

(1927) 12 MAD CK 0021
In the Madras High Court

Chairman, Municipal Council

APPELLANT

Vs

Thirunarayana Aiyangar

RESPONDENT

Date of Decision : 15-12-1927

Acts Referred:

Citation : (1928) ILR (Mad) 876 : (1928) 28 LW 218 : (1928) 55 MLJ 566

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is an application to revise the order of the Sub-divisional First Class Magistrate of Chidambaram acquitting the accused

in a prosecution launched by the Municipal Council of Chidambaram u/s 338(b) read with Sections 249 and 321 of the District Municipalities Act.

2. The facts of the case are. The respondent, a coffee-hotel keeper, had a license for carrying on business of coffee-hotel keeper for the year

1926-27. As he disobeyed the order of the Chairman in connection with some matter not connected with the license, the Chairman gave notice

that he had cancelled his license. Notwithstanding the cancellation, the respondent continued to carry on business as coffee-hotel keeper and he

was prosecuted for keeping a coffee-hotel without a license as required by Section 249 and Schedule V of the District Municipalities Act. The

learned Sub-divisional Magistrate acquitted the respondent on the ground that the prosecution had failed to prove that there was any justification

for the order cancelling the license. The Chairman, Municipal Council, Chidambaram, has preferred this Criminal Revision Petition.

3. The contention of Mr. T. R. Ramachandra Aiyar for the petitioner is that it was not open to the Magistrate to consider the question whether the

cancellation was proper or improper and that after the license was cancelled the respondent carried on business without a license and therefore he

is liable to be punished u/s 338(b).

4. The question for consideration in this case is whether the Criminal Court could consider whether the order, cancelling the license, was within the

jurisdiction of the Chairman. The argument of Mr. Ramachandra Aiyar is that u/s 249 a license is necessary for keeping a coffee-hotel. Under

Clause 6 of Section 321 it shall be the duty of the Chairman to inspect places in respect of which a license or permission is required by or under

the Act and he may enter any such place between sunrise and sunset in order to satisfy himself that the conditions of the license are observed; and

if any of the terms of the license are violated, the Chairman has power to cancel the license. It is argued that, the Chairman having cancelled the

license, the respondent ceased to have a license, for, the moment a license is cancelled it ceases to be in operation and his carrying on business

after the cancellation would be carrying on business without a license; for Clause 7 says:

When any license or permission is suspended or revoked, or when the period for which it was granted, or within which application for renewal

should be made, has expired, whichever expires later, the grantee shall for all purposes of this Act or any rule made under this Act be deemed to

be without a license or permission until the order suspending or revoking the license or permission is cancelled, or subject to Sub-section (11) until

the license or permission is renewed, as the case may be.

5. The question is whether a license which has been granted by the Chairman can be cancelled for any reason other than for a violation of any of

the conditions or the terms of the license, and the second question is whether the Court can, in dealing with the accused u/s 338, go into that

question. As regards the first question, whether the Chairman could cancel a license for any other reason or for no reason, it has to be considered

in connection with the provisions of the Act. The Chairman can cancel the license u/s 321(5) only for the contravention of any of its terms, and it is

not open to him to cancel the license for any reason that he thinks proper. In this case the reason for cancelling the license is the non-payment by

the respondent of the water-tax. However reprehensible the conduct of the

respondent may be in not paying the water-tax due to the Municipality, that would not be a ground for cancelling his license to carry on the business of a coffee-hotel keeper. Therefore the cancellation of the license was ultra vires the Chairman of the Municipal Council.

6. The next question is whether the Court could go into that question in a prosecution launched by the Municipality u/s 338. The contention of Mr.

Ramachandra Aiyar is that it is not open to the Court to go into the validity or otherwise¹ of the cancellation because it is outside the province of

the Court trying an accused person for an offence under the Municipal Act to go into the question whether any order, made by the Municipal

Chairman is proper or improper. Section 338 makes punishable the doing of any act if that act is done without license" or permission or

registration or in a manner inconsistent with the terms of any such license or permission, and under Clause (a) the Chairman may give notice to the

person doing the act to alter, remove or, as far as practicable, restore the whole or any property within the time specified in the notice. Then

Clause (b) says:

If no penalty has been specially provided in this Act for so doing such act, the person so doing it shall be liable on conviction before a Magistrate

to a fine not exceeding fifty rupees for every such offence.

7. It is not denied that carrying on a hotel-keeper's business without a license is an offence punishable under Section. 338. But the respondent

having had a license, the improper or illegal cancellation of it by the Chairman does not deprive him of the license which he obtained properly and

the terms of which he has not in any way violated. A distinction has to be drawn between a case of refusal of a license asked for the doing of a

thing and the cancellation of a license which a person has properly obtained. In the case of a refusal of a license for a bus it may be that the

Municipal Chairman has some reason for refusing it and it would not be open to" the Court to consider whether the reasons were good or bad; for

no reasonable man who is acting as Chairman would refuse to grant a license unless he has some reason for refusal. But if it is patent to the Court

that there could have been no reasons, the Court could come to the conclusion that the refusal amounted to not doing what is required by the Act

but something which is outside the Act and such refusal might be considered to

be ultra vires the Chairman. In the case of a license which has been granted, and which is good for a period, it would be ultra vires the Chairman of the Council to cancel it or suspend it not for something which the licensee did in the contravention of the terms of the license but for something which was unconnected with the license. In such cases the Court is not prevented by anything contained in the District Municipalities Act from holding that such an act was not within the ambit or within the scope of the powers vested in the Chairman of the Council by the Act and therefore the reason for doing such an act would not arise for consideration. I think on this principle the various cases on the interpretation of the several sections of the District Municipalities Act can be reconciled.

