

(1961) 09 AP CK 0001

Andhra Pradesh High Court

Case No: None

Municipal Health Officer

APPELLANT

Vs

Matta Ranganayakulu

RESPONDENT

Date of Decision: Sept. 20, 1961

Acts Referred:

- Constitution of India, 1950 - Article 19
- Criminal Procedure Code, 1898 (CrPC) - Section 432

Citation: (1962) CriLJ 461

Hon'ble Judges: Sharfuddin Ahmed, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sharfuddin Ahmed, J.

The short question that arises in this case on a reference by the J.S. C M. Ongole under "section 432 Criminal procedure Code is whether Sub-section (3) of Section 249 of the Madras Dist. Municipalities Act is void and unenforceable being repugnant and opposed to the fundamental rights guaranteed to a citizen under Article 19 of the Constitution of India.

2. The question arises In the following circumstances. The respondent herein was charge-sheeted for an offence Under Sections 249 and 250 read with Section 313 (1) of the Madras Dist. Municipalities Act inasmuch as he was found to be running a machinery viz., timber cutting machine with ten horse power electric Motor without obtaining necessary licence as required u/s 249 of the Madras Disi Municipalities Act. It was contended in that connection with reference to decisions of the Madras and Mysore High Courts that the powers vested in the Municipality u/s 249 (3) were arbitrary and therefore repugnant to Article 19 of the Constitution. It is on this basis that the learned Magistrate has made the reference.

3. Section 249 (3) of the Madras District Municipalities Act provides;-

The Executive authority may by an order and under such restrictions and regulations as he thinks fit, grant or refuse to grant such licence." This provision finds a place in Chapter XII Part IV which bears the heading "Public Health, Safety and Convenience.

The contention before the learned Magistrate was that Under this sub-section. the powers in the Municipalities to grant or refuse a licence were without any guiding principles, they were arbitrary and as such in violation of the fundamental rights guaranteed to the citizens.

4. The same view seems to have been taken in the Madras decisions in the case of K. Mohamed Khasim v. Municipal Council Ootacamund AIR 1956 Mad 181 where Rajagopala Ayyar, J., has held that:

In my opinion, the sub-section in its present form is in contravention of Article 19 and has to be struck down as violating the fundamental rights guaranteed by Article 19(1)(g).

This is the only observation made by his Lordship and there is no reference to any of the other provisions of the Act nor any discussion as to whether the conclusion arrived at was with reference to the entire scheme of the Act.

5. The same view seems to have been followed by the Mysore High Court in the case of Addl. Subordinate Judge, Mangalore v. B. Purushothama Baliga 1959 Mad LJ (Cri) 923. It has been observed that:

It is not disputed that under sub-section 3 Of Section 249 of the Madras District Municipalities Act, the executive authority who refused to grant a licence is not bound to assign reasons for doing so. It is also not disputed that no provision is made for an appeal under the Act against an order of the executive authority. In these circumstances there is Considerable force in the contention advanced by the respondents .that Sub-section (3) Of Section 249 of the Madras Dist. Municipalities Act which confers absolute and arbitrary discretion on the executive authority, namely, the Municipal Health Officer to grant Or refuse a licence on his own sweet will and pleasure and therefore violates the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India and should be struck down as invalid.

Unfortunately the learned judge has not adverted to Section 321 (4) or Section 322 (c) of the Dist. Municipalities Act where it has been laid down that:

321 (4). Every order of a municipal authority, refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.

Further a right of appeal against the said order has been provided in Section 322 (c) Of the Act:

An appeal shall lie to the council from (c) any order of the executive authority granting or refusing a licence or permission.

The judgment of the Mysore High Court therefore with due respect to the learned Judge proceeds on a wrong assumption and cannot be followed.

6. On the other hand there are decisions of Travancore-Cochin and Bombay High Courts to the contra. In the case of P. T. George v. Municipal Commr Trichur AIR 1957 Trav Co. 249, the judgment of the Madras High Court has been referred to and dissented from, Section 255 (3) of the Cochin Municipal Act seems to be in pari materia with Section 249 of the Madras Dist. Municipalities Act. with reference to it, it has been observed that: .

Section 255 (3), Cochin Municipal Act does not confer on the executive authority a power that is naked and arbitrary and therefore it is not ultra vires of the Constitution on the ground of infringement of Article 19(1)(g). As adequate checks and controls are available, the provision impugned does no more than strike a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by clause 6 of Article 19(1)(g)

The learned Judges of the Bombay High Court in the case of [Govindji Vithaldas and Co. Vs. The Municipal Corporation of the City of Ahmedabad and Others](#), have also, with reference to the Bombay Provincial Municipal Corporation Act, which is analogous to the Madras Dist. Municipalities Act, have come to the same conclusion.

7. Moreover even in a case where no right of appeal was provided, the Supreme Court in dealing with Cotton Textile (Control of Movement) Order 1948 ([Harishankar Bagla and Another Vs. The State of Madhya Pradesh](#),) observed as under:

In the present Control order there is no such provision as existed in the Uttar Pradesh Coal Control Order. provisions of that control Order bear no analogy to the provisions of the present control order. The policy underlying the Order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the courts to undo the mischief.

Thus even in a case where there was no right of appeal provided it was held that the conferment of a power on the executive where the policy of the legislation was evident, was not in violation of the fundamental rights guaranteed under the Constitution.

8. In the instant case however, there is a right of appeal provided and the authorities exercising the powers u/s 249 (3) are directed to pass, a "speaking order"

i. e., an order giving grounds for refusal or grant of the licence. It could not be said in the circumstances that the vesting of such powers in the Municipality was arbitrary Or capricious.

9. It is therefore not necessary to refer to the scheme of the Madras Dist. Municipalities Act or to point out that the enactment of this legislation was to safeguard public health safety and providj3 for better living condition far the citizens.

10. In that view the answer to the reference will be that Section 249 (3) of the Madras District Municipalities Act is not ultra vires of the Constitution.

11. The reference is answered accordingly.