Dhanuskoti and ors. Vs. State of Madras Represented by Secretary to Government, Rural Development and Local Administration Department and ors.

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Court : Chennai

Decided On : Jan-10-1969

Reported in : (1969)2MLJ224

Appellant : Dhanuskoti and ors.

Respondent : State of Madras Represented by Secretary to Government, Rural Development and Local Administration D

Judgement :
ORDER

P.S. Kailasam, J.

1. These petitions arise out of the application filed by Rev. Fr. Mathew D. Muttom, Director, Catholic Vivasaya Sangam, T. Sindalachery Village, Madurai District, under Sections 111 and 112 of the Madras Panchayats Act, 1958, and the orders passed thereon by the Uthamapalayam Panchayat Union Council, the Collector of Madurai and the State of Madras.

2. In February 1965, Rev. Fr. Mathew D. Muttom applied to the Commissioner of the Uthamapalayam Panchayat Union Council for approval of the use of a site for

running a flour mill. On 29th June 1965 T. Sindalahery Panchayat by a resolution sanctioned the establishment of a flour mill. On 17th July, 1965, the District Health Officer, Madurai approved the site proposed for the installation of the electric motor and on 20th August, 1965, the Commissioner, Panchayat Union, Uthamapalayam, informed Rev. Fr. Mathew D. Muttom that necessary steps may be taken to remit the installation fees and get orders before installing the machine. On 24th November, 1965, Rev. Fr. Mathew D. Muttom made an application in the printed form under Sections 111 and 112 of the Madras Panchayats Act for establishment of a flour mill. On 21st May, 1966 the Panchayat Union Council adjourned consideration of the subject and on 17th September, 1966, the Council refused to issue the licence on the ground that there was already an existing rice mill and that T. Sindalachery is a small village. On 19th October, 1966, Rev. Fr. Mathew D. Muttom filed a petition to the Collector against the orders of the Panchayat Union Council praying for the grant of the licence to run the flour mill. On 30th June, 1967 the Sub-Collector in his Memorandum No. Roc. C-2. 44717/66 was of the view that the Panchayat Union Council, Uthamapalayam should have, within sixty days from the date of receipt of the application, either refused or granted permission, and that as the order was not communicated within sixty days from the date of receipt of the application, the permission applied for is deemed to have been granted for the year 1965-66 for which it was applied for, under Section 159 (3) of the Act. On 31st August, 1967, the Commissioner of the Panchayat Union Council granted permission for the installation of the electric motor for the running of flour mill. The proceedings further stated that the installation should be completed within sixty days from the date of receipt of the order.

3. One Andiappa Chettiar who is the petitioner in Writ Petition No. 4321 of 1968 aggrieved by the order of the Commissioner, preferred an appeal to the Collector, and the Collector on 21st September, 1967 stayed further proceedings in the matter until final orders are passed. On 3rd October, 1967 Rev. Fr. Mathew D. Muttom filed a counter to the appeal filed by Andiappa Chettiar and on 30th December, 1967 filed a petition to the Collector praying for the cancellation of the stay granted by the Collector and for dismissal of the appeal preferred by Andiappa Chettiar. On 19th February, 1968 the Director of Rural Development in

