
(1986) 04 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1361 of 1978

M/s. Phuman Ram Chandan Lal and Others	APPELLANT
Vs	
Municipal Committee, Kharar and Another	RESPONDENT

Date of Decision : 28-04-1986

Acts Referred:

Punjab Municipal Act, 1911 — Section 121

Citation : (1986) 04 P&H CK 0024

Hon'ble Judges : D.V. Sehgal, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : Amrit Lal Jain, for the Appellant; S.S. Bajwa and Mr. P.S. Kang, for the Respondent

Judgement

D.S. Tewatia, J.—Petitioners are petty retail shopkeepers. Some of them sell ban-habbar, bamboos, paints, varnish, turpentine oil, slaked lime (chuna) and some of them are doing welding work. Some others sell-hay, green grass and Toori. None of them owns a brick-kiln, Chuna-Bhatti (lime Kiln) nor they manufacture paints, turpentine or spirits nor do they store these articles. The Petitioners also do not manufacture iron safe, trunks nor they have a yard or depot for carrying on their trade in respective items.

2. The Respondent Municipal Committee by notification dated 28.1.1977, Annexure P-1, has made regulation with a view to regulate the running of dangerous or offensive trade within the limits of its jurisdiction and by that notification has for the first time included lime kiln, storing for sale of unsaked lime, Chuna, Toori, ban-babbar and other articles mentioned in Annexure P-1. By virtue of the said notification a licence fee is required to be paid for carrying on the business in question in any place within the area subject to the authority of the Municipal Committee, Kharar, at the rate mentioned in the said notification.

3. It has been interalia asserted in the petition that the Petitioners are not liable to pay any licence of the kind.

4. Section 121 of the Punjab Municipal Act (hereinafter called the Act) which prohibits the use of place for carrying on the given trades without a licence fee is in the following terras:-

(1) No place within a municipality shall be used for any of the following purposes:-

melting tallow (dressing raw hides), boilding bones, offal or blood;

as a soap house, oil-boiling house, dyeing house or tannery ;

as a brickfield, brick-kiln, (charcoal-kiln) pottery or lime kiln ;

as any other manufactory, engine-house, (Store-house) or place of business from which offensive or unwholesome smells, (gases), noises or smoke arise;

as a yard or depot for trade in (unslaked lime) hay, straw, that chinggrass, wood, charcoal or coal, or other dangerously inflammable material ;

as a store-house for any-explosive, or for petroleum or any inflammable oil or spirit ;

except under a licence from the committee which shall be renewable annually:

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XX XX.

5. The counsel for the Municipal Committee sought to bring the case of such of the Petitioners as are engaged in the business of welding within the purview of the following provisions of Section 121 of the Act:-

xx xx place of business from which offensive or unwholesome smells, (gases), noises or smoke arise ;

6. The process of welding neither gives rise to offensive or unwholesome smells (gases), noises nor any smoke. Hence: the welding activity is not covered by the provisions of Section 121 of the Act and therefore, the Petitioners who are carrying on this trade are not liable to take out a licence and pay any licence fee.

7. The other trade, which some of the Petitioners are carrying, was sought to be brought within the purview of the following clause of Section 121 of the Act: -

as a yard or depot for trade in (unslaked lime), ay, straw, that-ching-grass, wood, charcoal or coal, or other dangerously inflammable material.

The Petitioners allegation in the writ petition that they are petty retail shopkeepers and that they do not carry on their trade in the prohibited items in a yard or a depot, has not been refuted by the Municipal Committee in its written statement.

8. A Division Bench of this Court while interpreting Item No. 5 of Section 121 of the Act, with which we are concerned in this case, in a case reported as Municipal Committee, Ambala City v. Mohan Lal (1972) 74 P. L. R. 842 has held that in order to interpret this item one cannot ignore the general nature of prohibition envisaged by this section because that item does acquire some colour from the other items enumerated in Section 121 of the Act. The trade in unslaked lime is prohibited because it emits heat when it comes into contact with water. Hay, straw, thatching grass, wood, charcoal or coal etc. are also incendiary materials and if stored in sufficiently large quantities increase the danger due to accidental fire. It is precisely for this reason that the statute has used the words "a yard" or "a depot" in item No. 5 of Section 121 of the Act. A yard or a depot denotes a big area in which goods are stocked. In commercial parlance a depot means a place in which goods are stored in large quantities for being supplied to retailers. A shop in the very nature of things cannot be regarded either as a depot or a yard.

9. The ratio of this decision squarely covers the facts of the present case.

10. For the reasons afore-mentioned, the petition is allowed and the Respondent Municipal Committee is restrained for levying any licence fee from the Petitioners. No order as to costs.

Sd/. D. V. Sehgal, J.