

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18367 OF 2014

ORDER :

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in issuing the impugned notice vide No.24/HS/C-7/GHMC/20, dated 23.06.2014, and in consequence thereof closing the premises of M/s.KHK Garden, Asifnagar, Hyderabad on 23.06.2014, as illegal and arbitrary and consequently to set aside the same.

2. The case of the petitioner is that it was registered as a firm and the building owned by the petitioner has been converted into a function hall and running in the name and style of KHK Garden. While so, on 16.06.2014, the 2nd respondent-the Assistant Medical Officer, Khairatabad, issued a notice under Sections 521 and 622 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') whereby the petitioner is directed to show cause as to why the establishment should not be closed within seven days from the date of receipt of the said notice. Immediately, after receipt of the said notice the petitioner paid an amount of Rs.36,000/- on 18.06.2013 through banker's cheque in favour of GHMC. Thereafter, the respondent-Corporation issued a Provisional Trade Licence for the year 2014-2015 to the petitioner under Sections 521 and 622 of the Act. While so, on 23.06.2014, the 2nd respondent-the Assistant Medical Officer has inspected the petitioner's premises and on the same day issued a notice dated 23.06.2014 for closer of the petitioner's establishment, on the ground that the petitioner has violated the provisions of the

Hyderabad Municipal Corporation Bye-Laws for the Regulation of Eating Houses or Hotels, 1973 (for brevity 'Bye-Laws'). The said notice is challenged in the present writ petition as without jurisdiction.

3. Sri K.V.Satyanarayana learned counsel for the petitioner submits that the impugned proceedings dated 23.06.2014 are in violation of principles of natural justice, since the same is not preceded by any notice. He also contends that as per Bye-law 36 of the Bye-Laws, it is only the Commissioner who can by an order in writing wind up the business of the hotels, but not the Assistant Medical Officer. As such, the 2nd respondent has no jurisdiction to issue the impugned notice. He also contends that Section 622(3) of Hyderabad Municipal Corporation Act, 1955 (*for short 'HMC Act'*) empowers only the Commissioner to revoke or suspend the licence granted, but not the Assistant Medical Officer. He also submits that the Commissioner, in exercise of the Powers conferred on him under Section 119 of HMC Act, 1955, empowered the Zonal Commissioner, Joint Commissioner, Additional Commissioner, Deputy Commissioner and other officers of GHMC to exercise the powers, duties and functions conferred or imposed upon or vested under him by or under the provisions of Sections of the Act and issued proceedings dated 06.07.2007. By virtue of the said proceedings, power to entering the premises for the purpose of inspection is conferred only on the Deputy Commissioner, but not on the Assistant Medical Officer.

4. He would further contend that by virtue of proceedings 27.06.1997, the Commissioner & Special Officer, Greater Hyderabad Municipal Corporation, in exercise of powers conferred under Section 119 of the Act, delegated to and empowered the

Zonal Commissioner, Joint Commissioner, Additional Commissioner, Deputy Commissioner & other Officers of GHMC to exercise the powers, duties and functions conferred or imposed upon or vested upon him by or under the provisions of Sections of the Act by duly cancelling the earlier delegation of power vide proceedings No.538/OP/OP1/MCH/96-3, dated 03.01.1997 on the Assistant Medical Officer. Even exercising of power by the Assistant Medical Officer does not arise since the same has been cancelled by subsequent proceedings dated 27.06.2007, as such, the impugned proceedings directing the closure of the petitioner premises itself is illegal and without jurisdiction.

5. On the other hand Sri R.Radha Krishna Reddy, learned Standing Counsel for the respondent Corporation submits that the powers under Sections 523 and 622 of the Act are delegated to Assistant Medical Officer by the Commissioner, GHMC by exercising power under Section 119 of the Act. He would further submit that the Assistant Medical Officer inspected the premises of the petitioner and found violation of Bye-laws. He also submits that the provisional permission granted on 18.06.2014 also expired by efflux of time, as such, the petitioner does not have any permission and it cannot be permitted to run the function hall as on today. Since the petitioner does not have valid licence, building plan approval by GHMC, Occupancy Certificate and that there is no fire safety approval, no relief can be granted to the petitioner.

