

(1958) 01 AP CK 0006
In the Andhra Pradesh High Court
Case No : Writ Petition No. 212 of 1956

K. Ranganayakulu

APPELLANT

Vs

Municipal Commissioner, Vijayawada Municipality

RESPONDENT

Date of Decision : 22-01-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1959 AP 460 : (1958) 2 AnWR 187

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : B.V. Subrahmanyam, for the Appellant; I. Balaiah, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Raju, J.—This is an application under Article 226 of the Constitution, for the issue of a writ of mandamus or other appropriate writ or order restraining the Vijayawada Municipality from proceeding with the action threatened in and by its notice dated 22-2-1956.

2. The facts which have given rise to this writ petition are simple and are not in controversy. The petitioner owns a saw-mill at Vijayawada. On an application made by him to the Commissioner of the Vijayawada Municipality on 12-9-1948, u/s 250 of the Madras District Municipalities Act, he was granted permission to install electric driven machinery for the saw-mill, Pursuant to the permission so granted, the petitioner has been running the saw-mill and renewal licences u/s 249 of the District Municipalities Act were being applied for and granted.

3. On 20-3-1952, the petitioner applied for permission u/s 250 of the District Municipalities Act for installing an additional 10 H. P. electric motor in the vacant premises contiguous to the premises in which he was already accorded permission to install the electric machinery for the purpose of running the saw-mill.

It is common ground that there was no reply from the Municipality either

granting the permission or rejecting the application made by the petitioner. u/s 321, Clause (if) of the District Municipalities Act, a period of thirty days is provided from the date of the application for the Municipality to reject the application, failing which it must be deemed that the permission applied for is granted.

4. During the year 1953-54, it is stated by the petitioner that he did not apply for a renewal licence as he did not work the additional 10 H. P. electric motor. He, however, made an application for a renewal licence for the year 1954-55 which was granted. He again applied for a renewal during the year 1955-56, and it was again granted. A copy of the said renewal licence No. 1207 dated 18-3-1955, is produced before me.

While so, on 6-2-1956, the petitioner applied for a renewal for the year 1956-57 as the previous licence was to expire on 31-3-1956. On 2-2-1956, the Municipal Commissioner, Vijayawada, gave notice to the petitioner which ran as follows:

"You are running a Saw-Mill in 19/273-A with electric motor without obtaining the necessary licence and permission from the council. The said running of the Saw Mill without necessary permission and licence is illegal and against the provisions of the M. D. M. Act. So please take notice! that unless you stop running the Saw-Mill within 4 days from the date of receipt of this notice you will be prosecuted for the offence. Further it is a continuing offence and you are liable for daily prosecution till it is stopped. This is without prejudice to the other remedies open to the Municipality."

5. On 23-2-1956, the Municipal Health Officer gave another notice to the petitioner, which was received by him on 27-2-1956, purporting to be an endorsement on the petitioner's application for renewal, dated 6-2-1956, in and by which he intimated the petitioner that the licence applied for was refused on the ground that the petitioner did not obtain the original installation permission as required by Section 250 of the District Municipalities Act. By the said notice, the petitioner was further threatened with prosecution for carrying on business without a licence.

6. From the above narration of the facts, it is clear that though the petitioner made an application for the grant of an installation permission, no reply was given by the Municipality for nearly six years. Subsequently for the years 1954-55 and 1955-56 the petitioner was granted renewal licences which could only be on the assumption that the petitioner's original application dated 20-3-1952, must be deemed to have been granted.

When again, in February, 1956, he applied for a renewal licence for the year 1956-57, that for the first time the municipal authorities realised that there was no original installation permission obtained by the petitioner notwithstanding the fact that they themselves granted a renewal licence for two years subsequently.

7. Statutes like the Madras District Municipalities Act authorise persons to do acts

for the benefit of others or, as it is sometimes, said for the public good. The statutory power conferred on an authority for the public good is coupled with a duty to perform it wider relevant circumstances. The fact that the exercise of the power is left to the discretion of the statutory body, does not exclude it from discharging its duty.

8. The power conferred on the authority must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself, that is, within the limits and for the objects intended by the legislature. Where there is a failure on the part of an authority to do so, there is a clear transgression of a duty imposed by law, which in this case is manifest or apparent.

9. If a person who wants to install machinery makes an application for permission, it is the obvious duty of the Municipality to inform him within a reasonable time either that the permission is anted or that it cannot be granted, Admittedly is was not done for six long years and this does not certainly redound to the credit of the Municipality; and having thereafter granted two renewal licences for two successive years, it is regrettable that the municipality should have sought to visit the petitioner with serious penalties by way of prosecution even during the period when the renewed licence was in force, when The dereliction of duty, if any, was on its own part and not on the part of the petitioner.

10. The petitioner has prayed for the issue of a writ of mandamus restraining the municipality from proceeding further with the action threatened in and by the notice given by it to the petitioner on 22-2-1956. A writ of mandamus is an appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would? be a failure of justice. The chief function of such writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdiction. Having regard to the facts above mentioned, I have no hesitation in holding that the relief prayed for by the petitioner must be granted.

11. A writ of mandamus will accordingly issue as prayed for by the petitioner. The petitioner will be entitled to his costs of this writ petition from the respondent. Advocate's fee Rs. 100/-.