

(1996) 08 MAD CK 0093
In the Madras High Court
Case No : C.R.P. No. 1744 of 1996

Muniammal

APPELLANT

Vs

Vadamalai

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, 80
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)

Citation : (1996) 2 CTC 421 : (1997) 1 LW 342 : (1997) 1 MLJ 393

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R.G. Annamalai, for the Appellant; V. Ayyadurai, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Since respondent entered appearance by filing caveat, by consent, the revision was heard on merits. This Revision is filed by the plaintiff in O.S.No.208 of 1993, on the file of the District Munsif's Court Gingee, to declare that the licence granted to the first defendant by defendants 2 to 7 to run a rice milling industry is invalid and to restrain the first defendant from running any such industry by a permanent prohibitory injunction.

2. It is the case of the plaintiff, petitioner herein, that he is running a rice mill from 21-1-1993 and that he has taken electric connection for the said purpose. He also says that even before 21.1.1993, he has been conducting the rice mill and the electric connection was granted to him originally on 28.5.1991. It is said that for running a rice mill, certain regulations are provided, one of which is that no licence should be granted for a running a rice mill within a distance of 5 kms. After the expiry of the period, he applied for renewal, and the first defendant also applied for the same, and both of them have been granted licence for running rice mill. It is said that he has taken financial assistance from various financial institutions, and if another competitor also comes, that will affect his

prospects in business, and the licence granted by the authorities in favour of the first defendant is against law and ignoring the provisions of Rice Milling Industry (Regulation) Act and the Rules framed thereunder.

3. Along with the suit, plaintiff moved an interim application wherein the first defendant was not made a party, but only defendants 8,9 and 10 were made counter-petitioners. In that interim application, he sought for an interim injunction to restrain the counter-petitioners therein from giving electric connection to the first defendant.

4. Trial Court, on 30-4-93, passed the following Order:-

"Heard. Records perused. Notice to respondents returnable by 18.6.1993. The respondents are not to give service connection to the 1st defendant by them."

5. Notice of injunction application was served on the counter petitioners to the interim application, and it seems that they have entered appearance, but they did not file any objection, nor was there any representation on the date of which it was posted. The Court, as per Order dated 29-7-1993, passed the following order; -

R-1 to R-4 called absent set exparte. Petition allowed."

6. The first defendant, thereafter filed an application to modify the order of injunction on the ground that he is a necessary party to the injunction application, and, because of the interim order, he is put to great loss and hardship. The trial court dismissed the said application stating that the remedy of the first defendant was to get himself impleaded in the injunction application under Order 1, Rule 10, C.P.C. and also for the reason that the order of injunction has been made absolute and, therefore, his remedy is only to pray for a review of the order or to file an appeal.

7. Against that order, first defendant filed C.M.A. No. 42 of 1994. The lower appellate court reconsidered the entire matter and came to the conclusion that the order of the trial court was per se illegal. It came to the conclusion that the interim injunction itself should not have been granted when the affected person is not made a party to the application. It was also of the view that the very suit was not maintainable and plaintiff has no prima facie case. The interim order passed by the trial court was vacated and the appeal was allowed. It is against the said judgment of the lower appellate court, plaintiff has preferred this revision petition.

8. On going through the facts, I feel that the plaintiff has come to court with an oblique motive to prevent the first defendant from running a rice mill for which a licence has been granted. The lack of good faith can be seen from the fact that in the interim application filed before the trial court, she did not want the first defendant to be made a party, and behind his back she wanted to obtain an interim order. I must say that the trial court also played its part in supporting the case of the plaintiff in granting an injunction in an application which was filed

without any bona fides.

9. The suit has been filed against 11 defendants, of whom defendants 2 to 7 are public officers. We do not find any averment in the plaint that a notice u/s 80, C.P.C. has been issued, or that permission has been granted by the trial court for instituting the suit. When the interim application was filed only against defendants 8 to 11 and when no urgent relief was prayed for against the other Public Officers, the suit ought not to have been entertained without issuing Section 80 C.P.C. notice. That statutory requirement was given a go-by by the trial court.

10. Time and again, this court has held that while passing an order of ex parte injunction, reasons must be stated that there is an urgency in the matter, and, therefore, without notice to respondent the interim relief prayed for should be granted to the petitioner. But the order of the trial court simply says:

"Heard. Records perused. Notice to respondents returnable by 18.6.1993. The respondents are not to give service connection to the 1st defendant by them."

