

(1997) 03 P&H CK 0119
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1495 of 1983

Bhalla Medicos and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Punjab Municipal Act, 1911 — Section 121(1)

Citation : (1997) 116 PLR 415 : (1997) 3 RCR(Civil) 381

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : J.C. Nagpal and R.S. Ahluwalia, for the Appellant; A.G. Masih, AAG for Respondent No. 1 and V.G. Dogra, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agrawal, J.—This is a petition by eight petitioners filed under Articles 226 and 227 of the Constitution for quashing the notification dated 19.7.1982, issued by the Department of Local Government, Punjab, whereby chemists and druggist were required to pay licence fee of Rs. 300/- per annum to the Municipal Committee, Nakodar, District Jullundur. All the chemists and druggist were required to obtain licences with effect from 1.4.1982 u/s 121 of the Punjab Municipal Act, 1911 (for short "the Act").

2. The petitioners are carrying on business in allopathic medicines and drugs at Nakodar and are registered under the Drugs and Cosmetics Act, 1940. They hold licences issued under the aforesaid Act. The petitioners declined to obtain licences from the Municipal Committee u/s 121 on the ground that they were not carrying on the business in any offensive or dangerous material.

3. Sub-section (1) of Section 121 of the Act specifies various articles of offensive and dangerous trades for which the persons carrying on business would be required to obtain licences from the Municipal Committee. Sub-section (1) of Section 121 of the Act reads as under :-

"121. Regulation of offensive and dangerous trade :-

1) No place within the 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 brick-field, brick-kiln, charcoal-kiln, pottery or lime-kiln;

as any other manufactory, engine-house, store-house or place of business from which offensive or unwholesome smell gases, noises or smoke arise; as a yard or depot for trade in unsalted 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 that no such licence shall be necessary in the case of any such premises which were used for any such purposes at the time that the Punjab Municipal Act, 1911, came into force, and were registered under that Act and in the case of brick-fields, which were used at the time that this Act came into force, but the owner or occupier of the brick-fields so excepted shall register the same in a book to be kept by the committee for the purpose.

(2) * * * * *

(3) * * * * *

(4) * * * * *

(5) * * * * *

4. The mention of the various articles specified in the aforesaid Sub-section (1) makes it clear that dangerously inflammable material, explosive articles, petroleum, oil and spirit have been included in the list of dangerous or offensive trades. Medicines or drugs do not find any mention in the aforesaid Sub-section (1).

5. Any trade in medicines and drugs cannot be regarded as an offensive or dangerous trade unless it is shown that the persons carrying on such trade are also dealing in any inflammable material or explosives. It is thus obvious that allopathic medicines and drugs are not covered by Sub-section (1) of Section 121 of the Act.

6. The respondents have, however, pleaded that the petitioners were selling drugs and medicines, including liquid ammonia, spirit, phenyl etc. These are said to be materials of offensive and dangerous nature. The levy of licence fee on the chemist and druggists by notification dated 19.7.1982 has, therefore, been defended.

7. A similar matter was examined by this Court by a learned Single judge of this Court in *Malhotra Drugs Store and Ors. v. The State of Punjab and Anr.* 1984 R.L.R. 67. The provisions of Sub-section (1) of section-121 of the Act were examined and it was held that the Municipal Committee had no authority to prescribe licence for carrying on the business of chemists and druggists u/s 121 of the Act.

8. A similar question again happened to be examined by another learned Single Judge of this Court in *Om Parkash Arora, Proprietor Parkash Studio, Barnala and Ors. v. The State of Punjab and Ors.*, (1988)93 P.L.R. 357. The learned Single Judge referred to the earlier decision of this Court in *Malhotra Drugs Store's* case (*supra*) and took the same view that the notification issued u/s 121 of the Act was liable to be quashed to the extent it was made applicable to the petitioners therein. In that case, the petitioners carried on business in different commodities like drugs and medicines, general merchandise, petty karyana etc.

9. Since the business in medicines and drugs does not fall within the ambit and purview of Sub-section (1) of Section 121 of the Act, the notification dated 19.7.1982 is liable to be quashed partly and to the extent it has been made applicable to Chemists and druggists.

10. In the result, the writ petition is allowed and the impugned notification dated 19.7.1982 is quashed to the extent it has been made applicable to the chemists and druggists specified in item at Serial No. 1 in the Schedule appended to the said notification. Consequently, prosecution, if any launched against the petitioners, stands quashed. No order as to costs.