
(1997) 09 MAD CK 0128
In the Madras High Court

E. Thangasamy Raja

APPELLANT

Vs

The Executive Officer, Ettayapuram Selection Grade Town
Panchayat

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226
Tamil Nadu District Municipalities Act, 1920 — Section 262

Citation : (1998) 1 MLJ 103

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—This writ petition is filed by the petitioner for the issuance of a writ of certiorarified manda-mus, calling for the records of the respondent relating to the impugned order in Na. ka. No. A1/783/96, dated 27.2.1997 and quash the same, and consequently direct the respondent to grant renewal of the Private Market Licence to the petitioner for running the private Market in Door Nos. 175 to 177 at ward VI in Ettayapuram Town Panchayat.

2. In the affidavit filed in support of the writ petition, it is said that the petitioner is running a Private Weekly Market in which people come and sell their sheep and goats. The market is situated in Door Nos. 175-177, Ward No. VI, Ettayapuram Town Panchayat, and it is being run by the petitioner for more than four decades and there has been no complaint whatsoever from any of the users of the market or from the respondent herein. It is said that the petitioner had applied for licence to run the private market and the same had been granted to him on payment of licence fee u/s 262 of the Tamil Nadu District Municipalities Act which is applicable to the respondent herein. On expiry of the licence, petitioner applied for renewal for the period from 1.4.1997 to 31.3.1998, enclosing a demand draft for Rs. 8,175 towards licence fee. The said application was rejected by the respondent without giving any opportunity to the petitioner to show cause why the licence should not be granted. It is further alleged in the writ petition that the impugned order dated 27.2.1997 was issued without application of mind and

the reasons stated therein, vis., non-provision of public convenience inside the market not maintaining the accounts, non-issue of receipts for the fee collected, excessive fees collected from the users and that there are no proper facilities such as drinking water on sheds, are nothing but conjectures and surmises, and not based on any inspection or enquiry. It is said that the property of the petitioner, where the petitioner has provided necessary infrastructure for the weekly market. It is his further case that his application dated 19.2.1997 was not at all considered in the proper perspective. He has applied within the time stipulated and, therefore, entitled to have the licence renewed. The District Municipalities Act provides for obtaining a licence for running a private market, and the respondent is empowered to issue the same. It is his case that the application for renewal has to be considered and orders of refusal or rejection to renew, if any, have to be passed, if the owner or occupier fails to comply with any of the directions of the respondent. It is said that there was no inspection either by the respondent or any officer authorised by him, and there was no complaint from any trader regarding excess collection of fees or non-issuance of receipts for the fees. It is further said that even under the statute, if there was any complaint or non-compliance of any condition, an opportunity has to be given to the applicant to rectify the defects and thereafter licence should have been granted. Even that opportunity was denied to the petitioner. It is his further case that there was no inspection by any person with notice to him, nor has been informed about any of the complaints which is made the reason for rejecting his renewal application. It is said that unless the proper is followed as per chapter XII, more particularly Sections 262 to 267-A of the District Municipalities Act, his application for renewal should not be rejected. It is further contended that the principles of natural justice have not been followed before rejecting the application for renewal. It affects the petitioner's fundamental right to carry on his trade and business, under Article 19(1)(g) of the Constitution of India. Petitioner also alleges mala fides on the part of the respondent in not granting the licence. It is said that in January, 1997 a resolution was passed by the respondent wherein it expressed its desire to run a sheep sandy in one of its properties. It was passed by the Panchayat before the petitioner's application for renewal, and the refusal is only for the purpose of monopolising the business. Respondent has issued an action notification for the licence to collect fees from the sheep sandy in that place. In the property of the respondent Panchayat, there is no infrastructure, and the allegation that the petitioner's market has no infrastructure is only a mala fide expression of its intention to spoil his well-established business, for the last 40 years. It is said that no valid reasons have been stated for refusing the renewal of the petitioner's application. In the various grounds mentioned in the affidavit petitioner has stated as to why the order of the respondent is liable to be quashed.