The said order is illegal and without jurisdiction. When the illegality was brought to the notice of the Court by the first defendant, the trial court was more technical than in administering justice. It held that the remedy of the first defendant was only to get himself impleaded in the interim application and also to file an appeal or review against the order passed on 29-7-1993. When a patent illegality has been brought to the notice of the court, the trial court did not care to reconsider the same, for, it was more interested in confirming the order. Even while passing the final order on 29.7.1993, the trial court did not form an opinion as contemplated under Order 39, Rule 1, C.P.C. The order of the trial court is patently illegal and the application filed by the petitioner herein was an abuse of process of court. The trial court also helped the plaintiff in the act of abuse of process, instead of rectifying its mistake.

11. Even on merits, plaintiff has no case. It is admitted that when the first defendant applied to the authorities for getting licence, plaintiff also filed objection, and it was after considering the objection of the plaintiff and other members of the public, licence was granted both the plaintiff and the first defendant for running the rice milling industry. When he himself is a party to a proceeding before the Authorities, he must have stated the reason as to how the other is illegal. We must understand that the plaintiff has no common law right to prevent the first defendant from conducting a business on obtaining proper licence. The Licencing Authority, after considering all the relevant facts, came to the conclusion that in that locality there is scope for running more than one rice milling industry. When the authorities themselves have considered all these aspects, plaintiff ought not to have resorted to file the suit to undo a valid action done by the Authorities under the Act.

12. In *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, their lordships considered how far an individual can challenge

the grant of licence issued to another person under the Rice Milling Industry (Regulation) Act, 1958. That was a case where the authorities permitted the change of location of a rice mill. Persons who were doing business in the same line challenged that order. While considering the same, the Supreme Court held that the competitors in the business cannot have any grievance against the grant of permission permitting the installation of the rice mill on a new site. The Supreme Court, in paragraph 9 of the judgment, held thus:-

"The Parliament has by the Rice Milling Industry (Regulation) Act, 1958, prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission of the Central Government shall be obtained. Permission for shifting their rice mill was obtained by the appellants from the Director by the appellants from the Director of Food & Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food & Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new site. The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i)."

13. The said decision was followed again by the Supreme Court in the decision reported in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . That is a case where licence was granted for running a cinema theatre under the Cinemas Regulations Act and the Rules framed thereunder. The authorities granted No Objection Certificate to a person and the same was objected by the competitor in the same business. Their Lordships held thus:-

"The proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is not entitled to invoke the certiorari jurisdiction *ex debito justitiae* to get a "No Objection Certificate", granted under Rule 6 of the Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction.

In order to have the *locus standi* to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person". The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him.

The Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules, 1954 are not designed to set norms of moral or professional conduct for the

community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

The Act and the Rules do not confer any substantive justifiable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. Thus the proprietor of Cinema theatre holding a licence for exhibiting cinematograph films has no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of No Objection Certificate to the rival trader."

14. Both the above decisions were again considered by the Supreme Court in the decision reported in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, . That is a case where the Court had to consider the liberalized scheme for granting stage carriage permits under the Motor Vehicles Act. While considering the question, the Supreme Court held thus:-

"Article 19(1)(g) is a guaranteed right of every citizen whether rich or poor to take up and carry on, if he so wishes, the motor transport business. It is only the State which can impose reasonable restrictions within the ambit of Article 19(6). Sections 47(3) and 57 of the old Act were some of the restrictions which were imposed by the State on the enjoyment of the right under Article 19(1)(g) so far as the motor transport business was concerned. The said restrictions have been taken away and the provisions of Sections 47(3) and 57 of the old Act have been repealed by the new Act. The new Act provides liberal policy for the grant of permits to those who intend to enter the motor transport business. The provisions of the Act are in conformity with Article 19(1)(g). When the State has chosen not to impose any restriction under Article 19(6) in respect of motor transport business and has left the citizens to enjoy their right under Article 19(1)(g) there can be no cause for complaint by the existing operators, petitioners herein, Court cannot do what the Parliament has undone.

The petitioners are permit holders and are existing operators. They are plying their vehicles on the routes assigned to them under the permits. They are in full enjoyment of their fundamental right guaranteed to them under Article 19(1)(g) of the Constitution of India. There is no threat of any kind whatsoever from any authority to the enjoyment of their right to carry on the occupation of transport operators. There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators from coming in the field as competitors. There is no justification in the petitioners' stand. More operators mean healthy competition and efficient transport system. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favoritism in the process of granting permits. Restricted licensing under the old Act led to the

concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. The apprehensions of the petitioners, that too many operators on a route are likely to affect adversely the interest of weaker section of the profession, is without any basis, the transport business is bound to be ironed out ultimately by the rationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal. The petitioners who are already in the business want to keep the fresh entrants out of it and as such eliminate the healthy competition which is necessary to bring efficiency in the trade."

