(1962) 04 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No. 83 of 1960

Sagarmull Chanmull APPELLANT

Vs

Collector of Madras RESPONDENT

Date of Decision : 12-04-1962

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu Pawnbrokers Act, 1943 — Section 1(1), 10, 10(1), 15(1), 15(2)

Citation : (1963) ILR (Mad) 263

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : T.N.C. Srinivasa Varadhacharya, for the Appellant; R.G. Rajan, for M.M. Ismail, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The Petitioner was a licenced pawn-broker. In February 1959, he applied for renewal of his licence u/s 3(2) of the Madras Pawn-brokers Act, 1943. On June 1, 1959, the Respondent served a notice upon the Petitioner referring to a report that he was convicted and fined Rs. 75 u/s 6(3) read with Section 15(1) of the Act for collecting excess interest and u/s 10(1) for not maintaining records accurately and that persons of bad character were visiting his shop and he was also suspected to be having dealings with bad characters in disposing of stolen properties. In the circumstances the Respondent informed the Petitioner that he considered him to be a person of bad character and unfit to hold a licence under the provisions of the Act and, therefore, called upon him to show cause within the time specified why renewal of his licence for the year 1959-60 should not be refused. The Petitioner forwarded his explanation, dated June 19, 1959, denying the charges levelled against him, except the two convictions referred to in the notice. The Respondent thereafter passed his order, dated July 3, 1959 which runs thus:

Sri Sugamul Chanmull has been convicted several times by the Court for contravening the provisions of the Act. He has also been fined for collecting excess interest. Hence he has been considered to be a person of bad character and unfit to carry on business as a pawn broker. The renewal of licence is accordingly refused.

The Petitioner unsuccessfully filed a revision petition before the Board of Revenue which by its order, dated September 14, 1959, agreed with the reasoning and order of the Respondent. The Petitioner seeks under Article 226 of the Constitution for a mandamus directing the Respondent to renew his licence.

2. It is obvious that the question that arises for decision is whether the Petitioner was rightly considered by the Respondent to be a person of bad character within the meaning of Section 4(2)(a) of the Act. Although in the notice to show cause the Respondent considered the Petitioner to be a person of bad character and unfit to hold licence for the three reasons mentioned therein, actually he refused to renew on the sole ground that because he had been convicted several times for contravention of the provisions of the Act ho was a person of bad character.

3. The Madras Pawn-brokers Act, 1943, is an Act intended to regulate and control pawnbrokers in the State of Madras. A pawnbroker is defined to mean a person who carries on the business of taking goods and chattels in pawn for a loan. Interest does not include for the purpose of the Act any sum lawfully charged in accordance with the provisions of this Act by d pawn broker for or on account of charges, but save as aforesaid it includes any amount, by whatsoever name called, in excess of the principal paid or payable to a pawn broker in consideration of or otherwise in respect of a loan. Section 3(1) in effect prohibits carrying on business as a pawnbroker at any place in any area to which the Act applies without a licence obtained under the Act for the purpose. The form and the application for licence is prescribed by Sub-Section 1 of Section 4. Sub-Section 2 of the section states that the licence shall not be refused except on one or both of the grounds, namely (a) that the applicant is of bad character or (b) that the shop or place at which he intends to carry on the business of a pawnbroker or any adjacent house or shop or place, owned or occupied by him, is frequented by thieves or persons of bad character. Against an order refusing grant of a licence, a revision is provided for the Board of Revenue under Sub-Section 3 of Section 4. The form of licence, is to be as prescribed by Sub-Section 4 of that section. Renewal of licences is provided for by Sub-Section 2 of Section 3 which is to the effect that every pawnbroker''s licence granted under this Act shall expire on the last day of the year for which it was granted, but may be renewed from year to year. The rest of the sections in the Act indicate regulations and conditions in respect of the pawnbroker''s licence and the penalties for contravention. Section 10 requires maintenance of regular records with the particulars referred to. Section 18(1) generally provides for penalties for contravention of any of the provisions of the Act or rule made thereunder or any terms or conditions of a licence. Section 15(1) says that it will be punishable if a pawnbroker advancing smaller amounts or receiving higher interest than that

