
(1957) 02 MAD CK 0024
In the Madras High Court
Case No : Writ Petition No. 552 of 1956

P.K.N. Abdul Mazid

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 19-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Rice Mills Licensing Order, 1955 — Rule 11A, 2(2)

Citation : AIR 1957 Mad 551 : (1957) 70 LW 547

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : G. Ramanujam, for the Appellant; D.V. Sivagnam, for Special Govt. Pleader and M.M. Ismail, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The petitioner has had a rice mill for over 20 years in Kottaguri village, Tiruvadanai Taluk, Ramanathapuram Dt. After the

introduction of the scheme of licensing rice mills under the Madras Act 29 of 1949, the petitioner obtained the requisite licence. The licensing is

now regulated by the Madras Rice Mills Licensing Order, 1955.

2. On 1-8-1955, the third respondent Bala-krishnan Chettiar applied to the Collector for a licence to work a rice mill of his in Kotagudi village. It

was common ground that the site selected by him for his mill was only about 40 feet away from the petitioner's mill. The petitioner lodged his

objection to the grant of the licence sought by the third respondent. On 9-11-1955 the Collector rejected the application that had been preferred

by the third respondent.

3. On 3-1-1956 the third respondent preferred what purported to be an appeal to

the Government against the order of the Collector dated 9-11-

1955 refusing the licence for which the third respondent had applied. That petition was forwarded by the Government to the Commissioner of Civil

Supplies on 19-1-1956. The petitioner intervened again and lodged his objections to the grant of a licence on 31-1-1956. The Commissioner

submitted his report to the Government. Again the petitioner intervened and lodged his objections with the Government. By its order dated 23-4-

1956, the Government treating the objections referred by the petitioner to the grant of a licence to the third respondent as ""petitions"" preferred by

the petitioner, rejected them. Thus in effect, the petitioner's objections were overruled. The Government directed the issue of a licence to the third

respondent and the Collector issued that licence to the third respondent on 3-5-1956.

4. The petitioner applied under Article 226 of the Constitution. The relief originally asked for was the issue of a writ of prohibition to restrain the

Collector from granting a licence to the third respondent. The application itself was preferred on 7-5-1956, even before which date, it should be

remembered, the Collector, acting under the orders of the Government, granted a licence to the third respondent. In C. M. P. No. 430 of 1957

the petitioner asked for and obtained permission to amend the petition, to ask for the issue of a writ of certiorari to set aside both the proceedings

of the Government and the issue of the licence to the third respondent.

5. In paragraph 2 of the affidavit the petitioner filed in C. M. P. No. 430 of 1957 he aver-red:

I understand, subsequent to the filing of the above writ petition No. 552 of 1956 that the second respondent had issued the licence to the third

respondent as directed by the Government 2 or 3 days prior to the filing of the said writ petition No. 552 of 1956. This fact was known to us only

from the counter affidavit filed by the third respondent in December 1956"".

One of the contentions of the third respondent was that this allegation could not be true. The petitioner's mill was admittedly close to the third

respondent's mill, and the petitioner could not have been in ignorance of the fact, that the third respondent, who had commenced the construction

of the mill long before he applied for this licence worked that mill from May 1956 onwards on the basis of the licence issued to him by the

Collector on 3-5-1956.

6. The Collector rejected the application of the 3rd respondent on 9-11-1955. The third respondent preferred an appeal to the Government on 3-

1-1956. On 23-4-1956 the Government directed the issue of A licence to the third respondent. That licence was granted on 3-5-1956. I have set

out these dates again to explain the basis of the objection of the petitioner to the validity of the Order of the Government and the subsequent issue

of the licence to the third respondent. The contention of the petitioner was that, as the Madras Rice Mills Licensing Order stood up to 23-4-1956,

the Government had no appellate jurisdiction to interfere with an order passed by the Collector.

7. The Madras Rice Mills Licensing Order, 1955 was issued under Madras Act 29 of 1949. These rules were amended by the Central

Government in exercise of the powers conferred on it by the Essentials Commodities Act, 1955 (Act 10 of 1955). This amendment was ordered

on 31-5-1956. Rule 11-A of the Madras Rice Mills Licensing order, as amended on 31-5-1956, provided for an appeal against the order of the

licensing authority, the Collector, to the Commissioner of Civil Supplies, Madras. Clause 3 of Rule 11-A further provided for a revisional

jurisdiction to be exercised by the State Government against an order of the Commissioner of Civil Supplies. Clause 4 of Rule 11-A ran:

In respect of orders passed before the date of coming into force of this clause, the time for appeal and revision petitions shall be reckoned from

the said date"".

