(1962) 12 AP CK 0006

Andhra Pradesh High Court

Case No: Appeal No. 524 of 1959

V.M. Vadi		APPELLANT
	Vs	
Vijayawada Municipality		RESPONDENT

Date of Decision: Dec. 18, 1962

Citation: AIR 1963 AP 435

Hon'ble Judges: Kumarayya, J

Bench: Single Bench

Advocate: D.P. Narayanarao, for the Appellant; D. Venkatappaiah Sastry, for the Respondent

Final Decision: Dismissed

Judgement

Kumarayya, J.

The plaintiff, who failed in his suit for recovery of damages of Rs. 7500/- for the loss of his business for the years 1956-57 and 1957-58 on account of alleged wilful neglect or refusal of the Vijayawada Municipality to grant him a licence, has come up to this Court in appeal.

2. He is the lessee of Vibrated Cement Products, Vijayawada, of which his own son M. M. Vadi is the proprietor. It appears that he had applied on 26-8-1952, for permission as required under Schedule V(s) and Rule 250 of the Madras District Municipalities Act, for installation'' of a 10 horse-power motor in Door No. 16/433 for the Vibrated Cement Products plant. According to him, his request was granted under Ex. A-3 and he obtained a working licence u/s 249 and Schedule V(s) for 1954-55. For the succeeding year, he got the working licence renewed. He made his application, Ex. A.7, on 9-2-1956 for the renewal of working licence for 1956-57. The Munivipality did not renew the licence- forthwith but called upon the plaintiff first to produce the installation permit within three days. The plaintiff had no installation permit with him. His contention was that he had sent the same to the Municipality. He, however, made an application Ex. A.8, dated 29-2-1956, submitting along with it plans in duplicate stating that since he was made to understand that the plans and

application were misplaced, he was sending the same to enable the Municipality to issue the necessary permit at an early date. The Municipality by its letter, Ex. A10 dated 19-3-1956, informed the plaintiff that final orders will be issued in due course and till then the machinery should not be installed. It also required from the plain-tiff information with regard to the number of workers proposed to be employed probably because this information was essential for purposes of Section 250. The plaintiff failed to supply the required information.

By and under Ex. A.11 dated 26-3-1956 the Municipality informed the plaintiff that the licence applied for is refused for the reason that he has not complied with the endorsement dated 23-2-1956 on Ex. A.7. This letter warned the plaintiff not to carry on the trade without any licence, in default of which he will be prosecuted under the District Municipalities Act. The plaintiff thereupon issued a notice Ex. A.12 dated 13-4-1956 to the Municipality to the effect that since no orders were passed within 30 days from the date of his application it will be deemed under the express provisions of the Municipalities Act that the necessary licence has been granted, that besides, the very fact that formerly the licence was renewed must postulate that there was an installation permit and that the notice refusing the licence without giving propel reason is illegal and void, and since he has stopped running the factory on account of the notice, the Municipality will be held liable for damages and will nave to make payment to the plaintiff at the rate of Rs. 100/- per day. Then for the year 1957-58 he again applied for a running licence on 6-7-1957 under Ex. A.13. He sent another application Ex. A.14 on 13-2-1957 depositing the balance of the fees for the purpose. As no communication was received in response, the plaintiff after giving notice, Ex. A.15, dated 3-5-1957, instituted the suit on 28-6-1957, without even waiting for the Statutory period of the notice. He claimed damages for the loss of trading for the years 1956-57 and 1957-58 and calculating the same under various heads brought his suit for a sum of Rs. 7600/-.

3. The defendant resisted this claim on the ground that installation permit was never granted to the plaintiff that the plaintiff himself never definitely stated that permission for the installation was in fact granted and that mere approval by the Council of installation does not give him a right to instal the same. They further contended that the mere sending of an application for the year 1954-55 and payment of the fees for the issue of a licence would not have the automatic effect of grant of a permit; that even the working licence was not granted to him, that the working of the mill prior to 1956-57 was, therefore, illegal, that the defendant was perfectly justified in demanding the production of the installation permit, that since the plaintiff had failed to produce the same in time and even admitted that he did not receive the permit but requested for the issue of a fresh permit for regularising the running of the plant without even furnishing the requisite particulars, the defendant was justified in not issuing a renewal licence for 1956-57; that if the plaintiff was aggrieved by this order, the proper course for him was to go in appeal, and that at any rate, since the act of refusal was committed in exercise of powers

under the Act. the plaintiff cannot in law claim damages and that the malice set up is not true.

