(2002) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20789 of 1998

Laxmi Lodge and Others — APPELLANT

Vs

Government of A.P. and Another — RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Hyderabad Municipal Corporation Act, 1955 — Section 199, 489

Citation : (2002) 6 ALD 605 : (2003) 1 ALT 30

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : I Aga Reddy, Bankatlal Mandhani, Vedula Srinivas, Government Pleader for Municipal Administration and K. Venugopal Reddy, SC for Municipal Corporation, for the Appellant;

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This batch of writ petitions are filed by the petitioners, who are running boarding and lodging houses, restaurants, hotels etc., aggrieved by the notice issued by the 2nd respondent-Municipal Corporation, in the year 1998.

2. According to the petitioners, all the petitioners have been carrying on business since long time without giving scope to any complaint either from respondent No. 1 or anybody. It is also stated that the petitioners have been maintaining cleanliness in their hotels to the required standards. It is further stated that in the matter of collection of dust, ashes, refuse and rubbish from their premises and depositing such material in the public receptacles and the places provided by the 2nd respondent, they have been observing the same standards as required, without giving scope for any complaint. While so, the 2nd respondent issued the impugned notices, said to be under Sub-sections (i), (ii) and (iii) of Section 483 and 489 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to ''the Act''), directing the petitioners to provide/construct/arrange the receptacle-bins within the premises, as suggested by the Municipal Health Officer, Warangal, as per the specifications given within 15 days from the date of

the receipt of the notice and to ensure that the dust, ashes, refuse, rubbish, trade refuse and waste generated within the premises is deposited in the receptacles. It is also further stated in the notice that the said deposited dust, ashes, refuse, rubbish, trade refuse and waste generated from the said premises will be collected by the Municipal Corporation on daily basis from the said receptacles. The petitioners were further directed to pay, varying amounts from Rs. 600 to Rs. 2500 or even more towards administrative charges for lifting, transportation, and dumping of the same at the dumping yard. It is further directed that the amount should be paid by 25th of every month, for the next month, and failure in this regard shall render the petitioners liable for prosecution in the Court of law, besides imposing fine under the provisions of the Act. According to the petitioners, the provisions referred to in the notices do not empower the Corporation to levy and collect any amount towards administrative charges for lifting, transportation and dumping the waste at the dumping yard. Hence, the petitioners filed this batch of writ petitions praying for the issue of a writ of mandamus declaring the action of the respondents as illegal, arbitrary and without jurisdiction, as no such power is vested in the Corporation under the provisions of the Act.

3. A counter has been filed by the 2nd respondent-Corporation admitting the issue of notices, as referred by the petitioners. But in the counter, it is stated that due to the fast development and increase in the population, trade, business and educational activities, within the limits of the Corporation, to create a healthy environment to the people of Warangal, the Standing Committee approved the Resolution No. 61, on 18-12-1997 and fixed the rates to be implemented from 1-4-1998 and issued the notification and published the same in the District Gazette in March, 1998. Therefore, the notices are in pursuance of such approval by the Standing Committee. In the counter, it is also stated that the administrative charges are being imposed in terms of Sections 483 and 489 of the Act.

4. At the time of hearing, the learned Counsel for the petitioners contended that the provisions of Section 483, read with Section 489 of the Act do not empower the Corporation to levy any administrative charges for lifting, transporting and dumping the waste in the dumping yards. The learned Counsel Sri V. Srinivas, who is appearing for one of the petitioner, which is running a hospital, stated that the above two provisions do not empower the Corporation to levy and collect any charges. But, however, Section 490 provides for entering into an agreement by the Corporation with the owner or occupier of any premises for removing rubbish or filth from such premises on such terms as to time and period of removal and other matters on payment fees at such rate as the Corporation may determine. But there is no such agreement between the petitioners and the respondent Corporation. Therefore, the Corporation does not have the power to issue the demand.

5. The learned Counsel for one of the petitioners, Sri Bankatlal Mandhani,

contended that Section 197 empowers the Corporation to levy and collect taxes on lands and buildings, which is called ''the property tax'' and in terms of Section 199 the said ''property tax'' includes ''conservancy tax'' and when once the Corporation has collected conservancy tax as one of the items of the property tax, it is not entitled to collect any tax further for the very same purpose. Therefore, it is contended that the notices issued by the Corporation are without jurisdiction.

6. The learned Standing Counsel for the Corporation, Sri Venugopal Reddy, on the other hand, tried to sustain the impugned notices relying upon the provisions of Section 489, especially Sub-section (2) of that section. The learned Standing Counsel has fairly conceded that except the above two provisions, there is no other provision, which empowers the Corporation, to levy and collect the tax, which is sought to be collected from the petitioners.

7. From the above rival contentions, the issue to be considered, in this batch of writ petitions, is whether the Corporation has got the power to demand and collect the amounts, said to be towards administrative charges for lifting, transporting and dumping the waste at the dumping yard.

8. For convenience the provisions of Sections 483 and 489 of the Act, are extracted hereunder: -

"Section 483. Duty of owners and occupiers to collect and deposit dust, etc :--(1) It shall be incumbent on the owners and occupiers of all premises to cause all dust, ashes, refuse, rubbish and trade refuse to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice from time to time specifies, in the public receptacle, depot or place provided or appointed under the last preceding section or the temporary deposit or final disposal thereof.

