
(1957) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 612 of 1955

T. Aswathanarayana

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 23-07-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 07 AP CK 0013

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : V.V. Krishnamurthy, for the Appellant; G. Venkataramasastry, for the Respondent

Judgement

Satyanarayana Raju, J.—This is an application, for the issue of a writ of certiorari to quash the notification, dated the 2nd of March 1955, published by the Vijayawada Municipality in the Krishna district Gazette.

2. The Petitioner is the managing partner of Sri Rama Talkies, Vijayawada, carrying on the business of exhibiting cinematograph films. He has been displaying advertisements of the pictures screened in his theatre at several places in Vijayawada town. The Vijayawada Municipality issued a notification, dated the 2nd of March 1955, which was duly published in the Krishna District Gazette, specifying the rates at which license fees were to be levied for advertisements displayed on walls or posts within the Town.

In pursuance of the notification, the Municipal Council issued a notice requiring the Petitioner to pay license fees on the hoardings and advertisements displayed by him, to the Contractor, to whom the right to collect fees on advertisements and hoardings within the municipal town of Vijayawada, has been given. The Petitioner gave a reply to the said notice denying the right of the municipality to levy such fees and as verging that there was no liability on his part to pay the same.

3. It was averred by the Petitioner, that, on the date on which he filed the present petition in this Court, he was screening a first run high class Telugu picture and. for a successful (imitation) of the said picture, large scale public such has necessary and that any interference with part (advertisements) displayed by him would result party is fall in the collections. He challenged cross of the notification inter alia on the Act, here is no power vested in the municipality of the Madras District Municipalities the Effect (in after) referred to as "the Act")

4. But advertisements and further vision in the Act or the rule wiring the Municipality collect fees on advertise it filed by the Exe-Commissioner of the asserted that the power to levy license advertisements and that is valid and intra vires are Municipality under the

5. On the above contentions, the question that arises for determination in this writ Petition is whether the Municipality has the right to collect fees at, on hoardings and advertisement displayed and there the notification imposing such fees is valid.

6. In order to appreciate the correct petition, it is necessary to consider the scheme of the Act with regard to the powers of the Municipality to levy fees on hoardings and advertisement displayed on Public streets within municipal Limits.

7. The expression "public street" is defined in Section 3 (21) of the Act as follows:

"Public Street" means any street, road, square, Court, alley passage, or riding path, which the public have a right of way) whether a thoroughfare or not and includes -

(a) the roadway over any public bridged causeway:

(b) the footway attached to any such street, public bridge causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah, or other structure, which lies on either side of the road-way up to the boundaries of the adjacent property whether that property is private property or property belonging to the Government

8. By virtue of Section 61 of the Act, all public streets in any municipality, with the pavements stones and other materials thereof, and all works materials and other things provided for sub streets, all sewers, drains, drainage works, tunnels and culverts whether made at the cost of the municipal fund or otherwise, in, along side or under any street, whether public or private and oil works, materials and things appertaining thereto are vested in the municipal council.

9. Section 180 of the Act prohibits encroachments and it reads:

No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street except as hereinafter provided.

Section 182 provides for the removal of encroachments. Section 183 empowers

the municipal council to grant a license allowing certain projection and erections "subject to such conditions and retractions as it may think fit." Sub-section (1) Section 103 reads as follows:

The council may grant a license, subject to such conditions and restrictions as it make thinning fit. to the owner or occupier of any premises to put up verandahs balconies, sun-shades, weather frames and the nice, to project over a street, of in streets in which the construction of arcadias has been sanctioned by the council, to put up an arcade; or to construct any step or draincoveringj necessary for access to the premises.

Sub-section (2) of Section 183 empowers the executive authority to gram a license subject to such conditions and restrictions as ho may think fit, for the temporary erection of pandas and other structures in a public street vested in the council Sub-section (3) of the same section empowers the municipal council to lease roadside and street margins vested in it for occupation an such terms and conditions and for such period as the council may fix. Sub-section (6) of Section 183 embowers the executive authority to remove any protection or construction on the expiry of a period for which a license has been granted under that section.

Section 306 empowers the municipality to make by-laws for the matters under that section. Clause (28) of provides that the municipal council by-law for the prohibition and regular enertisements in public street or power Chapter XVI of Part VI of the Act provides licenses and permissions.. Section 321 reads:

1.If every license and permission grin under this Act or any rule or by-law made under this Act shall specify the period if any for which and the restrictions, limitations and condition. subject to which the same is granted, and shall be signed by the executive authority.

2. Save as otherwise expressly provided in or may be prescribed under this Act, for every such license or permission, fees may be charged on such units and at such rates as may be fixed by the municipal council.

3. The council may (a) Place the collection of such fees under the management of such persons us may .appear to it proper; or b) farm out such collection for any period not Exceeding three years at a time and on such term"s and conditions as it may think lit.

11. It will now be convenient to set out the notification which"s the subject-matter of attack in this writ petition. That notification is dated the 2nd of March, 1955, and reads:

1. The license" should always consul the Executive Authority prior to the erection of any hoarding or advertisements in the town.

2. The Executive Authority will set apart only un objectionable places for erection or hoarding of advertisements in the town. The licensee should strictly adhere to such places only.

