
(2002) 02 AP CK 0158

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27048 of 2001

Shaik Dastagiri and Another

APPELLANT

Vs

Executive Officer, Udayagiri Gram Panchayat, Udayagiri,
Nellore Dist. and Another

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 104, 105, 105(1), 111
Constitution of India, 1950 — Article 19(1)

Citation : AIR 2002 AP 384 : (2002) 3 ALD 64

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

**Advocate : Sofia Begum, for the Appellant; H. Harishchandra Reddy, SC and
Government Pleader, for the Respondent**

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The two petitioners are residents of Udayagiri which is a major Gram Panchayat in Nellore District. They eke out their livelihood by selling vegetables on push carts and carrying the vegetable baskets on their heads. The 1st respondent appears to have ear-marked a market place in Gram Panchayat and constructed a few rooms. The 1st respondent conducted auction on 26-9-2001 leasing out/licensing the shops only to one person for a period of six months. As the Gram Panchayat decided to auction the shops only to one person subject to payment of Rs. 10,000/- as deposit, the petitioners being poor, could not participate in the same. When the first respondent with the assistance of 2nd respondent, namely, Station House Officer, Udayagiri Police Station, prevented the petitioners from carrying on their business of selling vegetables on push carts, the petitioners approached this Court praying for the issuance of a writ of mandamus directing the respondents to forbear from interfering with the business of the petitioners.

2. This Court while admitting the writ petition on 3-1-2002, directed the

respondents not to interfere with the petitioners" business. The Executive Officer, the first respondent, has now filed WV MP No.284 of 2002 seeking vacation of the interim orders. The matter itself was heard with the consent of the parties and is being finally disposed of.

3. Smt. Sofia Begum, the learned Counsel for the petitioners submits that 2002(3) FR--F-5 Section 104 of the Andhra Pradesh Panchayat Raj Act ("the Act" for brevity) has no application to the petitioners as they are not carrying any business in the public market. She also submits that in the absence of any law imposing restrictions of prohibiting sale of vegetables in the streets of Udayagiri, any attempt by the respondents to prevent the petitioners from carrying on their business on push carts would violate their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

4. The 1st respondent in the counter-affidavit asserts that the business carried on by the petitioners on the streets of Udayagiri is illegal, especially, when the 1st respondent auctioned shops in the market. The 1st respondent also asserts that the activity of the petitioners is against Section 105 of the Act.

5. The submission made by the learned Counsel for the 1st respondent is unsustainable. Section 104 reads :

"Public markets :--(1) The Gram Panchayat may provide places for use as public markets and, with the sanction of the Commissioner, close any such market or part thereof.

(2) Subject to such rules as may be prescribed, the Gram Panchayat may levy one or more of the following fees in any public market at such rates, not exceeding the maximum rates, if any, prescribed in this behalf, as the Gram Panchayat may think fit,--

(a) fees for the use of, or for the right to expose goods for sale in, such market;

(b) fees for the use of shops, stalls, pens or stands in such market;

(c) fees on vehicles including motor vehicles as defined in the Motor Vehicles Act, 1988 (Central Act 59 of 1988) or pack-animals bringing or persons carrying, any goods for sale in such market;

(d) fees on animals brought for sale into or sold in such markets;

(e) licence fees on brokers, commission agents, weighmen and measurers practising their calling in such market."

The first respondent has not placed before me any prior sanction by the Commissioner of Panchayat Raj permitting the 1st respondent to establish the public market u/s 104. No attempt has been made to place before this Court any rules prescribed by the Government permitting the Gram Panchayat to collect various types of fees at various rates. Also no effort is made to place before this Court any resolution of the Gram Panchayat fixing rates of fees.

6. Further, the reliance placed on Section 105, which reads :

"Licence for private markets:--(1) No person shall open a new private market or continue to keep open a private market unless he obtains from the Gram Panchayat a licence to do so.

(2) Application for such licence shall be made by the owner of the place in respect of which licence is sought not less than thirty and not more than ninety days before such place is opened as a market, or the commencement of the year for which the licence is sought to be renewed, as the case may be."

is wholly misconceived. A submission is made that the two petitioners" selling vegetables on the streets of Udayagiri amounts to establishment of a private market. This submission cannot be countenanced. Reading all the sub-sections of Section 105 together, it is reasonable to infer that a private market is a place which is established after obtaining licence with all the basic infrastructure facilities like water, drainage, sanitation, roads, facilities for weighing and measuring the goods etc. It is quite ununderstandable as to how a push cart used for vending the vegetables can be termed as a private market. This view is also supported by the provisions of Section 111 which empowers the Executive Officer to prohibit by public notice or licence or regulate the sale or exposure for sale of any animals or articles in or upon any public road or place that vest in the Gram Panchayat. The Legislature has clearly drawn a distinction between the private market established u/s 105(1) of the Act and the activity of selling in or upon the roads of Gram Panchayat. Though the Gram Panchayat can prescribe a licensing regimen and regulate sale of animals and articles on the roads, the same has to be preceded by proper sanction by Gram Panchayat. The counter-affidavit filed is silent on these issues. In the absence of any such resolution by the Gram Panchayat authorising the Executive Officer either to prohibit or to licence or regulate the sale or exposure of sale of any animal or articles upon any public road or place or part thereof, the respondents, muchless, the 2nd respondent, have no power or authority to prohibit or prevent the petitioners from carrying on their legitimate legal trade of selling vegetables in retail.

7. Be it noted the right to carry on business, trade or profession is a fundamental right under Article 19(1)(g) of the Constitution of India. In *Sodan Smgh v. New Delhi Municipal Committee* AIR 1989 SC 1988, *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, , *N. Jagadeesan, etc. Vs. District Collector, North Arcot and Others*, and other cases the Supreme Court held that the common law right of trading on pavements of streets also forms part of the right under Article 19(1)(g) of the Constitution of India. It was held:

The right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or repassing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads - to facilitate traffic - may be defeated. Allowing

the right to trade without appropriate control is likely to lead to unhealthy competition and quarrel between traders and travelling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under Clause (6) of Article 19. If the matter is examined in this light, it will appear that the principles stated in *Saghir Ahmad Vs. The State of U.P. and Others*, in connection with transport business applies to the hawkers' case also.

8. Street trading is a recognised fundamental right. The right to carry on trade and business on the streets or pavements of the streets without causing any inconvenience to the passers by also extends to Panchayats also and the respondents cannot totally prohibit such business in violation of the fundamental right.

9. In the result, the writ petition is allowed with costs quantified at Rs. 2,000/- to be borne by the 1st respondent. It is made clear that the 2nd respondent-Station House Officer of Udayagiri Police Station, shall not in any manner interfere with the legal and legitimate activity of selling vegetables by the petitioners from moving from one place to another on push carts or by carrying vegetables baskets on their heads.