6. A perusal of the impugned proceedings shows that the Assistant Medical Officer-2nd respondent has issued notice directing the petitioner to close down the establishment under Regulation No. 36 of Bye-laws, until further orders.

Regulation Nos. 35 & 36 of M.C.H.Bye-Laws for the Regulation of Eating Houses or Hotels, 1973, reads as follows.

“**35.(a)** Every premises shall be open to inspection by the Commissioner or any officer authorised by him in this behalf during working hours of the Hotel;

(b) The licensee shall carry out the directions given by the inspecting officer of the Corporation from time to time within a reasonable time.

36. The Commissioner may, in case of any violation of these bye-laws order in writing to wind up the business of the Hotel or prohibit the consumption or sale of raw materials or prepared articles. The owner or occupier of such Hotel shall not be authorised to continue or start again his business without obtaining a fresh written permission from the Commissioner.”

Section 523 (3) of the HMC Act reads as follows.

523. Inspection of premises used for Manufacture etc.,

(1).....

(2).....

(3) Notwithstanding anything contained in this section and unless specified under this Act, the Municipal Commissioner or any authorised person on his behalf shall exercise all the powers conferred on him under this Act and under the Prevention of Food Adulteration Act, 1954 and shall also have the powers to close down the premises and also seize the machinery and material when there is reason to believe that an offence is committed against some bye-law made under this Act.”

7. Regulation No. 36 of Bye-Laws and Section 523 (3) of the Act provide for closure of business. No doubt, power under Section 523 of the Act is conferred on the 2nd respondent vide proceedings 03.01.1997, but subsequent to that, Commissioner has again issued proceedings dated 27.06.2007 duly cancelling all the delegations issued earlier by the Commissioner under Section 119 of the Act whereby and whereunder the same were conferred on Deputy Commissioner. Regulation No.36 of Bye-Laws provides

that power for closure of business should be exercised by the Commissioner. No doubt, the 2nd respondent is empowered to inspect every premises by virtue of power conferred under Sections 523 and 622 of the Act and also Regulation 35 (a) of Regulation of Eating Houses or Hotels, 1973. However, Regulation No.36 specifically mentions that the Commissioner himself must exercise the power. The words in Regulation No.35 (a) i.e., 'any officer authorised by him' are missing in Regulation No.36 of Bye-Laws. This indicates that the Regulation making authority wanted to confer that power only on the Commissioner, but not on the delegate of the Commissioner. In the absence of such power conferred under Regulation 36 of Bye-Laws, the 2nd respondent-Assistant Medical Officer cannot exercise such power. Even the power conferred under Section 523 of the Act is also cancelled by virtue of proceedings dated 27.06.2007 which goes to show that the 2nd respondent has no power to demand for closure of business of the petitioner. In view of same, impugned notice is without jurisdiction and liable to be set aside. Then the next question that arises for consideration is whether the petitioner can run the business without having valid licence or permission as envisaged under the provisions of the Hyderabad Municipal Corporation Act.

8. Admittedly, the petitioner was granted Provisional Trade Licence on 18.06.2014 with certain conditions that the petitioner should produce rental deed, property tax receipt, building plan, location plan, building occupancy certificate and passport size photos within a period of three months. But the petitioner has not complied with the conditions mentioned in the Provisional Trade Licence dated 18.06.2014, and by efflux of time the said provisional licence also expired. The petitioner cannot run the

business without any permission or licence, contrary to the provisions of the Act.

In view of the above facts and circumstances, the impugned notice dated 23.06.2014 issued by the 2nd respondent-Assistant Medical Officer is set aside. However, it is open for the competent authority to take necessary action as per law. However, it does not mean that the petitioner can run the business without having valid licence and it is for the concerned authority to take action, if the petitioner runs the same without obtaining valid permission. The 2nd respondent shall not prevent the petitioner from using the premises for any other purpose, if it possesses necessary permission from the competent authority.

With the above direction, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

02.02.2015
kvs

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT PETITION No.18367 OF 2014

Date: 02.02.2015

kvs