Appellate and revisional powers were conferred on the specified authorities on 31-5-1956. It should, however, be remembered that in this case

the order of the Government preceded this notification. The Government passed its orders on 23-4-1956. On that date the Government could not

claim a jurisdiction to revise the order of the licensing authority, the Collector or to direct the issue of a licence to the third respondent under the

Madras Rice Mills Licensing Order, 1955. That position could not be disputed by the learned counsel for the third respondent.

8. The main contention of the learned counsel of the 3rd respondent was that the petitioner was not entitled to any relief in the proceedings he

initiated under Article 226 of the Constitution. The learned counsel submitted (1)

that the petitioner had no locus standi to maintain an application for the issue of a writ of certiorari; (2) the orders of the Government were administrative in their scope and therefore outside the purview of the jurisdiction this court could exercise under Article 226 of the Constitution by the issue of a writ of certiorari and (3) in any event since the relief of certiorari is essentially a discretionary relief, this court, in the circumstances of this case, should not exercise its discretion in favour of the petitioner by Setting aside the orders passed by the Government.

9. In *Natesa Mudaliar v. Regional Transport Officer, Chingleput* W. A. No. 107 of 1955 (Mad) (A), a Division Bench of this Court laid down:

Taking, for instance, the writ of certiorari, it has never been doubted that this court, as the inheritor of the jurisdiction possessed by the original

Supreme Court had the power to quash the order of an inferior tribunal, quasi-judicial or administrative, if such order was passed without

jurisdiction or if there was an error apparent on the face of the order (vide *Annie Resant v. Advocate General of Madras*, ILR 43 Mad 146: AIR

1919 PC 31 (B).) This power, the High Court could exercise at the instance of an aggrieved party, irrespective of any fundamental rights being

involved in the matter. Indeed this power the High Court possessed long before the Constitution guaranteed certain fundamental rights".

The learned Judges pointed out that the jurisdiction of the Court was not in any way curtailed by Article 226 of the Constitution. An aggrieved per-

son would thus be entitled to the grant of a writ of certiorari ex debito justitiae, if, for instance, he established that this order complained of was

passed by an authority which had no jurisdiction at all.

10. The learned counsel for the third respondent contended that the principle laid down in *W. A. No. 107 of 1955 (Mad) (A)* would not be

applicable to the facts of this case. He pointed out that the scheme of the Madras Rice Mills Licensing order was quite different from that of the

Motor Vehicles Act under which arose the case that was decided in *W. A. No. 107 of 1955 (Mad)(A)*. In writ pp. 107 of 1955 (Mad)(A) it was

pointed out that the petitioner had a statutory right to be heard before the statutory authority exercised its jurisdiction. The learned counsel for the

third respondent contended that there was no such provision in the Madras Rice Mills Licensing Order. That, no doubt, is true. In my opinion a

statutory right to object to the grant of licence or permission may not be the exclusive test to apply in deciding whether an applicant for a writ of

certiorari is an "aggrieved" person entitled to challenge the validity of the Order which he seeks to avoid.

In the present case it should be noticed that, though the Madras Rice Mills Licensing Order did not in terms provide for any objections to the grant

of a licence being considered by the licensing authority, in fact the petitioner lodged his objections over and over again. These objections were

certainly considered by the Government before it overruled them by its order dated 23-4-1956. The question at issue before the Government was

whether the third respondent should be granted a licence. That issue was decided by the Government in favour of the third respondent and against

the petitioner. The petitioner would certainly appear to be a person "aggrieved" within that decision of the Government.

11. The learned counsel for the petitioner referred to *Rex v. Richmond Confirming Authority; Howitt, Ex parte*, 1921-1 KB 248 (C), where the

position of a rival in trade, who objected to the grant of a licence, was considered. That again was a case where the objector to the grant of a

licence had a right to be heard by this licensing authority. The learned Chief Justice pointed out at page 253:

Bearing in mind that the applicant is a person who was entitled to appear and object as having this interest that he was carrying on business as the

licensee of premises in Richmond, I think the case comes within the decision in *Rex v. Groom; Ex parte Cobbold*, 19012 KB 157 (D)".