his proceedings agreed with the resolution of the Panchayat Union Council. On 13th March, 1968 Rev. Fr. Mathew D. Mutton preferred a revision petition to the Government, and the Government by its G.O. Rt. No. 531 dated 23rd February, 1968 directed the Panchayat Union Council to issue a licence to the Rev. Father to install an electric motor. On 26th March, 1968, the Collector issued a direction to the Commissioner to take immediate action in pursuance of the Government's Order dated 23rd March, 1968. On 17th April, 1968 the Collector directed the Commissioner to place the subject before the Panchayat Union Council. On 17th June, 1968 the Panchayat Union Council resolved that there was no necessity to grant a licence, after noting the contents of the Government Order dated 23rd March, 1968. On 18th July, 1968, the Government granted permission to the Rev. Father to install a motor. The Chairman of the Panchayat Union Council, Uthamapalayam Dhanushkoti, filed a Writ Petition No. 2658 of 1968 praying for the issue of a writ of certiorari calling for the records of the Collector of Madurai and the State of Madras and to quash the order of the State of Madras passed in G.O. Ms. No. 1390 of the Rural Development and Local Administration Department dated 18th July, 1968, and it was admitted and interim stay granted. On 17th September, 1968 the interim stay was vacated. On 4th October, 1968, the Uthamapalayam Panchayat Union Council filed Writ Petition No. 3654 of 1968 praying for the issue of a writ of certiorari calling for the records of the State of Madras and the Collector of Madurai relating to the application of Rev. Fr. Mathew D. Muttom and the order passed by the State of Madras in G.O. Ms. No. 1390, Rural Development and Local Administration Department, dated 18th July, 1968 and for quashing the same Rev. Fr. Mathew D. Muttom filed Writ Petition No. 4275 of 1968 on 15th November, 1968 praying for the issue of a writ of certiorari calling for the records, relating to the resolution of the Panchayat, Union Council, Uthamapalayam, dated 17th September, 1966 and as confirmed by Resolution No. 285 dated 17th June, 1968, and for quashing the resolutions. He also filed Writ Petition No. 4276 of 1968 praying for the issue of a writ of mandamus directing the Panchayat Union Council, Uthamapalayam, to grant the necessary licence and permission under Sections 111 and 112 of the Madras Panchayats Act to Rev. Fr. Mathew D. Muttom for establishing and running a flour mill in S. No. 516/6 in T. Sindalachery village. Andiappa Chettiar who is the owner of an existing

rice mill filed Writ Petition No. 4321 of 1968 praying for the issue of a writ of certiorari calling for the records relating to G.O. Ms.. No. 1390, Rural dated 18th July, 1968 and for quashing the same.

4. The contention of Mr. V. P. Raman, the learned Counsel for the Panchayat Union Council, Uthamapalayam is that the Government acted without jurisdiction in granting the permission to Rev. Fr. Mathew D. Muttom by its order dated 18th July, 1968. He also submitted that in any event the Government having; delegated its powers to the Director of Rural Development, it cannot seek to revise the Orders of the Director of Rural Development. The order of the Government was also challenged on the ground that it was passed without notice to the Panchayat Union Council which was the aggrieved party, and therefore, opposed to the principles of natural justice. Lastly, it was contended that the Rev. Father cannot rely on Section 159 (3) of the Madras Panchayats Act, as the section would not be applicable to licences which are not granted for a specific period.

5. In order to appreciate the contentions of the parties, it is necessary to refer to the relevant sections of the Madras Panchayats Act, 1958. Section 111 of the Act provides that the Government may, by notification specify the purposes which, in their opinion, are likely to be offensive or danagerous to human life or health or property. When such a notification is issued, under Sub-section (2), the Panchayat Union Council may notify that no place within the limits of the Panchayat as may be specified in the notification shall be used for any of the purposes specified in the notification issued under Sub-section (1) without a licence end except in accordance with the conditions specified in such licence. Sub-section (4) provides that the Executive Officer in the case of a Panchayat Town and the Commissioner in the case of a Panchayat Village shall be the authority competent to grant the licence or to refuse to grant it. This section requires the obtaining of a licence from the Executive Officer in the case of a Panchayat Town or from the Commissioner in the case of a Panchayat Village before using any place for a purpose which is likely to be offensive or dangerous to human life or health or property. It is common ground that the installation of a flour mill is a purpose falling within the scope of section hi, and a licence under the section has to be obtained. Section 112 requires that a person shall not without the permission of the Panchayat

Union. Council in Panchayat Villages and the Town Panchayat in a Panchayat Town (a) construct or establish any factory, workshop or work-place in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or (b) install in any premises any machinery or manufacturing plant driven by any power, not being machinery or manufacturing plant exempted by the Rules. This section is different from Section 111, and requires that permission should be obtained from appropriate authority for constructing or establishing any factory or for installing in any premisses any machinery. Section 113 empowers the Government to make Rules (a) prohibiting or regulating the grant or renewal of licences under Section 111 and the period for which such licences shall be valid; (b) as to the time within which applications for such licences or renewals thereof shall be made and (c) prohibiting or regulating the grant of permissions under Section 112. This section therefore enables the Government to frame Rules regarding the grant of licences under Section 111 or permission tinder Section 112. It will be seen that the authority to grant the licence for approving a site under Section 111 is the Commissioner in the case of a Panchayat Village. In this case, the Commissioner by his order dated 31st August, 1967 granted permission for installation of a 15 H.P. electric motor for the running of flour mill at S. No. 516/6 of T. Sindalachery Village to the Rev. Father. The grant of the permission by this order is in accordance with the provisions of Section 111 and its validity cannot be challenged by the Panchayat Union Council as the Panchayat Union Council is not the authority concerned. Therefore, so far as the approval of the site under Section 111 is concerned, it should be taken as having been Validly granted.

