
(1997) 05 P&H CK 0207
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 197 of 1982

Arora Traders and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Punjab Municipal Act, 1911 — Section 121(1)

Citation : (1997) 117 PLR 75 : (1997) 4 RCR(Civil) 114 : (1997) 2 RCR(Criminal) 290

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Advocate : D.V. Gupta, for the Appellant; Sushant Maini, DAG and Suresh Amba, for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

S.C. Malte, J.—Petitioners are dealing in Sanitary Fittings including G.I. Pipes, S.W. Pipes etc. at Dhariwal, District Gurdaspur. The Municipal Committee, Dharipal used to impose a condition of taking licence on payment of fee in respect of running the trades which could be called as "Dangerous and Offensive Trades" within the meaning of Section 121 of the Punjab Municipal Act, 1911. The trade of Sanitary Fittings including G.I. Pipes, and R.C. Pipes etc. was also included, in the list of these trade, and an annual fee was imposed by an amendment introduced by the Municipal Committee, Dhariwal. The Regional Deputy Director, Local Government, Amritsar Region, Amritsar, issued a notification Annexure P-1 and thereby, accorded his approval to the aforesaid amendment in the list of schedule of trades u/s 121 of the Punjab Municipal Act, 1991. Thus, from the date of publication in the official gazette, on 22.4.1980, the amendment was brought into force, and the petitioners were called upon to take the licence.

2. Papers further indicate that since one of the petitioners, Sushil Kumar, did not obtain the licence as per those provisions, he was prosecuted by filing a criminal

case No. 8 of 1981. The Judicial magistrate, 1st Class, Gurdaspur, by judgment dated 10.12.1981 held Sushil Kumar guilty of the offence of failure to obtain a licence u/s 121 (5) of the Punjab Municipal Act, and sentenced him to a fine of Rs. 40/-.

3. Executive Officer Municipal Committee had issued notice dated 13.7.1981. Annexure P-3 to petitioner No. 2 Dev Raj, and called upon him to deposit a licence fee within one week failing which legal steps would be taken. The petitioners therefore, sought the writ of certiorari for notice Annexure P-3 referred to above. The petitioners also sought to quash the aforesaid judgment in a criminal case No.8 of 1981 (Annexure P-2).

4. On behalf of the petitioners it has been submitted that even on a bare perusal of Section 121, it would be clear that it does not cover the trade of sale of Sanitary Fitting including pipes. It was contended that inclusion of that trade u/s 121 of the Punjab Municipal Act, 1911 was totally unwarranted.

5. The counsel for the Municipal Committee submitted that the sale of Sanitary Fittings involved the cutting of the pipes as per the demand of the customers, and that causes annoyance, and is thus squarely covered u/s 123 of the Punjab Municipal Act, which, among other provisions, makes a provision for inclusion of any trade involving offensive or unwholesome smell. In support of that argument, reliance was also placed upon the case of Jagir Singh Mohinder Singh and Ors. v. The State of Punjab and Ors. (1982)84 P.L.R. 313.

6. In order to appreciate the two true purpose, and import of Section 121 of the Punjab Municipal Act, 1911, it would be convenient to reproduce that provision to the extent it is relevant for the disposal of this petition. It is as follows :-

"121. Regulation of offensive and dangerous trade - (1) No place within a municipality shall be used for any of the following purposes :

melting tallow, (dressing raw hides) boiling bones, offal or blood, as a soap house, oil boiling house, dyeing house or tannery; as a brickfield, brick-kiln (charcoal-kiln.) pottery or lime kiln:

as any other manufactory, engine-house, storehouse or place of business from which offensive or unwholesome smell, gases, noises or smoke arise;

as a yard or depot for trade in unslaked lime hay, straw, thatching grass, wood, charcoal or coal, or other dangerously inflammable material;

as a store-house for any explosive or for petroleum or any inflammable oil or spirit;

except under a licence from the committee which shall be renewable annually:

Provided.....

(2)xxxxxxxxxx

(3)xxxxxxxxxx

(4)xxxxxxxxxx

(5)xxxxxxxxxx

7. The perusal of these provisions clearly indicate that it covers such trades, and business or manufacturing process which involves pollution of air or pollution by noise, or which otherwise would be dangerous for the reason that it was inflammable or explosive. The question here would be whether a trade involving the sale of Sanitary Fittings including pipes, would be such a trade which would squarely fall within the scope of Section 121 of the Punjab Municipal Act. The test to be applied would be whether it causes offensive and unwholesome noise, as mentioned in that provision. The term offensive or unwholesome is not defined under the Punjab Municipal Act. Therefore, these would be understood as meaning assigned to it in the dictionary. The dictionary meaning of word offensive is causing offence, displeasure or injury. The dictionary meaning of word unwholesome is-unsound, tainted in health taste, or morals. These two words used in Section 121 should be understood in a context in which these are used. Section 121 is under the caption "Regulation of offensive and dangerous trade". The list of the trades that would be covered by it clearly indicates that its purpose is to cover such trades which would cause pollution in the neighbourhood. The sale of Sanitary Fitting does not involve any such process that would result into pollution by creating noise. The counsel for the Municipal Committee contended that the cutting of the pipes as per the demand of the customers creates noise, and therefore, it falls under the scope of offensive business. I am unable to subscribe that argument. Volume and pitch of the noise that may be caused while cutting the pipes would be one of the factors to be considered. Besides that, it is nobody's case that these petitioners caused such a noise for the whole the working period. Nothing is on record to show that the persons from the neighbourhood had made some grievance that the petitioners caused constant noise while doing their business of selling the Sanitary articles. The counsel for the Municipal Committee had placed reliance on Joginder Singh's case (supra). In that case, Their Lordships in the concluding portion of the judgment observed that the continuous manufacturing process of furniture involves creation of noise, that would be offensive. That case can be distinguished from the present case. In the reported case, the petitioner was carrying on the manufacturing of furniture. In the present case, on the other hand, it is only sale of the ready articles except in a case wherein a pipe is required to be cut to the size as demanded by the customers. Even such occasion for cutting the pipe is likely to be far and in between. The creation of noise in the process of cutting the pipes would be of a limited volume, and is as a result of normal commercial, and business activities. It cannot be said, therefore, that such noise so caused would be offensive so as to come within the provision of Section 121 of the Punjab Municipal Act.

8. It was submitted that petitioner No.1 Sushil Kumar has suffered a conviction

as mentioned above, and therefore, it would not be now open to him to challenge the notification which required him to get a licence for running the trade of Sanitary Fittings. Sushil Kumar was convicted on the charge that he did not obtain a licence as required under the notification Annexure P-I. Mere conviction under those provisions will not disentitle him from raising the legality, and vires of the notification in question.

9. I find that the notification Annexure P-1 is beyond the scope of Section 121 of the Punjab Municipal Act, 1911. I, therefore, quash that notification. Consequently, notice Annexure P-3 issued to petitioner No.2 also stands quashed. The criminal judgment i.e. Annexure P-2, however, cannot be quashed because petitioner No.1 should have preferred separate remedy for that purpose. Petition is allowed in the terms mentioned above. No order as to costs.