
(2008) 09 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33681 of 2004

Sivadasan, A.

APPELLANT

Vs

Mattannur Municipality and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Kerala Municipalities Act, 1994 — Section 447, 447(1), 447(3), 447(3A), 511

Travancore-Cochin Interpretation and General Clauses Act, 1125 — Section 23

Citation : (2008) 09 KL CK 0006

Hon'ble Judges : M.C. Hari Rani, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Surendran and P. Gopika, for the Appellant; M.K. Damodaran P.K. Vijayamohan, P.A. Salim and M.K. Chandra Mohandas, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The Petitioner is running a service station under the name and style of "M/s Lakshmi Service Station", for servicing automobiles. He submits, the main business done in the service station is washing of motor vehicles. The said establishment was being run since 1987. It was having licence from the first Respondent Municipality, issued from time to time. For the year 2003-2004, the Petitioner submitted an application for renewal of the licence, on 22-2-2003. But, the said application was rejected by the Municipality, on the ground that the Petitioner failed to produce the consent from the Pollution Control Board for operation of his establishment. Later, Ext. P-2 notice was issued, proposing further action to close down the service station and prosecute him. He submitted Ext. P-3 reply, which was followed by Ext. P-4. In Ext. P-4 it was pointed out by the Petitioner that other Municipalities are not insisting upon such a condition regarding consent of the Pollution Control Board for renewal of the licence. The Petitioner was, later, told by Ext. P-5 that as per the circular issued by the Director of Municipalities, for renewal of licence, consent of the Pollution Control Board was mandatory. Since the Petitioner failed to produce the

consent, his application was rejected. He was again informed that his application for renewal of the licence cannot be allowed. Later, he was served with Ext. P-1 complaint from the Judicial First Class Magistrate's Court, Mattannur, filed by the Municipality, for prosecuting him for the offence punishable u/s 447 read with Section 511 of the Kerala Municipalities Act, 1994. Aggrieved by the above actions of the Municipality, this writ petition was filed seeking the following reliefs:

issue notice to the Respondents and after hearing there may be (issued) a writ in the nature of certiorari, or other order or declaration,

(a) quashing Ext. P-1 complaint and all proceedings in S.T.C. 1531 of 2004, on the file of the Judicial First Class Magistrate's Court, Mattannur,

(b) declaring that the Petitioner is legally entitled to conduct trade or business of service station in his building bearing No. VII/1280 situated in the Mattannur Municipality without obtaining any licence from the first Respondent,

(c) restraining the Respondents from interfering with the Petitioner's business of "service station" in building bearing No. VII/1280 situated in the Mattannur Municipality, in any manner,

(d) directing the first Respondent to pay cost of this writ petition.

2. The Petitioner contended that as long as no Rules are framed u/s 447 of the Kerala Municipalities Act, concerning his business, licence u/s 447(1) is not necessary. So, Ext. P-1 complaint filed against the Petitioner is unsustainable in law. In support of the above submission, the Petitioner relied on the decision of this Court in Shaji Vs. State of Kerala, . In the said decision it was held that a private hospital need not take any licence u/s 447(1) of the Act. In the absence of any rules framed by the State Government under that Section, it is contended that the Petitioner is not liable to take licence for running his establishment. When this writ petition came up for final hearing before the learned Single Judge, it was noticed that there is yet another decision of this Court in Unnikrishnan v. Paravur Municipality 2008 (2) KLT 711, which took a different view. It was held that even in the absence of any rules, a person running a trade in the Municipal area is bound to take licence. In view of the apparent conflict between these two decisions, the matter was referred to the Division Bench.

3. The Municipality has filed a counter-affidavit, supporting the impugned proceedings. According to the Municipality, it has published a notification u/s 447(1) of the Act in the year 1998, in the Kerala Gazette dated 19-5-1998. Service Station is one of the items notified as per the said notification. That notification survives even after the amendment to Section 447, in view of Section 575(2) of the Kerala Municipalities Act and also in the light of Section 23 of the Kerala Interpretation of General Clauses Act, 1925, it is submitted.

4. We heard the learned Counsel for the Petitioner Mr. R. Surendran and also Mr. P.K. Vijayamohanan for the first Respondent Municipality. The learned Counsel for the Petitioner submitted that in view of the amendment introduced to Section

447 as per Act 14/1999 with effect from 24-3-1999, the notification published by the Municipality has become obsolete and unworkable. In the absence of any Rules framed u/s 447(1), the Municipality cannot insist that the Petitioner should take a licence. At any rate, there should be a notification from the Municipality specifying which are the "dangerous or offensive trades" and which are "common trades", as mentioned in Sub-sections (3) and (3A) of Section 447, after the amendment. So, the learned Counsel for the Petitioner prays for granting all the reliefs sought for in the writ petition.

