
(1954) 10 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No's. 152 and 150 of 1954

K.V. Vanchi Ayyar

APPELLANT

Vs

The State of Madras and another

RESPONDENT

Date of Decision : 12-10-1954

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)

Citation : (1954) 10 MAD CK 0006

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : K.S. Sankara Aiyar and T.V. Rajagopalan, for the Appellant; Ismail, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—Though these petitions have actually become anfractuous in the sense that the relief asked for in these petitions cannot be

granted, the procedure adopted by the authorities who issued the orders the validity of which has been challenged in these petitions calls for

comment. The petitioner in both these applications for the issue of writs of certiorari is the President of the Mylai Vaideeka Mahajana Sabha, with

its premises at No. 3 Chitrakulam Street, Mylapore. The Sabha arranged for religious discourses. The Sabha claimed that though members of the

public had no right as such to enter its premises to listen to the discourses, it admitted any member of the public, who wanted to hear the

discourses. by tacit consent of the authorities of the Sabha.

2. On 10th January 1954, the Sabha applied to the Commissioner of Police for a licence to install a mike with an amplifier in the premises for a

period of two months. That licence was granted. From the records produced

before me it would appear that that licence was granted by the Deputy Commissioner of Police, though the licence itself was unsigned. On 28th February 1954 the licence was revoked under the orders of the Inspector of Police who himself purported to act under orders issued to the Commissioner of Police by the Government of Madras. It was to set aside this order of cancellation that W.P. No. 152 of 1954 was filed on 4th March 1954. Apart from the other contentions urged by the petitioner, he contended that the order of cancellation was passed in violation of the principles of natural justice without any notice to the licensee, the Sabha.

3. The period for which the licence had been granted on the application dated 10th January 1954 was two months. That licence itself was can-

celled towards the end of the two months period, that is on 28 h February 1954. On 10th March 1954 the petitioner applied afresh for a licence,

and that application was rejected by Deputy Commissioner of Police by his order dated 25th March 1954. It is the validity of this order dated

25th March 1954 that is challenged in W.P. No. 250 of 1954.

4. Since common questions arose, the petitions have been heard together.

5. With reference to W.P. No. 152 of 1954 one of the contentions put forward by the learned Counsel for the petitioner was that there was no

need at all to take out a licence under the provisions of the Madras City Police Act (Act III of 1888). But I am not called upon to decide in these

proceedings the validity of the order granting the licence. It is only the validity of the order cancelling that licence that is in issue. So without

deciding the question whether for installing a mike and an amplifier in private premises a licence by the police authorities is necessary at all, I shall

proceed on the basis that a licence had been granted, and confine myself to the question at issue, whether the cancellation of that licence was in

accordance with the Jaw. In that view of the case it should also be unnecessary to go into the soundness of the further contention put forward by

the learned Counsel for the petitioner that the provisions of S. 34 and S. 71, Cl. (xv) of the City Police Act are ultra vires as offending the

fundamental rights guaranteed under Art. 19 (1)(a) of the Constitution.

6. Section 71 (xv) of the City Police Act runs:

Whoever beats a drum or tom-tom or blows a horo or trumpet, or beats or sounds any brass or other instrument or utensil, or plays any music or

uses any sound amplifier except at such times and places and subject to such conditions as shall, from time to time be allowed by the

Commissioner is punishable under the terms of S. 71.

7. Section 6 of the Act empowers the Commissioner to delegate to any of his deputies or assistants the exercise of any of the powers assigned to

that officer as Commissioner under his orders. From the Police Standing Orders issued under S. 6 of the Act it would appear that the person

empowered to prescribe the time, place and conditions under S. 71 (xv) in relation to amplifiers is the Assistant Commissioner of Police.

8. The licence with which I am concerned in W.P. No. 152 of 1954 was apparently issued under the orders of the Deputy Commissioner. It does

not appear from the material placed before me whether any of the functions under S. 71 (xv) in relation to amplifiers was delegated by the

Commissioner to the Deputy Commissioner. But that in no way affects the real question at issue, whether the cancellation of that licence was valid.

It was not the person who issued the licence nor the person was empowered to exercise the functions under S. 71 (xv) that cancelled that licence.

