(2004) 04 AP CK 0111

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7718 of 1996

K. Mohd Yousuf and Others — APPELLANT

Vs

The Commissioner, Kadiri Municipality — RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 276, 277, 277(1), 277(2), 277(3)
Constitution of India, 1950 — Article 226

Citation : (2004) 4 ALT 335

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : O. Manoher Reddy, for the Appellant; B. Mahender Reddy and R.V. Chalapathi, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners filed the writ petition assailing the action of the respondent-Kadiri Municipality in collecting fee of Rs. 30/- and Rs. 60/- for each mini van and lorry, engaged by them for transporting fruits to their shops from outside the municipal market, as illegal, arbitrary and contrary to the provisions of the A.P. Municipalities Act, 1965.

2. The petitioners claim to be doing business in fruits in the shops taken by them on lease from the Mosque located on College Road, Kadiri. In the course of their business, the petitioners state that they engage vehicles for transporting fruits to their shops from destinations located outside the municipal area. It is their case that earlier the officials of the respondent used to collect Rs.5/- for each vehicle engaged by the petitioners for transporting the fruits to their shops from outside the municipal area. While so, it is the case of the petitioners that persons authorized by the respondent to collect fee, all of a sudden started collecting Rs.30/- for mini van and Rs.60/- for lorry, engaged by the petitioners for transporting the fruits to their shops from outside the municipal area. The

petitioners state that on enquiry they came to know that the respondent had auctioned the leasehold rights for collecting fee in the market yard. It is the case of the petitioners that even though the shops taken by them on lease belong to a private person (mosque) and not the municipality, and even though mosque, in which the shops are housed, is located outside the market yard on the main road and not within the market yard owned by the respondent, yet the respondent is collecting the enhanced fee in respect of the vehicles transporting fruits to their shops at the rate of Rs.30/- and Rs.60/- for mini van and lorry respectively, which is illegal and arbitrary. The petitioners state that u/s 277 of the A.P. Municipalities Act, 1965 (for short ''the Municipalities Act'') the respondent is entitled to collect or levy fee only in respect of the vehicles which come to public markets, as defined u/s 276 of the Municipalities Act, namely if they had been either acquired, constructed, repaired or maintained by the respondent from out of the municipal funds, and not to the shops belonging to private persons, and as such, the collection or levy of enhanced fee by the respondent from the petitioners in respect of the vehicles engaged by them for transporting fruits to their shop from outside the municipal limits, is not in consonance with the provisions of the Municipalities Act. Hence, the petitioners filed the present writ petition.

3. On behalf of the respondent, the Commissioner filed counter stating that markets in the municipality are categorized into two categories, namely public markets and private markets. For running business in a private market, the person intending to do business therein has to obtain a licence from the municipality u/s 279 of the Municipalities Act. When once licence u/s 279 of the Municipalities Act, is granted to a person to do business in a private market, the municipality is entitled to collect fee as specified in sub-section (2) of Section 277 of the Municipalities Act, and therefore, the persons who are running private markets or doing business in private markets, including the petitioners, are liable to pay the fee as specified therein. u/s 289 of the Municipalities Act, the respondent is empowered to prohibit or regulate the sale of articles on public streets. Though the respondent had been collecting fee from the petitioners in respect of the vehicles, which transport fruits to their shops from out of the municipal area, they have at no point of time objected to such collection, and in fact, paid the fee without any protest.

4. The Municipal Council of the respondent vide Resolution No. 334, dated 31-3-1996, enhanced the fee to be collected from each vehicle which transports fruits or goods to the shop owners from outside the municipal area. The petitioners who do fruits business, throw the garbage and rotten fruits on to the roads indiscriminately, causing inconvenience and health hazards to the general public visiting the market, and inasmuch the respondent in order to maintain public hygiene and good health of those frequenting the markets, engages people for clearance and removal of the garbage and vegetable refuse and rotten fruits, and thereby incurs expenditure for utilizing their services, the respondent had enhanced the fee. The fee that is being collected by the respondent from the

vehicles, which transport goods to the shops from outside the municipal area, is spent towards developmental activities and maintenance of roads, removal of garbage etc. Inasmuch as the petitioners are enjoying the amenities and facilities provided by the respondent, they cannot challenge the action of the respondent in enhancing the fee, and more so when the fee has been enhanced having regard to the quantity of goods being transported to the shops of the petitioners. It is thus prayed that the writ petition be dismissed. The petitioners cannot expect the respondent to maintain the markets at the cost of the general public and taxpayer, though they benefit by doing business therein. It is stated that if the petitioners have any dispute with respect to the place where they are carrying on business, is a market or not, they should have questioned the same by filing a representation before the Municipal Council, which would have been processed and forwarded to the Government as a reference u/s 290 of the Municipalities Act, for their decision, but neither the petitioners nor any other person had questioned the action of the respondent in collecting fee, and in fact, paid the fee levied all these years.

5. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent-municipality.