6. Section 112 requires that permission should be obtained from the Panchayat Union Council for construction of a factory or for installation of any machinery. The Reverend Father applied for a licence under Sections 111 and 112 of the Madras Panchayats Act on 24th November, 1965. The application states that a licence is required for running a flour mill in the place mentioned in the application for the year 1965. As the application is made in the form specified under Sections 111 and 112, it follows that permission under Section 112 was sought for by this application. The Government by virtue of the powers concerned on it framed Rules prohibiting or regulating the grant of licences and permissions, and Rule 7

provides that the Panchayat Union Council shall, as soon as may be after the receipt of the application and within sixty days from the date of receipt (a) grant the permission applied for either absolutely or subject to such conditions as it thinks fit to impose or (6) refuse permission, if it is of opinion that such construction, establishment or installation is objectionable by reason of the density of the population in the neighbourhood or that it is likely to cause nuisance. Before granting permission, the Panchayat Union Council is directed to obtain the approval of the Director of Town-Plannings as regards the suitability and adequacy of the site of the factory, workshop, work place or premises for the purpose and the laying out, arrangements and architectural appearance of buildings; and shall consult and have due regard to the opinion of the District Health Officer as regards the suitability of the site of the factory, workshop, workplace or premises for the purpose specified in the application from the public health point of view. The Director of Town-Planning or the District Health Officer is required to communicate his approval or opinion within forty days from the date of receipt of the reference, and if within the period of forty days, the Director of Town-Planning or the District Health Officer does not communicate his approval or opinion, he shall be deemed to have communicated his approval. Thus, under Rule 7 the Panchayat Union Council is entitled to refuse permission for the construction or installation by reason of the density of the population in the neighbourhood or that it is likely to cause nuisance. On behalf of the Reverend Father the resolutions of the Panchayat Union Council dated 17th September, 1966 and 17th June, 1968 are challenged on the ground that the reasons given by the Council for refusing to grant the licence are irrelevant and totally foreign to the provisions contained in the rule, and such refusal is unsustainable in law. The reason given in the resolution of 17th September, 1965 for refusal of' the licence is that there was no necessity for another mill as the village is a small one and there is already a rice mill existing. A licence under Section 111 is required to be taken for using a site for any of the purposes which are considered by the Government as likely to be offensive or dangerous to human life or health or property. Under Section 112 permission is required for construction or installation of a machinery and it is indicated in the Rules that such permission should be refused if the authority is of opinion that the construction, establishment or installation is objectionable by reason of the density

of the population in the neighbourhood or that it is likely to cause nuisance. That the village is small and that there is no necessity for two flour mills is not a reason for which permission could be refused under Rule 7. The authority can refuse permission on the ground that the installation is objectionable by reason of the density of the population in the neighbourhood or that it is likely to cause nuisance. The object of refusing permission or refusing to grant a licence under Sections 112 and 111 of the Act is not for the purpose of preventing competition; but only for safeguarding public health or preventing nuisance in the area. The reason given in the resolution of the Panchayat Union dated 17th June, 1968 is that there was no necessity for starting a new rice mill. This ground is not relevant for the purpose of refusing a permission applied for under Section 112. On this ground alone, Writ Petition No. 4275 of 1968 filed by Revernd Father Mathew D. Muttom for the issue of a writ of certiorari to quash the resolution of the Uthamapalayam Panchayat Union Council dated 17th September, 1966 confirmed by the resolution dated 17th June, 1968 will have to be allowed.

