
(1951) 11 MAD CK 0033
In the Madras High Court
Case No : Writ Petition No. 494 of 1951

A.C. Abdul Gaffoor

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 09-11-1951

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu District Municipalities Act, 1920 — Section 252, 36

Citation : AIR 1952 Mad 555

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : K. Umamaheswaran and S. Kulasekhara Reddi, for the Appellant;
Government Pleader and Kondiah, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, J.—This is an application for issuing a writ of certiorari to quash the proceedings of the Government in G. O. Ms. No. 3135

Health dated 11-9-1951.

2. The petitioner is the proprietor of Prabhat Touring Talkies. On 2-6-1951 he applied to file Tadpatri Municipality u/s 250 of the Madras District

Municipalities Act for permission to install an oil engine to run the cinema. The second respondent who is the proprietor of Chand Talkies,

Tadpatri, had also applied for a similar permission. On 11-7-1951, the Municipal Council, by resolution No. 89, granted permission to the

petitioner. Permission to the second respondent was refused. The Government by order dated 11-9-1951, set aside the resolution of the

Municipality and directed the Council to grant forthwith its permission to the second respondent. The present application is filed to quash that

order.

3. Learned counsel for the petitioner contended that the order of the Government in setting aside the resolution of the Municipality without giving an

opportunity to the petitioner for explanation is invalid. The relevant provisions of the Madras District Municipalities Act may be read :

Section 36(1): The Provincial Government may by order in writing--

(i) suspend or cancel any resolution passed, Order issued, or licence or permission granted or

(ii) prohibit the doing of any act which is about to be done or is being done in pursuance or under colour, of this Act, if, in their opinion,

(a) such resolution, order licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law, or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause

danger to human life, health or safety, or is likely to lead to a riot or an affray;

Provided that the Provincial Government shall before taking action under this section on any of the grounds referred to in Clauses (a) and (b) give

the authority or person concerned an opportunity for explanation;

Provided further that nothing in this subsection shall enable the Provincial Government to set aside any election which has been held.

250. (1) Every person intending,

(a) to construct or establish any factory, workshop or workplace in which it is proposed to employ steam-power, water-power or other

mechanical power or electrical power, or

(b) to install in any premises any machinery or manufacturing plant driven by steam, water or other power as aforesaid, not being machinery or

manufacturing plant exempted by rules, shall, before beginning such construction, establishment or installation, make an application in writing to the municipal council for permission to undertake the intended work.

2. The application shall specify the maximum number of workers proposed to be simultaneously employed at any time in the factory, workshop,

workplace or premises, and shall be accompanied by--

(i) a plan of the factory, workshop, work place or premises prepared in such manner as may be prescribed by rules made in this behalf by the

Provincial Government, and

(ii) such particulars as to the powers, machinery, plant or premises as the municipal council may require by by-laws made in this behalf.

3. The Municipal Council shall, as soon as may be after the receipt of the application;

(a) grant the permission applied for, either absolutely or subject to such conditions as it thinks fit to impose or

(b) refuse permission, if it is of opinion that such construction, establishment or installation is objectionable by reason of the density of the

population in the neighbourhood or that it is likely to cause a nuisance.

4. Before granting permission under sub-section (3), the municipal council:

(a) shall, if more than nine workers are proposed to be simultaneously employed at any time in the factory, workshop, workplace or premises,

obtain the approval of the Inspector of factories appointed under the Indian Factories Act, 1911, having jurisdiction in the area of the municipality,

or if there is more than one such inspector, of the inspector designated by the Provincial Government in this behalf by general or special order, as

regards the plan of the factory, workshop, workplace or premises with reference, to :

(i) the adequacy of the provision for ventilation and light,

(ii) the sufficiency of the height and dimensions of the rooms and doors,

(iii) the suitability of the exits to be used in case of fire, and (iv) such other matters as may be prescribed by rules made by the Provincial

Government, and

(b) shall consult and have due regard to the opinion of the municipal health officer where the municipal council employs such an officer and of the

district health officer in other cases as regards the suitability of the site of the factory, workshop, workplace or premises for the purpose specified

in the application.

252. The Provincial Government may, either generally or in any particular case, make such order or give such directions as they may deem fit in

respect of any action taken or omitted to be taken u/s 250 or Section 251.

The scope of the aforesaid provisions is apparent. No machinery or manufacturing plant driven by steam, water or other power, can be installed in any premises without the permission of the municipality. If Section 252 is not in the statute book, u/s 36 of the Act, the local Government can only

set aside the permission issued by the municipality after giving the authority or person concerned, an opportunity for explanation. But u/s 36 the

Government's jurisdiction to set aside the resolution or the order granting permission by the municipality is only on any of the grounds specified in

that section. But Section 252 does not impose any such limitation on the powers of the Government to interfere with the orders of the municipality.

The Government may make such order, or give such directions, as they may deem fit, in respect of any action taken, or omitted to be taken, u/s

250. Where there is a specific provision and a general provision, it is a well-established principle that the specific provision shall prevail over the

general provision. But the question remains, whether u/s 252 the Government can ignore the only safeguard provided to the affected party u/s 36

of the Act, viz, giving an opportunity to the person concerned for an explanation.

4. The learned Government Pleader contended that Section 252 confers unlimited powers on the Government and is not conditioned by any

safeguards provided u/s 36 and therefore the Government can set aside the order of the municipality without giving an opportunity to the authority

concerned, or to the person affected. If this argument be accepted, then it will lead to the anomaly that the Government in exercising a limited

power has to give an opportunity to the party affected whereas in exercising an unlimited power it can act arbitrarily. That could not have been the

intention of the Legislature. u/s 252 the Government has certainly the power to set aside the order of the Municipality giving permission to the

petitioner. But that order affects very valuable rights of the petitioner. The power given u/s 252 is quasi-judicial in nature and the Government

cannot therefore set aside the order of the Municipality without giving an opportunity to the petitioner for explanation. As in this case the

Government have set aside the order of the Municipality without giving notice to the petitioner, it is hereby quashed. This order does not preclude

the Government from exercising its power u/s 252 of the Act after giving an opportunity to the petitioner for explanation. The petitioner will have

his costs of this petition--Advocate's fee Rs. 100.