3. A counter-affidavit has been filed by the Executive Officer of the respondent Panchayat. It is admitted by the Panchayat that the petitioner made an application for renewing the licence. In paragraph 4 of the counter-affidavit, it

is said that majority of the Panchayat members wanted the Panchayat itself to run the business in its place. Petitioner had paid Rs. 8,175 as licence fee for one year. This amount represents 15% of the total amount collected by the petitioner for the market. According to respondent, the members were of the opinion that if the Panchayat runs the weekly market, it would be able to realise enormous amount, since it is in dire need of funds for its activities. It was further contended that various complaints were received by the Panchayat against the petitioner's market. It is said that the complaints were to the effect that the petitioner's agents were collecting exorbitant amount as fees for the sheep and goat brought to the market. There were also no basic amenities available in the place, nor was there any toilet facility. Water is also not made available either for cattle or for men, and these deficiencies were the subject matter of many complaints by number of persons. It is said that on 22.2.1997, the Executive Officer made a personal inspection of the petitioner's market site and found the complaints to be true. Taking into consideration the above facts, the Panchayat decided not to issue licence for the year 1997-98 for running a private market. It is further contended that on 31.1.1997, the Panchayat decided that the respondent itself would run the weekly market in its land at Ettayapuram. The right to conduct the market was given in auction, and the same was bid by one K. Gurusamy of Kovilpatti in auction for Rs. 4,05,000. The Panchayat stood very much to gain by this auction. When compared to this, the amount paid by the petitioner is very meagre. It is further contended that if the Panchayat is to renew the licence in favour of petitioner, it will continue to suffer great loss,

4. It is further contended in the counter that there is no basis for filing the writ petition and so long as there was licence, petitioner has enjoyed the benefits, and the petitioner compel the respondent Panchayat to renew the licence. There are adequate reasons for the respondent to refuse to grant licence in favour of petitioner. It is further contended that there is no necessity for acquiring the land of the petitioner since the Panchayat itself is in possession of its own lands, and the various reasons for refusing the licence are supported by evidence. The respondent further contended that the petitioner was not submitting the accounts properly, nor was he maintaining the accounts. Licence fee is collected on the basis of income derived from the weekly market, and, unless the income is known, the correct licence fee cannot be collected. Petitioner was never ready to show his accounts. It is also stated that the respondent is entitled to ask the petitioner to provide facilities, and there is a duty cast on the petitioner to provide the same. It is said that the petitioner had been enjoying the facility for decades by paying almost a pittance to the respondent Panchayat, whereas he had been collecting enormous amounts and pocketing the same to himself. He had been making unjust enrichment at the cost of the respondent Panchayat. The respondent woke up from its slumber only now, and it has realised its folly of renewing the licence in favour of petitioner after getting a very low amount. It is said that the Panchayat has been acting only in accordance with law, and there has been no violation of any Rules or Regulations. It prayed for dismissal of the

Writ petition.

5. Chapter XII of the Tamil Nadu District Municipalities Act deals with "Licences and Fees", and Section 262 of the said Act deals with "Licence for Private market" Sub-Sections (1) and (3) of Section 262 read thus:

No person shall open a new private market or continue to keep open a private market unless he obtains from the Council a licence to do so (Sub-section (1)

The Council shall, as regards private markets already lawfully established and may, at its discretion as regards new private markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water-supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the council may think proper, or the council may refuse to grant any such licence for any new private market. The council may, however, - at any time, for breach of the conditions thereof, suspend or cancel any licence which has been granted under this section. The Council may also modify the conditions of the licence to take effect from a specified date. " (Sub-section (3).

Sub-section (4) deals with the procedure when a licence is granted, refused, suspended, cancelled or modified. Sub-section (5) says that "Every licence granted under this section shall expire at the end of the year". Section 264 enables the Council to require the owner, occupier, or farmer of any private market to provide certain amenities or facilities. Section 265 further says that if, in spite of notice given by the Council to carry out certain works, the owner or occupier fails to do so, it may suspend the licence or may refuse to grant licence until such works have been completed. So far as this writ petition is concerned, the above are the relevant provisions that require consideration.

6. Under Article 19(1)(g) of the Constitution of India, petitioner has got a fundamental right to his business or trade, and respondent can regulate the same by issuing licence. "To regulate" Means, the licence has to be granted subject to certain conditions. But the refusal to grant the same is only the exception.

7. In Saghir Ahmad Vs. The State of U.P. and Others, , though their Lordships did not express any final opinion whether restrictions include extinction, they were of the view that the word "restriction under Article 19(6) is used only in the sense of limitations or reasonable restrictions, and any legis-lation which totally deprives a private individual to do his lawful trade or business is violative of the fundamental rights.

8. In this case, it is not disputed by respondent that the petitioner is doing the very same business for the last 40 years, and for the year 1997-98 also he sought renewal of licence. He had to apply for renewal of licence only in view of Section 262 of the District Municipalities Act. The complaint of the petitioner is that while considering renewal of the licence, the same was rejected by the

respondent, without hearing him, and thereby his livelihood is affected. The said contention is answered by the respondent on the ground that whether to grant or not to grant a licence is within the discretion of the respondent, and, for the said purpose, Article 226 of the Constitution of India cannot be invoked. It is the case of the respondent that so long as the petitioner had the licence, he has enjoyed the benefit.