specified in the accounts. Sub-Section 2 of the section is that if a pawnbroker is convicted of an offence under Sub-Section 1 after having been previously convicted of such an offence, the Court convicting him may order his licence as a pawnbroker to be cancelled. Penalty provided by Sub-Section 1 to be imposed by Court extends to a. fine of Rupees Five Hundred. That in brief is the background and broad scheme of the provisions of the Act and in their context the words bad character in Section 4 fall to be elucidated.

4. These words have not been defined in the Act and the only indication, if at all, of its meaning is perhaps to be found in the arrangement of the words frequented by thieves or persons of bad character in Clause (b) of Sub-Section 2 of Section 4. If the words bad character red in the context of the word thieves, it may suggest that a person can be called a bad character if his character is something like that of a thief and there should be something in the character of the man which is culpable under the criminal law, not merely on abstracts principles of general ideas of morals or ethics. In the absence of an indication in the provisions of the Act, it is difficult, as it appears to me, to hold that a mere conviction for contravention of Section 10(1) and Section 1(1) will by itself render a man''s character bad within the meaning of Section 4. If that were net so, I can see little scope for the application of Sub-Section 2 of Section 15, for, if by the first conviction a person becomes a person of bad character that in itself will be a ground for either cancellation or refusal to renew the licence as the case may be. To my mind Sub-Section 2 of Section 15 does not contemplate such a state of affairs between the first and the second conviction. If a conviction under the Act is to be treated as making a man of bad character Section 4 would have clearly said so. Section 10(1), as I said, relates to the maintenance of regular records with the prescribed particulars. With the best of intention a person may err or go wrong or omit to give particulars and thus contravene Section 10(1) although such contravention may involve no culpable omission, but could it be said that this was in itself sufficient to make a person a bad character? I think not. Receiving interest in excess of what is shown in the pawn ticket may, in a sense, be indicative of greed which is made punishable u/s 15(1) but, in my opinion, it is again not enough to call him a bad character. To be that, as I consider, much more will be required.

5. My attention has been invited to Kevalchand v. State of Madras ILR (1957) Mad. 937 where Rajagopalan, J., was concerned with a different problem. But while on it, the learned Judge stated that the words bad character u/s 4 are capable of an objective test in the sense of the Court being in a position to judicially review the facts and determine whether they constitute a bad character, observed the learned Judge at page 946.

The concept of a bad character was and continues to be a well-known one both to the officers of the police department and the officers of the Revenue department, who are expected to and do work in unison with the police in maintaining law and order. To a revenue officer or a police officer, A.B.C. (Bad

Character) connotes something definite. Indeed it should be common knowledge that every police station maintains a register of reputed bad characters.

But it is not sufficient to state that by bad character is meant what a police officer or a revenue officer understood by it. Nor did the learned Judge say so. With due respect, the learned Judge was not called upon to consider the precise meaning of the words and define them in that case which, therefore, does not assist the Respondent here.

6. I am clearly of the opinion that the mere fact of the Petitioner having been convicted once u/s 10(1) and once u/s 15(1) of the Act will not in itself justify the Respondent treating him as a bad character within the meaning of Section 4 and on that basis declining to renew his licence u/s 3(2). Had the Petitioner moved this Court in time for final disposal of this petition, a rule as prayed for him would have been issued to the Respondent But the year for which renewal of licence was asked for having now expired, it is no longer possible to issue the rule. While holding that the Respondent was not justified in declining to renew the licence, having regard to the expiry of this year 1959-60, no rule will issue. In that sense, this petition has to be dismissed and is dismissed and the rule nisi is discharged. No costs.