4. On these pleadings, in all 5 issues were settled by the learned Subordinate Judge, who held that he refusal to grant working licence for 1956-57 was not illegal and capricious and that, therefore, the plaintiff was not entitled to any mandatory injunction nor to any damages for loss of his business. The learned Subordinate Judge, referred to Section 321(11) of the District Municipalities Act had (sic) also observed that it was open for the plaintiff to carry on the business if within 30 days the working licence was not granted and that, therefore, he has no cause of action against the defendant.

5. The points for consideration are (1) whether the Municipality was justified in refusing the working licence for the year 1956-57 and not taking any action in regard to the licence for 1957-58, and (2) if not, whether this refusal and default would give a cause of action for the plaintiff in tort.

6. In K. Ranganayakulu Vs. Municipal Commissioner, Vijayawada Municipality, this Court in somewhat similar circumstances but while exercising its powers under Art. 226 ol the Constitution of India, made the following observation:

"If a person who wants to instal machinery makes an application for permission, it is the obvious duty of the municipality to inform him within a reasonable time either that the permission is granted or that it cannot be granted. Admittedly this was not done for six long years and this does not certainly redound to the credit of the municipality and having thereafter granted two renewal licences for two successive years, it is regrettable that the municipality should have sought to visit the petitioner with serious penalties by way of prosecution even during the period when the renewed licence was in force, when the dereliction of duty, if any, was on its own part and not on the part of the petitioner."

In the instant case, the application was made for issue of an installation permit in the year 1952 itself. The Municipality therefore ought not to have taken so long a time for the issue of permit for installation. It was its duty to either grant the permit or refuse the same, within 30 days, since it had failed to do so, the necessary consequences of Section 321(11) were bound to ensue and it should, therefore, be deemed that the permit was granted subject to the law, rules, by-laws, regulations and all conditions ordinarily imposed. It is worthy of note that on the said application of the plaintiff the Council had in fact approved of the installation of the Vibrated Cement products plant by the plaintiff by its resolution dated 4-4-1953. This bears pointed reference in the proceedings of the Municipal Commissioner dated 11-4-1953 (Ex. B.3). That was sufficient to put the Municipality on constant notice even though permit might-not have been actually issued. Issue of permit was then a mere formality, which may, as already noticed, be even assumed by reason of lapse of statutory period. It must also be noted that the plaintiff had been thereafter

granted working licence which was renewed for the year 1955-56. That is evident by Ex. A. 5. This was not ordinarily possible unless the permit for installation was granted either in fact or in law. Prior grant of installation permit is. a pre-requisite essential for the grant of a working licence. Of course, being a permanent licence, as deposed to by D. W. 1, installation permit does not require renewal every year like the working licence. That is not to say that the changes in working conditions also would not necessitate procurement of a fresh permit.

Under the provisions of Section 250, contained in Sub-clauses (5) and (6), if any material changes are effected in the working conditions of the factory, fresh permit shall have to be obtained. Section 321 (S) besides, makes it obligatory on the grantee to produce the permit or licence at the request of the Executive authority. This provision is of course intended to enable the Executive authority to ensure without delay or inconvenience that the provisions of the Act are duly complied with. It is this provision that has led to complications in this case. Even though the permit might have been actually or by necessary implication granted, the authority concerned could claim at any time inspection of the same. When the application for renewal of licence was made, the authority accordingly demanded the permit for inspection by making an endorsement (Ex. A. 7) on the application. The plaintiff in reply no doubt stated that he had made an application in the year 1952 but mentioned at the same time that it was understood that the plans and application were misplaced and that ha was submitting the plan therefore in duplicate, so that necessary permit may be issued at an early date. This led to a further confusion in that having regard to the language of this application, Ex. A. 8 it cannot but be deemed that what the plaintiff wanted was the permit and not the renewal of the working licence. But white making such a request, he did not give details as to the workers etc., which was essential for the grant of any permit That is the reason why, under Ex. A. 10 he was required to supply the requisite information with regard to the number of workers proposed to ba employed. Mailers reached their climax when tha required information was not given and consequently, renewal of working licence was refused with a threat of prosecution in case the plaintiff ran the concern. This in short is the state of facts which gave rise to this action.

