
(1988) 01 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5011 of 1978

Om Parkash Arora, Proprietor M/s Parkash Studio, Barnala
and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Punjab Municipal Act, 1911 — Section 121

Citation : (1988) 01 P&H CK 0093

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Jasbir Singh, for the Appellant; Amarjit Markan, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This judgment will also dispose of Civil Writ Petitions No. 1615 of 1987, 1786 of 1987 and 6615 of 1986 as the question involved is common in all these cases. 1

2. The main question involved in these petitions is whether the Petitioners are liable to procure licenses for storage of photographic films for use in their studios as they are not inflammable substances nor is the Executive Officer, Municipal Committee, is empowered to issue orders directing the Petitioners to procure licenses for keeping photographic films for use in their studios. The Petitioners in the present writ petition, i.e. C.W.P. No. 5011 of 1978 are professional photographers running Photo Studios since a number of years. They were served with notices/orders of the Executive Officer, Municipal Committee dated 11.7.1978 wherein they were asked to obtain licenses under the provisions relating to offensive and Dangerous Trades, at a fee of Rs. 50/- per annum for the photographic films stored by them for use in their studios. The said provisions are contained in Section 121 of the Punjab Municipal Act, 1911, which reads as under:-

S. 121. Regulation of offensive and dangerous trade.-(1) No place within a municipality shall be used for any of the following purposes:-

melting tallow, (dressing raw hides), boiling 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 arises;

as a yard or depot for trade in (unlaced lime), hay, straw, thatching-grass wood, charcoal or coal, or other dangerous 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;

Provided that no such license shall be necessary in the case of any such premises which were used for any such purpose at the time that the Punjab Municipal Act, 1891, came into force, and were registered under that Act and in the case of brickfields, which were used at the time that this Act came into force; but the owner or occupier of the brickfields so excepted shall register the same in a book to be kept by the committee for the purpose.

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

Somewhat similar provisions are there in Section 343 of the Punjab Municipal Corporation Act, 1976, under which orders were passed giving rise to C. W. P. No. 6615 of 1986. The Petitioners challenged the said order passed u/s 121 of the Punjab Municipal Act, primarily on the ground that the Municipal Committee has no such powers to issue such orders u/s 121 of the Act because neither the Petitioners are using any place as a yard or depot for trade in dangerously inflammable matter and secondly the material required in the business of photography was not dangerously inflammable matter as contemplated u/s 121 of the Punjab Municipal Act

3. The stand taken in the return filed on behalf of the municipality is that the committee is charging the licensing fee on the storage of photographic films and, therefore, was within its jurisdiction.

4. In Writ Petition No. 1615 of 1987, the Petitioners are Chemists and Druggists and are selling patent medicines

5. In Writ Petition No 1786 of 1937, the Petitioners are petty kariana general

merchants who rather have small shops having some plastic goods items as well.

6. The main argument raised on behalf of the Petitioners is that Section 121 of the Punjab Municipal Act, 1911, provides that no place within a municipality shall be used as a yard or depot for the trade in dangerously inflammable material etc. According to the Petitioners, they are running regular shops and, therefore, the premises do not fall within the definition of a "yard" or "depot" and secondly the trade which they are carrying on in their shops could not be said to be dangerously inflammable in any manner. In support of this contention, reference was made to the Division Bench judgment of this Court reported as *Municipal Committee, Ambala City v. Mohan Lal* (1972) 74 P.L.R. 842, *M/S Phuman Ram Chandan Lal and Ors. v. Municipal Committee, Kharar* (1986) 89 P.L.R. 669, and *M/S Malhotra Drug Store and Ors. v. The State of Punjab and Anr.* 1984 R.L.R. 67, in view of these authorities pronouncements of this Court no meaningful argument could be raised on behalf of the Respondents. In *M/S Phuman Ram Chandan Lal's* case (supra) it was held that 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 as a yard. In these circumstances, the Municipal Committee was restrained from levying any licence fee on the Petitioners who were retail shop keepers and some of them were doing welding work. Reliance in this case was also placed on the earliest Division Bench judgment of this Court in *Mohan Lal's* case (supra) in which it was observed that "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 as a yard." In *M/S Malhotra's* case (supra), the Petitioners were carrying on the business of Chemists and Druggists. It was held therein that the shop of Chemists and Druggists cannot be treated as yard and depot in terms of Section 121 of the Punjab Municipal Act. Moreover, the medicines stocked by the Petitioners in their shops as Chemists and Druggists and for sale to the retailers cannot be held to include dangerously inflammable material and, therefore, the Municipal Committee has no authority to prescribe licence for carrying on the business of Chemists and Druggists.

7. In this view of the matter, all the petitions succeed. The notices and the notification issued to the Petitioners u/s 121 of the Punjab Municipal Act, 1911, in C.W.P. Nos. 5011 of 1978, 1786 of 1987 and 1615 of 1987, are quashed to the extent they are made applicable to the Petitioners whereas in C.W.P. 6615 of 1986, the Respondents are directed not to interfere in the lawful business activities of the Petitioners and thus restrained from forcing the Petitioners to licences for doing photostat copies work through photo machines and pay licence fee for the said purpose.