

(1968) 07 MAD CK 0008
In the Madras High Court
Case No : W.A. No. 150 of 1968

Thiruvengadam

APPELLANT

Vs

Muthu Chettiar and Another

RESPONDENT

Date of Decision : 30-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Rice Milling Industry (Regulation) Act, 1958 — Section 12, 5(4), 6

Citation : AIR 1970 Mad 34

Hon'ble Judges : K. Veeraswami, O.C.J.; T. Ramaprasada Rao, J

Bench : Division Bench

Advocate : G. Ramaswamy, for the Appellant; Government Pleader and R.G. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, Offg. C.J.

1. This Appeal arises from an order of Kailasam, J., dismissing in limine the petition under Article 226 of the Constitution to quash an order of the

State Government, dated 16th November, 1967 granting to the first respondent a permit u/s 5 of the Rice Milling Industry (Regulation) Act, 1958,

read with the Government of India Notification G. S. R. 512, dated 22nd April, 1959 for establishing a new rice mill at Enadhi Village, Pattukotiai

Taluk. The first respondent applied for a permit on 8th November, 1966, the site was approved on 10th January, 1967 and it would appear that

the Panchayat Union Council gave its permission for granting of a licence on 13th March, 1967. The permit issued to the first respondent

prescribed a period within which he should establish the rice mill.

It is stated that since then the first respondent has put up the construction and

installed a mill thereby incurring a heavy expenditure. The appellant representing a local temple which is 65 feet removed from the site on which the rice mill is located, raised certain objections which are also supported by some of the villagers who were worshippers. The objections were that the establishment of the rice mill so near the temple would cause inconvenience to the worshippers particularly at the time of the festival. Further, if decortication were to be permitted, the vibration emanating would affect the temple building. The impugned order of the Government granting the permit is silent about the objections. But the preamble to the order shows that the District Revenue Officer's report, dated 31st July, 1967 had been referred before the decision to grant the permit was arrived at. Kailasam, J., in dismissing the writ petition in limine stated that he did so in view of the decision of this Court in W. P. Nos. 2132 and 2298 of 1966 (Mad). Those cases related to rice mill permits, as in the present appeal. The learned Judge took the view that an order granting permit was an administrative order and that the petitioners in those cases could not, in any case, be regarded as aggrieved.

2. Mr. G. Ramaswamy for the appellant contends that an order u/s 5 of the Rice Milling Industry (Regulation) Act, is having regard to the nature of the power, a quasi-judicial order and that the appellant being an objector is also a person aggrieved. He says that inasmuch as the impugned order of the Government does not ex facie show that the objection had been dealt with and does not give reasons for rejecting them, it is as a quasi-judicial order, vitiated, which, for the reason, can be removed by this Court by certiorari. In support of his contention as to the nature of the power of jurisdiction of the Government u/s 5, he has invited our attention to certain decided cases to show whether the power or jurisdiction is quasi-judicial in character will depend upon its nature, the manner of its exercise and how it affects the rights of parties. The proposition formulated in that broad manner is unexceptionable. A power can be said to be quasi-judicial in character, if it confers authority to decide rights or liabilities which affect parties, and the statute which confers the power also indicates that there is a duty in exercising the power to act quasi-judicially. Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, observes:

The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of

the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the

effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different

circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively.

In *Ridge v. Baldwin*, (1963) 2 WLR 935 : (1963) 2 All ER 66 : (1964) AC 40, the second requirement of duty to act judicially was considered to

be unnecessary in relation to a question whether the principles of natural justice had not to be followed in making an order u/s 191 (4) of the

English Police Act. That sub-section specified the grounds on which a constable could be dismissed from service, and, the particular ground on

which the dismissal was made, having not been made known to the officer concerned and his explanation asked for, the House of Lords was of the

view that on account of failure to observe the principles of natural justice, the order was vitiated. Referring to (1963) 2 WLR 935 : (1963) 2 All

ER 66 : (1964) AC 40, the Supreme Court in *Sadhu Singh Vs. Delhi Administration*, , pointed out that the English case did not support the broad

proposition that no order of public authority which affected the rights of a person might be made without giving that person an opportunity of

making a representation against the proposed order. It seems to us that even where there is authority the exercise of which affects parties, it cannot

be taken as a rule that an order made in exercise of such power is necessarily quasi-judicial in character. The nature of the order will further

depend upon the scheme and intendment of the provisions of the Act which confers the power and which may throw light on the question,

3. So far as an order made u/s 5 of the Rice Milling Industry (Regulation) Act is concerned, we are of the view that having regard to the provisions

of that section and of the Act as a whole, it is administrative in character. The Act is intended to regulate the rice milling industry in the interest of

the general public. The Act is essentially a regulatory measure. Sub-section (3) of Section 5 says that grant of a permit under Sub-section (4) is

related to the necessity for ensuring adequate supply of rice and Sub-section (4) prescribes the procedure for grant of a permit. It specifies a

number of matters which ought to be taken into account in granting a permit, and, for that purpose, the Government should cause a full and

complete investigation to be made in the prescribed manner. The other provisions of the Act bear on restriction on rice mills, power of inspection

returns, penalties, certain offences and delegation of powers.