3. No hoarding or advertisement should be arranged to any electrical post. If any hoarding or advertisement is seen hanging from an electrical post, it will be removed departmentally without giving notice and demolished. The cost of removal will be recovered from the company concerned.

4. Any hoarding or advertisement erected at any other place other than the places specified by the Executive Authority in Rule 2 are liable for removal and destruction by the Executive Authority or his duly authorised agent without notice. Further the person or company who does (it) is liable for criminal prosecution and for payment of damages besides payment of fees to the license.

12. This notification was made in pursuance of resolution No. 1680, dated 2-3-1955, approved by the Municipal Council providing for the levy of fees as per the rates fixed therein on hoardings and advertisements in public streets. The notification enumerates the special conditions "relating to the right to collect fees for hoarding" and advertisements during the year 1955-56. In accordance with the above notification, the right to levy fees on hoarding and advertisements was farmed out for the year 1955-56 in 1955 for a sum of Rs. 4,810 to one Bazaar, who had entered into an agreement with the executive authority, as a result of which, he was granted the license. Pursuant to the license granted to him by the Municipality the licensee was collecting fees according to the rates mentioned in the notification. It appears that on 14-6-1955, the licensee informed the Executive Authority that the Petitioner was displaying advertisements at 30 places without the license. By means of the Petitioner was asked by the authority to pay the fees to the licensee with license days of the receipt of the notice and in 1955, the Petitioner sent a reply questioning the validity of the license.

13. The question then is whether this license pursuant to which the Municipality farmed out the right to collect fees to the Contractor and fees were demanded from the Petitioner on the hoardings and the advertisements displayed by him within the Municipal limits, is valid.

14. At the outset, it may be mentioned, that it was submitted on behalf of the Municipality that no by-laws were framed by the Municipality u/s 806 (28) of the Act but that the levy of fees was made under the general powers vested in the Municipality under the Act. That all public streets are vested in the Municipality cannot be disputed. Under S. 180, all encroachments in or over any street are prohibited except as provided under the Act. u/s 183 (2) the Executive Authority has got the power to allow structures temporary or otherwise in a street in accordance with a license that may be issued by the Authority in that behalf.

Under Section 321 (2) of the Act, for every license so issued, fees may be charged on such units and at such rates as may be determined by the municipality. u/s 321(3)(b), the council may farm out such license for any period not exceeding three years at a time on such terms and conditions as it may think fit. u/s 321(2) extracted above, the municipality has got the power to charge fees at such rates as may be fixed by the council.

15. A hoarding is a fencing of boards used for posting bills and advertisements. The Petitioner has put up hoardings and advertisements at 30 places in or over public streets these were booked as unauthorized encroachments & actually four out of them were removed and the Petitioner also paid the charges incurred by the Town Planning Officer for their removal.

16. From a reading of the above provisions, it is manifest that the municipality is empowered to levy fees for hoardings and advertisements, which constitute encroachments, in public streets, which are vested in the municipality.

17. It is, however, argued by the learned Counsel for the Petitioner that there is no provision in the Act empowering the municipality to levy license fees for advertisements, raying upon a decision, of the Madras High Court in M.S. Ayyar and Co. by C.R.V. Das and Others Vs. G. Srinivasalu Naidu, . The facts there were these: The Petitioner was convicted and fined for advertising without a license in Coimbatore Town in two ways: (1) in his bullock cart, and (2) by means of a Board, hung over the roof of his house. The municipal council relied on a bye-law framed u/s 306(23) of the Madras District Municipalities Act as justifying its action, and it was held by Mockstt J. that the by-law empowering the municipality to levy license fees was ultra virus. Before the learned Judge, the provisions of Section 321 of the District Municipalities Act were also relied upon as empowering the municipality to levy the license fees.

Dealing with 8. 321 the learned Judge held that, the power or levy license fees in respect of Advertisements" is not vested in the municipality. The conclusion of the learned Judge really proceeded on the invalidity of the by-law framed by the Municipality u/s 306 (28) of the Act.

From of these decision in the relevant provisions ""supported on the facts of the municipality is enticement displayed on the padlock can advert the board hung over the roof could not have is in tatted encroachmcajts in or over a public Municipality vested in the municipality and the concord Dis the learned Judge that the Municipality are 16) not levy fees was wholly justified. I am un the to snare the view of the learned Judge that delight to collect license fees in inspect of hoardings and advertisements does not vest in the municipality.

18. In this case, as I have already mentioned, the Municipality does not rest its right to collect the fees on any by-law framed u/s 306(28) of the Act. The power to levy the license fees is claimed by the Municipality under the general provisions of the Act. If the argument for the Petitioner is to be accepted, it would It in allowing clam to make encroach| that over public streets which are vested in the ion municipality. The streets being vested in to municipality, it has a right to prohibit enroll" means on its property polis.

19. On a reading of all the provisions-Act, I have come to the conclusion that conduction made by the Municipality is wit the competence and is valid. If the notification valid, the further contentions of the lea unseal for the Petitioner cannot be sustained.

20. In the Circumstances of the case Petitioner is not entitled to invoke the jurisdiction of in court under Article 226 of the Constitution. The writ petition, therefore, fails and is dis Capri with costs Advocate's fee Rs. 100.