

**(1970) 01 OHC CK 0027**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 169 of 1965

Krishna Prasad Bose and Others

APPELLANT

Vs

Executive Officer, Jijpur Municipality and Another

RESPONDENT

**Date of Decision :** 06-01-1970

**Acts Referred:**

Constitution of India, 1950 — Article 226

Orissa Municipal Act, 1950 — Section 297, 297(2), 298, 303, 337

**Citation :** (1970) 36 CLT 683

**Hon'ble Judges :** B.K. Patra, J;A. Misra, J

**Bench :** Division Bench

**Advocate :** B.K. Pal, for the Appellant; S. Mohanty, for the Respondent

**Final Decision :** Allowed

## Judgement

B.K. Patra, J.—This is a writ application under Article 226 of the Constitution praying for the issue of a writ of mandamus or any other appropriate writ directing the opposite parties to forbear from giving effect to the order passed by them direction closure of the Biraja Hat, Jajpur and for directing them not to give effect to the resolution levying an assessment of Rs. 1,826/- on the Plaintiff as license fee for the Hat.

2. The facts of the case which are not seriously disputed are these. The Plaintiff is the owner of a Hat known as Biraja Hat alias Agneswar Hat in the town of Jajpur which is a private market under the provisions of Section 297 of the Orissa Municipal Act, 1950 (hereinafter referred to as the Act). The said Hat is being run for more than sixty years. On 20.2.1965, the Plaintiff applied to the Municipality for renewal of license for the Hat for the financial year 1965-66. That application was received by the opposite parties on the very same day. But instead of passing an order within thirty days thereafter, either granting the licence or refusing to grant it, the Municipality asked the Plaintiff to give an account of the income of the Hat for the previous year. By application dated 29-3-1965, the Plaintiff wanted an extension of time for submission of accounts

and by order dated 15-4-1965, five days" time was allowed to the Plaintiff. The accounts were duly submitted by the latter on 16-4-1965. On 21-4-1965, the Municipality intimated to the Plaintiff that a Bum of Rs. 1826/- had been assessed as license fee on the Plaintiff's Hat and that the same should be paid within a period of eight days therefrom. As the Plaintiff disputed the correctness of the amount levied on him as license fee, the amount was not paid by him. On 17-5-1965, a prolongation was issued by the Municipality to the effect that the owners of the Birija Hat had not obtained a licence for the Hat and were holding it without any authority and that as such the public should not transact any business in the Hat (Annexure-A). The Plaintiff protested against this proclamation by his application dated 4-6-1965. But in spite of it, another proclamation almost on the same lines as Annexure A was issued by the Municipality (Annexure-O). The Plaintiff contends that under the provisions of Section 297(2) read with Sections 298 and 337(8) of the Act, the Municipality is bound to renew license in respect of an old private market like the Biraja Hat and, in this particular case, the application for renewal having been made at the proper time, and no order having been issued within 30 days of the receipt of such application, the application for renewal must, u/s 337(8) of the Act be deemed to have been allowed by the Municipality and as such the proclamation issued by the Municipality is illegal. It is further contended that when there is a dispute about the assessment of fees and the legality of the assessment itself, it is liable to be challenged in a suit and the granting of a license for an old private market and the assessment of licence fees being distinct and independent matters, non-payment of the disputed amount of fees cannot be a ground for declaration that the market is being held without a license. In the circumstances stated above, 818 the licence for the Hat must be deemed to have been granted, the Municipality has no jurisdiction or power to close the private market u/s 303 of the Act. It is also urged in the petition on constitutional grounds that the Municipality has no jurisdiction to levy a licence fee of an amount more than Rs. 250/- but as these contentions are not pressed at the time of hearing and the writ petition can be disposed of on other grounds, it is unnecessary to refer to these contentions at length.

2. To appreciate the contentions raised by the parties, it is necessary to refer to the relevant provisions of the Act. Section 297 which deals with license for private markets runs as follows:

297. Licences for private markets.

(1) No person shall open a new private market or continue to keep open a private market unless he obtains from the municipal 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 license 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 licence is sought, as the case may be.

(3) The municipal 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 rules 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 municipal council may think proper, or the council may refuse to grant any such licence for any new market. The municipal 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 municipal council may also modify the conditions of the licence to take effect from a specified date.

(4) When a license is granted, refused, suspended, canceled or modified under this section, the municipal council shall cause a notice of such grant, refusal, suspension, cancellation, or modification in the oriya language to be posted in conspicuous place at or near the entrance to the place in respect of which the license was sought or had been obtained.

