
(1997) 07 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No. 12664 of 1997 connected with Writ Petition No's. 15828, 28837, 3130, 3392, 3462, 4069, 4469, 4697 to 4704, 11994, 12549, 12821, 13624, 14261, 14502, 15368 and 15787 of 1997

The Empire Publicity Service, Bangalore

APPELLANT

Vs

The Commissioner, Bangalore Mahanagara Palike and Another

RESPONDENT

Date of Decision : 07-07-1997

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 134, 135, 135 (1), 443 (10)

Citation : (1997) ILR (Kar) 2868

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri Shetty and Sri Reddy, Sri K. Dhruva Kumar, Sri Ananth Mandagi, Sri N. Kumar, Sri V.B. Shiva Kumar, Sri Ravi Malimath, Sri B.K. Sampath Kumar, Sri Udaya Holla and Sri Sreevastsa Associates, for the Appellant; Sri A. Nagarajappa, Government Advocate, Sri K.N. Puttegowda and Sri T. Narayana Swamy, for the Respondent

Judgement

1. The petitioners in all these writ petitions have sought for a direction directing the Corporation not to remove the hoardings erected by them on the ground that they have deemed permission u/s 443(10) of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act") since the Commissioner of the Corporation has not passed orders on the applications filed by them for grant of permission to erect the hoardings or for renewal of such permission within 45 days.

2. It is submitted that the petitioners have made applications for permission to erect the advertisement hoardings in Bangalore city u/s 135 of the Act. The said applications, according to the petitioners, having not been considered by the Commissioner and no order is communicated to them within 45 days the permission is deemed to have been granted u/s 443(10) of the Act and therefore the Corporation has no authority to remove the hoardings. The learned Counsel for the Corporation submitted that Section 443(10) of the Act has no application

insofar as it relates to an application for permission u/s 135 of the Act so as to say that there is a deemed permission to erect the advertisement hoardings in Bangalore City.

3. In view of the rival contentions referred to above, the point that arises for consideration is, whether there is any deemed permission in respect of the erection of an advertisement hoarding u/s 443(10) of the Act in the event on the applications filed for permission no order is passed and communicated to the applicants by the Commissioner, within 45 days. In order to appreciate said contentions it is necessary to refer to the relevant provisions of the Act.

3. Section 135(1) of the Act reads as follows:

"No advertisement shall, after the levy of the tax u/s 134 has been determined upon by the Corporation, be erected, exhibited, fixed or retained upon or over any land, building, wall hoarding or structure within the city or shall be displayed in any manner whatsoever in any place without the written permission of the Commissioner".

Section 443(10) of the Act reads as follows:

"The acceptance by the Corporation of the prepayment of the fee for a licence or permission or for registration shall not entitle the person making such prepayment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration, but an applicant for the renewal of a licence or permission or registration, shall until communication of orders on his application, be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not communicated to the applicant within forty-five days after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application and subject to the provisions of this Act, the rules, bye-laws, regulations and all conditions ordinarily imposed".

4. According to sub-section (10) of Section 443 if no order is passed on an application for licence or permission and has been communicated to the applicant within forty-five days after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application. u/s 135 of the Act no advertisement shall after the levy of tax determined u/s 134 of the Act be displayed without the written permission of the Commissioner. From the reading of Sections 134 and 135 of the Act, it is clear that before displaying any advertisement the tax that is required to be paid u/s 134 has to be determined. Therefore without the written permission of the Commissioner no advertisement shall be displayed in Bangalore City. Section 135 of the Act specifically provides for consideration of the application for permission to erect advertisement hoardings by the Commissioner under which there cannot be any advertisement

on the hoardings without the written permission of the Commissioner, Section 443(10) of the Act is applicable only where there is no specific provision providing for consideration of the application for permission to erect advertisement hoardings. Therefore, I am of the considered view that Section 443(10) of the Act has no application since Section 135 clearly provides for written permission to display the advertisement.

5. Further the legal fixation that has been created u/s 443(10) of the Act is not applicable in respect of the advertisement on hoardings. u/s 135 of the Act there shall be a written permission of the Commissioner for the purpose of displaying the advertisement. The deemed permission u/s 443(10) of the Act cannot be treated as a permission u/s 135 of the said Act, since it is to be in writing. Therefore, I am of the considered view that without there being a written permission of the Commissioner after determining the levy of tax u/s 134 of the Act no person is entitled for displaying advertisement on the hoardings in Bangalore City.

6. Sections 134 and 135 of the Act read with the bye-laws framed by the Corporation regulates advertisement on hoardings in Bangalore city. These provisions are only to prevent disorderly manner of erection of hoardings in Bangalore city. In these days the traffic in Bangalore city is very heavy, The erection of advertisement hoarding is not properly regulated; it may disturb the concentration of the drivers of the vehicles and further it may cause public nuisance and inconvenience. Therefore, every person who intends to erect hoardings for the purpose of advertisement are required to obtain written permission from the Commissioner u/s 135 of the Act.

7. In all these cases there is no written permission from the Commissioner as contemplated u/s 135 of the Act. If that is so, the respondent-Corporation has got every authority to remove the unauthorised hoarding erected in Bangalore city.

8. Learned Counsel for the petitioner has cited a decision of this Court in M/s. I.J. Advertising and Others v Commissioner of Bangalore City Corporation, to say that the petitioners are entitled for a benefit u/s 443(10) of the Act. After going through the said order I find that there is no consideration of Section 443(10) of the Act with reference to Sections 134 and 135 of the Act. Therefore, the said decision is in no way helpful to the petitioners.

9. In the result, I pass the following order. All the writ petitions are rejected. If any of the petitioners have already erected hoardings, they are entitled for a notice from the Corporation before taking any steps to remove such hoardings in view of the decision of this Court in the case of Rex Advertisers Vs. Corporation of the City of Bangalore, .