7. The scope of the power conferred on the Government under Section 113 (3) of the Madras Panchayats Act, 1958 may now be considered. Section 113 (3) provides as follows:

The Government may either generally or in any particular case, make such order or give such directions as they may deem fit in respect of any action taken or omitted to be taken under Section 111 or Section 112.

The section enables the Government to make such order or give such direction in respect of any particular case and in respect of any action taken or omitted to be taken under Sections 111 or 112. The grant or refusal to grant permission under Section 112 would be an action taken or omitted to be taken under Section 112, and the Government would be entitled to make an order or give directions in respect of that particular order. It has been held by this Court in Abdul Gaffoor v. State of Madras : AIR1952 Mad555 that the power under Section 252 of the Madras District Municipalities Act, 1920, which is similar to Section 113 (3) of the Madras Panchayats Act, 1958, is wide and the Government had wide powers to interfere with the orders of the municipality.. The contention of the learned Counsel

that the Government cannot interfere with the individual orders of the Panchayat granting or refusing to grant the permission is unacceptable as it is opposed to the wording in the sub-section, and contrary to the decision of this Court. Another attack against the order of the Government is that the Government having delegated its powers to the Director of Rural Development under Section 157, it is not entitled to sit in revision over the orders of the delegated authority. Mr. V. P. Raman submitted that though the person who had delegated certain powers can himself exercise that power, both the authorities cannot exercise the same powers in a particular case, and in any event the authority that delegated the powers cannot sit in revision over the orders of the authority to whom the power is delegated. Reliance was placed on the decision of the Supreme Court in Godavari S. Parulekar v. State of Maharashtra : 1966 CriLJ1067 . It is unnecessary to consider this question in any length in view of the specific provisions in Section 157 (4) of the Act. The sub-section provides that the exercise of any power delegated under Sub-sections (1) to (3) shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification and also to control and revision by the delegating authority, or where such authority is the Government by such officer as may be empowered by the Government in this behalf. It is further provided that the Government shall also have power to control and revise the acts or proceedings of any officer so empowered. The sub-section therefore specifically empowers the Government or any officer empowered by the Government in this behalf to control or revise the orders of the officer to whom the powers are delegated. In view of this clear provision in the sub-section, the contention of the learned Counsel that the Government cannot revise the orders of the Director of Rural Development has to be rejected. But the Panchayat Union Council is on firm ground in its contention that the order passed by the Government on 18th July, 1968 granting permission to the Reverend Father to instal a motor without notice to the Panchayat Union Council is untenable in law. Section 113 (3) enables the Government to make such order or to give such direction in any particular case in respect of any action taken or omitted to be taken under Section 111 or 112 of the Act. The action thus taken or omitted to be taken under Section 112 is by the Panchayat Union Council in Panchayat Villages and the Town Panchayat in Panchayat Town. The principle of natural justice

requires that a person should be heard before a decision adverse to him is taken. The plea on behalf of the State is that the power of the Government is of a supervisory nature and that it is not obligatory on the Government to hear the Panchayat Union Council before reversing its order. In support of this contention reference was made to Section 147 of the Act which makes it incumbent on the Inspector of the Panchayats to give opportunity to the authority or person concerned before taking action on any of the grounds referred to in Clauses (a) and (b) of Sub-section (1) to Section 147. It is submitted that since it is specifically mentioned in the section, it is obligatory on the part of the Inspector of the Panchayats to give an opportunity to the authority or person before action is taken under the Sub-section (1) referred to above, and the absence of such a provision in Section 113 should be construed as conferring a power on the Government to make such order or to give such direction as contemplated in the sub-section without notice to the authority or person concerned. This contention cannot be accepted, for, the Government in exercising its functions under Section 113 (3) is dealing with the rights of parties, namely, whether to grant or refuse to grant licence or permission on the decisions of the Panchayat Union Councilor the Panchayat of the Town Panchayat as the case may be. In exercising quasi-judicial powers and dealing with the rights of parties, the principles of natural justice require that the party likely to be affected has to be heard. The absence of a specific provision to that effect will not deny the affected parties the right to be heard. In Abdul Gaffoor v. State of Madras : AIR1952 Mad555 , the validity of an order of the Government setting aside an order passed be the municipality without giving an opportunity to the affected party was considered. The Court was dealing with the provisions of Section 252 of the Madras District Municipalities Act. Section 252 provides that the State Government may, either generally or in any particular case, make such order or give such directions as they deem fit in respect of any action taken or omitted to be taken under Section 250 or Section 251. It may be noted that the provisions of Section 252 of the Madras District Municipalities Act are in pari materia with the provisions of Section 113 (3) of the Madras Panchayats Act. In Section 36 of the Madras District Municipalities Act, the proviso required the Provincial Government before taking action under that section on any of the grounds referred to in Clauses (a) and (b) to give the authority or the person

