

(2002) 02 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 1546 of 2002

Balaram Cine Publicities, Bangalore

APPELLANT

Vs

Bangalore Mahanagara Palike and Another

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 135, 443 (10)

Citation : (2003) ILR (Kar) 1690 : (2002) 2 KarLJ 371 : (2002) 2 KCCR 1117

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : S. Vishwajith Shetty, for the Appellant; B.V. Muralidhar, Government Advocate, for the Respondent

Judgement

H.L. Dattu, J.—Though the matter is listed in preliminary hearing, by consent of the learned Counsels appearing for the parties to the lis, it is taken up for final hearing.

2. Petitioner is an Advertising Agency. It is carrying on business in outdoor advertisement within the limits of Bangalore Mahanagara Palike.

3. Petitioner by its application dated 8-11-2001 had approached the respondent-authorities for grant of permission for erecting of a hoarding on a private land i.e., near R.V. Road, Basavanagudi. Along with the application, petitioner had also enclosed the tax paid receipt, no objection certificate issued by the owner, sketch, affidavit, etc. The request made in the application is rejected by the respondent-Commissioner by his order dated 22-12-2001; but has communicated the same to the petitioner on 27-12-2001. Aggrieved by the rejection of his request made in the application dated 8-11-2001 and aggrieved by the endorsement issued on 27-12-2001, petitioner is before this Court for the following reliefs.--

(1) to quash the endorsement bearing No. AT(1P) PR. 285.2001-2002, dated 27-12-2001: and

(2) to declare that the petitioner is deemed to have been granted permission to erect the schedule hoarding.

4. In order to appreciate the contentions canvassed by the petitioner, the following provisions in Karnataka Municipal Corporations Act, 1976 ("the Act" for short) requires to be noticed by this Court. They are:

Section 135 of the Act provides for prohibition of advertisements without written permission of Commissioner. The said provision is as under.--

"135. Prohibition of advertisements without written permission of Commissioner.--

(1) No advertisement shall, after the levy of the tax u/s 134 has been determined upon by the Corporation, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the city or shall be displayed in any manner whatsoever in any place without the written permission of the Commissioner.

(2) The Commissioner shall not grant such permission if--

(i) the advertisement contravenes any bye-law made by the Corporation; or

(ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of Sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway relating to the business of a railway".

5. The provision commences with a non obstante clause. It says that no advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall etc., within the City without the written permission of the Commissioner.

6. Sub-section (2) of Section 135 of the Act mandates that the Commissioner shall not grant permission u/s 135(1), if the advertisement contravenes any bye-law made by the Corporation or the tax, if any, due in respect of the advertisement has not been paid.

7. Chapter XXI of the Act provides for procedure and miscellaneous with regard to licence, registration and permission. For the purpose of this case, Sub-section (10) of Section 443 of the Act is relevant. Therefore, it is extracted and it reads as under.--

"(10) The acceptance by the Corporation of the prepayment of the fee-for a licence or permission or for registration shall not entitle the person making such prepayment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of

registration, but an applicant for the renewal of a licence or permission or registration, shall until communication of orders on his application, be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application, for licence or permission or for registration are not communicated to the applicant within forty five days after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year for such less period as is mentioned in the application and subject to the provisions of this Act, the Rules, Bye-laws, Regulations and all conditions ordinarily imposed".

8. A reading of Sub-section (10) of Section 443 of the Act would clearly demonstrate that on an application filed for licence or for permission or for registration requires to be communicated to the applicant within forty-five days after receipt of the application by the Commissioner; otherwise, the application is deemed to have been allowed for the year, for such less period as is mentioned in the application and the same is subject to the provisions of the Act, Rules, Bye-laws, Regulations and all conditions ordinarily imposed.

9. Keeping in view the aforesaid provisions, let me notice the fact situation in the instant case. It is not in dispute nor it can be disputed by the respondents that petitioner had filed an application for grant of permission for erection of a hoarding on a private land on 8-11-2001. On receipt of such application, the Commissioner for Corporation has passed an order on 22-12-2001 rejecting the claim made by the petitioner in the aforesaid application. But the office of the Commissioner has communicated the order made by the Commissioner to the petitioner only on 27-12-2001.

10. Petitioner's learned Counsel contends before this Court that the order made by the Commissioner on 27-12-2001 is wholly arbitrary, illegal, since the Commissioner has not assigned any reasons whatsoever for rejecting the application filed by the petitioner. Secondly, learned Counsel would contend that, since the respondents have communicated to the petitioner the rejection of his application dated 8-11-2001 only on 27-12-2001, the permission sought for in the application is deemed to have been granted.

11. Sri Muralidhar, learned Counsel for the respondent-Commissioner has produced the records of the case. The Commissioner while rejecting the petitioner's application for grant of permission for erecting a hoarding over a private land, does not assign any reason whatsoever. An order made without assigning any reason is no order in the eye of law. In that view of the matter, rejection of the request made by the petitioner for permission to erect a hoarding on a private land is arbitrary and illegal. Secondly, Sub-section (10) of Section 443 of the Act mandates that rejection of the request made in an application for grant of permission or for grant of licence requires to be communicated to the applicant within forty-five days from the date of the application.

12. In the instant case though an order is made on 22-12-2001 by the

Commissioner, the same "s communicated to the petitioner on 27-12-2001. In view of that, in view of the language employed in Sub-section (10) of Section 443 of the Act, since the communication of the order made on the application for grant of permission to erect a hoarding on a private land is made to the petitioner beyond forty-five days, permission sought for by the applicant/petitioner in his application dated 8-11-2001 is deemed to have been granted.

13. In the result, writ petition is allowed. The impugned endorsement issued by the Commissioner dated 22-12-2001 communicated on 27-12-2001 is quashed. It is further declared that the petitioner is deemed to have been granted permission to erect a hoarding on a private land, namely R.V. Road, Basavanagudi, Bangalore. The petitioner shall pay the licence fees and other additional charges as provided under the provisions of the Act. All the other contentions of both the parties are left open. Ordered accordingly.