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

Mr. Pal., learned Advocate appearing for the Plaintiff relying on Sub-section (3) of the section contends that subject to such rules as to supervision and inspection and such conditions as to sanitation, drainage, water-supply etc. it is obligatory on the Municipal Council to issue a licence to a private market already lawfully established and its discretion to allow or refuse a licence is confined only to a new private market and that in neither case is the grant of a licence conditional on payment of the licence fee. As we are of the view that this writ application can be disposed of on another ground which we will presently notice, it is unnecessary for us to express any final opinion on the aforesaid contention raised by Mr. Pal.

3. Section 337 of the Act deals with the general provisions regarding licenses and permissions and Sub-section (8) thereof is in the following terms:

337. General provisions regarding licences and permissions:

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(8) The acceptance by, or on behalf of a municipal council of the prepayment of the fee for licence or permission, shall not entitle, the person making such prepayment to the licence or permission, as the case may be but only to refund of the fee in case of refusal of the licence or "permission; but an Applicant for the renewal of a licence or permission shall until communication of orders on his application, be entitled to act as if the licence or permission had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission are not communicated to the Applicant within thirty days after the receipt of the application by the Executive officer the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules, regulations by-laws

and all conditions ordinarily imposed.

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It is not disputed that the Plaintiff submitted an application to the Municipality on 20-2-1965 for renewal of the licence for the Hat for the year 1965-66 and that the Municipality received the application on the very same day. It is submitted by Mr. Pal that as no orders on the application have been communicated to the Plaintiff within thirty days after the receipt of the application by the Municipality, his application must be deemed to have been allowed for the whole year and it cannot therefore be said that he is holding the Hat without a license. Mr. S. Mohanty appearing for the opposite parties conceded that no specific order refusing the application has been communicated to the Plaintiff at any time and much less within 30 days of the receipt of the application, but made a feeble attempt to argue that the expression "orders on application" occurring in Sub-section (8) of Section 337 of the Act does not necessarily mean an order either refusing or allowing the application and that the expression is wide enough to cover intermediate steps that the Municipality may take in the course of consideration of the application, and the intermediate step referred to by him is the letter of the Municipality calling upon the Plaintiff to submit the accounts of the previous year.

We are unable to accept this contention. What the section requires is a specific order on the application for licence. It is argued by Mr. Mohanty that unless the expression "orders on an application for licence or permissions is construed in a manner urged for by him, it would work rather hardship, because, before an application for grant or renewal of a licence is either allowed or rejected, certain intermediate steps have to be taken, queries made and information obtained, and it may not always be possible to complete the process within a period of thirty days. If this was the intention of the Legislature there would have been absolutely no necessity for the rest of the Sub-section (8) commencing from "and save as otherwise specially provided in this Act", because, the provision in the Sub-section that "an application for renewal of a licence or permission shall until communication of orders on his application, be entitled to act as if the license or permission had been renewed" would have been sufficient to cover a contingency of the nature referred to by Mr. Mohanty. The fact that in spite of this provision, the Legislature enacted that "if orders on an application for licence are not communicated to the Applicant within thirty days of the receipt of his application by the Executive officer, the application shall be deemed to have been allowed for the year shows beyond any reasonable doubt that the final orders on the application should not only be passed within 30 days of the receipt of application but that it should also be communicated to the Applicant within that period.

4. It is next urged by Mr. Mohanty that the proclamation dated 17.5.1965 (Annexure A) can be deemed to be such communication as is contemplated under Sub-section (8) of Section 337 of the Act. Apart from the fact that this is

not an order on the application filed by the Applicant and much less communicated to him, as required by law, it is also issued beyond the period of thirty days contemplated in Sub-section (8) of the section.

5. On the aforesaid analysis it must follow that the application submitted by the Plaintiff to the Municipality for renewal of the licence for the year 1965-66 must be deemed to have been allowed by the Municipality. Consequently, it cannot be said as is alleged in the notices, annexures "A" and "C" that the Plaintiff is holding the Hat without a licence. Section 303 of the Act gives power to the Municipality to close a private market either when no licence has been applied for or the licence for which has been refused, withheld or suspended, or which is held or kept open contrary to the provision of the Act. None of the conditions has been satisfied in this case to entitle the Municipality to close the private market. In the result, therefore, the application is bound to succeed.

6. We would accordingly allow this application and direct that a writ in the nature of Certiorari be issued quashing the proclamations made by the Municipality in Annexures "A", and "C" dated 17-5-1965 and 5-6-1965 respectively. As the financial year 1905-66 has closed long ago, the prayer for the issue of a writ of mandamus directing the Municipality to for hear from giving effect to the proclamations aforesaid has become infructuous. The opposite parties shall pay the costs of this petition. Hearing fee is assessed at Rs. 100/-.

A. Misra, J.

7. I agree.