We may particularly notice that Section 12 which provides for appeals, does not give a right of appeal against an order u/s 5. That by itself is not

conclusive but on a consideration of these provisions we are clearly of opinion that an order under Sub-section (4) of Section 5 is in its effect but

administrative in character. It is true that in the course of exercising the power to grant a permit, the authority vested with the power is enjoined to

have regard to the specified matters and for that purpose, an investigation ought to be directed. But beyond that the power to grant permit is not

one to decide rights as such. It is contended by Mr. Ramaswamy that refusal of a permit may affect fundamental rights, but. In our view, that

general consideration does not alter the true character of the power u/s 5 (4). It is a regulatory power which is justified by its being reasonable and

intended to serve public interest

4. A few cases which this Court had occasion to decide under the Rice Milling Industry (Regulation) Act have been brought to our notice on that

aspect of the question, but on the view we have taken, it does not appear to us to be necessary to refer to them in detail. The view we have

expressed is, however, in conformity with *P. L. L. Ramanathan Chettiar v. Board of Revenue, Madras*, ILR (1964) Mad 151 : (1963) 2 MLJ

320, and the orders in Writ Appeal No. 195 of 1962 and W. P. No. 43 of 1964 (Mad) *Lakshmi Ammal v. Commissioner of Civil Supplies*, ILR

(1964) Mad 869 : (1965) 1 MLJ 119, left the question open.

5. The question whether an order is quasi-judicial or administrative in character arises not with reference to the scope of the power of this Court

under Article 226 of the Constitution. The power under the Article is not confined to judicial or quasi-judicial orders, but it is within its ambit to

review even administrative orders, if only to see that they conform to the rule of law and are within the limits of the grant of the relevant powers.

The relevancy of the character of the order as quasi-judicial is that in the case of such orders they are bound to set out the reasons therefor. That is

however, not to imply that administrative orders, as a rule are not required to set out reasons. There may be cases in which the circumstances may call for setting out reasons. But, in case of failure to do so it may not follow that the orders are necessarily bad. It will be open to the Court to examine the records and satisfy itself whether the authority exercising the power in deciding a matter has reasonably applied its mind to the appropriate statutory provisions and the facts.

6. In the instant case, on a reference to the record, we are satisfied that the licensing authority, in making the impugned order u/s 5 has applied its mind to all the relevant matters enjoined by the statutory provision to be taken into account and to the facts relating to them, though of course this does not appear ex facie the order. As we said, the order does refer to the report from the District Revenue Officer. We have looked into that report which has considered the objections from the worshippers and the appellant in relation to the temple and suggested that they might be overruled. When this report was referred to in the impugned order there is no reason in the circumstances to think that the Government did so mechanically. What is, however, stated for the appellant is that the District Supply Officer, who actually carried out the Investigation contemplated by Section 5 (4) and made a report made it appear to the appellant that there was substance in the objections on behalf of the temple, and that, the fact that the report was surprisingly against the temple was brought to the notice of the Government and there is nothing in the impugned order dealing with that aspect. But, the substance of the matter is whether the Government applied its mind to the objections on behalf of the temple and rejected them. That, we are satisfied, they did.

7. Learned Government Pleader contended that the appellant, in any case, cannot be regarded as an aggrieved person. Though, on the view which we have already expressed, this question does not require to be considered, nevertheless we may briefly express our view. A person can be said to be aggrieved, if apart from the general interest such a person, as a member of the public, may have, he has a particular or special interest in the subject-matter supposed to be wrongly decided. In *Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others*, , which arose under the provisions of the Madras Motor Vehicles Act, this Court

after referring to the observations of Earl of Reading, C. J., in *Rex*

v. Richmond Confirming Authority, Ex parte Howitt, (1921) 1 KB 248 and also *Rex v. Groom*; Ex parte, Cobbold, (1901) 2 KB 157, laid down

the true principle in these words:

The true principle is to determine whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law

being wrongly administered.

We do not see how, in that sense, the appellant can be said to be aggrieved in the matter of grant or refusal of licence to the first respondent u/s 5.

He purports to be a trustee or worshipper of the temple. He is not a rival applicant for a rice mill permit nor is he the owner of a rice mill, nor as far

as we are able to see, is he interested in the matters specified in Section 5 (4) of the Act. It is true the averment is that the running of a rice mill 65

feet away from the temple may cause inconvenience to the worshipping public and also may affect the temple building. Whether it is so or not, that

is not a consequence which is directly connected with or flows from the rice mill licence. The complaint of nuisance, if at all is directed against the

running of the rice mill and not the permit itself. The remedy of the appellant, in such a case if it is available, is not in respect of the licence and has

to be sought in separate proceedings. In our view, the appellant is not a person aggrieved.

8. The appeal is dismissed with costs. Counsel's Fee Rs. 100.