It was the Inspector of Police that purported to cancel the licence, and even he did not exercise any discretion of his own. He purported to act

under the orders of the Government. When a statutory function is assigned to a statutory authority and the exercise of that power depends upon

the discretion to be used by that statutory authority, it is only that statutory authority that can exercise the power and not the Government. That was

clearly laid down by the Supreme Court in *Commissioner of Police, Bombay v. Gordhanridas Bhanji* 1052 S.C.B. 135 = 65 L.W. 212. So even,

if the order of cancellation had been passed either by the Commissioner or by the Assistant Commissioner, who had been empowered by the

Commissioner under S. 6 of the Act to exercise the powers under S. 71 (xv), the cancellation in this case not in the exercise of that discretion of

the Commissioner of Police or of the delegated authority, but in obedience to the orders issued by the Government, would be wholly invalid; and in

the present case, as I have already pointed out, it was not even the person competent to issue orders that issued the order of cancellation; it was

the Inspector of Police, to whom no powers apparently had been delegated nor could have been delegated by the Commissioner of Police under

the terms of S. 6 of the City Police Act.

9. On this short ground alone, without even going into the question whether such a cancellation could have been ordered even by a competent

authority without notice to the licensee, and without giving him a reasonable opportunity to show cause why the licence should not be cancelled, the

order complained against will have to be set aside, and the rule nisi will have to be made absolute. But in this case the period for which the licence

was granted expired long ago, and no useful purpose will be served by directing the formal cancellation of that order. But as in the main the

petitioner has succeeded in establishing the invalidity of the order complained against, the petitioner will be entitled to his costs in this writ petition.

10. The subject matter of W.P. No.250 of 1954 is the validity of the order of the Deputy Commissioner of Police dated 25th March 1954 by

which he refused the application for an amplifier preferred by the petitioner on 10th March 1954. The order ran:

The grant of loud speaker licence is refused in view of representations received from the neighbors that the sound of the microphone annoyed them

and disturbed the studies of their school children preparing for examination,

11. One of the main contentions of the petitioner was that this refusal was not based upon the exercise of any discretion by the Deputy

Commissioner himself, but was treated by the authorities as really ancillary to the cancellation of the prior licence granted, and the cancellation of

the prior licence was under the orders of the Government and not in the exercise of the discretion of the statutory authority empowered to grant

that licence, in the counter affidavit filed by the Deputy Commissioner who passed the order dated 25th March 1954, he categorically averred in

paragraph 4 that

it was in the exercise of his discretion properly after considering whether the granting of the licence to install an amplifier in a private premises,

namely, No. 8 Chitrakulam Street would cause annoyance to the persons residing in the neighbourhood that he rejected that application.

12. In view of that categorical statement, I am unable to hold that the rejection was in compliance with the orders of the Government passed earlier

to cancel the licence that had already been granted, though the proximity of time would give room for a suspicion, that to a considerable extent the

latter rejection was influenced by the orders of the Government which orders the Government had no jurisdiction at all under the City Police Act to issue.

13. I have already pointed out that under S. 71 (xv) of the City Police Act, it is the Commissioner of Police that is to decide the conditions etc.,

under which permission to install an amplifier could be granted. The power the Commissioner delegated to the Assistant Commissioner of Police

under S. 6 of the City Police Act. The order of rejection in this case was passed by the Deputy Commissioner, and I have not been shown

anything to prove that the powers exercisable under S. 71 (xv) have been delegated to the Deputy Commissioner by the Commissioner. The

Deputy Commissioner is no doubt an officer higher in rank to the Assistant Commissioner to whom those powers have been specifically delegated.

But it is not mere ranking in the hierarchy of police officers that could clothe them with jurisdiction. There must be a specific delegation by the

Commissioner under the terms of S. 6 and such delegation is wanting in the case of the Deputy Commissioner of Police. Therefore I have to hold

on the material placed before me that the Deputy Commissioner of Police had no jurisdiction at all to refuse the licence or pass the order he did on

25th March 1954. That would lead to this conclusion, that the refusal was passed in the exercise of discretion of an officer other than the one to

whom the power had been validly delegated by the Commissioner, even accepting as wholly correct the contention in paragraph 4 of the counter

affidavit of the Deputy Commissioner. On this ground the order dated 25th March 1954 will have to be set aside.

14. The writ of mandamus which the petitioner asked for however cannot be issued in this case, because the period for which the licence had been

asked for was over long ago, and the purpose for which amplifier was required may no longer be in existence. So in the exercise of my discretion I

decline to issue the writ of mandamus asked for though the petitioner was able to establish that the rejection of the application he had made on

10th March 1954 was improper and invalid. Should an application be made by the petitioner afresh no doubt it will be disposed of by the

competent authority in the light of the observations made in the order. I do not think there should be any separate order as to costs in W.P. No.

250 of 1954. Counsel's fee in W.P. No. 152 of 1954, Rs. 100.