(1986) 03 OHC CK 0025

In the Orissa High Court

Case No : Criminal Revision No. 1 of 1982

Subash Chandra Patnaik — APPELLANT

Vs

The Executive Officer, Notified Area Council — RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:
Orissa Municipal Act, 1950 — Section 290(1), 383

Citation : (1986) 61 CLT 626 : (1986) 1 OLR 460

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : N.C. Pati, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—The petitioner has challenged the order passed by the learned Judicial Magistrate, Surada, convicting him u/s 383 of the Orissa Municipal Act (''Act'' for short) and sentencing him to pay fine of Rs. 40/- in default, to undergo simple imprisonment for ten days.

2. The facts which are simple are recounted below. The petitioner owns and operates a rice and flour mill within the area of Surada Notified Area Council (hereinafter referred to as the N. A. C). He paid the annual licence fee levied by n. A. C. till the year 1979-80 at the rate of Rs. 50/-. In the year 1980-81 the N.A.C. authorities levied licence fee of Rs. 350/-, which the petitioner did not deposit, but nevertheless without obtaining a valid licence operated the mill. Therefore, the opposite party filed a prosecution report against him for having committed an offence u/s 383 for contravention of Section 290(1)(v) of the Act.

3. The petitioner took the defence that the annual licence fee was drastically enhanced from Rs. 50/- to Rs. 350/- for the year 1980-81 which the N.A.C. had no jurisdiction to do. Therefore, it was not possible to pay the enhanced licence fee and obtain a licence for the aforesaid period.

4. The learned Judicial Magistrate held that the State Government by notification

had prescribed the maximum limit of the annual licence fee at Rs. 60/- and so the N.A.C. authorities had no jurisdiction according to law to levy annual licence fee at Rs. 350/- Nevertheless, he convicted and sentenced the petitioner, because, he operated the rice and flour mill during the year in question without obtaining a licence.

5. Mr. Pati, appearing for the petitioner, urged that in view of the clear finding that the N.A. C. authorities had no jurisdiction according to law, to levy an annual licence fee of Rs. 350/- much beyond the maximum limit prescribed by the State Government, the order of conviction and sentence passed by the learned Judicial Magistrate is illegal and cannot be supported. The contention requires careful examination.

6. The relevant provisions of Section 290 are quoted below for easy reference :

"290. Purposes for which places may not be used without licence :

(1) The municipal council may notify that no place within the municipality as may be fixed by it shall be used without a licence granted by the Executive Officer and except in accordance with the conditions specified in such licence, for any one or more of the following purposes, namely :

xx xx xx (w) using for any industrial purpose any fuel or machinery ; and

xx xx xx (7) The municipal council may, subject to the maximum to be fixed by the State Government, levy a fee in respect of any such licence and the renewal thereof and may impose such conditions and restrictions upon the grant of such licence as it may think necessary."

Sub-Section (1) of Section 290 cannot be read in isolation. It has to be read conjointly with Sub-Section (7). If the provisions of both are read conjointly, the simple interpretation would be that a municipal council including a ''Notified Area Council'', after issuance of the notification as contemplated in Sub-Section (I) providing for the grant of licence in any area within its local limits, may levy a licence fee which shall be subject to a maximum to be fixed by the State Government. If such licence fee is not paid or on payment of such licence fee the licence is not renewed, the business for which a licence is necessary cannot be carried on within its limits. In this case, indisputably Surada N.A.C. has prescribed for a licence with conditions to carry on the business of operating a rice and flour mill within its local limits. The maximum annual licence fee prescribed by the State Government as found by the learned Court below was Rs. 60/-. There is nothing on record to show that the State Government fixed maximum annual licence fee, either at Rs. 50/- or a figure above it. So if the State Government had prescribed the maximum annual licence fe,e at Rs. 60/- the Surada N.A.C. according to law, could not prescribe an annual licence fee of Rs 350/-, much beyond the maximum limit prescribed by the State Government. If the Surada N.A.C. would have levied for the year 1980-81 an annual licence fee subject to the maximum of Rs. 60/-and the petitioner would not have renewed his licence on payment of such fee then there would have been justification to hold him guilty for an offence u/s 383 for contravention of Section 290(1)(v) of the Act. But as the Surada N.A.C. itself violated the law by levying annual licence fee much beyond its jurisdiction and the maximum limit prescribed by the State Government, the petitioner could not be compelled to pay licence fee at the abnormally enhanced rate and so, in such circumstances, there was no intentional violation of law for which he could not be convicted of a criminal charge. It is desirable that a legally constituted local body, such as, the municipality or the N.A.C. should itself observe the provisions of the statute before finding fault with the people who reside or carry on business within its territorial limits.

Before parting with the case, I deem it my duty to observe that this judgment will not impede the petitioner to pay the legally prescribed licence fee for the year in question.

7. For the above reasons. I am unable to uphold the order of conviction and sentence. Accordingly, I set aside the same and acquit the petitioner of the charge, Fine if realised shall be refunded.