

Shaji Vs. State of Kerala

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Court : Kerala

Decided On : Oct-28-2003

Reported in : 2004(1)KLT118

Judge : K. Balakrishnan Nair, J.

Acts : Kerala Panchayat Raj (Licencing of Dangerous and Offensive Trades and Factories Rules, 1996 - Rule 7; [Kerala Panchayat Raj Act, 1994](#) - Sections 232; Kerala Municipalities Act, 1994 - Sections 447

Appeal No. : O.P. No. 12010 of 1999

Appellant : Shaji

Respondent : State of Kerala

Advocate for Def. : Siby Mathew,; A.A. Mohammed Nazir,; Philip J. Vettickatt

Advocate for Pet/Ap. : E. Subramani and; S. Easwaran, Advs.

Judgement :

K. Balakrishnan Nair, J.

1. The petitioners are private hospitals. Some of them are run in municipal areas whereas some others are located in Panchayats. They are aggrieved by the prospects of levy of fees by the concerned Municipalities and Panchayats under

the provisions of the Kerala Municipalities Act, 1994 and the [Kerala Panchayat Raj Act, 1994](#). The grievance of the hospitals working in the municipal area may be summarised as follows:

2. Under Section 313 of the Municipality Act, every private hospital has to get registration after paying the prescribed fee. Section 314A authorises the Municipality to levy fees for any services rendered to those hospitals by the Municipality. The petitioners do not have any grievance regarding the registration fee or the fee levied by them for rendering some special services to them. But they feel aggrieved by the payment of licence fee under Section 447. Section 447(1) reads as follows:

'A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the municipal area shall be used for any one or more of the purposes specified in the Sixth Schedule or for any other trade without a licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public.

Provided that no notification under this Sub-section shall take effect before the expiry of sixty days from the date of its publication'.

In view of the above provision, unless the Rules are framed authorising the grant of licence and levy of fee for the same, the petitioners submit that they need not take out any license under the Municipality Act. The learned counsel appearing for the Municipalities submitted that so far no Rules have been framed under S, 447. If that be so, there cannot be any levy of license fee under Section 447 from the private hospitals working in the municipal area. It is declared so.

3. The hospitals working in the Panchayat area are concerned with the obligation to take license and also to pay license fee under Section 232. The said provision provides, a licence from the Secretary of the Grama Panchayat is necessary for carrying out dangerous and offensive trades within the area of the Panchayat. The

Government have framed Rules under the said Section as per S.R.O. No. 76/96 called Kerala Panchayat Raj (Licencing of Dangerous and Offensive Trades and Factories) Rules, 1996. Rule 3 of the said Rules says that the dangerous and offensive trades for the purpose of Section 232 are those enumerated in the first schedule to the Rules. Sl. No. 142 in the first schedule is running of private hospitals. The petitioners feel aggrieved by the very inclusion of the private hospitals among the group of dangerous and offensive trades. Though the words used may appear to be offending, the above words were used in the relevant Rules for the last several years to cover trades that are not that offensive also. The dangerous and offensive trades for the purpose of the Rules need not necessarily be dangerous and offensive as understood in common parlance. The words have been given an artificial meaning under the Act and Rules. This will be evident from Schedule I of the Rules. Production of Ayurvedic Medicines, running of hotel and tea shops, storing of water, fruits, flowers, etc. are also enumerated among dangerous and offensive trades. Therefore, the petitioners need not be felt aggrieved by the inclusion of private hospital as one among them. But they point out that Rule 7 of the Rules enables the Panchayat to levy license fees as prescribed under Schedule II to the Rules. The said schedule provides levy of fees at different rates ranging from Rs. 10 to Rs. 4,000/- per year. This is based on the average turnover of the hospital. The petitioners are not very much aggrieved by it. But they feel aggrieved by the residuary provision provided in the Rules which says that in case there is difficulty to compute the turnover, 5% of the total investments for the machineries of the hospital will be taken as the daily turnover. The petitioners apprehend that based on that, their hospitals may be compelled to pay huge license fees. But irrespective of the daily turnover, the maximum fee that could be levied for an year is only Rs. 4,000/-. Therefore, the said apprehension may not be correct. Whatever be that, it is admitted that so far no Panchayat has demanded any fee under Rule 7 of the above said Rules. So, in what manner the levy will be made is only a moot point now. If there is an actual levy of fee under Rule 7 and any of the petitioners are aggrieved by it, the said hospital will be free to work out its remedies.

The Original Petitions are disposed of as above.

