
(1997) 04 P&H CK 0157
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1726 of 1983

Darshan Kumar Devinder Kumar, Karyana Merchant and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Haryana Municipal Act, 1973 — Section 128

Citation : (1997) 116 PLR 725 : (1997) 3 RCR(Civil) 460

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

Bench : Single Bench

Advocate : R.S. Mittal and Aarti Gupta, for the Appellant; Raman Gaur and C.B. Kaushik, for the Respondent

Judgement

N.K. Agrawal, J.—This is a joint petition by 486 shopkeepers and traders of Pehowa, District Kurukshetra, under Article 226 of the Constitution for quashing the Haryana Municipal (Dangerous and Offensive Trades) Bye-Laws, 1982 and for restraining the Municipal Committee of Pehowa from realizing fee under the impugned bye-laws.

2. Petitioners are dealers in articles of common use like cloth, shoes, electric goods, general merchandise, karyana goods, hardware, paints, foodgrains, vegetables, medicines, timber etc. The Tehsildar of Pehowa, who is also the Administrator of the Municipal Committee of Pehowa Town, issued a proclamation by beat of drum in the town on 2.3.1982 that all the shopkeepers of the town must obtain licences after paying fee as prescribed in the bye-laws of 1982. Since the shopkeepers were not covered under the said bye-laws and they were not selling any offensive or dangerous articles as mentioned in the Schedule to the bye-laws, the present writ petition has been filed, challenging the action of the Administrator.

3. Section 128 of the Haryana Municipal Act, 1973 (for short, "the Act") restricts the use of any place within the municipal limits for keeping the items and articles

specified therein, treating and describing the measures as "regulation of offensive and dangerous trades". Sub-section (1) of Section 128 of the Act reads as under :-

"128. Regulation of offensive and dangerous trade - (1) No place within a municipality shall be used for any of the following purposes, namely :-

- (a) melting tallow, dressing raw hides, boiling bones, offal or blood"
- (b) soap house, oil-boiling house, dying house or tannery;
- (c) brickfield, brick-kiln, charcoal-kiln, pottery or lime-kiln;
- (d) any other manufactory, engine-house, store-house, or place of business from which offensive or unwholesome smells, gases, noises or smoke arise;
- (e) yard or depot for trade in unslaked lime, hay, straw, thatching-grass, wood charcoal or coal, or other dangerously inflammable material;
- (f) store-house for any explosive, or for petroleum or any inflammable oil or spirit.

except under a licence obtained by the owner or occupier the committee which shall be renewable annually."

4. It would appear from a plain reading of the aforesaid provision that Municipal Committee may charge a fee for allowing a person to use any place for any of the purposes mentioned in clauses (a) to (f). A licence is required to be obtained by a person engaged in any offensive and dangerous trade and dealing in any of the articles specified. A person is prohibited, except under a licence, to use a place for storing tallow, raw hides, bones, blood, explosives, petroleum, inflammable oil, or spirit. The use of a place without a licence is not permissible as shop house, oil-boiling house, dying house, tannery, brickfield, brick-kiln, lime-kiln etc. A place also cannot be used, without licence, as an engine-house or as a place from where offensive or unwholesome smells, gases, noises or smoke arose or as a yard or depot for trade in unslaked lime, hay, straw, thatching-grass, wood charcoal or coal, or other dangerously inflammable material. A Municipal Committee may require, u/s 128 of the Act, a person to obtain licence if such person carried business in any of the articles specified in any of the clauses (a) to (f) of that section. Sub-section (2) of Section 128 enjoined upon the Municipal Committee not to withhold licence unless it found that the business in question would be a cause of annoyance, offence or danger.

5. Shri R.S. Mittal, learned Senior Counsel for the petitioners, has argued that all commercial shops cannot be required to obtain licence u/s 128 of the Act unless it is shown that the trade was within the mischief of Section 128. Certain specified trades can only be called offensive or dangerous and "not all the trades. Many items mentioned in the Schedule to the Bye-laws are not at all covered by the provisions of Section 128 and, therefore, the Bye-laws are outside the scope and ambit of Section 128 of the Act. The notification dated 6.9.1982 containing

the bye-laws is said to be ultra vires and is, therefore, sought to be quashed. The premises used for the sale of furniture, timber, bamboos, fodder, iron trunks, tins, utensils, ghee, paper and stationery are said to be wrongly included in the Schedule. None of the six clauses or Section 128 authorizes the Government to frame bye-laws for such traders and shopkeepers who carried on business in articles not covered u/s 128. Shri Mittal has argued that all the petitioners are not engaged in any trade or business within the prohibition of Section 128 of the Act. They are not carrying on any trade in offensive or dangerous articles and they cannot, therefore, be required to obtain licence for their trade.