concerned an opportunity for explanation. The provisions in the section requiring notice to be given are in similar terms as the provisions in Section 147 of the Madras Panchayats Act. It was contended that while under Section 36 of the Madras District Municipalities Act the Government's power to set aside the resolution or, order granting permission is only on any one of the grounds specified in the subsection and after giving an opportunity to the authority concerned, no such restriction is placed on the powers of the Government under Section 252. The Court rejected the contention of the Government Pleader that Section 252 conferred unlimited power on the Government, and that it could set aside the order without giving an opportunity to the authority concerned. It was held that as the order affected the valuable rights of the petitioner therein, and as the power given under Section 252 is quasi-judicial in nature, the Government cannot set aside the order of the municipality without giving an opportunity to the petitioner. The decision relied on is on all fours and is applicable to the facts of this case, as it is not disputed that the Government did not give notice to the Panchayat Union Council before granting permission by G.O.Ms. No. 1390 Rural Development and Local Administration Department dated 18th July, 1968. The order cannot be sustained and has to be set aside on this ground. In this view, Writ Petition No. 3654 of 1968 will have to be allowed and the Government Order referred to above will have to be quashed.

8. Writ Petition No. 2658 is filed by Dhanushkoti in his private capacity, though IDhanuskoti is the Chairman of the Panchayat Union Council. This Writ Petition has not been filed on behalf of the Panchayat Union Council or under its authority. As the Writ Petition No. 3654 of 1968 filed by the Uthamapalayam Panchayat Union Council is being allowed, and as Writ Petition No. 2658 of 1968 is filed in the personal capacity of the petitioner, this petition is dismissed.

9. The plea of Rev. Fr. Mathew D. Muttom that the licence applied for by him should be deemed to have been granted under Section 159 (3) of the Madras Panchayats Act has to be considered. Section 159 deals with general provisions regarding licences and permission. Sub-section (1) requires that every application for any licence or permission under the Act or any rule or regulation made thereunder, or for the renewal thereof, shall be made not less than thirty and not

more ninety days before the earliest date with effect from which or the commencement of the period for which the licence or permission is required. Section 159 (1) deals with both licences and permissions. Sub-section (3) provides that if orders on an application for any licence or permission are not communicated to the applicant within thirty days or such longer period as may be prescribed in any class of cases after the receipt of the application by the Executive Authority of the Panchayat or the Commissioner, the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed and subject to the law rules, by-laws and regulations and all conditions ordinarily imposed. Sub-section (3) also deals with applications for licences and permissions. If orders are not communicated within 30 days or within such longer period as may be prescribed in any class of cases after the receipt of the application by the authority, the application shall be deemed to have been allowed. If the sub-section had ended at this stage, there would have been no difficulty. But the sub-section proceeds to say that the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed. It is submitted that by providing that the application shall be deemed to have been allowed for the period for which it would have been ordinarily allowed, the application of the sub-section is restricted to licences and permits which were granted for a specified period, and not to licences for sites which are given permanently, and also for permission to construct a factory or to install a machinery. Reliance is placed on a decision of a Bench of this Court in S. Govinda Iyer v. Villupuram Municipality : (1966)2MLJ164 in which the Court was construing the deeming provisions of Section 321 (11) of the Madras District Municipalities Act. On a construction of the sub-section, the Court held that an application for a permanent installation under Section 250 would not fall within the preview of the deeming provision in Section 321 (11) of the Act. Section 250 of the Madras District Municipalities Act provides that every person intending to construct or establish any factory, workshop or workplace in which it is proposed to employ steam-power, water-power or other mechanical power or electrical power or to install in any premises any machinery or manufacturing plant, shall before beginning such construction, establishment or installation make an application to the Municipal Council for permission to undertake the intended work. The relevant

portion of Section 321 (11) may be extracted ::.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 thirty days after the receipt of the application by the Executive Authority, the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules by-laws, regulations and all conditions ordinarily imposed.

