
(1967) 12 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 270 of 1965

Mahadeo Prasad	Vs	APPELLANT
The State of Madhya Pradesh and others		RESPONDENT

Date of Decision : 14-12-1967

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127, 233, 283, 283(1), 349

Citation : (1971) ILR (MP) 470 : (1968) JLJ 655 : (1968) MPLJ 132

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; K.K. Dubey, Govt. Advocate and R.P. Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

The Petitioner Mahadeo Prasad owns a flour-mill within the limits of the Nowgong Municipality. On 25th January 1965 a notice was issued to him by the Chief Municipal Officer informing him that he was running the flour-mill without obtaining a licence which was contrary to the bye-laws framed by the Municipality and asking him to obtain a licence on payment of Rs. 25. The applicant then made representations to the Chief Municipal Officer questioning the validity of the bye-laws requiring him to obtain a licence for the running of a flour-mill and prescribing a fee of Rs. 25 for the licence. He was informed by the Chief Municipal Officer that the Municipal Council was acting in accordance with law in asking him to take out a licence on payment of Rs. 25. The Petitioner then preferred an appeal before the Collector, Chhatarpur, which was dismissed. He now seeks a writ of certiorari for quashing the orders of the Municipal Council directing him to take out a licence on payment of Rs. 25 as also the order passed by the Collector in appeal.

It was argued by Shri Dabir, Learned Counsel appearing for the Petitioner, that

the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act) did not authorize the Municipal Council to frame any bye-law with regard to the running of a flour-mill except under a licence and did not even give power to the Municipal Council to impose any fee for the licence. It was said that Section 127 of the Act only empowered the Municipal Council to impose taxes; it did not give any power to impose a fee in respect of any licence. Learned Counsel, therefore, contended that the Nowgong Municipality Flour and Saw Mills (Regulation and Inspection) Bye-laws, 1944, framed by the Municipal Council were ultra vires the Act and invalid.

In our judgment, there is no substance in the contention put forward on behalf of the Petitioner. It is true that Section 127 does not speak of imposition of licence fees. But Section 349 lays down that the Council may charge such fee as may be prescribed by bye-laws for any licence granted under the Act. Now, Section 283(1) deals with Regulation of certain trades. That provision, in so far as it is material here, is as follows:

283. Regulation of certain trades:- (1) If it be shown to the satisfaction of the Council that any building or place used:

or intended by any person, to be used-

* * *

(a) as a factory, workshop or place of business in which animals are employed or intended to be employed for doing work or in which steam, water or any mechanical power is used or intended to be used;

* * *

is or is likely by reason of such use of, and of its situation to become a nuisance to the neighbourhood or is so used or is so situated as to be likely to be dangerous to life, health or property, the Council may, by written notice, require the owner or the occupier-

(i) at once to discontinue the use of or at once to desist from carrying out, or allowing to be carried out, the intention so to use, such building or place; or

(ii) to use it in such manner, or after such structural alterations as the Council in such notice prescribe, so that it may not become, may be no longer, a nuisance or dangerous.

Explanation.-For the purpose of this section nuisance shall include any contamination of the atmosphere whereby a deposit of soot is caused or any mechanical noise.

Sub-section (4) of Section 283 says-

Whoever uses without a licence, or during the suspension or after the withdrawal of a licence, any place for any purpose mentioned in Sub-section (1) in any Municipality in which bye-laws are for the time being in force prescribing the

conditions on or subject to which, the circumstances in which, and areas or locality in respect of which licences for such uses may be granted or refused, suspended or withdrawn, shall be punished with fine which may extend to fifty rupees and with further fine which may extend to ten rupees for every day on which such use is continued after the date of first conviction.

The effect of Sub-sections (1) and (4) of Section 233 is that a Municipal Council" has the power to frame bye-laws regulating the trades mentioned in Sub-section (1) and when the Municipal Council has framed such bye-law, then no person can use without a licence any place for any purpose mentioned in Sub-section (1) within the limits of the Municipality.

A flour mill installed at a place within the limits of the Municipality clearly falls under Clause (q) of Section 283(1). That clause covers a place of business in which any mechanical power is used. As is common knowledge, the" grindstones or the grinding discs in a flour mill revolve on account of mechanical power. It is true that sometimes a flour grinding machine is run with the aid of an electric motor by belting two pulleys, one on the grinding machine and the other on the electric motor. Even then the grinding machine is run not by electrical energy but by mechanical power. In fact, there is conversion of electrical energy into mechanical power even when the pulley of the motor revolves when the electric current is switched on. The contention, therefore, of the Petitioner that as his flour mill is run by electricity, it does not fall under Clause (q) cannot be accepted.

Again, even if it be assumed that a place at which a flour mill is run is not covered by Clause (q), that does not in any way assist the Petitioner. A place at which a flour mill is run and installed clearly falls within the scope of that part of Section 283(1) which follows the various clauses enumerated therein. Under that part, if a place is or is likely by reason of its use to become a nuisance to the neighbourhood, then the Municipal Council has the power to require the owner or the occupier at once to discontinue the use of the place. As is clear from the Explanation to Section 283(1), a place can constitute a nuisance to the neighbourhood if its user creates any mechanical noise. It cannot be gainsaid that in the running of a flour mill "mechanical noise" is inevitable. It is thus plain that u/s 283 (1 and (4) the Municipal Council has the power to frame bye-laws for regulating the use of any place for carrying on the business of a flour mill.

Learned Counsel referred us to *Bilaspur Municipality v. Wamanrao* 1941 NLJ 403 = AIR 1941 Nag. 292 where it has been held with reference to Section 133 (1) (e) of the Central Provinces and Berar Municipalities Act, 1922, that if a flour mill is to be licensable under that provision, it must be one from which offensive or unwholesome noises or smokes arise. That decision has no applicability here for the simple reason that the clause somewhat analogous to Section 133 (1) (e) of the 1922 Act is Clause (n) of Section 283(1) in the 1961 Act. It is with reference to Clause (q) of Section 283 (1) and the later part of Section 283(1) that we have reached the conclusion that a place used for the running of a flour mill falls u/s 283, and if the bye-laws of any Municipal Council require that no place within its

limits can be used for the establishment and running of a flour mill except under a licence, then the owner of the mill has to take out a licence.

The Nowgong Municipality Flour and Saw Mills (Regulations and Inspection) Bye-laws, 1964, have been framed by the Municipal Council in the exercise of its powers under Sub-clause (1) of Clause (9) of Section 358 read with Section 349(1) of the Act. Sub-clause (1) of Clause (9) of Section 358 empowers the Municipal Council to frame bye-laws for regulating any act which occasions a public nuisance and for the Regulation of which no provision is contained in the Act. Section 349 gives to the Municipal Council the power to charge such fees as may be prescribed by any bye-laws for any licence under the Act. In view of the provisions contained in Section 283 (1) and (4), Section 349 and Section 358(9) (1), it cannot be contended with any degree of force that the bye-laws framed by the Nowgong Municipal Council regulating flour mills are ultra vires. Bye-law No. 3 of the Bye-laws prescribes that no person shall establish or run a flour mill within the limits of the Nowgong Municipality without a licence or otherwise than in accordance with the conditions of the licence so granted and that every licence shall be granted on payment of a fee of Rs. 25. The Municipal Council, therefore, rightly asked the Petitioner to take out a licence in respect of his flour mill on payment of Rs. 25.

For these reasons, this petition is dismissed. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of the security deposit shall be refunded to the Petitioner.

Petition dismissed.