15. A Full Bench of our High Court also considered the right of a competitor in challenging the licence granted under the Rice Milling Industry (Regulation) Act, 1958, and the judgment is reported in *M.L. Krishnamurthy and Ors. v. The District Revenue Officer and Ors.*, 1989 (II) M.L.J. 284 . The Full Bench held that a competitor in a business has no locus standi to challenge the grant. In that decision, it was held thus:-

"The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject to only the restrictions imposed by law in the interests of general public under Article 19(6)(i). If Section 8(3)(c) of the Act, which is merely regulatory is not complied with, there would be imposition of penalty, but a competitor in the business cannot seek to prevent the other, in spite of the violation, from exercising his right to carry on business, because of the default. The lack of previous permission, as per Section 8(3)(c) will not give the existing rice-mill owner a locus standi for challenging the grant of the permission, because no right, vested in him could be stated to have been infringed. The observations of the Supreme Court would not be construed to say that if it is a case of permit u/s 5 (4) of the Act, the existing rice mill owner would have a lever to challenge the grant on the ground that it has prejudicially affected his business.

It is held that an existing rice mill owner whenever there is a grant of a permit or license in favour of another under the Act cannot be stated to have been denied or deprived of a legal right, or sustained injury to any legally protected interest, the grant does not operate as a decision against him, much less does it wrongly affect his title to something he has not been subjected to a legal wrong; he has suffered no legal grievance; he has no legal peg for a justifiable claim to hang on, and therefore he is not a person aggrieved and he has no locus standi to challenge the grant. Rivalry in the same trade is permissible to law and in that context, the person cannot complain that his commercial interest is prejudicially affected."

16. The grant of licence is regulated by the various provisions of the Rice Milling Industry (Regulation) Act. The restrictions provided in those Regulations are in the nature of "public interest" and the personal right of a single individual is not affected thereby. The Authorities while granting or refusing to grant a licence, are taking into consideration only the interest of the general public and not the personal right of a single individual. For a right which is regulated by a Statute, the remedy is also provided therein. As already stated, plaintiff is not having any common law right to restrain the first defendant from doing a lawful business. If that is not a common law right and the right is governed by a Statute, the petitioner cannot file a suit exercising ordinary civil jurisdiction. He has to exhaust the remedies as provided under that Act and Rules. The machinery provided under the Act alone will have to be taken into consideration.

17. In *Subramaniam v. Sreenivasan and Anr.*, 1971 K.L.T. 699, a similar question came for consideration under Cinemas (Regulation) Act, 1958. In paragraphs 5 and 7, the Kerala High Court held thus:-

"If a person has a right at common law and in regard to this matter a statute is enacted which statute provides a machinery for working out the remedy, if the right is infringed, still such person will be entitled to resort to a civil court to seek his remedies in regard to the infringement of his rights unless the statute excludes such resort to the civil court and confines his remedies to that provided by the statute. But this rule does not hold good where the statute creates right for the first time. In such cases it is the machinery prescribed by the statute which creates the right that will be available to the person. In such a case unless right is conferred on the civil courts it will not be open to a person to resort to such civil remedies.

xxx xxx xxx The restrictions contained in the section do not confer a right on any other member of the public other than the general right as one of the public to object to the grant. It cannot be said that under the law of the land one exhibitor could have a grievance if another starts similar business. By reason of the regulation by the Act no personal right is obtained by the plaintiff. His right to object in the matter of grant of the licence and his right to take up the matter in appeal are to be exercised only with the ultimate view that the grant of licence to the first defendant is to be in the interest of general public. If that be the case, the suit for injunction as now brought by him must fail."

18. The Law is very clear that the suit itself is misconceived and that it is an abuse of process of Court, Petitioner cannot have any grievance when the injunction application was dismissed by the lower appellate Court. The lower appellate court took into consideration the fact that the petitioner has filed the suit suppressing material facts and without impleading the person who would be affected if an interim order is passed. The conduct of the petitioner, according to the lower appellate court, disentitles the petitioner from getting an equitable relief through court. When the petitioner has come to Court with an oblique motive and without good faith, she is not entitled to the interim relief sought for.

The trial Court disregarded the well-settled legal principles in granting the injunction. The same was set right by the lower appellate Court.

19. I do not find that any illegality has been committed by the lower appellate court in vacating the order of injunction.

20. In the result, the revision petition is dismissed with costs. Advocate fees Rs. 5,000. On receipt of a copy of this order, the trial court will consider whether the suit is maintainable, and the same will be decided as a preliminary issue.