9. I do not think the contention of the respondent can be accepted for a moment. Being a public authority, there must be valid reasons for refusal of a licence, and it also settled law that a public authority has to act in fairness.

10. Before rejecting the application for renewal, it is also the bounden duty of the respondent to hear the petitioner about its proposed action. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , their Lordships said that even in respect of administrative actions, if certain adverse civil consequences follow the order could be passed consistently with the principles of natural justice. Of course, in that case, the question that came for consideration was regarding the retirement of a Government servant. In paragraph 9 of the judgment, their Lordships said thus:

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State of its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

11. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the earlier decision was followed. In paragraph 20 of the judgment, their Lordships held thus:

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent mis-carriage of justice. These rules can operate only in areas not covered by law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alterant partem*). Very soon thereafter a third rule was envisaged and that it that quasi-judicial enquiries must be held in good faith, with out bias and not arbitrarily or unreasonably. But

in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. As unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, , the rules of natural justice are not embodied rules. What particular rule of natural justice should supply to a given case must depend to a great extent on the facts and circumstances of that case, the framework, of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

Following the earlier two decisions mentioned above, in *Purshottam Bahel v. A.C. Baruah* AIR 1971 A&N 173 a Division Bench of that High Court held that these principles apply in the case of rejection of renewal of licence. That is a case where the proprietor of a hotel was asked to close down his business under the Assam Municipalities Act, by refusing to renew the licence. While considering the case, in paragraph 14 of the judgment, their Lordships said that the Board is a statutory authority constituted under the Act. In refusing renewal of a licence or withholding a licence, u/s 229(2) of the Act it exercises a statutory power affecting the right of a citizen to carry on trade or business. When the Board directs a person to close down his established hotel and restaurant, refusing renewal of licence on grounds mentioned in Section 229(2), such an order certainly involves civil consequences. Even though the Board's order may be administrative in character, it has to be made consistently with the principles of natural justice, inasmuch as it involves civil consequences so far as the affected citizen is concerned. Their lordships held that since there was violation of the principles of natural justice, notice is invalid.

12. In *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, , their lordships held thus:

Where in order to carry on business a licence is required, refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before

either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must.

Thereafter, their lordships said that in that particular case on hand, no opportunity was given and, therefore, the order was quashed.

13. The same principle was reiterated by the Patna High Court in the decision reported in *Paras Nath Prasad Vs. State of Bihar and Another*, .

14. In "Treatise on Administrative Law" by M.P. Jain--Edition 1996--Volume 1, at page 267, the learned Author has said thus:

For refusing to renew a licence, the Courts usu-ally insist on natural justice being afforded to the licensee, as the effect of this is no less drastic on the licensee than that of cancellation. Thus, it has been ruled that a municipality is to observe natu-ral justice while refusing to renew a licence for running restaurant by an individual. In this context, reference may be made to an English case, *R. v. Gaming Board, ex parte Benaim*, where Lord Denning insisted that while refusing to renew the licence of a gaming club, the licensing authority (Gaming Board in this case) is bound to give a hearing to the licensee gaming club in the name of fairness.

Learned Author has further stated thus:

The grant of a licence for acquisition and possession of firearms under the Arms Act has been held to be nothing more than a privilege. But the same cannot be said of cancellation or refusal to renew such a licence. Such an action entails civil consequence to the licensee and, therefore, he has a right to be heard when such action is contemplated. If, for some reasons, an action has to be taken immediately, then the licensee ought to be heard after the provisional action, but before fi-nal action, of cancellation of the licence.

15. In D.D. Basu's "Administrative Law"--Fourth Edition (1996) at page 605, the learned Author has said thus:

Where the function of licensing related to a fundamental right, e. g., to carry on the business of public transport, it must be held to be quasi-judicial, even though the statute did not provide for a hearing of interested objectors. Even dealing in liquor has been brought under this category. It is now practically settled that the refusal, cancellation or revocation of a licence to carry on a business must comply with the minimum requirements of natural justice (i.e., notice and opportunity to represent against the proposed order), because such order visits the person in question with civil and pecuniary injury.