6. Shri Raman Gaur, learned counsel for the State of Haryana, had, on the other hand, argued that notification dated 6.9.1982 issued by the State Government was a valid declaration and could not be quashed inasmuch as it had been issued u/s 128 of the Act. It applies to those who carried on business in any offensive or dangerous material. The notification covers the items specified in clauses (a) to (f) of Section 128(1). The notification required a person to obtain licence if he used a place as a workshop or engine-house or for selling kerosene oil, petrol, fire-wood etc. or manufactured soap, leather goods, soda, acid, paints, salt-petre, sulphur, naphtha, mercury, turpentine, resin, spirit, wine or any other dangerously inflammable oil, liquid or material. Section 200 of the Act empowers the State Government to make general bye-laws applicable to all or any of the municipalities on any of the matters mentioned in clauses (a) to (y) thereof. Clause (s) relates to Section 128 and clause (y) deals with the residuary powers to make bye-laws.

Clauses (s) and (y) of Section 200 of the Act read as under :-

"200. General Bye-laws - The State Government shall make bye-laws applicable to all or any of the municipalities as it may, by notification, specify, by which the Committees shall -

(a) to (r) * * * *

(s) prohibit the storage of more than a fixed quantity of any explosive, petroleum, naphtha, or other inflammable material in any building not registered or licenced u/s 128;

(t) to (x) *****

(y) generally provide for carrying out the purposes of this Act.

Provided that the State Government may of its own or on a representation from a committee alter, vary or modify the bye-laws so as to suit the particular needs of the committees."

7. A perusal of clause (s) makes it clear that the State Government may prohibit the storage of petroleum, explosives, spirit or other inflammable material. All the items mentioned in Section 128 have, however, not been mentioned in clause (s) of Section 200 of the Act. Clause (y) of Section 200 empowers the State

Government to generally provide for carrying out the purposes of the Act.

8. A perusal of the notification, containing the bye-laws in question, shows that it prohibits the use of any place for the storage or sale of 41 items. However, sale of furniture and timber, in items Nos. (7) and (8) of the Schedule, has also been prohibited without licence. Similarly, the manufacture of soap in item No. (10) and the sale of sirka, kannas, munj or ban in item No. (11) has also been prohibited. Sale of bamboos, dry fodder, chuna or kali is also not permissible without licence. Manufacture of iron-trunks, tins, and utensils is also prohibited. It has already been seen that clause (d) of Section 128 prohibits the use of any place for the manufacture of any material, if offensive or unwholesome smells, gases, noises or smoke arose. In the light of this prohibition, the manufacturing process of any material can be said to fall within the mischief of clause (d) of Section 128. However, the sale of furniture, timber and ghee cannot be said to be a prohibited item.

9. The notification issue by the State Government cannot be struck down because it has been issued within the scope and ambit of Section 128 read with Section 200 of the Act. Clause (d) of Section 128 prevents the use of any place for manufacturing any article if it created any offensive or unwholesome smell, gas, noise or smoke. Similarly, if a place is used for keeping thatching grass, hay, straw, coal or other dangerous inflammable material, that is also not permissible without a licence under clause (e) of Section 128(1). In this light, notification dated 6.9.1982, which is under challenge in the present petition, is not liable to be struck down as a whole. Items (7) and (8) and (28), prohibiting the use of a place for the sale of furniture, timber and ghee respectively, do require reconsideration by the State Government, because these items cannot be said to be offensive or dangerous articles or dangerously inflammable materials.

10. Shri R.S. Mittal, Senior Counsel for the petitioners, has also argued that rendering of service was necessary for collecting any licence fee. If the Municipal Committee has not rendered any service, it had no authority to collect a fee. This plea is further found to be devoid of force in the light of decision of this Court in Jagir Singh Mohinder Singh and Ors. v. The State of Punjab and Ors. (1982) 84 P.L.R. 313, and the decision in Dry Cleaners Association v. Karaj Sadhak Afsar and Ors. 1983(1) AILLR 665.

11. Looking to the nature of challenge to the Government notification dated 6.9.1982, containing the bye-laws framed u/s 128 read with Section 200 of 1 the Act, the plea of the petitioners cannot be accepted inasmuch as the prohibition imposed by the Government is found to be within its powers and scope u/s 128 of the Act. However, all the petitioners cannot be required to obtain licence without specifying the articles and materials in which they are dealing. It would be, therefore, appropriate that the Administrator, Municipal Committee, Pehowa, should examine the case of each petitioner so as to ascertain if the trader or shopkeeper manufactured or stored any offensive or dangerous material as specified in Section 128 of the Act. If it is found that the petitioners or any of

them did not manufacture, store or sell any of the articles specified in clauses (a) to (f) of Section 128(1), there would be no authority with the Administrator to require the trader to obtain a licence u/s 128 of the Act. In the result, the petitioners, plea to strike down the notification dated 6.9.1982, containing the bye-laws, is rejected. However, the Administrator, Municipal Committee, Pehowa, is directed to examine the case of each petitioner so as to ascertain if the petitioner was using a place for the manufacture, storage or sale of any dangerous or offensive material specified in Section 128 of the Act. If a person is doing so, the Administrator shall be at liberty to require such person to obtain a licence.

12. The writ; petition is disposed of in the above terms. No. costs.