

(1969) 06 MAD CK 0002

In the Madras High Court

Case No : Writ Appeal No's. 68 and 120 of 1969

The Panchayat Union Council

APPELLANT

Vs

Rev. Fr. Mathew D. Muttom and Others

RESPONDENT

Date of Decision : 19-06-1969

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 321(1), 321(11)

Tamil Nadu Panchayats Act, 1958 — Section 111, 112, 113(3), 159, 159(1)

Citation : (1970) ILR (Mad) 537

Hon'ble Judges : K. Veeraswami, C.J.; K.N. Mudaliyar, J

Bench : Division Bench

Advocate : V.P. Raman, for the Appellant; G. Ramanujam, Government Pleader, K.K. Venugopal and R. Nadanasabapathy, for the Respondent

Final Decision : Dismissed

Judgement

K. Veeraswami, C.J.—These two appeals are directed against two orders, one allowing Writ Petition No. 3654 of 1978 filed by the union

council and the other allowing Writ Petition No. 4275 of 1963 filed by the grantee of the licence.

2. The Appellant in Writ Appeal No. 120 of 1969 applied on November 24, 1965 to the Uthamapalayam Panchayat Union Council for installation

and running licences u/s 111 and Section 112 of the Madras Panchayats Act, 1958 in respect of a flour mill. The application was rejected by the

council on September 17, 1956. The sub-collector passed an order dated June 30, 1967, on an application filed by the Appellant in Writ Appeal

No. 120 of 1969 holding that the two applications must be deemed to have been granted u/s 159(3). The Director of Rural Development, who

was addressed by the Collector, was of the view that the panchayat union council should not have delayed matters to create rights, and, the council

was correct in refusing to grant the licence on the ground that there was already a flour mill in the small village. The matter was taken up in revision

to the Government which gave a direction on March 23, 1968 to the union to issue a licence u/s 113(3). Before making that order no notice would

appear to have been sent to the union council. When eventually the matter was placed before the union council, by a majority, it resolved against

grant of licence. Later on July 18, 1968, the Government granted permission u/s 113(3) to the licensee to install a motor for running a flour mill.

This order was also without notice to the council. The union council filed Writ Petition No. 3654 of 1968 against the order of the Government

which was eventually allowed on the ground that it was without notice to the council. Writ Petition No. 4275 of 1968 was to quash the resolution

of the council declining to grant a licence. This Petition too was allowed.

3. It may be seen that the disposal of the two appeals rests on a narrow point; whether the installation licence and the licence for running for the

year 1965 should not be deemed to have been granted u/s 159(3). If that is held in favour of the grantee, no other question can possibly arise for

it is not disputed by the Appellant in Writ Appeal No. 120 of 1969 that the running licence should have to be renewed for subsequent years. On

that question, we are clearly of opinion that the deeming provision aforesaid did apply, with the result the installation licence should be deemed to

have been granted. It is admitted that the Council failed to pass an order on the application of the grantee within the time allowed for the purpose.

In such a case, Sub-section (3) of Section 159 enjoins that the application shall be deemed to have been allowed.

4. Mr. V.P. Raman for the Appellant in Writ Appeal No. 68 of 1969 relies on *Govinda v. Municipal Council Villupuram* ILR (1967) Mad. 455

and contends that the same interpretation, as governing Section 321(1) of the Madras District Municipalities Act should apply to a determination of

the scope of Section 159(3) of the Madras Panchayats Act. To deal with this contention it is necessary to notice Section 111 and Section 112.

Those two sections appear in chapter III which relates to functions, powers and property of panchayats and panchayat union councils. A variety of

matters have been compressed into this chapter which does not seem to be quite logical. But, the last few sections in this chapter are devoted to

licensing of places and " also user of places for certain purposes and for permission for construction of factories and installation of machineries.

