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(1955) 01 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 374 of 1954

K. Mohamed Khassim and Brother — APPELLANT

Vs

Municipal Council — RESPONDENT

Date of Decision : 28-01-1955

Acts Referred:
Constitution of India, 1950 — Article 19(1)(g), 19(6)

Citation : (1955) 01 MAD CK 0024

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : S.K. Ahmed Meeran and M. Khaja Mohideen, for the Appellant; D''Souza of John and Row, for the Respondent

Judgement

Rajagopala Ayyangar, J.—This is an application for the writ of certiorari against the Municipal Council of Ootacamund to quash an order refusing the applications made by the petitioners for the grant of a licence to store and sell fireworks and for a writ of mandamus directing the respondent to giant to the petitioners the licence applied for.

2. It is necessary to set out a few facts in order to understand the points raised for decision. The petitioners are merchants doing business at Ootacamund. In accordance with the provisions of S. 249 of the District Municipalities Act, the Municipal Council of Ootacamund notified on 26-11-1952 that no place within the Municipality shall be used for selling or storing fireworks without the licence of the executive authority. In compliance with this notification, the petitioners submitted two applications on 14-9-1954 for the issue of a licence for storing and selling fireworks not exceeding 50 lbs. in premises Nos. 290 and 291 Main Bazar, Ootacamund and in stall Nos. 10 and 11 in the market at Ootacamund from 16-10-1954 to 31-3-1955. These applications were made to the Municipal Health Officer, who forwarded them to the Madras Fire Service Officer for his remarks. The Fire service officer stated in reply that from the fire service point of view there was no objection to the storage and sale of crackers provided the

explosives rules were adhered to. The Health Officer however refused the petitioners'' applications by an order dated 28-9-1954 for the following reasons:

The places referred to above are not 150 feet at least away from any residential building.

Meanwhile the petitioners were in communication, with both the Fire Service Officer as well as the Inspector of Explosives as regards any possible objection by these two departments to the grant of the licences which they had applied for. A reply was received from the Fire Service Officer on 1-10-1954 in which it was stated that there was no objection from the Fire Service point of view for the grant of the licence for the sale of manufactured crackers under the condition of licence in form K at the two premises mentioned by the petitioners. They also received a similar reply from the Inspector of Explosives dated 4-10-1954 as follows:

A clearance of 150 feet all round is required only- for premises where explosives (fireworks) are. proposed to be manufactured possessed and sold such premises being licensed in form 1 of the Explosives rules.

Premises which do not observe any clearance around them can be licensed in form K of the Explosives Rules 1940 for possession and sale of manufactured fireworks in quantities not exceeding 200 lbs. provided such buildings are substantially built structures and they conform to the conditions laid down under a licence in form K of the Explosives Rules 1940.

In view of the above you may approach the authorities concerned and obtain the no objection certificate and thereafter forward the same with other particulars to this office for necessary action.

On receipt of these two communications, the petitioners filed an appeal to the Municipal Council against the order of the Health Officer to whom had been delegated the duty of dealing with these licences in the first instance. In an appeal petition dated 4-10-1954 the petitioners drew the attention of the Municipality to these two communications and the unreasonableness of insisting on the condition regarding a clearance of 150 feet around the premises for the grant of a licence to store 50 lbs. of crackers for sale. The matter came up before the Municipal Council at a meeting held on 13-10-1954 when the following resolution was passed:

The discretion of either giving or refusing the grant of licence rests with the Municipal Health Officer and the Council does not like to interfere with his jurisdiction and upset his proceedings.

This was the order on the appeal which was communicated to the petitioners on 20-10-1954. Meanwhile the petitioners had applied to the Additional District Magistrate, Nilgiris, for a no objection certificate to the grant of a licence in form No. K. The Additional District Magistrate granted the certificate as prayed for by a communication dated 22-10-1954 in which he stated:

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The Station Officer, Madras Fire Service, Ootacamund has stated that there is no objection to the grant of a licence for the said premises from the point of view of the Fire services. The Tahsildar, Ootacamund has reported that there is no objection in the said premises being licensed in form K. But the Ootacamund municipality has not issued the necessary certificate as the premises are not separated by 150 feet from dwelling houses. As there is no such condition to the grant of a licence in form K and as the Municipality''s objection is not on valid grounds, the Additional District Magistrate, the Nilgiris finds no objection to the grant of a licence in form K As the time available before Deepavali is short this certificate Is issued.

A copy of this was also forwarded to the Commissioner, Ootacamund Municipality. As the Municipal authorities continued to refuse to grant the licence, the petitioners have approached this court for the relief mentioned earlier.

