

(2011) 11 MAD CK 0035

In the Madras High Court

Case No : In Writ Petition (MD) No. 9883 of 2008

S. Vairapalam

APPELLANT

Vs

The Executive Officer, Selection Grade Town Panchayat,
Sattankulam, Thoothukudi District and The District Collector,
Thoothukudi District, Thoothukudi

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5), 19(6), 21, 226
Tamil Nadu District Municipalities Act, 1920 — Section 264, 267, 269(1)

Citation : (2011) 11 MAD CK 0035

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai in W.P. MD No. S. 9983 and 10222/2008, Mr. G. Thalaimutharasu in W.P. MD No. S. 9995, 10041 and 10042/2008 and Mr. M. P. Senthil in W.P. MD No. 10150/2008, for the Appellant; T.S. Mohammed Mohideen, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K. Chandru

We have to take a practical review of the matter. Most people do not have the money to purchase meat from other cities or other States and bring it to Ahmedabad. Almost all meat-eaters get their meat from the local butcher shop in the city, usually from a shop which is close to their residence. Hence, closure of the slaughter house, in substance, means compelling the non-vegetarians to become vegetarians for 9 days"-Supreme Court in Hinsa Virodhak Sangh's case.

1. These observations made by the Supreme Court will set the tone for these judgments. In these batch of writ petitions the competing interests of shop-keepers claiming right to sell fish and fowl in various wards within the limits of the town panchayat with conditions of licence and the desire of the town panchayat to relocate them to its shopping area located outside its limits are

clashing with each other.

2. The petitioners in these batch of writ petitions are all traders in selling in meat, poultry and fish within the Town Panchayat limits of Sathankulam Selection Grade Town Panchayat.

3. In all these writ petitions, the petitioners were aggrieved by the notices issued by the Town Panchayat by the Executive Officer of the Town Panchayat. The petitioners informed that the Town Panchayat in its meeting held on 19.08.2008, passed a resolution No. 277 by which the Town panchayat had decided to shift all the meat shops to the newly constructed complex constructed by the Town Panchayat. It was the stand of the panchayat that the decision was taken for maintaining the hygienic condition of the locality. Pursuant to the resolution an advertisement was also put up and informed that the shops owners were given notice since the notices were not complied with a final warning was issued by the impugned action of the town pancahyat stating that if they have not removed their shops in which they were selling fish, meat and poultry and if they do not remove the shops within 7 days and locate the shop into the newly built shopping complex, necessary restraint action will be taken for the petitioners from continuing the public health hazard and further action will be taken against the petitioner S. Aggrieved by the notices, the writ petitions came to be filed.

4. Pending the writ petitions, this Court granted interim orders. On notice from this Court in some of the writ petitions, the first respondent Town Panchayat has filed counter affidavits, dated 28.11.2008. Since the issue involved in these writ petitions are identical, they were grouped together and a common order is passed.

5. Mr. G. Prabhu Rajadurai, learned counsel for the petitioners contended that the action initiated by the Panchayat was illegal and contrary to the provisions of the Act. No doubt, the petitioners have located their shop in a private campus but under the Tamil Nadu District Municipalities Act on a licence, they can carry on the trade of selling or storing for the purpose of sale of preservation of flesh and fish. Unless and until, any contravention of licence conditions, the authorities cannot make an omnibus embargo on the selling sale of items and they are not contraband items. It is not the case of the town panchayat that the petitioners were having activities akin to a slaughter house in which case, the local body is entitled to indicate the area in which such activities can be located. In the present circumstance, there is no necessity for the petitioners to go to far off places for the purpose of selling flesh and fish as the case may be. It is also stated that the right of every citizen to have a choice of his own to eat and consume and it should be made available within a reasonable price and at a reasonable distance.

6. He further submitted that under the guise of imposing reasonable restriction, the respondent town panchayat imposed fetters on the right to carry on trade. He further submitted that the allegations made in the counter affidavit that there

were complaints from the general public especially from one self help group of women is concerned, there was no specific allegations made regarding contravention of licence conditions. It was always open to the town panchayat to take appropriate action against the particular traders but that cannot be a rule to remove all the shop keepers from the existing places of business. Therefore, the present resolution should not bar the petitioners from selling flesh and fish in the shops hired by them.

7. Mr. G. Prabhu Rajadurai further submitted that it was one thing to state that henceforth no flesh or fish can be sold except in the market identified by the town panchayat and that no licences will be given for selling such items in other places.

8. For this purpose, the panchayat must take a reasonable decision. In paragraph 2 of the counter affidavit all that has been mentioned was relating to meat vendors and not other items of sale ie., selling of poultry or fish within the town panchayat limits. In any event, in the counter affidavit, there is no clarity in the stand of the respondents. Under the said circumstances, the learned counsel stated that the omnibus resolution of the panchayat and consequent action taken by the Executive Officer must be set aside by this Court.