6. The learned counsel for the petitioner submits that though the petitioners are carrying on business in fruits in the shops belonging to a private person (mosque) located on the road outside the public market, the respondent is collecting the enhanced fee in respect of the vehicles transporting fruits to their shops from outside the municipal area, which is illegal and arbitrary. He submits that the place where the petitioners are carrying on business in fruits does not come within the meaning and definition of public markets, as defined in Section 276 of the Municipalities Act, and as such, the respondent, who u/s 277 of the Municipalities Act, is empowered to collect or levy fee in respect of the vehicles coming to the public markets from outside the municipal area, cannot collect or levy fee in respect of the vehicles transporting fruits to the shops of the petitioners, which are located outside the public market. He, thus submits that the action of the respondent in enhancing the fee for the vehicles which transport fruits to their shops from outside the municipal area, is illegal and arbitrary and is violative of the provisions of the Municipality Act.

7. Per contra, the learned Standing Counsel for the respondent-municipality submits that inasmuch as the petitioners had obtained licence for doing business in fruits in a private market as required u/s 279 of the Municipalities Act, they are liable to pay the fee as determined by the municipality from time to time, and they cannot be allowed to contend that the respondent is not empowered to enhance the fee in respect of the vehicles transporting fruits to their shops which are located outside the public market. He submits that the respondent having granted licence to the petitioners to run business, is empowered to regulate their business and collect fee for providing the necessary amenities. He submits that inasmuch as the petitioners are enjoying the amenities and facilities provided by

the respondent, and having regard to the fact that the respondent is incurring huge expenditure for upkeep and maintaining hygiene of the place where the petitioners are carrying on business, by clearing and removing the garbage, the petitioners who enjoy the services, cannot have any grievance against the enhancement of fee. In support of his contention that the respondent is entitled to levy fee for maintaining cleanliness and hygiene in a market area, the learned Standing Counsel placed strong reliance on the judgement in Secunderabad-Hyderabad Hotel Owners Assn. V. Hyderabad Municipal Corporation 1999 (1) SC 136.

8. In the background of the pleadings and the rival contentions, the only question that arises for consideration in this writ petition is whether the respondent is well within its powers and justified to impose, enhance and collect fee on the vehicles which transport fruits from outside its municipal limits to the shops of the petitioners situated in a private market and within its municipal limits?

9. Before proceeding to consider this question, a brief reference may be made to the provisions of the A.P. Municipalities Act, 1965 dealing with markets to analyze the power of the municipality to collect fee. Though the respondent states that markets in the municipality as classified as ''public markets'' and ''private markets'', there is no definition of ''private market'' in the Municipalities Act. However, there is a provision in the Municipalities Act which deals with ''public markets''. Section 276 of the Municipalities Act, which deals with ''public markets'' reads thus:

276. Public markets:-

(1) All markets which are acquired, constructed, repaired or maintained out of the municipal fund shall be deemed to be public markets; and such markets shall be open to all persons.

(2) Notwithstanding anything in the relevant law for the time being in force, every market situated within the municipal limits and belonging to a gram panchayat, panchayat samithi or Zilla Parishad shall vest in the municipality. The Government shall determine, in the manner prescribed, the amount of compensation payable therefore to the Gram Panchayat, Panchayat Samithi or the Zilla Parishad, as the case may be.

10. The power of the Municipal Council in respect of public markets is stated in Section 277 of the Municipalities Act. Sub-section (1) of Section empowers the Council to provide places for use as public markets. Under sub-section (2), the Council may, in any public market, levy any one or more of the fee mentioned in clauses (a) to (e) thereunder at such rates and may place the collection of such fee under the management of such persons as may appear to it proper or may form out such fee for any period not exceeding one year at a time and on such terms and subject to such conditions as it may deem fit. As per clauses (a) to (e), the Council is empowered to impose fee for the use of, or for the right to

expose goods for sale in such markets; for the use of shops, stalls, pens or stands in such markets; on vehicles or pack-animals carrying, or on persons bringing goods for sale in such markets; fee on animals brought for sale into, or sold in such markets; and licence fee on brokers, commission agents, weight-men and measures practicing their calling in such markets. Further under sub-section (3), the Council with the sanction of the Government can close any public market or part thereof, and under sub-section (4), the Council is empowered to lease any land, shop, godown, building or terrace of a building owned by it and situated anywhere in the municipality for any period not exceeding five years at a time and subject to such terms and conditions as the council may deem fit, provided that it is competent for the council to grant with prior sanction of Government, any lease for a period exceeding five years, but not exceeding five years at a time.

11. Though Section 282 of the Municipalities Act vests power in the council in respect of public markets, it may be noticed that the council is empowered to, by due notice, require the owner, occupier, or farmer of any private market to construct approaches, entrances, passages, gates, drains and cess pits for such market and provide it with latrines, as per the descriptions, roof and pave the whole or any portion of the floor with such material, to secure imperviousness and ready cleansing, ventilate it properly and provide it with supply of water, provide passages of sufficient width between the stalls and make alterations in the stalls, etc., and keep it cleanly and proper state and remove all filth and refuse therefrom. However, it may be noticed that for establishing a private market, one is required to obtain licence u/s 279 of the Municipalities Act. Section 279 of the Municipalities Act reads thus:

279. Licence for private market:-

(1) 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.