Section 111 relates to purposes for which places may not be used without a licence. The Government notifies the area which should not be used

for any purposes regarded as offensive or dangerous to human life, health or property Power is given to the panchayat union council, however, to

notify that the place within that area specified should not be used for such purposes without a licence and except in accordance with the conditions

specified in the licence. While this section relates to the user of the place for the specified purposes, Section 112 is concerned with the installation.

This section prohibits construction or establishment of any factory, workshop or work place in which it is proposed to employ, among other things

mechanical power or electrical power, without the permission of the panchayat union council. Chapter VI contains general and miscellaneous

provisions, and more particularly, it contains provisions regarding licences and permissions. Section 159 prescribes the procedure for application

and grant of licence and prescribes the time within which the application should be made and also the time within which the application should be

granted, and, if not granted, it should be taken that the licence had been granted. This section applies both to licence as well as to permission, that

is to say, both for licence for periods as well as for installation. Licences issued u/s 111 are, in the very nature of things, of a recurring character,

while the permission u/s 112 can obviously be granted once and for all without any reference to particular period, because it relates to installation

of machinery. These features must be borne in mind in appreciating the scope of Section 159.

5. Sub-section (1) of Section 159, as we indicated, prescribes the time within which an application should be made. Once such an application had

been made Sub-section (3) contemplates that licence or permission should be communicated to the Applicant,

within thirty days or such longer period as may be prescribed in any class of cases after the receipt of application by the executive authority of the

panchayat the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed and subject

to the law, rule, by laws and regulations and all conditions ordinarily imposed.

The Sub-section carefully uses the words licence or permission, the former relating, in the present context, to Section 111 and the latter to Section

112. When it speaks of allowing for the period, if any, for which it would have been ordinarily allowed, it naturally has to be understood, in the

context of the permission, that the period has no relevance, for, installation licence is granted once and for all, not for any particular period. That is

not the case, of course, with reference to the licence for user of the land for particular purposes u/s 111, where it is normally allowed for a year or

part of a year, according to the language of Section 159(1).

6. The result of our interpretation is that the installation licence must be deemed to have been granted to the Appellant in Writ Appeal No. 120 of

1969 because the union council failed to pass an order within the time allowed for the application to be granted or refused and the result

communicated. So far as the running licence, as we call it, that is to say, the licence for the user of the land for the particular purpose is concerned,

that should have been deemed to have been granted only for 1965 and it could not have life beyond that year.

7. *Govinda v. Municipal Council Villupuram* ILR (1967) would appear to take the view that because it would be impossible -to get through the

procedure necessary for communicating the grant or refusal of an application for licence within thirty days or sixty days, as the case may be, it

warranted an interpretation that Section 321(11) did not apply to the case of installation. The learned Judges thought that that extraneous

circumstance, based on impossibility, warranted by passing the specific language used by that section. If there was any difficulty in granting or

refusing an application for installation within the time specified by the Legislature or under the delegated legislation it would be a case for

amendment rather than for the Court to depart from the language used. With due respect we are not able to concur with the view which

commended itself in *Govinda v. Municipal Council Villupuram* ILR (1967) Mad. 455 It does not, it may be pointed out, keep in view the two

sections in the District Municipalities Act relating to installation and running licences and also the specific language employed by Section 321(11).

We are not able to limit the operation of Section 321(11) only to cases efficiencies for user of places for specific purposes. We do not want to

distinguish S. Govinda Iyer Vs. Municipal Council, Villupuram, merely on the ground that it was concerned with the District Municipalities Act

because the language of Section 321(11) is more or less similar to that employed by Section 159(3) of the Panchayats Act. Our only justification

for taking a different view is that the decision does not give effect to the language of the section and the fact that it is not for the Court to get over it

on assumed impossibility of compliance. Also we find no evidence before us that an installation licence cannot be granted within sixty days of the

filing of the application for the purpose.

8. The result is both the writ appeals are dismissed as unnecessary on the view we have taken. This is because the Government order does not

come in for attack at all, as by virtue of the deeming provision in Section 159(3) the licence for installation should be deemed to have been granted.

No costs.