16. On the basis of the above legal principle, it cannot be doubted that the action of the respondent in refusing to renew the licence without hearing the petitioner is invalid. In the counter-statement, they have no case that they ever wanted the petitioner to show cause for the alleged violation of the conditions. As stated

earlier, the contention raised is that it is within the discretion of the Panchayat either to grant or refuse to grant the licence. The said attitude of the respondent is only arbitrary and cannot be supported by law.

17. One of the main reasons that is stated in the counter for refusing the licence is that the respondent who is the licensing Authority itself wants to conduct the same business. In the last sentence in para. 4 of the counter, it is said that if a licence is granted to the petitioner, the Panchayat will continue to suffer great loss. This clearly shows the mala fide intention on the part of the panchayat in rejecting the petitioner's application. When the Petitioner has got a fundamental right to carry on a trade, if he is permitted to continue the business, he becomes a competitor. Merely because there will be competition and consequently loss to one person, that cannot be a ground for refusing the licence. If the reason stated in the counter affidavit is to be accepted, then it follows that the Panchayat alone has got a monopoly in doing the business. When the licensing authority itself indulges in such a business and deprives another man of his livelihood, it should have been a little more fair. When the licensing authority is in the position of a Trustee to the members of the public, it should not exploit the power of issuing licence, to its own advantage.

18. Apart from the reason (extracted above) in paragraph 4, other averments have also been made in the same paragraph wherein it is said that the Panchayat received certain complaints against the petitioner, and there was a local inspection of the site by the deponent of the affidavit. Petitioner was not informed about any of the complaints, and he was also not asked to explain about the so called allegations. Even in respect of the personal inspection by the Executive Officer, no notice has been given. We must understand that even before the local inspection, the Panchayat has taken a decision to run a market of its own, and it was thereafter the renewal application was made by the petitioner. The sequence of events establishes that the panchayat has already decided to reject the renewal application, and the subsequent allegations have been made to suit its action. For the last 40 years, there was no complaint against the petitioner, and respondent also did not have a case that the licence-fee is not properly paid, nor were the accounts properly maintained. Not even one notice was issued in the last 40 years. All on a sudden, after 31.1.1997, an allegation is made that petitioner is not maintaining proper accounts and the licence-fee paid by him is too meagre. This shows that reasons have been invented for rejecting the petitioner's application for licence. In the counter-statement, respondent has said: "After all what the petitioner had is only licence. He enjoyed the right to licence for the period for which it was granted. He cannot legally compel the respondent Panchayat to renew the licence. " This attitude of the respondent shows that it never wanted to act as a public authority for the welfare of the public. Even though it has stated that "petitioner had only a licence", by non-issuance of the same, the livelihood of a person is affected. There is a complaint by the respondent that there are no basic amenities in the property where petitioner conducts the weekly market, and that is also one of

the reasons for rejecting the application for licence. u/s 265 of the District Municipalities Act, the Panchayat is empowered to suspend the licence till the work is completed or to refuse the licence till then. By refusing to renew the licence once and for all, even the discretion that is given u/s 265 of the Act was refused to be taken into consideration by the Panchayat.

19. When the matter was being argued, learned Counsel for respondent also said that the Panchayat has got supreme power to reject an application for the issue of a licence and the court cannot compel it to grant the same. He reiterated that the grant of licence by the Panchayat is only a charity on its part. In my view, the attitude of the Panchayat was never fair.

20. Under the above circumstances, I quash the order of the Respondent dated 27.2.1997.

21. The further question that arises for consideration is, whether the Panchayat must be directed to reconsider its decision and thereafter pass appropriate orders. Normally, that should be the order of court, and the court cannot decide as to whether a person must be given a licence or not. But, having considered the attitude of the respondentPanchayat, especially the argument of leaned counsel for respondent, that what the Panchayat gives is only a charity by issuing a licence, and also the statement in the counter-affida-vit, that if licence is given to petitioner, that will affect the business of the respondentPanchayat, I do not think that even if an opportunity is given to the Panchayat to reconsider its decision, it will act fairly. When the respondentPanchayat itself has ventured to do the same business and it does not want a competition in that field, the court can expect that it will not act in accordance with law.

22. Under the above circumstances, I direct the respondent to issue a licence for conducting a private market in the property of the petitioner in Door Nos. 175 to 177 at Ward VI, in Ettayapuram Town Panchayat, within a period of 15 days from the date of this order. Having considered the circumstances of the case, I feel that this is a fit case where the petitioner must also be awarded his costs. Accordingly, the writ petition is allowed as indicated above, with costs. Advocate fee is quantified at Rs. 2,500. (Two thousand five hundred). W.M.P. Nos. 6850 and 6851 of 1997 are dismissed.