In construing the subsection in Writ Petition No. 1752 of 1964 on a reference by Srinivasan, J., expressing doubt as to the correctness of an earlier decision of this Court in Public Prosecutor v. Krishna Rao I.L.R. (1958) Mad 330 : (1967) 2 M.L.J. 637, and Ranganayakulu v. Municipal Commissioner, Vijayawada Municipality : AIR 1959 AP460 , the Court held that the deeming provision in Section 321 (11) would not be applicable to an application for permission under Section 250 of the Madras District Municipalities Act. The reasons given by the Bench of this Court is that if the provisions of Section 250 are to be complied with in the letter and in spirit, the municipality cannot be constrained to arrive at a decision one Way or the other within the period of a month, and that if there is such an obligation it would really defeat the purpose of Section 250, because it may be impossible to obtain the opinions of experts on the vital aspects referred to in the sub-clause of that section. The second reason that is given is that since Section 321 (11) specifically refers to the application being ' deemed to have been allowed for the year or for such less period as is mentioned in the application ', it clearly refers to an application for permission, licence or registration as mentioned in the sub-section, for such defined period, which may be a year or less. The first ground, namely, that the municipality cannot be constrained to arrive at a decision one way or the other within the period of a month is not applicable to an application under Section 112 of the Madras Panchayats Act for Rule 7 of the Rules framed under Section 112 of the Act provides that the Panchayat Union Council shall within sixty days from the date of receipt of the application, either grant or refuse permission. Rule 8 makes it clear that though it is incumbant on the Panchayat Union Council to obtain the approval of the Director of Town-Planning and consult the District Health Officer as regards the suitability of the site, if within a period of forty days the Director of Town-Planning or the District Health Officer did not communicate

his approval, he shall be deemed to have communicated his approval. Reading Rules 7 and 8 together, it is clear that it is incumbant on the Panchayat Union Council to obtain the approval of the Director of Town-Planning and consult the District Health Officer, and if those authorities do not communicate their approval or opinion, their approval should be deemed to have been communicated. The Panchayat Union Council is also under an obligation to grant or refuse permission within 60 days from the date of receipt of the application. As there is an obligation on the Panchayat Union Council to obtain the approval of the Director of Town-Planning and consult the District Health Officer and provision is made for proceeding on the basis that the authorities concerned had communicated their approval if no reply is received within a period of forty days, the reason given by the Bench of this Court in S. Govinda Iyer v. Villupuram Municipality : (1966)2MLJ164 , that the municipality cannot be constrained to arrive at a decision one way or the other within the period of a month, is not applicable to the present case. The second ground on which the Bench held that the provisions of Section 321 (11) are not applicable to an application for permission under Section 250 of the Madras District Municipalities Act corresponding to Section 112 of the Madras Panchayats Act is that Section 321 (11) specifically referred to the application being ' deemed to have been allowed for the year or for such less period as is mentioned in the application ' and that this will indicate that it referred to an application for permission or licence for such defined period which may be a year or less. Comparing the wording of Section 321 (11) of the Madras District Municipalities Act with the wording in Section 159 (1) of the Madras Panchayats Act, it is significant that while the crucial part of Section 321 (11) would be that 'the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application ', the crucial part of Section 159 (3) is that ' the application shall be deemed to have been allowed for the period if any, for which it would have been ordinarily allowed.' The absence of the words ' allowed for the year or for such less period ' in Section 159 (3) of the District Panchayats Act as is mentioned in Section 321 (11) of the Madras-District Municipalities Act and on which the decision of the Bench is based is significant. By Section 159 (3), it is provided that the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed. This would include

