

(2002) 10 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No's. 44589, 47426, 47535, 47761 and 47777 of 2001 and 30087-88 of 2002 (LB)

Rainbow Advertising

APPELLANT

Vs

Bangalore Mahanagara Palike and Another

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Karnataka Municipal Corporations Act, 1977 — Section 443 (10)

Citation : AIR 2003 Kar 162 : (2002) ILR (Kar) 5226

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : S. Vishwajit Shetty, for the Appellant; Ashok Harnahalli and K.N. Puttegowda, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—The petitioners are registered advertising, agencies Involved in the business of installing advertisement hoardings for their clients. After entering into agreement with the owners of the properties the petitioners had filed their applications before the respondents seeking permission; for the erection of the hoardings. These applications had been considered and orde"rs had been passed by the respondents permitting the petitioners to erect hoardings. As the term of the permission/license originally granted under the Act is limited to one year, on the expiry of the one year period, the petitioners made applications for renewal along with the requisite fee. The respondents have declined in all these cases to renew the permission earlier granted on one ground or the other. Being aggrieved by the said refusal to renew the permission or licence earlier granted, these petitions have been filed by the aggrieved petitioners.

2. I have heard learned Counsel Mr. Vishwajith Shetty for petitioners and Mr. K. N. Puttegowda for the respondent-corporation.

3. Learned counsel Mr. Vishwajith Shetty submitted that as the case of the respondents rests on Section 443(10) of the Karnataka Municipal Corporation Act, 1976 ("the Act" for short) the benefit of deemed permission is available to these hoardings and, therefore, the respondents cannot dismantle these hoardings. On the contrary, it is the contention of learned counsel for the corporation Mr. K. N, Puttegowda that even assuming that these hoardings would be covered by Section 443(10) of the Act the period for which the renewal was sought also being over, in the absence of fresh application for renewal the hoardings In question would be unauthorised hoardings and, therefore, the petitioners cannot have any valid objection in law for dismantling these hoardings.

4. As the entire thrust of the case pleaded by the petitioners is dependent on the deemed permission which, according to the learned counsel for petitioners, is available to them by operation of law. it is relevant to consider the provision to determine whether the relief sought in these petitions could be granted to the petitioner. The relevant provision reads :

"443(10).-- The acceptance by the Corporation of the prepayment of the fee for a licence or permission or for registration shall not entitle the person making such prepayment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration, but an applicant for the renewal of a licence or permission or registration, shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders, on an application, for licence or permission or for registration are not communicated to the applicant within forty five days after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year for such less period as is mentioned in the application and subject to the provisions of this Act, the rules, bye-laws, regulations and all conditions ordinarily imposed."

A careful reading of the underlined portion of the provision does go to show that the applicant is entitled to act as if the licence or permission has been renewed only until communication of orders to him by the corporation on the renewal application. The later part of the provision which deals with "deemed permission" only relates to an application made for registration or licence or permission and not to a renewal application. In all these cases, communication has been sent by the respondents turning down the request for renewal. That being the case on facts, with effect from the date when the request for renewal was declined, the hoardings would cease to be authorised hoardings. The provision deals with three aspects viz., the first being the effect of receipt of an application along with the requisite fee by the corporation, the second relates to the applications made for renewal and the third and the last deals with the effect of omission on the part of the corporation to decide on the application within 45 days after its presentation. On a careful reading of the provision it becomes crystal clear that "deemed

permission" is available to all applications for renewal only upto the date of receipt of communication from the corporation as to its fate. If the request is turned down on a later date, even if it be later than 45 days, the applicant cannot lay claim to "deemed renewal". The provision clearly separates "renewal application" from the "original application" in the matter of bestowing the benefit of deemed permission in that, while it is made available for all original applications, it has not been extended to the renewal applications. Hence, in my considered opinion. Section 443(10) of the Act would be of no avail to the petitioners to claim that their applications for renewal have to be deemed as renewed because they were rejected after the expiry of 45 days.

5. Be that as it may. even assuming for the sake of argument that the "deemed permission" is available to renewals also, then too the petitioners would not be entitled to any relief at the hands of this court as the period for which this "deemed permission" would be available has also come to a close. There is no material on record to show that an application is made by the petitioners for renewal and the same had been received by the corporation for the subsequent period too. In the absence of such application and the period for which the application had been presented to the corporation also having expired, the hoardings invoked would automatically become unauthorised. While on this point it would be useful to refer to the decision of the Supreme Court in N.S. Shethna Vs. Vinubhai Harilal Panchal, . While dealing with the question of renewal of licence and the powers that are available to a Licensing Authority in the matter of such renewal, the Apex court observed thus :

"The renewal of a licence for sale of tickets is not a matter of course. The fact that the Licensing Authority can in proper circumstances refuse an application for renewal and is not precluded from imposing different conditions and can grant it for a different period coupled with the absence of any Rules for renewal are all indications leading to the result that renewal is a fresh grant is not merely continuation of the licence previously issued.

If renewal is treated as continuation of the licence previously granted, in a case where a licence is renewed from year to year as it would be in a large number of cases, if a licensee has committed breach of one of the conditions of the licence in any particular year, action against him can be taken in any subsequent year and his licence would be liable to be cancelled or suspended during any such subsequent year for a breach committed by him several years ago."

6. Thus, it is clear that renewal of a licence is not a matter of course and the Licencing Authority can always refuse an application for renewal. The applications for renewal having been refused by the respondents herein, the schedule hoardings as of now are without a valid permission or licence and. therefore, they can only be characterised as unauthorised hoardings. Thus, on facts and in law. the petitioners are not entitled to any relief in these writ petitions.

7. These petitions are, accordingly, dismissed.