9. The learned counsel placed reliance upon a decision of the Supreme Court in Ganpati Singhji VS. State of Ajmer and Another reported in AIR 1995 SC 188 to contend that the right to hold a trade of his own land is a fundamental right under Article 19(1)(g) and it can be restricted only by the restriction provided under Article 19(5). Such reasonable restrictions can be made only in the interest of general public. In the absence of the municipal law empowering the council to impose a ban, no such power can be assumed by the municipal authorities.

10..The learned counsel also placed reliance upon Section 269 (1) of the Tamil Nadu District Municipalities Act wherein it only prohibits unlicensed places to be used for selling or storing for the sale of preservation of flesh and fish. The other learned counsels for the petitioners M/S. G. Thalaimutharasu and M. P. Senthil adopted the same arguments.

11. Per contra, Mr. T.S. Mohammed Mohideen, learned Additional Government Pleader contended that the town panchayat was entitled to establish private markets in respect of Section 264 of the Act. In the absence of any licence for a private market, no person can vend anything that he may chose. The council has got full powers to decide the location for vending any substance in public place. u/s 267 of the Act, the council has got power to close any private markets.

12. The learned Additional Government Pleader further submitted that there is no dispute regarding any private market. It was a trade by the individual in the hired places/shops of their choice. It must be stated that there is no power to carry on business without proper municipal licence. The action of the authorities were based upon concrete materials received from the public. It was also

authorised by a resolution passed by the panchayat as early as on 02.08.2006.

13. In the present case, there is no complaint that the petitioners were slaughtering any cattle in their shop premises. In which case, the fundamental right claimed by the petitioners cannot apply as the municipal law ultimately prohibits slaughter of animals for sale as food except within the licenced premises.

14. The only question was whether either after slaughter of animal, the flesh can be sold by way of retail vending in a licenced premises that too not necessarily in a public market established by the municipality and whether the trade relating to the poultry in such shops can be carried on.

15. A reading of the counter affidavit filed in W.P. (MD) No. 9883 of 2008, dated 28.11.2008 shows that the resolution related to only meat vendors. A copy of the resolution was not produced before this Court. Therefore, this Court has to proceed only on the basis of the averments made in the affidavit sworn to by the Executive Officer. In the absence of the respondent town panchayat furnishing the materials under which the decision was taken and also the provisions under which the decision to shift the meat shops outside the town panchayat, this Court is not willing to decide the issue on the basis of the rival pleadings and assertions made at the bar with reference to the choice of food and the fundamental right of the petitioners for carrying on their trade.

16. There is no doubt true that the relevant municipal law namely the Tamil Nadu Municipalities Act provides for a contingency with reference to the selling of flesh and fish and slaughter houses. No one can contend that they have an unrestricted right to carry on trade without a municipal licence. At the same time, the council on their ipse dixit cannot refuse to grant licence on the basis of unsubstantiated allegations or that a policy decision was taken by the council. Ultimately, it is for the council to decide the issue depending upon public health and the interest of consumers who would like to purchase the food at a reasonable price and within a reasonable distance. But the right of the traders which are subject to regulations and reasonable restrictions based upon the Constitution and the municipal lawS. Since the text of the resolution was not produced and the petitioner alleges the resolution only related to meat shops, this Court was obliged to interfere with the impugned notices issued by the town panchayat and to remit the matter for fresh disposal by the council. It must take into account the interests of the various traders and decide the question of permission to sell the flesh and fish in terms of proviso to Section 269(1) of the Tamil Nadu District Municipalities Act. If any decision is taken the same could be notified. But before taking a decision, the town panchayat must take into account all relevant circumstances and must strictly act in terms of the Act.

17. In this context, it is necessary to refer to a judgment of the Constitution Bench of the Supreme Court in Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another, . In that case, the

Supreme Court was dealing with the power of a Municipal Corporation u/s 466(1) (D) of the Bombay Provincial Municipal Corporation Act, 1949 as well as the power of the Municipal Commissioner to impose reasonable restriction in the matter of opening of slaughter houses and closing down of shops on particular dates. In that context, the Supreme Court observed that under Article 19(6) a law is protected which imposed in the interest of general public reasonable restrictions on the right conferred under Article 19(1)(g). But it was also stated that it is left to the Court in cases of a dispute to determine the reasonableness of the restriction imposed by the law.

18. The Supreme Court further observed that while determining the question, the Court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred under Article 19(1)(g), will not become an absolute one and what the Court has to do is to consider whether the restrictions imposed are reasonable in the interest of general public. The term "in the interests of general public" is wide import comprehending public order, public health, public security, morals, economic welfare of the community and as well as the objects mentioned in Part IV of the Constitution. The very same judgment, also referred to the wisdom of the legislature in making a reasonable classification on the basis of the usefulness to the society.