7. From the above discussion if is clear that though the grant of installation permit could be presumed and a working licence could be issued of renewed on that basis and further the plaintiff also could run his concern even without a working licence as the statutory period of erant or refusal had already expired without any positive reply from the Municipality, the difficulty had arisen on account of the provisions of Section 321 (8), and also because as per Ex. A. 8, (the application of the plaintiff himself), the previous application and the plans were misplaced and consequently, it could not be precisely ascertained whether there were no material changes in the working conditions effected since and added to that the plaintiff when called upon did not choose to furnish those details, The authorities charged with the responsibility of seeing that the provisions of the Act are duly complied with were

faced with a dilemma. On one hand, they had to renew the licence on the presumed issue of a permanent installation permit; on the other, they had also to ensure that the working conditions have not materially changed. which they could not do for want, of previous record. of course in the absence of any positive proof of material alteration which had come to their knowledge . they could as well have renewed the licence But on that ground it cannot justifiably be held that in issuing the impugned notice, the Municipal authorities were actuated by any malice. The most that can be said is that the situation created was puzzling and the authorities were overcautious or that as the plaintiff himself in one of his notices has put it they were labouring under a mistaken view of law. He has no doubt also alleged that this action of the Health Officer was actuated by malice and that the officer was prevailed upon by the plaintiff''s rivals in the trade. But as regards this there is practically no proof. Even the plaintiff does not speak of any rival who might have influenced the Health Officer to pass such an order. The allegation in this behalf seems to have been based on mere surmise. My conclusion therefore is that while making the impugned order the authority was not actuated by any oblique motive but that he had Section 321(8) foremost in his mind and that since the plaintiff''s application, Ex. A. 8, suggested that it was an application for permit for installation failure of the plaintiff thereafter to furnish requisite particulars, had in no small measure contributed to the passing of the order.

8. The suit, it may be remembered, is not one for the issue of a working licence. In fact, the working licence was sanctioned in the month of September, 1957. The plaintiff makes grievance of the fact that it was not granted to him in time, and that, on the contrary, he was threatened with prosecution. But, as I have already observed, if the permission was not given within 30 days, there was nothing to prevent the plaintiff from working the factory, having regard to the clear provisions of Section 321(11). On the same basis, even for the years 1957 and 1958, after this application was made and no reply was received either in affirmative, or negative, he was perfectly at liberty to continue the business. But if he has not elected to do so probably on the alleged threat, which even according to the express words in his own notice is of no consequence, he cannot certainly lay a claim for damages. The claim for damages here is not based on breach of contract. It is said to be based on the law of torts. There is no statute in India which expressly provides for cases of torts. Therefore, the English common law rules are availed of by the Courts as consistent with justice, equity Snd good conscience. Of course while applying the same, departure from any particular rule of English common law to suit the local conditions forms but a normal feature of administration of justice. The rules of torts are not indefinitely flexible to cover any case. That is the reason why no right of action for damages at large lies at law. It is necessary for the plaintiff to bring himself within the four corners of some recognised head of law. Therefore a tortious act must be a civil wrong actionable in law. Whether a private individual or a corporate body, both are subject to tortious liability. The rule with regard to

corporation is summed up in Halsbury''s Laws of England (3rd Edition, Vol. 9 page 87) thus:

"A corporation aggregate is liable lobe sued for any tort, provided that (1) it is a tort in respect of which an action would lie against a private individual (2) the person by whom the tort is actually committed is acting within the scone of his authority and in the course of his employment as agent of the corporation, and (3) the act complained of is not one which the corporation would not. in any circumstances, be authorised by its constitution to commit. Thus an action will lie against a corporation for conversion, for trespass, for wrongful distress, for assault, for negligence. for nuisance, for false imprisonment, for infringement of a patent for keeping a dangerous animal, for breach of trust, and even for fraud, and for torts involving malice, such as malicious prosecution and libel. A corporation may be sued upon a fraudulent representation as to the credit of a third person if made under its seal, but not if made'' in a letter written and signed by its agent. A corporation can be made liable in a civil action for maintenance."

The same principle governs tortious acts in India committed by the corporate bodies according to the law as administered in India. The learned counsel failed to point out that the act complained of purporting to be committed in exercise of the authority under law is tainted with malice or constitutes an actionable wrong. The only point raised in argument is that Ex. A. 8 has been misconstrued and the language used by the plaintiff therein has been mistaken for a request to issue a permit for the installation. Assuming that to be so, that cannot make it a case of malice. It is then argued that it is a case of gross negligence. I do not think that having regard to the circumstance discussed above such a contention is acceptable. It is clearly an act purporting to have been done in exercise of the authority conferred on the officer by law. It cannot be said that the officer was guilty of abuse of the power vested in him; nor is there anything to show that in passing the order in question he was actuated by an extraneous or objectionable consideration. In no sense of the term the refusal to grant the permit is a tortious act. If it was of error of judgment, the present remedy is misconceived. These could be corrected in appeal, which was open to the plaintiff, but he did not choose to prefer such remedy. The impugned act, in short, was not an actionable wrong. It could not possibly give an occasion for a suit for damages. The suit of the plaintiff is, therefore, liable for dismissal and in my opinion the learned Subordinate Judge was right in dismissing the same.

9. The result is that the appeal fails and it is dismissed with costs.