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Court : Karnataka

Decided On : Nov-13-2002

Reported in : AIR2003Kant79; 2003(1)KarLJ444

Judge : A.V. Srinivasa Reddy, J.

Acts : [Karnataka Municipal Corporations Act, 1976](#) - Sections 103 and 443(10);
[Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos. 9570 of 2001 and 27917 to 27946 of 2002

Appellant : infant Advertising Private Limited and anr.

Respondent : Bangalore City Corporation (Bangalore Mahanagara Palike) and ors.

Advocate for Def. : S.N. Prashanth Chandra, Adv.

Advocate for Pet/Ap. : Tarakaram Associates

Disposition : Petition dismissed

Judgement :

ORDER

A.V. Srinivasa Reddy, J.

1. In this petition filed under Articles 226 and 227 of the [Constitution of India](#) the prayer is to quash the impugned endorsement Annexure-G, dated 23-2-2001 issued by the respondents directing the petitioners to cure the defects contained in the application for renewal made by the petitioner in respect of hoardings already erected by the petitioners and further informing the petitioners that in the event of failure on the part of the petitioners to cure the defects noted by the respondent within a period of 7 days that the respondents would act in accordance with the directions given by this Court in the previous writ petitions filed by the petitioners. The petitioners allege that the impugned endorsement issued by the respondents is untenable and it is a manifestation of the predetermined intention of the Corporation to arbitrarily refuse the request of the petitioners for renewal of the licence.

2. The number of hoardings involved in these petitions is 31. These hoardings are already in existence and the application made by the petitioners to the Corporation was for renewal of the licence earlier granted or for renewal of the deemed licence. In the present case there is no refusal on the part of the Corporation to grant licence but the respondents have, merely called for certain details which in the opinion of the respondents are required for proper consideration of the application filed by the petitioners. It is not in dispute that the petitioners have filed a single application in respect of 31 hoardings. The petitioners apprehending that the Corporation might remove the hoardings have come up with these petitions.

3. I have heard the learned Senior Counsel Mr. Tarakaram for the petitioners and Mr. S.N. Prashanth Chandra for respondents.

4. The question whether a direction as sought for by the petitioner could be issued would largely depend on the petitioners establishing that they have a right in law to ensure the continued existence of the hoardings erected by them. The erection of hoardings by the registered advertising agencies and their subsequent renewals is governed by Section 443(10) of the Karnataka Municipal Corporations Act ('the Act' for short) and advertisement bye-laws of the Corporation. Section 443(10) of the Act reads:

'443(10).--The acceptance by the Corporation of the prepayment of the fee for a licence or permission or for registration shall not entitle the person making such prepayment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration, but an applicant for the renewal of a licence or permission or registration, shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application, for licence or permission or for registration are not communicated to the applicant within forty-five days after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year for such less period as is mentioned in the application and subject to the provisions of this Act, the rules, bye-laws, regulations and all conditions ordinarily imposed'.

(emphasis supplied)

A careful reading of the highlighted portion of the provision does go to show that the applicant is entitled to act as if the licence or permission has been renewed only until communication of orders to him by the Corporation on the renewal application. In the present case the respondents have by the impugned communication dated 23-2-2001 directed the petitioners to make good the deficiencies noted thereunder. That being the accepted position by both parties, in terms of Section 443(10) the petitioners could lay claim to the privilege of ensuring the existence of the subject hoardings only till 23-2-2001. As an order has been made on 23-2-2001 giving certain directions to the petitioners for compliance and the petitioners having failed to comply with them, with effect from 23-2-2001 the petitioners' privilege to exhibit the hoardings would cease and the hoardings from that day onwards would become unauthorised hoardings. In my opinion, the respondents were well-within their right to give those directions as the Commissioner is entitled to regulate and control the grant of licence for erection of hoardings. It must be remembered that a person is not entitled to a licence as a matter of right and in all cases where a licence is granted the licensee is bestowed privilege to do a thing and that privilege could be declined by the Licensing Authority in terms of the provisions governing grant of such licence. The impugned

order merely directed the petitioners to carry out a few tasks which in the opinion of the respondents was necessary for considering the application. The respondents could not consider the application in the form it was presented as, according to respondents, it was lacking on certain material aspects. The order, innocuous as it is, does not suffer from any illegality calling for the interference of this Court. While on this point it would be useful to refer to the decision of the Supreme Court in *N.S. Shethna and Ors. v Vinubhai Harilal Panchal*, : [1967]1SCR174 . Dealing with the question of renewal of licence and the powers that are available to a Licensing Authority in the matter of such renewal, the Apex Court observed thus:

'The renewal of a licence for sale of tickets is not a matter of course. The fact that the Licensing Authority can in proper circumstances refuse an application for renewal and is not precluded from imposing different conditions and can grant it for a different period coupled with the absence of any Rules for renewal are all indications leading to the result that renewal is a fresh grant and is not merely continuation of the licence previously issued.

If renewal is treated as continuation of the licence previously granted, in a case where a licence is renewed from year to year as it would be in a large number of cases, if a licensee has committed breach of one of the conditions of the licence in any particular year, action against him can be taken in any subsequent year and his licence would be liable to be cancelled or suspended during any such subsequent year for a breach committed by him several years ago'.

Thus, it is clear that renewal of a licence is not a matter of course and the Licensing Authority can always refuse an application for renewal and impose new conditions. The applications for renewal having been refused by the respondents herein, the schedule hoardings as of now are without a valid permission or licence and, therefore, they can only be characterised as unauthorised hoardings.

5. The submission of learned Senior Counsel Mr. Tarakaram that the ' Corporation having collected tax on the hoardings for the entire period for which renewal was sought could not have refused to consider the application, is not well-founded. Under the Advertisement bye-laws payment of tax at the time of applying for fresh

licence or for renewal having been made mandatory, the mere fact that the petitioner presented the application along with the necessary tax would not entitle the petitioner to an automatic renewal of the licence. Payment of tax on hoardings is only a precondition that has to be satisfied at the time of making the application. The sanctioning or rejection of application would depend on several factors. The payment of requisite tax on the hoarding along with the application would only render the application valid but would not entitle the person making the application to an automatic renewal of the licence previously granted. Unless an application is complete in all particulars which is essential for considering it with reference to the bye-laws governing such consideration, on payment of advance tax which is just one of the requirements to be satisfied by the applicant at the time of making the application, the applicant cannot be heard to say that the Corporation was in error in rejecting the application for renewal. The Corporation having found certain defects in the application had called upon the petitioner to cure those defects. The petitioner having failed to do so, the Corporation could not decide on the application one way or the other. Once there is a communication sent by the Licensing Authority as has been done in this case under Annexure-G, an applicant for licence cannot claim that he has a right to exhibit the hoarding even in the absence of renewal of the previous licence merely because he had paid the requisite tax. Thus, on facts and in law, the petitioners are not entitled to any relief in these writ petitions.

6. The writ petitions are, accordingly, dismissed.

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