8. Reliance is placed by Mr. Ramachandra Aiyar upon Muthu Balu Chettiar and Others Vs. The Chairman, Madura Municipality, in support of his

position that it is not open to the Magistrate to go into the validity of the order of the Chairman cancelling the license. That case does not help him.

In that case it was held that it was not open to the Court to question the/ validity of the rules framed under the District Municipalities Act. The

learned Judges observe at page 636:

The offence charged is u/s 338 of the Act and consists of using the rice-mill without the license prescribed by any rule, by-law or regulation made

under the Act. The necessary rules have been framed in this case and it is not within the province of a Criminal Court to determine whether such

rules have been validly framed, a matter which should be left for determination in a Civil Court.

9. If the Criminal Court were to go into the validity of the terms of the license that would be outside the province of the Court, but it is open to the

Court to consider whether the Chairman acted within the powers given to him by the rules framed under the Act for the issue of licenses under the

Act. That the Municipality cannot act in contravention of the Act is a well-established proposition. The Municipality is a statutory body and it

cannot act in contravention of the terms of the statute by which it is created. In Queen-Empress v. Veerammal ILR (1892) M. 230 a person

applied for a building license and the Municipality refused to grant the license on the ground that the land proposed to be built on was required for

municipal purposes. Notwithstanding the refusal of the Municipality to grant a

building license the party put up the building. Then an order was served upon the party to remove the building but the party refused to remove the building whereupon a prosecution was launched and a Bench consisting of Justices Muthuswami Aiyar and Best set aside the conviction on the ground that the Municipality acted outside its powers in refusing a license. Mr. Justice Best observed:

The order of the Council directing Veerammal to abstain from building on a portion of her land was ultra vires; and their further notice directing her to remove the building for no other reason than that it had contravened such order was illegal, and therefore not one that she was bound to obey.

10. It is unnecessary to consider in detail some of the cases quoted by Mr. Patanjali Sastri such as those in *Municipal Council, Chicacole v. Seetharamayya Naidu* (1925) 21 L.W. 280 *Ramachandra Servai Vs. President, Union Board, and Taluk Board, Bandar v. Zamindar of*

Chellapalli ILR (1920) M. 156 : 1920 40 M.L.J. 91 It was held by Mr. Justice Oldfield and Mr. Justice Krishnan in *In re Sesha Prabtt* (1921) 42

M.L.J. 149. that the validity of a notification under the Act could be questioned in a prosecution launched for violation of the notification. In that

case the notification" was published as if it was under the new District Municipalities Act of 1920. As a matter of fact, on the date of the

notification, the District Municipalities Act had not come into force and the Court held that the notification published before the Act came into force

was not a valid notification and the accused who acted in contravention of that notification was not guilty of an offence under the new Act. Reliance

is placed by Mr. Ramachandra Aiyar upon a decision of Mr. Justice Krishnan reported in *Krishnaswami v. Emperor* (1924) 48 M.L.J. 132. In

that case Mr. Justice Krishnan upheld the conviction for driving a car without a license and the accused's contention was that the President of the

District Board to whom he applied for license improperly refused to grant a license and that he was justified in driving it without a license. Mr.

Justice Krishnan observed:

I do not think that his order can be regarded as an absolute nullity as is argued and the case considered as one in which no order has been passed.

It may be that the accused can claim damages against the President if he is able to establish that the President exercised his powers u/s 212 not

bona fide but with malice on account of personal ill-feeling against him. That question will have to be considered when a proper case is brought,

but, in this prosecution, the accused, in order to escape punishment, must show that he had a license given by the President of the District Board or

he comes under Clause 11 of Section 212.

11. This decision is not against the principle that when the President of a District Board or the Chairman of a Municipal Council acts ultra vires, his

order cannot but be invalid and a violation of the order cannot be the subject of a criminal charge. It may be that the refusal to grant a license may

be for proper and valid reasons and the Court cannot go into the validity of the reasons or the expediency of the occasion which necessitated the

refusal of the license and a Court is bound to assume that the Chairman acted properly; but where he is bound to do a certain thing and he does

not do it, or where he is not permitted to do a thing and he does it, it cannot be said that the Court could not go into the question of the validity of

the omission or act especially when a prosecution is launched against a person for violating the illegal or ultra vires order of omission or the act of

the Chairman. A prosecution u/s 338 is a criminal prosecution in which a person is sought to be convicted. In order to sustain a conviction it must

be shown that the accused violated a legal order which a public servant or a statutory body was authorised under the law to pass. As observed by

Mr. Justice Krishnan in *In Re: A.E. Smith*, .

The prosecution must establish affirmatively to his satisfaction that the tax was payable and that there was a default in payment of the tax. The fact

that the accused did not appeal to the Standing Committee cannot be treated as in any way preventing him from raising the plea before, the

Criminal Court, where he is sought to be convicted of an offence by the prosecutor.

12. This observation meets the argument of Mr. T.R. Rama-chandra Aiyar that the respondent should have appealed to the Council against the

order of the Chairman and if he did so the Council could have put it right. Supposing the Council did not choose to put the matter right, would he

be liable to be convicted u/s 338. I have no hesitation in holding that, where an act is ultra vires a statutory body, whether it be of the Chairman or

of the whole Council, the Court which is asked to convict a person for the

violation of the order of the statutory body is not prevented from considering the legality of the order. Where the order is within the powers of the Chairman or the Council or sanctioned by the rules framed under the Act, it is not open to the Magistrate or the Court to go into the necessity, expediency or the reasonableness of the order. In this case the order of the Chairman was ultra vires, and, that being so, the license cannot be said to have been cancelled and the respondent cannot be said to have been trading or carrying on business without a license. The order of the Lower Court is right and the petition is dismissed.