applications for which there is no period. Otherwise, there Would have been no need to use the words ' if any '. The words occurring subsequently, that is, ' for which it would have been ordinarily allowed ' would not have the effect of excluding applications in which no period is specified. On the other hand, the use of the words 'Ordinarily allowed' in Section 159 (3) would indicate that applications for licences and permission for which a period is not specified are also included. Giving the sub-section the plain and literal meaning, it would be seen that regarding application for licences and permissions for which no period is specified, the applications shall be deemed to have been allowed. Because of the difference in the language employed, the Bench decision, which construed the provisions of Section 321 (11) of the District Municipalities Act, cannot be held to be applicable. In this case, Reverend Father Mathew D. Muttom made an application under Sections 111 and 112 of the Madras Panchayats Act on 24th November, 1965 and the Panchayat Union Council refused to grant the licence only on 17th September, 1966, after a lapse of about ten months. As this order of refusal was not communicated with in 60 days as prescribed under Rule 7, the deeming provision under Section 159 (3) will have to be held as applicable. Therefore, the application of Reverend Father Mathew D. Muttom dated 24th November, 1965 under Sections 111 and 112 of the Act shall be deemed to have been allowed. By the Rules framed under Section 112, the permission for construction or establishment of a factory or for installation of a machinery is permanent in nature and need not be renewed. But it would be subject to the provisions of Rules 10 and 11, that is, subject to the compliance of the relevant Rules made under Clause (xxxiii) of Sub-section (2) of Section 178 of the Madras Panchayats Act, 1958, or the building regulations, if any, in force in the area within the jurisdiction of the Panchayat Union Council. The Panchayat Union Council is also entitled to issue such directions as it thinks fit for abatement of the nuisance that is caused under Rule 11, and to take action under Rule 11 (2) in case of wilful default. So far as the licence under Section 111 is concerned, Rule 3 framed under Section 111 provides that every such licence shall expire at : he end of the year unless for special reasons the Commissioner considers it should expire at an earlier date, when it shall expire at such earlier date, as may be specified therein. This rule makes it clear that the licence granted under Section 111 is only for a period of

one year. The authority for the grant or renewal of a license under Section 111 is the Commissioner of the Panchayat Union, and the petitioner will apply for the renewal of the licence in accordance with law.

10. It now remains to consider the relief prayed for by Reverend Father Mathew E. Muttom in Writ Petition No. 4276 of 1968 for the issue of a Writ of mandamus directing the Panchayat Union Council and the Commissioner to grant the necessary licence and permission under Sections 111 and 112 of the Madras Panchayats Act. It is seen from the discussions above that permission under Section 112 for construction of the building and installation of the machinery shall be deemed to have been granted under Section 159 (3) of the Act, and so far as the licence under section in is concerned, it is to be renewed every year. The petitioner in Writ Petition No. 4276 of 1968 submitted that he having fulfilled all the requirements for grant of permission, the authority should be directed to issue a licence. From the statement of facts, it will be seem that the Commissioner did in fact great the licence for the year concerned. But so far as the renewal for subsequent years is concerned, he has to discharge a statutory duty and see that the requirements are fulfilled. The Rules regulate the grant and renewal of the licence under Section 111, and the Commissioner is bound to proceed according to the provisions of the Rules. In the circumstances, a Writ of mandamus cannot be issued. In this view, it is unnecessary to refer to the various decisions cited by Mr. K.K.. Venugopal, the learned Counsel for Reverend Father Mathew D. Muttom in support of his plea that it is competent for the Court to issue Writ of mandamus. The power of this Court to grant a Writ of mandamus under appropriate circumstances cannot be disputed. But in the circumstances stated this petition will have to be dismissed.

11. Writ Petition No. 4321 of 1968 filed by the lessee of an existing flour mill need not be considered as the provisions for the grant of licence or permission under the Madras Panchayats Act is not regulatory in character and the authorities are bound to grant a licence or permission if the requirements under the section are satisfied. So far as the grant of licence or permission under Sections 111 and 112 is concerned, the interests of rival licences or permit holders are totally irrelevant as the sections do not contemplate regulationing of the grant of licences and

permits according to the requirements of the locality or the economic violability. In the absence of such specific provisions the right of a person to exercise his fundamental right to carry on any occupation, trade or business as contemplated under Article 19 (1) (g) of the Constitution cannot be restricted. This Writ Petition will have to be dismissed.

12. In the result, Writ Petitions Nos. 3654 and 4275 of 1968 are allowed and Writ Petitions Nos. 2658, 4276 and 4321 of 1968 are dismissed. There will be no order as to costs in any of these petitions.