

(1941) 04 MAD CK 0023
In the Madras High Court

M.S. Ayyar and Co. by C.R.V. Das and Others

APPELLANT

Vs

G. Srinivasalu Naidu

RESPONDENT

Date of Decision : 24-04-1941

Acts Referred:

Madras City Municipal Act, 1904 — Section 129A

Citation : AIR 1941 Mad 749 : (1942) ILR (Mad) 73 : (1941) 54 LW 93

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—Criminal R.C. No. 1100 of 1940. - The petitioner has been convicted and fined by the Senior Bench Court of Coimbatore for advertising without a license in Coimbatore in two manners, (1) in his bullock cart and (2) by means of a board hung over his roof. Mr. Bhashyam Ayyangar argues that the conviction is without jurisdiction because no offence has been committed. That depends on a consideration of the District Municipalities Act. There is an express provision in the Madras City Municipal Act, Section 129A, which was introduced by the amending Act 10 of 1936 making special provisions for taxing advertisements but the only provision with regard to advertise, ments to be found in the District Municipalities Act is Section 306, Clause 28. Section 306 says:

The Council may make by-laws not inconsistent with this Act or with any other law to provide... (28) for the prohibition and regulation of advertisements in public streets and parks.

2. This section is in the same words as Section 349(28), Madras City Municipal Act, 4 of 1919. There will be found in Section 306 several provisions relating to licenses, for example Clause 10(e) for licensing of builders and surveyors, 18(c) for licensing and controlling of brokers, etc., and 22(b) for the levy of fees for the use of certain burial and burning grounds. "Licenses and fees" are comprehensively dealt with in Chap. 12, which is so headed. Therein are specified a number of acts for which licenses are required and for which fees may be levied. But there is no provision there for the granting of any license or

levying of fees in relation to advertisements. The learned Public Prosecutor has rested his case entirely on Section 321 which reads as follows:

(1) Every license and permission granted under this Act or any rule or by-law made under this Act shall specify the period, if any, for which, and, restrictions, limitations and the conditions, subject to which the same is granted, and shall be signed by the executive authority. (2) Save as otherwise expressly provided in or may be prescribed under this Act, for every such license or permission, fees may be charged on such units and at such rates as may be fixed by the Municipal Council.

3. There is a distinction in the Act between "license" and "permission" and "regulating" as an examination of the chapter shows, for example, u/s 255 a license to use a slaughter house is required, but u/s 250 permission is required to establish a factory. I observe too that, although private markets can be regulated by by-laws under chap. 14, Section 306(18)(b), license fees are leviable on them under chap. 12. Chapter 14 is headed "rules, by-laws and regulations" and Chap. 12, as I have already stated, "license and fees." The Public Prosecutor contends that u/s 306, Clause (28) the "regulation of advertisements" would include giving permission to advertise and therefore, by further implication, a power to levy license fees. But, although in the Act advertisements may be prohibited, I can find nowhere that they are prohibited or permitted only by license as in the case of all the other numerous subjects mentioned. Licensing, permitting and regulating are, in my view, distinct matters and are dealt with distinctly and differently under the Act. The intention of Section 306, Clause (28) seems to me to empower the municipality to prohibit altogether advertisements in public streets or parks or to regulate their exhibition, for example, as to size and position no doubt a necessary provision in the interests of the appearance of the streets and parks. I do not think - indeed I think it is contrary to a general reading of the Act - that it can be implied that a further power to levy license fees in respect of the advertisements is given. But under the by-laws which are attached to the record, it is expressly provided that fees shall be levied.

4. "Regulate," according to the Oxford Dictionary, means "to control by rule, subject to restrictions, moderate, adapt to requirements." It does not seem possible to stretch this meaning to include levying fees, especially when such elaborate provision is made in other parts of the Act for this purpose with regard to other specified matters. What the true meaning and sense of "regulate" in this Act is can be derived from its use in Section 306(2)(3B)(9)(10)A, (11)(12), (18B) and (22A). It is a general principle that any provision by which a member of the public may be taxed should be clearly stated; so should, in my view, an analogous provision by which any payment can be compelled from them. My conclusion is therefore that neither directly nor by implication is there any provision in this Act to enable a District Municipality to levy license fees for advertisements any more than in the City Municipal Act before the introduction of

the amending Act of 1936 which provided especially for taxation, for advertisements. It is for the Legislature to deal with this omission if it thinks fit. The by-law therefore "appears to be ultra vires, and in consequence this revision petition will be allowed, the (conviction set aside and the fine, if paid, refunded.

5. Criminal R.C. Nos. 1101, 1103 and 1104 of 1940. - The learned Public Prosecutor agrees that my order in Criminal R.C. No. 1100 of 1940 applies to these cases, and the order will be the same.