The learned Chief Justice stated at page 255:

I believe that to be the true principle upon which this court acts. Here the applicant had an interest distinct from the general inconvenience which

may be suffered by the law being wrongly administered".

If that were the test, the petitioner before me certainly had an interest of his own in the question, whether the third respondent should be granted a

licence to work a rice mill in close proximity to the petitioner's. That the statutory rules in the Rice Mills Licensing Order did not specifically confer

a right on a trade rival, situate as the petitioner was, to object to the grant of a licence under that order may not, in my opinion, affect the real

principle to apply in such cases. Factually, as I said, both the licensing authority

and the Government, which assumed an appellate jurisdiction, permitted the petitioner to make his representations objecting to the grant of the licence which the third respondent had applied for. The objections were considered before the final decision was reached. In the circumstances of this case, I am convinced that the petitioner should be treated as a person aggrieved", a special interest of his being affected by the order, the validity of which he challenged. That clothed him with a right to invoke the jurisdiction vested in this court by Article 226 of the Constitution to issue a writ of certiorari.

12. The Second of the contentions of the learned counsel for the third respondent, that the order of the Government was solely administrative in its scope, also fails. The learned counsel referred to the observations of Imam J. in *Raman and Raman Ltd. Vs. The State of Madras and Another*, .

In discussing the nature of the functions performed under the Motor Vehicles Act the learned Judge observed:

That they are not judicial is accepted, but, it is said they are not administrative but quasi-judicial and therefore amenable to the jurisdiction of a court possessing the power to issue a writ of certiorari. In proceedings under Sections 47, 64 and 64-A of the Act, there is no determination of any individual's rights and from that point of view the functions of these authorities may be regarded as executive or administrative. On the other hand, it may be said that a person has the fundamental right to carry on his business of plying buses and therefore has the right to have the statutory functions of these authorities properly exercised in which case they would be quasi-judicial functions".

As I understand the judgment, this passage would appear only to set out two possible views, because the learned Judge proceeded to say:

Assuming this to be so, it has yet to be seen whether the State Government acted in excess of its legal authority".

It is not necessary for me to examine now what precisely the position is under the Motor Vehicles Act, which, at least with reference to the grant of permits, specifically provides for an element of selection among the applicants for the permits.

13. No doubt, under the Madras Rice Mills Licensing Order as it stood, there was no specific provision made for restricting the number of"

licences that could be issued in a given locality, which would have brought in the need for selection if more than one person applied for a licence.

Rule 2(2) however provided:

In the matter of issuing or refusing to issue a licence, a licensing authority shall be guided by such general order, as the State Government may

from time to time issue to him in this behalf".

My attention was not drawn to any general direction issued before 23-4-1956 to restrict the number of licences to be issued by the licensing

authority in a specified locality.

14. Nonetheless, I am of the view that where statutory rules prescribe a licence as in this case, as a condition precedent to this exercise by a

person of his right to engage himself in a business of his choice, the grant or refusal of the licence by the licensing authority cannot be viewed merely

as an administrative act. In *N. Balaraman Vs. Corporation of Madras*, , Subba Rao J. observed no doubt with specific reference to the Madras

City Municipal Act, that the issue of an order or refusal to issue a licence is quasi-judicial. In this case it should be remembered that the 3rd

respondent applied for the issue of a licence. The need to obtain a licence constituted a restriction, no doubt, a valid restriction. The validity, of

restriction imposed by Rule 2 (1) was not put in issue in these proceedings, on his fundamental right to carry on his business. The question had to

be determined by the licensing authority, whether the third respondent could be granted a licence. That really made the determination at least

quasi-judicial in its scope. The petitioner objected to the grant. It cannot be said that where from the point of view of the third respondent the

determination was of a quasi-judicial nature, looked at from the point of view of the petitioner it was only administrative in its scope. It is really the

nature of the statutory function discharged by the statutory authority that should determine whether the act in question was merely administrative or

whether the exercise of the statutory power was quasi-judicial in its scope. It was that that determined also the scope of the appellate jurisdiction

that the Government purported to exercise.