19. Subsequent to the judgment of the Constitution Bench in Quareshi's case, the Supreme Court had an occasion to consider a similar matter in its judgment in Hasmattullah Vs. State of Madhya Pradesh and others, after referring to Quareshi's case (cited supra), the Supreme Court in paragraph 15 held as follows:

15. Three different Constitution Benches of this Court in Mohd. Hanif case¹, Abdul Hakim case² and Mohd. Faruk case³ have held that total ban on slaughter of bulls and bullocks is ultravires the Constitution. The submissions which have now been made and seem to have found favour with the High Court, with reference to the usefulness and merits of cattle dung and the part which it plays in the rural economy, has been dealt with at length by this Court in Mohd. Hanif case¹. The right of the butchers to practise their trade has been upheld in these decisions and because there is a short supply of milch cattle, total ban on their slaughter was upheld as being

a reasonable restriction in the interest of general public. But it was held in no uncertain terms that a total ban on the slaughter of useless cattle, which involves a wasteful drain on the nation's cattle fodder, which itself was in short supply and which would deprive the useful cattle of much needed nourishment, could not be justified as being in the interest of general public

.....

16.....it was observed at p. 18 that the prescription of the age of 16 years could:

(SCC p.18, para 17)

... be said to be reasonable, looking to the balance which has to be struck between public interest, which requires useful animals to be preserved and permitting the different appellants before us to carry on their trade and profession.

(Emphasis added)

This Court, therefore, in Haji Usmanbhai case 4 once again reiterated the principle of striking a balance between the right of the butchers and the public interest.

20. However, the Supreme Court also struck a note of warning to the writ Courts to be careful in accepting about the facts to be accepted and relied upon if there were to be bona fide disputes between the parties regarding the correctness of the same.

21. In *Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others*, , the Supreme Court dealt with the decision of the Municipal authorities decision to close down slaughterhouses and the right of the traders and consumers came to be considered. Though it dealt with temporary closure of slaughterhouses the decision travel beyond the issue raised and dealt with the right of competing interests and the people's choice about their food preferences. Hence, it will be worthwhile to quote paragraph 27 and 72 from the judgment which are as follows:

27. Had the impugned resolutions ordered closure of municipal slaughterhouses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of the butchers of Ahmedabad who practise their profession of meat selling. After all, butchers are practising a trade and it is their fundamental right under Article 19(1)(g) of the Constitution which is guaranteed to all citizens of India. Moreover, it is not a matter of the proprietor of the butchery shop alone. There may be also several workmen therein who may become unemployed if the slaughter houses are closed for a considerable period of time, because one of the conditions of the licence given to the shop-owners is to supply meat regularly in the city of Ahmedabad and this supply comes from the municipal slaughter houses of Ahmedabad. Also, a large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of this Court. In *R. Rajagopal v. State of T.N.*⁷ (vide SCC para 26 : AIR para 28) this Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. It is a "right to be let alone."

72. As already stated above, it is a short restriction for a few days and surely the non-vegetarians can remain vegetarian for this short period. Also, the traders in

meat of Ahmedabad will not suffer much merely because their business has been closed down for 9 days in a year. There is no prohibition to their business for the remaining 356 days in a year. In a multi-cultural country like ours with such diversity, one should not be oversensitive and overtouchy about a short restriction when it is being done out of respect for the sentiments of a particular section of society. It has been stated above that the great Emperor Akbar himself used to remain a vegetarian for a few days every week out of respect for the vegetarian section of the Indian society and out of respect for his Hindu wife. We too should have similar respect for the sentiments for others, even if they are a minority sect.

[Emphasis added]

22. Therefore, in the light of the rival contentions and in the light of the legal precedents referred to above, this Court is of the view that in the absence of any correct details with reference to the selling of fowl or fish, as required u/s 269(1) by license shop, and because of the vague averments in the counter affidavit filed by the town panchayat, the matter will have to go back to the town panchayat for a fresh consideration. It must take into account all the relevant circumstances of the case.

23. Hence, all the writ petitions are disposed of with a direction to the first respondent town panchayat to place the matter before the town panchayat council for a proper determination. Once such a decision is taken, it will be notified for public attention. If thereafter, the petitioners have any further grievances, they can always exercise their right of judicial review over such decision by approaching the appellate authorities failing which as a last resort for a proper judicial review before this Court under Article 226 of the Constitution. Until such a decision is taken by the town panchayat, the status quo prevailing as on date shall continue.

The connected miscellaneous petitions are closed. However, parties are allowed to bear their own costs.