
(2009) 07 KL CK 0113
In the High Court Of Kerala
Case No : Writ Petition (C) No. 420 of 2009

Sidhardhan

APPELLANT

Vs

Paravur Municipality

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Kerala Municipalities Act, 1994 — Section 447, 447(1)

Citation : (2009) 3 ILR (Ker) 883 : (2009) 3 KLT 920

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : M.P. Liju and G. Padmaraj, for the Appellant; T.A. Shaji and V. Manu, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioners are authorised retail distributors in terms of the Kerala Rationing Order 1966, issued by the Government of Kerala in exercise of authority under the Essential Commodities Act, 1955. By the impugned notice, they are required by the Municipality to take licence in terms of Section 447 of the Kerala Municipality Act, 1994. They challenge this on the ground that there is no quid pro quo for the fee being levied as licence fee and no special benefit to the payer is provided on payment of the fee prescribed for such licence. The decision of the Apex Court in Corporation of Calcutta and Another Vs. Liberty Cinema, and the decision of the Division Bench of this Court in Jeevaraja v. Commissioner, Badagara Municipality 1973 KLT 845 are pressed into service.

2. Learned Counsel for the petitioner further argued that the activity in a rationing shop does not amount to trade since there is neither any profit motive nor any profit generation by the authorised retail distributors who get only a commission on the basis of the rationed articles distributed through his depot and that the process of activities in the retail rationing shop is only the end exercise of the governmental mechanism of reaching out rationed articles to

those entitled to provision of ration in terms of the Rationing Order. Accordingly, it is argued that in the absence of such activity being classifiable as a trade, it is impermissible to make imposition of any fee or to have an insistence that the authorised retail distributors should have licence in terms of Section 447 of the Municipality Act.

3. Per contra, the learned Counsel for the Municipality as also learned Government Pleader argued that, though rationing shops are established and controlled by the Government aimed at providing ration articles to the card holders, the activity in a rationing shop is nothing but a trade. It is also pointed out that notwithstanding the manner in which Sub-section (1) of Section 447 of the Municipality Act is couched, by now, it is categorically stated by the Division Bench of this Court in *Sivadasan v. Mattannur Municipality* 2008 (4) KLT 684 that notwithstanding that no rules have been made in that behalf by the issuance of a notification, the Municipality is entitled to insist on licence for any trade in terms of Section 447(1) of the Municipality Act. Learned Counsel for the Municipality also referred to the decision of this Court in *V. Stanunathan, Health Inspector v. A.A. Aziz* 1967 KLT 746, wherein, it was held that a person holding licence under the Kerala Kerosene Control Order, 1965, one issued under the Defence of India Rules, 1962, is bound to take licence under the municipal laws.

4. As noticed earlier, settling the then existing controversy, the Division Bench laid down in *Sivadasan* (supra) that even if no rules are notified covering any special trade, licence u/s 447(1) is obligatory. That position notwithstanding, it needs to be considered whether the activity of an authorised retail distributor, so appointed under the rationing order, amounts to trade. Learned Government Pleader points out that even this issue is no more *res integra* as this Court, in *Assistant Labour Officer v. Muraleedharan* 1990 (1) KLT 252, has held that a ration shop falls within the definition of "shop" for the purpose of the Kerala Shops and Commercial Establishments Act, 1960, which includes a premises where any trade is carried on. This Court had analysed the provisions of the Rationing Order in that judgment and had held that a rationing shop is a premises where trade or business is carried on and rationed articles are being distributed through these shops and the customers pay the price of the rationed articles.

5. Adverting to the provisions in Clause 29(1) of the Rationing Order, it can be seen that the authorised retail distributor is duty bound to supply rationed articles to the card holders on demand and offer of price by or on behalf of the holder of a ration card registered with that retail shop. He has to do so on cancellation of the appropriate space or part thereof, as provided for the purpose, in the ration card. The transaction here, is that the citizen who is entitled to rationed articles, pays the price or consideration for the articles, he is provided with the same, by the Government through the rationing system, as rationed articles. The word "trade" is not defined in the Rationing Order. Taking its meaning in its different shades, "trade" includes shop keeping; commerce;

buying and selling; book trade etc., however, not definitely requiring that such activity should be one that generates profit or wanted to generate profit. Transaction of sale or purchase from a specified point where such activity is being carried on is nothing but trade. Profit and loss may or may not arise in trade. That cannot always be stated as a condition for trade because one may even carry on the activity of a trade on a "no profit no loss" basis. Therefore, the argument on behalf of the petitioner that the authorised retail distributor does not earn any profit and that he is only a distributor is of no consequence to decide whether the transaction in an authorised rationing retail shop amounts to trade. The decision in *Muraleedharan* (supra) applies to the case in hand also.

6. As regards the decision in *Jeevaraja* (supra), referred to by the learned Counsel for the petitioner, it needs to be noted that the Bench was considering the case of a copra drying yard where essentially no trade takes place. The principle of "special benefit" applied in that case does not apply to the facts of the case in hand. It also does not appear to have a general application on all cases falling u/s 447 of the Municipality Act. I say this because the power of a municipal authority to insist on a licence is not essentially one that should and ought to be made dependent always on the principle of special benefit. This is because, in the growing scenario of regulatory statutory provisions and the need of the society to have controls and regulations in place, for the better management of its existence, regulatory licences are inexcusable. Insistence on licence in terms of Section 447, particularly in relation to activities where even the Prevention of Food Adulteration Act would be relevant, cannot be got over relying on arguments based on the special benefit doctrine or the principle of quid pro quo referable to the concept of fee. In the case in hand, the petitioners do not have a case that they are not obliged to have licence under the Prevention of Food Adulteration Laws. It is the municipal authority which, through its Health Officers/Inspectors, empowered to take appropriate action. Even in this view of the matter, I do not find any ground to hold that the petitioners do not need to have a licence u/s 447 of the Act.

In the result, the Writ Petition fails. The same is accordingly dismissed.