15. I am unable to accept the contention of the learned counsel for the third respondent, that the orders of the Government and the subsequent

grant of the licence to the third respondent were wholly administrative in their

scope, outside the purview of correction by the issue of a writ of certiorari. In paragraph 3 of its counter affidavit the Government averred:

The order of the Government to issue licence to the third respondent is nothing more than a direction to the Collector to comply with the general instructions issued by the Government in this regard"". That may open up other questions for consideration, whether apart from Rule 2 (2) the Government was entitled to issue instructions to the statutory authority in whom was vested the jurisdiction to grant or refuse a licence. That, however, would not make the grant or refusal of a licence merely an administrative act.

16. Thus the position is the application of the petitioner for the issue of a writ of certiorari, to set aside the orders of the Government dated 23-4-

1956 and the licence issued to the third respondent by the Collector on the basis of these orders of the Government, is maintainable. As the grant

of a licence was regulated by the statutory rules in the Madras Rice Mills Licensing order, the orders of the Government dated 23-4-1956 are

liable to be set aside, as the assumption of appellate or revisional jurisdiction by the Government was not then authorised by the statutory rules.

17. The question that remains is whether despite what I have recorded above, the court should in the circumstances of this case, discharge the rule

nisi, in the exercise of its discretion.

18. In this case the licence itself was issued on 3-5-1956, and that was before the petitioner presented his application under Article 226 of the

Constitution. The relief asked for then was a writ of prohibition. It was only in January 1957 that the petitioner asked for the issue of a writ of

certiorari and he pleaded then that it was only in December 1956 that he came to know of the issue of the licence on 3-5-1956. I have already

pointed out that that cannot be true, though on the material on record it may not be possible to fix with any degree of precision the date on which

the petitioner actually learnt that a licence had already been issued to the third respondent It cannot however be said in the circumstances of this

case that the petitioner obtained a rule nisi on a representation, which, on the date he made it, he did not believe to be true. That the petitioner

obtained an amendment of the prayer in his application on the basis of a representation, the truth of which has not been established, may not by

itself in the circumstances of this case disentitle the petitioner to the relief that is permissible.

19. The next contention of the learned counsel for the third respondent was based on the averments in paragraph 2 of the counter affidavit of the

Govern-merit:

""Further the Government have also decided that the licences under the Madras Rice Mills Licensing Order, 1956 should be issued as a special

case, to such of the new rice mills, where buildings for installation were already constructed and machinery erected or purchased and kept ready

for erection and issued instructions to the effect in January 1956. The rice mill of the third respondent"" herein came under this category, The

Government after a full consideration of all the facts and circumstances passed orders directing issue of a licence to the third respondent herein"".

20. The instructions issued by the Government in January 1956 apparently fell within the scope of Rule 2 (2) of the Madras Rice Mills Licensing

Order, 1955, which vested in the State Government a power to issue general directions to licensing authorities. The learned counsel for the 3rd

respondent urged that had the petitioner applied afresh to the licensing authority at any time after January 1956, the Collector was bound to grant

the licence. The Collector actually granted the licence on 3-5-1956. Even if the order of the Government dated 23-4-1956 was not passed

without jurisdiction that need not in the circumstances of this case affect the issue of the licence by the licensing authority on 3-5-1956. The further

submission of the learned counsel was that, as the third respondent was bound to get a licence had he applied afresh after January 1958 or even

were he to apply afresh now, the licence issued on 3-5-1956 should be left intact, & if that could be left intact, there was nothing gained by selling

aside only the order of the Government dated 23-4-1956.

Technically no doubt there was no fresh application after January 1956. Rejection of the application preferred by the third respondent was on 9-

11-1955, and the correctness of that could not be tested with reference to the instructions issued by the Government in January 1956. To insist

upon a fresh application after January 1956, to cure the defect in the grant of a licence to which the third respondent was entitled under the rules

and the instructions issued by the Government under Rule 2 (2) in January 1956

would, in the circumstances of this case, savour of ½ technicalities being allowed to prevail against the right to which the third respondent was entitled after January 1956 to obtain a licence. I am quite alive to the fact, that the jurisdiction of the Government to issue the order dated 23-4-56 is not a mere technicality. Still the question remains, should the license granted on 3-5-1956 be set aside? The rice mill has been, working all these days, and the third respondent would certainly Be entitled to obtain a fresh license even if the license granted on 3-5-1956 to is set aside. In these circumstances, I think the plea of the third respondent should be accepted, that I should exercise my discretion against confirming the rule nisi.

21. The rule is discharged and the petition is dismissed. No order as to costs.