

Om Saran Vs. Sub-divisional Magistrate, Chandausi, Moradabad and Another

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Court : Allahabad

Decided On : Oct-19-1994

Reported in : AIR1995All315

Judge : R.A. Sharma and ;M. Katju, JJ.

Acts : [Constitution of India](#) - Articles 19(1) and 226; [Motor Vehicles Act, 1988](#)

Appeal No. : Civil Misc. Writ Pettioner No. 33481 of 1994

Appellant : Om Saran

Respondent : Sub-divisional Magistrate, Chandausi, Moradabad and Another

Advocate for Def. : S. C.

Advocate for Pet/Ap. : Anand Kuamr Gupta, Adv.

Judgement :

ORDER

R.A. Sharma, J.

1. Petitioner, who is holding a licence of petty diesel dealer in village Majhole District Moradabad, has filed this writ petition challenging the advertisement for

grant of another licence published in a newspaper dt. 17-9-1994 for the same village. His grievance is that the demand of diesel is not such so as to require grant of additional licence for the sale of diesel, and if such a licence is granted it will cripple his business. In this connection the petitioner has invited attention of the Court to a letter of the Government of U.P. dt. 16-12-1987, laying down guidelines for grant of petty dealers licence. One of the guide-lines laid down by the Government is that where demand is about 20-25 Killo litres per month only one petty dealer licence should be granted.

2. No law confers a right on the petitioner to raise objection against grant of petty dealer licence. Unless such right is conferred on a person by any law he cannot challenge the grant of licence to any other person. In J. M. Desai v. Roshan Kumar (AIR 1976 SC 578), relevant extract from which is reproduced below, the Supreme Court held that proprietor of a cinema theatre cannot challenge under Art. 226 of the [Constitution of India](#) the 'No objection certificate' granted by the District Magistrate in favour of a rival in the trade (at pp, 586, 587, 588 of AIR) :

'Did the appellants have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury The answer in the circumstances of the case must necessarily be in the negative.

XXXXX

In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justifiable claim to hang on. Therefore, he is not a 'person aggrieved' and has no locus standi to challenge the grant of No Objection certificate.'

Same principle was reiterated in the case of Rice and Flour Mills v. N. T. Gowda (AIR 1971 SC 246), wherein it was laid down that Rice Mill owner has no locus standi to challenge under Art. 226 of the [Constitution of India](#) the setting up of the

new rice mill by another trader even if such setting up is in contravention of law. Again in *Mithilesh Garg v. Union of India* (AIR 1992 SC 443), the Supreme Court has declared that an existing stage carriage operator is not the person aggrieved and cannot challenge the grant of new permit on the route under the new [Motor Vehicles Act, 1988](#). A Division Bench of this Court in *Shyam Behari Tewari v. State of U. P.*, (1994) 23 All LR 520, has also reiterated the same principle, while dismissing the writ petition filed by the owner of a cinema hall, challenging the grant-in-aid to new cinema halls. In this connection the Division Bench has laid down as under :--

'Article 19(1)(g) of the Constitution or any other provision of law does not guarantee protection from competition to the petitioners. The loss of income on account of competition does not result in injury to the legal right of the business man. In this connection Supreme Court has laid down in the case of *J.M. Desai v. Roshan Kumar* (supra) as under :--

Thus in substance, the appellants stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest to the business competition causing it being a lawful activity. Judicially, harm of this description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to a society at large.'

3. The letter, referred to above, is from the Government to all the District Magistrates of this State, whereby guidelines for granting licence of petty diesel dealer, have been laid down. The petitioner cannot enforce those guidelines. It is a matter between the Government and its District Magistrates. This letter does not confer any right on the petitioner so as to challenge the grant of new licence to other person.

4. For the reasons given above, the petitioner is not entitled to challenge the advertisement for the grant of additional licence. This petition is accordingly dismissed.

5. Petition dismissed.

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