3. Besides the above facts, the petitioners have also alleged in their affidavit in support of the petition that the action of the Municipality was "mala fide'' and was actuated by improper motives as a reprisal for two suits which the petitioners have filed against the Municipality for the recovery of damages for malicious prosecution. I shall deal with this point at a later stage.

4. The defence of the Municipality to the writ petition is three-fold. The first is that the discretion of the Municipal authorities under S. 249 of the District Municipalities Act is absolute and that this Court could not interfere with the exercise of such a discretion. Secondly they deny that they were actuated by improper motives in rejecting the petitioners'' applications. The main point however raised by them was that owing to a fire which had broken out in a shop vending crackers, fireworks etc. in 1950. from 1951 onwards the Municipality had set a piece of land far removed from residential quarters, that they were issuing licences for storing fireworks and crackers only in that plot and that the petitioners were not entitled to insist on their premises in the shop and residential areas being licensed for storing and selling these dangerous goods. In. regard to this, it might be mentioned that as early as 30-9-1954 the petitioners had applied to the Municipality for information as to whether particular plots had been set apart for storing and selling crackers during 1954-55 and it is admitted that the Municipality had sent no reply at all to this communication Further as the refusal to issue the licence was not based upon Municipality having set apart any particular plot where this trade could be carried on, in my judgment, it is not open to the Municipality to sustain the rejection of the licence on this ground.

5. Two questions arise for consideration in this petition. (1) Was the refusal of the licence illegal? (2) Was it improper as motivated by ''mala fide'' reasons?

6. In the first place the terms of S. 249 might be noticed. The relevant portions of S. 249 of the District Municipalities Act which govern the grant of licence are these:

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249(1): The Council may publish a notification in the district gazette and by beat of drum that no place within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the licence of the executive authority and except in accordance with the conditions specified therein:

Provided that no such notification shall take effect:

(a) until sixty days from the date of publication, and

(b) except with the previous sanction of the State Government in any area outside the Municipal limits;

(2) The owner or occupier of every such place shall within thirty days of the publication of such notification apply to the executive authority for a licence for the use of such place for such purpose.

(3) The executive authority may by an order and under such restrictions and regulations as he thinks fit, grant or refuse to grant such licence.

It will be seen that under sub-sec. (3) the executive authority is given an absolute power of refusing to grant the licence as also the power of imposing such restrictions and conditions as he might think fit. As the petitioners have under the Constitution a fundamental right to carry on their business subject to such reasonable restrictions as might be imposed, the question is whether the vesting of such an absolute power as would be involved in sub-sec. (3) in an executive authority without any guidance by the Legislature as to the relevant conditions and restrictions would be reasonable restriction within Art. 19(6) of the Constitution. In my opinion, the sub-section in its present form is in contravention of Art. 19(6) and has to be struck down as violating the fundamental rights guaranteed by Art. 19(1) (g). But even apart from this, it is clear from the communications from the Fire Service officer as well as from the Inspector of Explosives and the Additional District Magistrate, which I have set out above, that the Municipal Health Officer was under a mistaken impression that for the issue of a licence in form K, Indian Explosives Rules, 1940, the restriction which he imposed namely that there should be no habitation within 150 feet of the place of the storage was applicable. In my judgment, it is clear that the Municipal Health Officer, who is the executive authority vested with the power by the Municipal Council to grant or refuse a licence has exercised his discretion to refuse the petitioners'' applications on irrelevant grounds and his order is therefore liable to be quashed.

7. There is one further matter that might be referred to and that is, that the Municipal Council which is vested with the statutory duty to hear and dispose of appeals from the orders of the Municipal Health Officer has really abdicated its duty by passing a resolution in the terms I have set oat earlier. After all, the executive authority was functioning as a statutory delegate and it was for the Municipal authorities to consider whether objections raised by the petitioners to

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the order of the Municipal Health officer were justified or not on the merits. The Municipal Council never considered the appeal on the merits and its rejection of the appeal on the ground stated by it is there fore improper.

8. In the view which I have taken of the action of the Municipality as being illegal & not in accordance with the law, it is unnecessary to consider the point about the ''mala fides'' by reason of the petitioners having filed two suits for damages for malicious prosecution and I do not propose to express any opinion on that beyond saying that I do not consider that the suggestion is wholly without foundation.

9. In my opinion, the petitioners have made out the illegality of the order of the respondent refusing them the grant of the licence. The order therefore of the Municipal Health Officer and the Municipal Council refusing the petitioners the grant of the licence are hereby quashed and the respondent Municipality is directed to issue the licence to the petitioners as prayed for in their petitions. The petitioners are entitled to their costs. Advocate''s fee Rs. 100.

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