

(1966) 02 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 1752 of 1964

S. Govinda Iyer

APPELLANT

Vs

Municipal Council, Villupuram

RESPONDENT

Date of Decision : 23-02-1966

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 230, 249, 250, 321(11)

Citation : AIR 1967 Mad 290

Hon'ble Judges : M. Anantanarayanan, O.C.J.; Ramakrishnan, J

Bench : Division Bench

Judgement

Anantanarayan, Offg. C.J.

(1) This writ petition comes up before us, upon a reference by Srinivasan J, on a question of considerable interest, with regard to the juxtaposition

and the relative application of Ss. 249, 250 and 321(11) of the Madras District Municipalities Act (V of 1920). The matter is partly covered by

two authorities, to which our attention has been drawn, but it does appear that the particular ground of distinction upon which the learned Judge

sought to place the proceedings before a Division Bench, has not been dealt with in either of these authorities.

(2) A very few facts are essential for an elucidation of the position. We shall be quite brief, since the learned Judge has already referred to the

merits at some length, in his judgment of reference. The writ petitioner is the proprietor of a printing press, wherein he had an electrically-operated

treadle. On 17-4-1964, he applied under Sec. 250 of the Act for installing an additional treadle with 2 H. P. electric motor. There was

correspondence between the Municipal Council on the one hand and the petitioner on the other, which ultimately led to an order of the Municipal

Council declining permission, dated 20-6-1964. One of the grounds of objection in that order was the letters of consent had not been obtained by the petitioner from adjacent householders for the proposed installation.

The petitioner, I., substance, claimed tow reliefs. Firstly, his contention was that the order or orders of the Municipal Council, taking the orders

together in necessary, constituted a proceeding characterised by an error of law apparent on the face of the record. There could be no obligation

known to law laid upon a proprietor of that kind desiring to install an additional treadle with 2 H. P. electric motor, to go canvassing for letters of

consent from adjacent householders, acquiescing in the proposed installation. On that ground, the order has to be struck down by the issue of the

appropriate writ of certiorari. The other contention of was that, because of the deeming effect of S. 321(11) of the Madras District Municipalities

Act, since the order of refusal was not communicated to the petitioner within thirty days of the receipt of his application by the executive authority,

the application should be deemed to have been allowed. The argument is that, in this view, the installation could be permanently maintained and run

by the writ petitioner, including the additional treadle, without any further licence.

(3) We shall immediately deal with the second point, since that is the ground upon which the reference has been made by the learned Judge. For

this purpose, a glance is necessary at the relevant provisions of the Act. Under Sec. 249 and the sub-clauses of that section, a procedure is

provided for, whereunder applications for the renewal of licence, which normally expire at the end of the year, have to be taken out. Under Sec.

230 of the Act, which is important, there is an elaborate procedure for the obtaining of permission or a licence for the installation of a factory,

workshop or work-place employing power, and, for the installation in such premises.

Before the Municipal Council grants the permission, it has to pay heed to a variety of factors enumerated in sec. 250(4) sub-clauses (a) and (b).

Such criteria would include the adequacy of provisions for ventilation and light the adequacy of the dimensions of the rooms and doors, the

suitability of exists to be used in case of fire, the allied factors relating to public health. At least two types of authority have to be consulted, before

the Municipal Council grants the permission, and one is the Inspector of such

factories, and the other is the Municipal health staff including the Health Officer, Under Sec 321(11), as we have earlier pointed out, if orders on an application for licence or permission or for registration are not communicated to the applicant within 30 days after the receipt of the application by the executive authority, "the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules, bylaws, regulations and all conditions ordinarily imposed".

(4) The two decisions on this aspect are *The Public Prosecutor Vs. T. Krishna Rao, and Ranganayakulu v. Municipal Commissioner Vijayawada Municipality* 1958 (2) AWR 187: AIR 1958 AP 460. In the first decision, which is the decision of a single Judge of this Court (Somasundaram

J.) the validity of a prosecution for offences under Sec. 250 read with Sec. 313 of the Act came up for consideration. In that case, though the

application was made on 12-5-1955, no final order of refusal was ever communicated to the applicant. As Srinivasan J. points out, the learned

Judge took the view that the deeming provision under Sec. 321 clause (11) would apply and that permission must be deemed to have been

granted for the installation, in the terms of that sub-clause; that being the case, the party could not be prosecuted for the offence under Sec. 250

read with Sec. 313 of the Act. That is all that the case decided, and it does not bear upon the present question whether the deeming provision

would apply, where what is proposed is a permanent installation, without any reference to any particular period.

