

(1988) 07 KAR CK 0046
In the Karnataka High Court
Case No : W.P. No. 17577/1987

Mangala Plastopacks

APPELLANT

Vs

Commissioner, Mangalore City Corporation and Others

RESPONDENT

Date of Decision : 21-07-1988

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 358

Citation : (1988) 3 KarLJ 318

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-In this writ petition, the petitioner has questioned the legality and correctness of an endorsement dated 4-11-1986 issued by the Commissioner, Corporation of the City of Mangalore, Dakshina Kannada. By the aforementioned endorsement, his application for renewal of his licence to manufacture plastic bags at premises situate in Car Street, Mangalore, with the assistance of 50 horse power electric motor has been refused indicating the five grounds on which the refusal is made. Aggrieved by the same, the petitioner filed an appeal to the Standing Committee, Health, which also came to be dismissed. Therefore, the present writ petition under Art. 226 of the Constitution inter alia contending, among other things, that the endorsement is vitiated as the petitioner was not heard before he was prevented by the endorsement from carrying on the business which is held to be emanating foul smell and also for the reason that he is using electric motor of more than specified horse power permissible for use by the Corporation of the City of Mangalore in that area.

2. The foundation for the argument is Section 358 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the Act) which reads as follows:

"358. Power of Commissioner to require owner or occupier of a factory, etc., to discontinue the use of such factory. Whenever it shall appear to the Commissioner that any factory, workshop or workplace or any building or any place in which steam, water or other mechanical power or electric power is used,

is or is likely to become, by reason of the employment of such power or by noise or by any gas, vapour, smoke, vibration, dust or other impurity generated in the course of the work carried on in such place or by any other cause, a nuisance or danger to the life, health or property of persons, in the neighbourhood, he may by written notice require the owner or occupier of such factory, workshop, workplace, building or place to discontinue the use of such factory or place for any of the purposes that may be specified in such notice."

3. Section 354 of the Act provides for the manner of making an application for construction, establishment or installation of factory or workshop or workplace in which steam or other power is to be employed. Section 355 of the Act empowers the Commissioner to issue directions for abatement of nuisance caused by steam or other power used in such factory. Section 356 of the Act provides for prohibition of use of steam-whistle or steam-trumpet without permission of the Commissioner in writing. Section 357 of the Act provides for Commissioner to issue directions to keep the factory or other places in a state of cleanliness.

4. Section 358 of the Act provides for the Commissioner to discontinue permission to use such premises. As is obvious from Section 358 of the Act as extracted above, when an owner or occupier of such workshop, factory building is to discontinue to use such factory or places for any of the purposes that may be specified in the notice, it visits the owner with civil consequences of preventing him from carrying on his business activity as a manufacturer. That may not be done unless he is heard before he is asked to discontinue. Therefore, if the impugned order, the endorsement, at Annexure-J has the effect of discontinuing the premises in question from being used as factory on account of the increased horse power or the motor power used, then the petitioner should have been heard by the Commissioner. That not having been done, the endorsement be sustained.

5. It is too late in the day to contend that when a person is visited with civil consequences, he need not be heard. Since the decision in *State of Orissa v. Dr. (Miss) Binapani Dei and others* (AIR 1967 S.C. 1269) unless statute specifically excludes the hearing, in all other cases, rules of natural justice must be observed when a person is visited with a civil consequence.

6. Mr. B.P.Holla, learned Counsel for the 1st respondent Commissioner, contended that the petitioner was given a hearing by the Standing Committee for Health when he filed an appeal against the order of the Commissioner and that should specify the requirement of the rules of natural justice which is implied in giving effect to the provisions of Section 358 of the Act. I do not think that argument may be accepted by this Court. When a specified Authority is empowered to perform a specific duty, it is for him to satisfy himself after hearing the parties likely to be affected by the order he proposes to make whether such order should be made or not. It cannot be left to another authority to consider them. What may not satisfy the Appellate Authority could have satisfied the Commissioner or vice-versa. The Standing Committee for Health heard the appeal of the petitioner

is not ground to deny the requirement of rules of natural justice which is implied in an order contemplated under Section 358 of the Act.

7. As there is no dispute, the petitioner was not heard by the Commissioner, he must succeed. Therefore, Annexure-J is quashed on this limited ground and the matter is remitted back to the Commissioner to afford an opportunity to the petitioner to be heard in the matter of closing his factory on account of his using 50 horse power motor.

8. All other questions raised in this writ petition are left open to be urged later if necessary. But, however, they may be urged before the Commissioner-1st respondent with the hearing now directed.

9. Rule will accordingly issue and be made absolute.