

(1998) 11 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 10259 of 1996

Doctors'' Forum (Registered), Puttur, Dakshina Kannada
District

APPELLANT

Vs

Town Municipal Council, Puttur, Dakshina Kannada District
and Another

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Constitution of India, 1950 — Article 48A, 51G
Karnataka Municipalities Act, 1964 — Section 256 (1) (a), 87

Citation : AIR 1999 Kar 122 : (1999) ILR (Kar) 552 : (1999) 1 KarLJ 689

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Sri K. Sashidra Karanth, for the Appellant; Sri M.N. Ramanjaneya Gowda, High Court Government Advocate and Sri B. Ramaswamy Iyengar, for the Respondent

Judgement

1. This petition is filed for quashing the Resolution Nos. 166 and 173, dated April 29, 1995 passed by the 1st respondent and published in the newspaper dated May 31, 1995 levying licence fees on nursing homes and clinics with, a further writ in the nature of declaration that the municipality cannot prevent the ratepayers and the members of the petitioner's forum from utilising the garbage disposal infrastructure of the municipality and to dispose of the garbage generated within the limits of the municipality.

2. In view of the Resolution Nos. 166 and 173, dated April 29, 1995, the municipality issued a notification dated May 29, 1995 as per Annexure-A and published the same in the various newspapers levying licence fee on nursing homes and clinics along with other items. The petitioner made a representation to the 1st respondent not to impose such licence fee as there is no authority of law; for which the municipality in turn replied to the petitioner on July 28, 1995 requesting them to pay the licence fee and to assist them in the development of the municipal area. After certain protracted proceedings, the municipality issued

a notice dated February 29, 1996 u/s 256(1)(a) and (b) calling upon the petitioners to secure licence in order to run the clinics and nursing homes and in default of which, action would be taken against them.

3. Section 256(1) of the Karnataka Municipalities Act, 1964 (hereinafter called "the Act") reads as follows:-

"256. Premises not to be used for certain purposes without license.--(1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a licence granted by the Municipal Commissioner or Chief Officer in this behalf, namely:-

(a) any of the purposes specified in Part I of Schedule XIII;

(b) any purpose which is, in the opinion of the Municipal Commissioner or Chief Officer dangerous to life, health or property or likely to cause a nuisance;

(c) keeping horses, cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce thereof; or

(d) storing any of the articles specified in Part II of Schedule XIII except for domestic use of any of those articles:

Provided that the municipal council may declare that premises in which the aggregate quantity of articles stored for sale does not exceed such quantity as may be prescribed by bye-laws in respect of any such articles shall be exempted from the operation of clause (d).

Where the order of the municipal area refusing permission is based on extraneous considerations, it is liable to be-quashed".

4. From the aforesaid provisions, it is seen that clauses (c) and (d) have not been made applicable. The municipality purported to have acted u/s 256 and imposed the licence fee. In view of Section 256(1)(a), the licence is required to be obtained in respect of the premises which would be used for any of the purposes enumerated in Part I of Schedule XIII or for any purpose which is in the opinion of the Municipal Commissioner or Chief Officer, dangerous to life, health or property or likely to cause nuisance. It is not the case of the municipality that running clinics and nursing homes in any premises is either dangerous to life, health or property or likely to cause nuisance. Part I of Schedule XIII does not deal with clinics and nursing homes in respect of which licence is required to be obtained. It is true that the licence fee generate income to the municipality for its development. That does not mean that the municipality has authority of law to impose and levy fees on every item which according to the opinion of the municipality appears to be proper and appropriate. No fee nor any tax shall be levied except by authority of law. The municipality is authorised to levy licence fee only in respect of items enumerated in Part I of Schedule XIII and if the schedule is silent in respect of clinics and nursing homes any imposition of fee against them is without authority of law. The respondents are unable to point out

the source of their power to impose fee against clinics and nursing homes.

5, Chapter X of the Act deals with the obligatory and discretionary functions of municipal councils. Section 87 deals with the obligatory functions of the municipal council; Section 88 provides for special functions and Section 91 deals with the discretionary functions of municipal council. Section 87 of the Act reads thus.-

"87. Obligatory functions of municipal councils.--It shall be incumbent on every municipal council to make adequate provision by any means or resources which it may lawfully use or take for each of the following matters within the municipal area, namely.-

- (a) lighting public streets, places and buildings;
- (b) watering public streets and places;
- (c) cleansing public streets, places and sewers, and all spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipal council or not, removing noxious vegetation and abating all public nuisance;
- (d) extinguishing fire and protecting life and property when fire occur;
- (e) regulating or abating offensive or dangerous trades or practices;
- (f) removing obstructions and projections in public streets, bridges, and other public places, and in spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipal council or belong to the Government;
- (g) securing or removing dangerous buildings or places and reclaiming unhealthy localities;
- (h) acquiring and maintaining, changing and regulating places for the disposal of the dead;
- (i) constructing, altering and maintaining public streets, culverts, municipal boundary marks, markets (including separate and suitable place for vending vegetables), slaughter houses, latrines, privies, urinals, drains, sewers, drainage works, sewage works, baths, washing places, drinking fountains, tanks, wells, dams and the like;
- (j) xxx xxx xxx; (k) xxx xxx xxx; (l) xxx xxx xxx; (m) xxx xxx xxx; (n) xxx xxx xxx; (o) xxx xxx xxx; (p) xxx xxx xxx; (q) xxx xxx xxx; (r) providing covered metallic receptacles and covered metallic receptacles mounted on wheels for use by servants employed by the municipal council for the removal of night-soil and rubbish and disposing of night-soil and rubbish and, if so required by the Government, preparation of compost manure from such night-soil and rubbish;

Explanation.--In this clause, "rubbish" includes dust, ashes, broken bricks,

mortar, sewage, dung, dirt, decomposed substances and refuse of any kind".

6. The Supreme Court in *Municipal Council, Ratlam Vs. Vardichan and Others*, , considering the question, whether the order of the Trial Court as upheld by the High Court directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains and public excretion by nearby slum dwellers could be sustained has observed as follows:

"15. Public nuisance, because of pollutants being discharged by the big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing the drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear.

7. In *Dr. B.L. Wadehra v Union of India*, the Supreme Court considering the provisions of the obligatory functions of the Corporation under the Delhi Municipal Corporations Act, 1957, in the context of Articles 48A and 51-G of the Constitution and following the decision of the Supreme Court in *Ratlam*, issued direction to the New Delhi Municipal Council to comply with the statutory functions of the Corporation.

8. Section 87 of the Karnataka Municipalities Act is almost similar to Section 42 of the Delhi Municipal Corporations Act. In view of the similarity of the provisions and the municipality is obliged to perform its obligatory functions, the petitioner is entitled to succeed in this petition.

9. Accordingly, this petition is allowed. Rule made absolute. Annexure-A the notification dated May 29, 1995 issued in pursuance of the Resolution Nos. 166 and 173 of the first respondent-municipality is hereby quashed insofar as it relates to the members of the petitioner's forum. It is further declared that the municipality cannot prevent the ratepayers and members of the petitioner from utilising the garbage disposal infrastructure of the municipality and it is the fundamental duty of the municipality to dispose of the garbage generated within its limits in order to maintain cleanliness and clean environment.

10. In the circumstances of the case, there is no order as to costs.

11. Sri M.N. Ramanjaneya Gowda, learned High Court Government Advocate is permitted to file memo of appearance within four weeks.