(2) The Commissioner may, if he thinks fit, by written notice require the occupier and owner or either of them of any premises to cause all dust, ashes, refuse and rubbish, but not trade refuse to be collected daily, or otherwise periodically, from the said premises and deposited temporarily upon any place forming part of the said premises which the Commissioner appoints in this behalf, and it shall be incumbent on the said occupier and owner or either of them to cause the said matters to be collected and deposited accordingly.

(3) It shall be incumbent on the owners of all premises to provide receptacles of a size to be specified by the Commissioner for the collection therein of all dust, ashes, refuse, rubbish and trade refuse to be collected from such premises. Such receptacles shall at all times be kept in good repair and condition and shall be provided in such number and place and retained in such positions as the Commissioner may, from time to time, by written notice, direct.

(4) It shall also be incumbent on the owners and occupiers or either of them of all premises when required by the Commissioner by written notice so to do, to

employ servants for the purpose of carrying out and complying with the requirements of Sub-sections (1) and (2) of this section.

Section 489. Removal of rubbish and filth accumulating in large quantities on premises:--(1) If any person who is bound u/s 483 to cause the collection and deposit of dust, ashes, refuse, rubbish and trade effluent or u/s 483 to cause the collection and removal of excrementitious and polluted matter shall allow the same to accumulate on his premises for more than twenty hours or shall keep the same otherwise than in a proper receptacle, or shall neglect to cause the same to be removed to the receptacle, depot or place provided or appointed for the purpose, the Commissioner, may in addition to the institution of any proceedings provided for in this Act, by written notice require such person to collect forthwith all such dust, ashes, refuse, rubbish, trade effluent or excrementitious or polluted matter accumulated thereon and remove the same forthwith in the manner and to place provided by or under this Act.

(2) If such person shall fail to comply with the notice given under Sub-section (1), the Commissioner may cause, the dust, ashes, refuse, rubbish and trade effluent or excrementitious or polluted matter accumulated in such premises to be removed and a penalty not exceeding one thousand rupees as the Commissioner may fix shall be paid by such person towards the cost of removal.

9. A reference Section 483 shows that the heading of the section reads as ''duty of the owners and occupiers to collect and deposit dust, etc. As per the said provision, it is the duty of the owners or occupiers of all premises to cause all dust, ashes, refuse, rubbish and trade refuse to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice from time to time specifies, in the public receptacle, depot or place provided or appointed u/s 482 or the temporary deposit or final disposal thereof. If the owners or occupiers did not carry on the said act of removing the waste, the Commissioner may by written notice require the occupier and the owner or either of them of any premises to cause all the dust, ashes, refuse and rubbish to be collected daily or otherwise periodically from the said premises and deposited temporarily upon any place forming part of the said premises, and it shall be incumbent on the said occupier and owner or either of them to cause the said matters to be collected and deposited accordingly. Further, it shall be incumbent on the owners of all premises to provide receptacles of a size to be specified by the Commissioner for the collection therein of all dust, ashes etc., to be collected from such premises and such receptacles shall at all times be kept in good repair and condition and shall be provided in such number and place and retained in such positions as the Commissioner may, from time to time, by written notice, direct. Section 489 contemplates that if any person, who is bound u/s 483 to cause the collection and deposit of dust, ashes etc., shall allow the same to accumulate on his premises for more than twenty hours or shall keep the same otherwise than in a proper receptacle, or shall neglect to cause the same to be removed to the receptacle, depot or place provided for the purpose, the

Commissioner, may, in addition to the institution of any proceedings for in this Act, by written notice require such person to collect forthwith all such dust, ashes, refuse etc., accumulated thereon and remove the same forthwith in the manner and to place provided. If such person fails to comply with the notice given under Sub-section (1), the Commissioner, may cause, the dust, ashes etc., accumulated in such premises to be removed and such charge as the Commissioner may, with the sanction of Standing Committee fix, shall be paid by such person towards the cost of removal. This sub-section, subsequently, in the year 1999 was amended, as per which, in the place of the words, ''such charges as fixed by the Commissioner, may, with the sanction of Standing Committee'', me words ''a penalty not exceeding one thousand rupees as the Commissioner may fix'' were substituted.

10. Any of the provisions referred to above, does not contemplate or empower the Commissioner to levy and collect any amounts towards administrative charges for lifting, transporting and dumping the waste in dumping yards. When such power is not vested in the Corporation, the notices issued by the Corporation, raising a demand towards such administrative charges is illegal and without jurisdiction and therefore, the demand made by the Corporation is illegal and unsustainable.

A reference Section 490, however, provide for entering the Commissioner in contract with the owner or occupier of any premises to remove rubbish or filth from such premises, on payment of fee at such rates, as the Corporation may determine. But, it is not the case of the Corporation that there is any such contract.

11. Further, a reference made to Section 199 clearly shows clearly that the property tax collected in respect of the premises includes conservancy tax and therefore, the proposed tax, which is in the name of ''conservancy tax'', if allowed, would amounts to levy and collection for the second time - once as property tax, and again in the present form. Even on that count also, the levy and demand of the administrative charges are illegal and unsustainable.

12. Therefore, all the impugned notices, issued by the respondent-Corporation against the petitioners are set aside.

13. In the result, all the writ petitions are allowed. No costs.

