

(2006) 02 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 923 of 2004

Chandrashekar and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Citation : (2006) 2 KCCR 749

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

Bench : Single Bench

Advocate : Mylaraiah Associates, for the Appellant; P. Nataraju, Associates for Respondents 3 and 5 and H.C. Shivaramu, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J. 1. The Petitioners, assailing the correctness of the impugned Resolution dated 23.10.2003 vide Annexure-B and licence dated 5.11.2003 issued by the Town Municipal Council Srirangapatna in favour of 5th Respondent vide Annexure-C, and so also the order dated 29.12.2003 passed by the Assistant Commissioner, Pandavapura Sub-Division, Pandavapura vide Annexure-D, have presented this writ petition.

2. The Petitioners are claiming to be the permanent residents of Doddagaradi Street, of Srirangapatna Town, Mandya District. The land measuring 5 to 6 feet width is connecting the main road of Srirangapatna. Fifth Respondent is the Proprietor of an industrial unit called "Hindustan Engineering Works". Previously, 5th Respondent had established the said industrial unit at Kuppanagaradi Beedi Srirangapatna Town, Mandya District which was his own building. When things stood thus, the Deputy Commissioner, Mandya District has initiated the proceedings against the 5th Respondent, as he was found that 5th Respondent is running the industrial unit in the name and style of "Hindustan Engineering Works" at Kuppanagaradi Beedi, Srirangapatna Town Mandya District, which is the residential locality and he was directed to shift the said industrial unit to non-residential area. Be that as it may, 5th Respondent has filed an application before

the 4th Respondent-Town Municipal Council, Srirangapatna for licence and an endorsement was issued by the 4th Respondent vide Annexure-A. Again, 5th Respondent has filed an application before the 4th Respondent for licence. The said application filed by the 5th Respondent was placed before the 4th Respondent-Council, who in turn, has passed the resolution on 23.10.2003 vide Annexure-B and on the basis of the said resolution, licence was issued to the 5th Respondent on 5.11.2003 vide Annexure-C. It is the further case of the Petitioners that, thereafter, they have filed petition before the Assistant Commissioner, Pandavapura Sub-Division, Pandavapura, questioning the licence granted in favour of the 5th Respondent. The Assistant Commissioner has rejected the said petition filed by the Petitioners. Being aggrieved by the impugned orders as referred above vide Annexures-B and D and seeking further directions, Petitioners have presented this writ petition.

3. I have heard the learned Counsel for the Petitioners and the learned Counsel for Respondents.

4. After careful perusal of the materials available on record, it emerges on the face of the endorsement issued by the Chief Officer of the 4th Respondent on 14.5.2003 rejecting the request made by the 5th Respondent for establishment of an Engineering workshop on the grounds that, the residents of the said locality have filed objections for granting any permission and in view of the objections filed by the residents of that area and in the interest of the public in general and as the said area is meant for residential purpose, his request cannot be considered. Ignoring the said endorsement given by the Chief Officer of the 4th Respondent, the representation given by the 5th Respondent was again placed before the Council of the 4th Respondent. The 4th Respondent without looking into the endorsement given by the Chief Officer and without calling for the report from the Karnataka State Pollution Control Board, Mandya, it has proceeded and granted the permission to 5th Respondent. Thereafter, this fact was brought to the notice of the Assistant Commissioner, Pandavapur Sub-Division, Pandavapura by the Petitioners by way of filing an appeal. But the said request was rejected. After perusing the Annexures-D, C and B, it emerges from the contents stated therein that, Respondents 2, 3 and 4 have proceeded to pass orders contrary to the relevant materials available on record and the case made out by these Petitioners and other residents of that area. Further, it is pertinent note that, learned Counsel for the Petitioners during the course of his submission, has produced the copy of the letter issued by the Regional Office, Karnataka State Pollution Control Board on 24th January 2004, to the 5th Respondent and copy to the Petitioners stating that, in pursuance of the complaint given by the Petitioners that 5th Respondent wants to establish an engineering workshop and the same is not permissible, they have made spot inspection on 12.1.2004 and in the spot inspection, they noticed that, surrounding the said site, there are residential houses and if the workshop is established, the public in general i.e., senior citizens and particularly, children in that locality will be affected and there will be several side effects and in view of this, the said site is not good for

establishment of workshop and also to maintain the environment of that area and in spite of that, it is established, he will be held responsible. This communication has been issued by the said Board on 24th January 2004 to the 5th Respondent and copies to the 4th Respondent and the Assistant Engineer of MESCOM. In spite of that, 5th Respondent has not made any sincere efforts to close his business or shift the same to the place where it is permissible i.e., industrial or commercial zone.

5. The learned Counsel for 4th Respondent Sri H.C. Shivaramu has submitted that, when they have received the complaint, they have made the spot inspection and after considering the ground reality of that area, the request of the 5th Respondent has been considered. Therefore no error or irregularity was committed by the 4th Respondent in issuing the licence to the 5th Respondent. The said submission made by the learned Counsel for 4th Respondent is liable to be rejected at threshold for the reason that, on a careful reading of the communication sent by the Karnataka State Pollution Control Board, Mandya dated 24th January 2004, to the 5th Respondent, as referred above and the 4th Respondent being the competent authority, it is duty cast on them to get the correct position of the spot before considering his request, as to whether the said site comes within the residential/commercial/industrial zone or not. But the 4th Respondent, without obtaining NOC from the Town Planning Authority Mandya and without taking clearance certificate from the Regional Office of the Karnataka State Pollution Control Board, Mandya, has proceeded to pass the resolution contrary to the mandatory provisions of the Karnataka Municipalities Act and its bye-laws. Therefore, the manner in which the 4th Respondent has proceeded to pass the resolution/order is not sustainable at any stretch of imagination.

6. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by the Petitioner is allowed.

The impugned Resolution dated 23.10.2003 bearing No. Pukashree:Sabe:8:2003-04 vide Annexure-B; licence dated 5.11.2003 vide licence No. 216 /2003-04 in favour of the 5th Respondent as per Annexure-C, passed by the Town Municipal Council Srirangapatna, Mandya District and also the order dated 29.12.2003 passed in Case No. Purasabe:54:2003-04 by the Assistant Commissioner Pandavapura Sub-Division, Pandavapura as per Annexure-D are hereby set aside.

Matter stands remitted back to the 4th Respondent with a direction to reconsider the same afresh and take appropriate decision in accordance with law, after affording an opportunity to the Petitioners and the 5th Respondent and dispose of the same, as expeditiously as possible, within an outer limit of four months from the date of receipt of the copy of this order.