(5) Again in *K. Ranganayakulu Vs. Municipal Commissioner, Vijayawada Municipality*, a learned single Judge of the Andhra Pradesh High Court

expressed the same view, on the facts of that case. The facts have been dealt with in some detail by the learned Judge (Srinivasan J.) and we need

not reiterate them here. But we, must point out that the writ of mandamus was issued in that case, because the statutory power conferred on the

authority was coupled, in the view of the learned Judge, with a duty to perform it under the circumstances, which it failed to perform. In that case

also, even though Section 321(11) has been referred to, it is indisputable that the precise ground which now comes up for our determination has

not been dealt with, as such.

(6) The ground may be now precisely stated. As we have earlier said, where the Municipality is faced with the question of granting or declining of permission for the permanent installation of a factory, or of machinery, which may conceivably affect the health of persons in that locality, and may also involve several precautions in the interests of the public, the procedure makes it imperative that the Municipal Council should obtain expert opinion upon several aspects, before taking a decision. Learned counsel for the Municipality would appear to be right in his contention that, if the provisions of Section 250 are to be complied with in the letter and in spirit, the Municipality cannot be constrained to arrive at a decision one way or the other, within the period of a month. If there is such an obligation it would really defeat the purposes of Section 250, because it may be impossible to obtain the opinions of experts on the vital aspects referred to in the sub-clause of that section.

(7) This interpretation is further borne out by a close scrutiny of the terms of S. 321, sub-clause (11), which is the deeming provision. Where two provisions of a statute do not really conflict with each other, and can be harmoniously interpreted, it is a fundamental canon of interpretation of statute, that that interpretation which reconciles them should be adopted; and not that which spells out a conflict or contraction. Since S. 321(11) specifically refers to the application being "deemed to have been allowed for the year or for such less period as is mentioned in the application", clearly this refers to an application for permission, licence of registration, as mentioned in that sub-section, for such defined period, which may be a year or less.

During the discussion of the facts of the present case, it became evident from arguments of learned counsel that the law and the rules really provide for three types of permission or licence. One is for the installation of the factory or the machinery itself; this may be a prayer for permission in perpetuity, or may be limited to some period of a year or less. Again, it may be an addition to an existing installation, or may be for the commencement of a factory. Even where such a permission has been granted, it is conceded by learned counsel for the writ petitioner that another permission must also be obtained, for running the machinery from year to year. It is not in dispute that a renewal permission of that kind will have to

be obtained from year to year, if the installation is to be of any use to the concerned proprietor; for obviously, an installation that he cannot work or run is of no use to him.

(8) Under these circumstances, since it may be very difficult to lay down some criterion of distinction between section 250 and Section 321(11)

based on the kind of installation or the extent to which the initial installation affects the pre-existing plant, the only distinction that we can

unhesitatingly declare is that based on the time factor. For permission, or for a licence which is for a permanent installation of a factory, Section

250 will apply, and since no time will be specified in the application, the deeming provision in Section 321(11) will not be attracted. The

Municipality may apply all the relevant factors in Section 250, after obtaining the opinion of experts, and it could not be deemed to have given a

perpetual permission, merely because the decision is not taken within a month of the receipt of the application.

However, even in such a context of facts, if a party acts, under the bona fide belief that the silence of the authority implies its consent, we think that

this might at least be a valid defence against a prosecution of the kind referred to in *The Public Prosecutor Vs. T. Krishna Rao*, . But, where the

application is of a temporary character what-ever might be the subject matter of the application, whether it is a small addition or a large addition to

existing machinery, the deeming provision will apply, if the reply is not communicated within a month. Hence, for that period mentioned in the

application, which may be a year or less, it will be deemed that permission has been accorded. At the expiry of that period, of course, the

necessity to renew the licence will again occur. We answer the reference and furnish this interpretation accordingly.

(9) With regard to the actual writ proceeding itself, the writ must clearly issue, for we agree with respect with the opinion of Srinivasan J., that it

will be an error of law apparent on the face of the record to embody in the order for refusal, and as the main ground for such a refusal, an

obligation to seek out letters of consent from adjacent occupiers of property which is not known either to statute or to the common law. The matter

is thus released for fresh determination by the Municipal Authority in the light of the relevant criteria.

(10) No order as to costs.