

(2008) 07 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 7360 of 2006

Chandrashekar Shetty

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)

Citation : (2011) 2 KarLJ 338 : (2011) 4 KCCR 3382

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

Bench : Single Bench

Advocate : R.L. Patil, for the Appellant; N.S. Deshpande, High Court
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, being aggrieved by the impugned order dated 24th March, 2006 passed by first Respondent bearing No. DLG/E and T/68/2004-05 vide Annexure-J, has presented the instant writ petition. Further, Petitioner has sought for a mandamus, directing the first Respondent to grant licence to the Petitioner to run his "Royal Video Games" in Shop Nos. 8 and 9 at Jubilee Complex, from the premises mentioned in the cause title pursuant to deemed licence.

2. The grievance of Petitioner in the instant writ petition is that, Petitioner was a licensee under the Licensing and Controlling of Places of Public Amusement Order, 1985. The said licence granted by the Competent Authority was in force till 31st December, 2005. Since Petitioner intended to change the place of operation of his business, he filed the application seeking fresh licence. Since the authorities did not communicate the decision or otherwise of the said licence within the stipulated time, it was considered as a deemed licence. When Petitioner opened his shop, on the basis of deemed licence, it was raided and the operation of his business was stopped. The said action of the authority was questioned before this Court by the Petitioner, by filing a writ petition in W.P. No.

17749 of 2005 and the said writ petition came to be allowed with a direction to the authority to consider the grant of licence afresh within two weeks and reserved liberty to Respondents to cancel the licence if the Petitioner is convicted in criminal case. However, the same was not considered by the authorities within the stipulated time. When the reminder application was filed once again by the Petitioner, his request was considered and issued the impugned endorsement dated 24th March, 2006, rejecting the application filed by Petitioner on the ground that, running of video games will not be good for common people and young generation as there is a possibility of gambling, that there is no parking space for the customers and that Crime No. 190 of 2005 is registered against the Petitioner. Assailing the correctness of the impugned endorsement, as referred above, Petitioner herein felt necessitated to present the instant writ petition.

3. The principal ground urged by learned Counsel for Petitioner in the instant writ petition is that, the impugned endorsement is highly arbitrary and high handed and is therefore, violative of Article 14 of the Constitution of India. Further, the impugned endorsement strikes at the fundamental right of the Petitioner to carry on any occupation or trade guaranteed under Article 19(1)(g) of the Constitution of India and is therefore liable to be quashed. The rejection of licence by first Respondent on the ground that a criminal case is pending against the Petitioner is contrary to the order passed by this Court in the writ petition filed by Petitioner and therefore, this is a fit case for the Court for interference. Further, it is submitted that, there is no authority or power for first Respondent to pass such an order when Petitioner was already a deemed licensee and the licence which is deemed to have been granted because of the failure of the first Respondent to consider the application for licence within the stipulated time, Court not have been subsequently rejected without afforded reasonable opportunity to Petitioner. Hence, in view of non-compliance of the principles of natural justice, the impugned endorsement issued by first Respondent is liable to be quashed.

4. Learned Government Pleader, appearing for Respondents, inter alia, contended and substantiated the impugned endorsement issued passed by first Respondent stating that, the same is within the purview of the power and jurisdiction of the first Respondent and that, the same is based on the report submitted by the jurisdictional police authority by its communication dated 13th March, 2006 and on the basis of the application filed by Petitioner dated 21st March, 2006. Therefore, no error or illegality as such has been committed nor the Petitioner has made out any good grounds to entertain the instant writ petition. Further, he submitted that, the Respondents having regard to the nature of licence sought for by Petitioner, after conducting proper enquiry, have taken a decision in the interest of public, particularly, the locality and the residents in the said locality. Therefore, he submitted that, the writ petition filed by Petitioner is liable to be dismissed as devoid of merits.

5. After careful perusal of the grounds urged by Petitioner, as referred above, and the submission made by learned Government Pleader appearing for

Respondents including the statements made in the impugned endorsement dated 24th March, 2006 vide Annexure-J, I do not find any error or illegality as such committed by first Respondent in issuing the said endorsement, rejecting the licence to the Petitioner for running the video games in the premises which is located in the center of the extension area. That too, there is shortage of parking place in the area chosen by the Petitioner for starting the video games. Since the decision taken by the first Respondent is keeping in view the public in general and the residents of the locality in particular, it is not justifiable to interfere in the impugned endorsement and permit such person to carry on the business. The licensee of the Petitioner is rejected on the basis that, there is not proper place or conducive atmosphere for starting the video games and it is not in good interest of the area which the Petitioner has chosen. Further, it is specifically referred and recorded in the impugned endorsement that, Petitioner, under the guise of running the video games, is entertaining the gambling activities, which is not in the good interest of public and there is no parking place for the persons who come to play the video games. Therefore, in the interest of justice and interest of public in general, particularly, the locality, where Petitioner is intending to run the video games, the impugned endorsement is issued. Further, it is pertinent and significant to note that, the first Respondent has recorded a specific finding that, when the premises where the video games shop of the Petitioner is situate was raided, it was found that, some of the persons had engaged themselves in gambling activities and therefore, a criminal case was registered in Crime No. 190 of 2005 under the relevant provisions of the Act and Rules. Therefore, taking into consideration all these relevant factors, the said authority has opined that, the place chosen by Petitioner to run the video games is not a fit place and not in good interest of general public, particularly young generation and also in order to maintain peace and tranquility in the area, rejected the licence sought for by Petitioner under the relevant provisions of the Amusement Order, 1995. The said specific finding and reasoning recorded by the first Respondent is after taking into consideration the ground reality and on the basis of the report submitted by the jurisdictional Competent Authority dated 13th March, 2006, and the same is just and proper. Therefore, I do not find any good grounds as such made by Petitioner to interfere in the impugned endorsement issued by first Respondent, rejecting the licence to the Petitioner to run the video games.

6. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by Petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.