

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

W.P.No.30878 of 2012

Between:

Big C Mobiles Private Limited

... Petitioner/Appellant (s)

And

The Vijayawada Municipal Corporation,

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 21.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.30878 OF 2012

ORDER:

This writ petition is filed declaring the action of the respondent in demanding trade licence and fee under Sections 516, 521, 539, 622 and 623 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') in respect of petitioner's shops situated in Vijayawada including the notice dated 10.09.2012 and further in demanding 'User Charges' as illegal and arbitrary.

The case of the petitioner is that it has obtained necessary permission from the competent authority as required under the A.P.Shops and Establishments Act, 1988 and as such it is not required to obtain any licence under Section 521 of the Act. It is also stated that though the business being carried out by the petitioner is not included in schedule 'P' of the Act, the respondent-corporation apart from demanding the petitioner to obtain trade license, it is insisting for payment of fee under Section 622 of the Act. The petitioner further states that the imposition of "User Charges" viz., garbage charges is not traceable to any of the provisions of the GHMC Act or the Rules made thereunder, therefore, the levy of user charges is unwarranted. Aggrieved by the action of the respondent corporation in issuing notice under Sections 516, 521, 539, 622 and 623 of the Act demanding the petitioner to obtain trade license and fee and also user charges, the present writ petition is filed.

Counter is filed by the respondent stating that the Corporation is empowered to issue notice for obtaining trade licence to run the business of the petitioner under the provisions of GHMC Act, 1955. The respondent also states that under Section 622(2) of the Act, the Commissioner is empowered to charge fee for every such licence or written permission at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation. It is further stated that the "user charges" are levied under G.O.Rt.No.973 where the Government is fully authorised to collect such fees in the interest of city

sanitation and also environment at large. Hence the notice issued by the Commissioner is valid and is within jurisdiction.

Learned counsel for the petitioner submits that none of the Sections referred in the impugned notice are applicable to the case of the petitioner and no provisions in the Act empowers the respondents to direct the petitioner to obtain license and pay trade license fee. In support of his contentions he relied on judgment reported in ***A.P. Bankers and Pawn Brokers Association, Appellant v. Municipal Corporation of Hyderabad, Respondent***^[1], ***Sri Satyanarayana Trading Co. and others v Secretary and Special Officer, Nellore Municipal Council, Nellore and another***^[2] and the order passed by this Court in **W.P.No.5069 of 2006 and batch**.

On the other hand Sri T.Balaswamy, learned Standing counsel for the respondent submits that since the trade carried on by the petitioner come under the purview of Section 521 of the Act, the impugned notice is issued to the petitioner under Section 521 of the Act. Even otherwise, the petitioners are liable to obtain trade license as per the provision under Section 403, 404, 625 and 625 of the Act. He also submits that the Sections 403, 404, 624 and 625 are not brought to the notice of this Court while deciding W.P.No.5069 of 2006 and batch.

In ***A.P. Bankers and Pawn Brokers Association*** case the Supreme Court held that

“if there are no terms and conditions, which can be imposed by a Commissioner or the Municipality in respect of a particular trade or operation then even if the Commissioner is of the opinion that, that trade or operation is dangerous to life or health or property or that it is likely to create a nuisance he would not be able to regulate or control that trade or operation. Insistence on getting a licence, in such a case, would be useless formality and would not be authorised by Section 521”

9.....that the trade and operation of money lending and pawn broking is controlled and governed by other Acts and other Laws like the Andhra Pradesh Money Lenders Act, the Andhra Pradesh Pawn Brokers Act, etc. Those Acts lay down all terms and conditions on the basis of which such trade or operations could be carried on. In

the Hyderabad Municipal Corporation Act, there is no provision empowering the respondents to either carry out inspections or to take any measures to ensure that such trade and operations are run properly and that exploitation is avoided. This aspect has been noticed by the High Court in the impugned judgment.

In ***Sri Satyanarayana Trading Co. and others*** case, this Court set aside the imposition of licence-fee on carrying on business in gunny bags and on storing/sale of cement.

In view of the ratio laid down in the above judgments, the respondent authorities have no power to collect licence fee under Section 521 of the Act.

A perusal of the other provisions under Section 403, 404 and 624 and 625 reads as follows:

Section 403 and 404 of the Act reads as follows

403. Licence for sale in public places: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall hawk or exposed for sale in any public street any article whatsoever, whether it be for human consumption or not.

404. Licenses for use of skill in handicraft of rendering services for purposes of a gain in public place or street: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain, use his skill in any handicraft or in rendering services to and for the convenience of the public in public place or public street.

Similarly Section 624 and 625 of the Act reads as follows”

624. Licence for sale in public place: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall use nay public place or any public street for the purpose of hawking or exposing for sale, any article whatsoever whether it be for human consumption or not.

625. Licence for use of skill in handicraft or

rendering services for purposes of gain in public place or street: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain use and public street for the purposes of using his skill in any handicraft or in rendering service to and for the convenience of the public.

The above said provisions deal with licenses to do business in public places and streets. In the present case, petitioners are not doing business in public places or streets, as such the said provisions have no application. No other provision is brought to the notice of this Court empowering the respondent to insist for trade licence in respect of trade carried on by the petitioner.

In view of the above facts and circumstances, the respondents have no power to levy trade licence fee on the petitioner, as such, the same is without jurisdiction.

Accordingly, the writ petition is allowed setting aside the impugned notice. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 21.07.2015
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[\[1\]](#) AIR 2001 Supreme Court 1356

[\[2\]](#) AIR 1980 288