5. The learned Counsel for the Municipality, on the other hand, submitted, even in the absence of any rules, since the Petitioner is running a trade, he cannot do it without a licence, in view of the express prohibition contained in Section 447(1). It is also submitted that he should take licence at least from the Secretary under Sub-section (3A) of Section 447. The relevant portion of Section 447, as it stood before the amendment introduced as per Act 14/1999, reads as follows:

447. Purpose for which places may not be used without licence, (1)A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the municipal area shall be used for any one or more of the purposes specified in the Sixth Schedule or for any other trade without a licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public.

* * * * * (3) The Secretary may, by order and subject to such restrictions and regulations as he thinks fit, grant or in the interest of the public refuse to grant such licence.

The above provision after the amendment reads as follows:

447. Purpose for which places may not be used without licence, (1)A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified in the rules made in this behalf or for any other trade without a licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public,

* * * * * (3) The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant grant such licence.

(3A) The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and conditions as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such licence.

6. A reading of Sub-section 447(1) would show that for running a business covered by the rules, if any, prescribed and for other trades also, licence is necessary. The Petitioner is, admittedly, running a trade. So, even if no rules are notified, covering the trade run by the Petitioner, still he is liable to take the licence, in view of Section 447(1), which not only deals with the purposes specified by the rules, but also with other trades. Therefore, the decision in *Shaji v. State of Kerala* (supra), to the extent it says that no licence is necessary for running a trade u/s 447(1), in the absence of any rules framed by the Government, does not lay down the correct legal position. The decision in *Unnikrishnan v. Paravur Municipality* (supra) has correctly interpreted the provision.

7. The learned Counsel for the Petitioner has raised a contention that the existence of a valid notification issued by the Municipality is a condition precedent for insisting for a licence to run a trade, even if it is not covered by the rules. But, we agree with the contention of the Municipality that its notification published in 1998, to the extent it is not repugnant to the amended provision, will survive. Item No. 163 in that notification is "Service Station". So, the Petitioner's business will come under the said heading "Service Station", which is listed as item 163 in the notification published by the Municipality u/s 447(1) read with other relevant provisions, as they stood in 1998. But, it is true that the said notification does not specify whether the trades notified are dangerous or offensive trades or other common trades. If it is a dangerous or offensive trade, the Petitioner has to move the Council for licence under Sub-section (3) of Section 447 and if it is a common trade, he has to move the Secretary of the Municipality under Sub-section (3A) of Section 447. Going by the above provisions, it is clear that the Petitioner has to take, at least, a licence from the Municipality for "common trade" to run his establishment. So, the contention of the Petitioner that the notification is obliterated, in view of Act 14/1999, cannot be accepted. As long as the classification of the trades into "dangerous or offensive trades" and "common trades" is not made, the Petitioner can, of course, say that his trade is a common trade and he need take licence only for that.

8. But, when the question of prosecution of the Petitioner comes, we think different considerations arise. Law has to be strictly interpreted and applied. It is common case that so far the Government have not issued any Rules under Sub-section (1) of Section 447. No provision under the Act or the Rules framed thereunder or any notification has been brought to our notice, classifying "dangerous or offensive trades" and "common trades". Sub-section (3) or Sub-section (3A) does not specify who is authorised to make the classification. If the

classification is to be done by prescription by Rules, it can be done by the Government. Since the provisions are vague as to who should author the classification, it may be done by the Municipality also, though there is no specific authorisation for that in the Act. Whatever be that, in this case the Municipality has not classified the trades. So, the law u/s 447, in the absence of any Rules or classification of trades, is in a vague and nebulous stage. Therefore, for violation of that section, if a person is prosecuted, we feel that the same will offend certain basic principles governing penal law. It is one of the fundamental principles of criminal law that commissions and omissions which entail penal consequences should be defined, with precision and notified in advance, so that, the citizens can avoid violating that law. If the injunctions of a law are vague, innocent persons may infringe the law unwittingly. Such persons will be accused ex-post facto that what he did was an offence. When the law is vague, the same impermissibly delegates to the police and the Judge, as the case may be, to decide from case to case what is an offence and what is not an offence. Such a law cannot stand scrutiny in the light of Article 14 of the Constitution of India. In this context, it is apposite to quote the observations of the Apex Court in *Kartar Singh Vs. State of Punjab*, .

130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone...than if the boundaries of the forbidden areas were clearly marked".

9. In view of the principles laid down above, we feel that it is quite unsafe to sustain the prosecution of the Petitioner for violation of the provisions of Section 447. We, therefore, quash Ext. P-1 complaint and the writ petition is allowed as above. This does not mean that if the Petitioner runs his trade without licence, the Municipality is helpless. It can close down the shop with police assistance.

The Registry is directed to send a copy of this judgment to the Chief Secretary of the State to take appropriate action, if so advised, to remove the vagueness in Section 447 of the Municipalities Act.

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