the GMC. He

nce, on the ground that a Public Interest Litigation is pending, the petitioner's licence cannot be refused to be renewed.

As regard the allegations, made against the petitioner, that a public complaint has been received against him and that the petitioner and some others have been causing sound and environmental pollution, etc., it is noteworthy that these were not the grounds, assigned, in the order, dated 19.06.2008, while refusing to renew the petitioner's licence.

As far as the question of public complaint and other allegations made against the petitioners are concerned, the same may become grounds for revocation of the licence, if, upon being provided with the opportunity of having his say, the petitioner fails to satisfy the respondents/authorities concerned on the public complaint and other allegations aforementioned.

Although a feeble attempt was made, on behalf of the respondents, to persuade this Court to hold that a writ petition, under Article 226, is not maintainable, for, a provision for appeal against an order declining to renew licence has been made under Section 438(e) of the Guwahati Municipal Act, 1971 (in short, 'the Act'), suffice it to point out that Section 438(e) of the Act relates to suspension or revocation of licence and not renewal of licence. Thus, Section 438(e) of the Act comes into play, when a licence, which is in force, is either suspended or revoked and not otherwise. Viewed thus, it is clear that there is no impediment, on the part of this Court, to invoke, in a case of the present nature, its powers under Article 226, particularly, when the impugned order assigns, for refusing to renew the licence, a reason, which is not sustainable in law.

Because of what have been discussed and pointed out above, the impugned order, dated 19.06.2008, is hereby set aside and quashed. The respondents are directed to renew, within a period of seven days from today, the petitioner's licence subject to such condition(s) as may be, in accordance with law, imposed by the respondents/authorities concerned in the light of the public complaint, which is claimed to have been received against the petitioner, and also in the light of the allegations of sound, environmental pollution, etc., caused by the petitioner. It is, however, made clear that though the respondents/authorities concerned have been directed to renew the petitioner's licence, it shall not be treated to have placed any embargo, or created any bar, on the powers of the respondents/authorities concerned to suspend or revoke the petitioner's licence if the respondents/authorities concerned, on the basis of the materials available, or which may become available, decide to suspend or revoke such licence in accordance with law. The interim directions, passed, in this case, shall accordingly stand modified.

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