(2) Application for such licence shall be made by the owner of the place in respect of which the licence is sought not less than thirty and not more than ninety days, before such place is opened as a market, or the commencement of the year for which the licence is sought to be renewed as the case may be.

(3) 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 fee to be charged in such markets 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.

(4) When a licence is granted, refused, suspended cancelled or modified under this section, the Council shall cause a notice of such grant, refusal, suspension, cancellation or modification in English and in the main language of the district to be posted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

(5) Every licence granted under this section shall expire at the end of the year.

12. From the aforementioned provisions, it is clear that no private market can be established unless licence is obtained from the Council. It is required to notice that the sub-section (3) of Section 279, which is regulatory in nature, empowers the Council to grant licence 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 fee to be charged in such markets as the council may think proper.

13. Though it is the case of the petitioners that they are doing business in fruits in the shops belonging to a private person (mosque) located outside the public market, and having regard to the provisions of Section 277 of the Municipalities Act, the respondent is not entitled to impose fee in respect of markets, it may be noticed that it is the specific case of the respondent that for doing such business, the petitioners had obtained licence u/s 279 of the Municipalities Act. Though the markets in a municipal area are categorized into two categories, namely ''private markets'' and ''public markets'', the fact remains that the petitioners are doing business in a private market area. Though u/s 276 of the Municipalities Act, all the markets acquired, constructed, repaired or maintained out of the municipal funds, shall be deemed to be public markets and will be open to all persons, and though the power of levying fee at such rates on such public markets is vested in the municipality u/s 277 of the Municipalities Act, the fact which remains undisputed is that the petitioners had obtained licences u/s 279 of the Municipalities Act for running a private market, which is subject to certain conditions. Sub-section (3) of Section 279 of the Municipalities Act, which is both regulatory and supervisory in nature, empowers the municipal council in respect of private markets already lawfully established and may, at its discretion as regards new private markets, grant 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 markets as the municipal council may think proper. Though the petitioners contend that the respondent is not entitled to enhance the fee in exercise of its power u/s 277 of the Municipalities Act, which relates to the power of the municipal council in respect of public markets alone, it may be noticed that the licence granted to the petitioners under sub-section (3) of Section 279 is subject to such regulations as to supervision and inspection and 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 markets as the council may think proper.

When once the licence granted to the petitioners is subjected to certain conditions, and imposes the power of supervision and regulating the affairs of the private market with respect to the matters specified in sub-section (3) of Section 279 of the Municipalities Act, which inter alia, include the power of the municipal council to deal with the rents and fees to be charged in the private markets, it cannot be said that the municipal council has no power to pass resolution enhancing the fee to be collected from the vehicles which transport goods to the shop owners situated outside the market area from outside the municipal area. In the instant case, the municipal council has passed resolution No. 334 dated 31-1-1996 enhancing the fee, and such resolution, having regard to the regulatory power conferred on the municipal council u/s 279(3) with respect to private markets, cannot be said to be illegal or arbitrary. It is not as if the petitioners had not been paying the fee at all. The petitioners had been paying the fee even prior to the enhancement without any grievance. Be that as it may, none can dispute the fact that a duty is cast on the local bodies, such as the panchayats, municipalities and municipal corporations, to maintain cleanliness and hygiene in their respective jurisdictions, else the very purpose of creating them would stand defeated. For them to sustain and grow and carry on their administration effectively and efficiently and discharge the duties cast upon them and provide the basic civic amenities and keep its citizens happy, it is necessary that they should be financially strong and self-supporting. It is required to notice that it is the specific case of the respondent that the fee collected or levied by them from the vehicles transporting fruits to the shops of the petitioners from outside the municipal area, is being used for incurring the expenditure towards removal of heaps of garbage thrown by the petitioners on to the roads, and that the petitioners, who are making profits by doing business in the markets, cannot expect the maintenance of the private markets, at the cost of taxpaying citizens of the municipality. The apex Court in Secunderabad Hyderabad Hotel Owners Association v. Hyderabad Municipal Corporation 1991 (1) SC 136 having regard to the increase in the cost of providing service whether regulatory or otherwise, upheld the action of the respondent in enhancing the licence fee, and more so keeping in view the nature of amenities the corporation is required to provide to the shop owners, namely maintenance of cleanliness and hygiene etc. In the instant case, there can be no doubt that the respondent is providing sanitation and also engaging its staff inclearing the garbage and other refuse thrown by the petitioners on to the roads. Therefore, it cannot be said that the respondent is not empowered to levy fee in respect of the vehicles transporting goods to the shops of the petitioners from outside the municipal area.

14. In the result, the writ petition has no merit, and the same is accordingly dismissed. No costs.

