(1958) 01 MAD CK 0026

In the Madras High Court

V. Ratna Mudaliar (died) and Others — APPELLANT

Vs

The Cantonment Board of St. Thomas Mount — RESPONDENT

Date of Decision : 02-01-1958

Acts Referred:
Cantonments Act, 1924 — Section 203

Citation : AIR 1958 Mad 513 : (1958) ILR (Mad) 729 : (1958) 71 LW 259 : (1958) 1 MLJ 349

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The petitioner together with his brothers purchased the property-known as the Pallavaram Private Market under a

sale-deed, dated 9th October, 1930. This property is situate within the limits of the Cantonment of St. Thomas Mount. By arrangement with his

brothers the petitioner has been managing this market. Year after year he has been taking out an annual licence from the Cantonment Board after

paying the prescribed licence fee demanded by the Board. The last of the licences was for the period from 1st April, 1955, to 31st March, 1956

and for the issue of this licence the Cantonment Board charged a fee of Rs. 440 being eight per cent, of the gross income received by the petitioner

from the market. By a resolution, dated 30th April, 1956, the Cantonment Board decided to increase the licence fee from eight to ten per cent, of

the gross income derived from the market on the ground that the expenses incurred by the Board was far in excess of the licence fee that it had

been collecting. The petitioner was called upon to pay the increased licence fee but he refused to do so. As a consequence the Cantonment Board

refused to renew his licence. The petitioner has now come to this Court for the issue of a writ of mandamus to direct the Cantonment Board to

issue a licence to him in relation to the market.

2. Two points have been taken by the petitioner. The first is that the Cantonment Board is entitled to charge fees only for the "" opening "" of a

market and that it has no authority or power to charge any fees for the renewal of a licence already issued for opening a market. The second is that

in asking for the enhanced licence fees the Cantonment Board acted in excess of its powers and converted the licence-fee into a source of revenue

which it is not entitled to do. Mr. Vasudevan, the learned advocate for the petitioner argued, only the first point. According to him the Cantonment

Board can charge a fee only for the "" opening "" of the market, that is, for the initial opening and it cannot charge any fees for the renewal of the

licence. I think this contention of his is sound. Section 203 of the Cantonment Act (II of 1924) empowers a Cantonment Board to charge licence

fees to open a private market. So far as it is now relevant the section runs as follows:

A Board may charge such fees as it thinks fit to impose for the grant of a licence to any person to open a private market--in the cantonment and

may grant such licence subject to such conditions consistent with this Act and any bye-laws made thereunder as it thinks fit to impose.

3. It will be noticed that the section covers only licences to open a market. It is only at that stage that the Cantonment Board has been given power

to charge a fee. Once the licence is granted and a market is opened Section 203(1) ceases to apply. It will be appreciated that when a market is

opened and it is continued year after year it will not be correct or appropriate to speak of the market being ""opened"" every year. It seems to me

that to do so would be a very artificial way of construing the word '' open '' occurring in Section 203(1) of the Act. The learned Government

Pleader argued that when a licence is granted for a particular term and that term expires and the licence is then renewed, it will be proper to speak

of the market as being ""opened"". I find it difficult to agree. If this view were right it will be equally proper to speak of the market being opened not

merely year after year but month after month or even day after day. I am inclined to read the word "" open"" in Section 203(1) of the Act as applying

only to the first or initial opening of a market.

4. An examination of Section 210 of the Act strengthens this view. Sub-section (1) of that section enumerates the classes of persons who cannot

ply their trade in a cantonment area without obtaining a licence. Sub-section (2) enacts that a licence granted under Sub-section (1) shall be valid

until the end of the year for which it is issued. Sub-section (4) entitled the Board to charge fees for the grant of licences. Reading Section 210 as a

whole it is clear that the Cantonment Board is entitled to charge annual fees for the licence it issues u/s 210 but I can see no such power u/s 203(1)

of the Act. The contrast is important.

5. I do not doubt that u/s 203 the Cantonment Board when issuing a licence can say that it will be tenable only for a particular period since under

Sub-section (1) it can impose such conditions as it thinks fit. To prescribe a period for which a licence will be valid would be a power falling within

these words but under the guise of this power it seems to me that the Board cannot say that on the expiration of the particular period the market is

being "" opened "". It became '' open '' when the first licence was granted and the market began first to function. Sections 208 and 280 of the Act

empower the Board and the Central Government to make bye-laws and rules under the Act. These sections, however, do not confer power on the

Cantonment Board to charge fees for the renewal of a licence issued u/s 203.

6. It is interesting to contrast the words used in the corresponding provisions of the Madras City Municipal Act, the District Municipalities Act and

the Local Boards Act. Section 304(1) of the Madras City Municipal Act, 1919, runs as follows:

No person shall without or otherwise than in conformity with an annual licence granted by the Commissioner in this behalf continue to keep open a

private market. Application for the renewal of the licence shall be made not less than forty-five and not more than ninety days before the

commencement of the year for which licence is sought.

7. Then follow provisions for the charging of fees for the issue of licences. In other words, while the City Municipal Act gives specific powers for

charging fees for keeping open a market no such power is conferred on the Cantonment Board in respect of keeping open a private market under

this Cantonment Act.

8. The language of Sections 171 and 174 of the District Boards Act is even more

striking. Section 171(1) runs thus:

No person shall in any non-panchayat area, open a new private market or continue to keep open a private market unless he obtains from the

district board a licence to do so. The words of Section 262 of the District Municipalities Act are practically the same.

9. The distinction, therefore, between opening a market and keeping open a market is one which is well known to the statute-book. When,

therefore, Section 203 of the Cantonment Act makes provision only for charging fees for the opening of a private market advantage cannot be

taken of it to charge fees for keeping the market open under the guise of renewal fees because in such a case there is no opening of any fresh

market.

10. The learned Government Pleader strongly argued that the Cantonment Board can issue a licence for a term and then at the end of that term it

can charge fees again for the renewal of the licence because on the expiration of the specified term there would be the "" opening "" of the market.

But as I said before that would be a very artificial way of reading the words of the section. A licence may be given for the running of a hotel or

eating-house for a period of one year and if at the end of the year the licence for the hotel or the eating-house is renewed it would scarcely be right

to say that a new hotel or eating-house has been "" opened "". The learned Government Pleader referred me to Sections 204 and 205 of the

Cantonment Act. In my view the provisions of these sections do not help him. On the other hand they are really against him because Section

204(1) speaks of persons who keep open for public use any market or slaughter-house in respect of which a licence is required.

11. Similarly Section 205 which runs:

Whoever knowing that any market or slaughter-house has been opened to the public without a licence having been obtained therefore when such

licence is required by....

12. The language of these two sections makes it plain that the framers of the Act kept in mind the distinction between the opening of a market and

the keeping open of a market.

13. In my view, the objection taken, by Mr. Vasudevan is sound and the Cantonment Board is not entitled to charge any fees for the renewal of

the licence in this case. The Board is entitled only to charge fees for the opening of a market, that is, the initial opening of a market and not for the

subsequent keeping open of a market.

14. The petition is allowed and the rule is made absolute. A writ will, therefore, issue directing the Cantonment Board to issue a licence to the

petitioner without calling upon him or requiring him to pay any fees for the renewal of the licence. The petitioner will be entitled to his costs.

Counsel''s fee Rs. 100.