

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

W.P.Nos.11900 of 2012

Between:

M/s. A.P.Film Chamber of Commerce

... Petitioner/Appellant (s)

And

The State of Andhra Pradesh

and 3 others

... 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.11900 OF 2012

ORDER:

These writ petitions are filed declaring the action of the respondents in enhancing the trade license fee for the petitioner's Society, as illegal and arbitrary and for a consequential direction to set aside the Resolution No.18 dated 16.04.2010 of Municipal Corporation of Vijayawada in respect of petitioner-Society

The case of the petitioner is that it is a Society registered under Public Societies Registration Act and its main object is to encourage, develop and spread necessary knowledge in the Film Industry in all its branches in Andhra Pradesh. While so, the Council of Municipal Corporation of Vijayawada unilaterally passed resolution dated 16.04.2010, enhancing the trade license fee on the basis of monthly rental value of the petitioner-Society though there are no guidelines, Rules, schedule prescribing levy of trade license fee. Further a notice was also issued by the 4th respondent on 06.02.2012 under Sections, 516, 521, 539, 622 and 623 of the Act directing the petitioner to pay the advance amount and obtain license for the period 01.04.2012 to 31.03.2013 though the above said sections are not relevant to the present case. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the respondents in W.P.No.22056 of 2012 stating that as per the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') the petitioner has to pay D & O trade license fee. It is also stated that Council of Vijayawada Municipal Corporation in its resolution No.18/18, dated 16.04.2010 accepted the enhancement of trade license for 23 different trades by suggesting certain modification in certain trades as mentioned in the list under Section 622(2) of the Act. Basing on the resolution the respondents 2 and 3 fixed the trade license fee with a reasonable enhancement for 23 different trades and also published in newspapers. The petitioner never raised any protest with regard to the same in writing. It is further submitted that under Section 70-G of the Act, the Special Officer has

got all powers to decide the trade license fee and that the resolution passed by the Special Officer for enhancing the trade license is proper.

Learned counsel for the petitioners contends that though the impugned notices are issued under Sections 521, 516, 539, 622 and 623 of the Act, none of the provisions authorise the respondents to impose trade license fee on the petitioners. He further submits that Section 6 of the A.P.Cinemas (Regulation) Act, 1955 deals with grant of license and since the petitioner have obtained license under A.P. Cinemas (Regulation) act, no further license is required under Municipal Corporation Act.

In support of his contentions he relied on judgments reported in ***K.C. Varadachari, Partner, Madras Oil Mills and Products v. The State of Madras, by the Secretary to the Government of Madras, Food and Agriculture Department***^[1], ***M/s. Mohta Ispat Limited, Ratlam v. The Chief Municipal Officer, Ratlam and others***^[2], ***Corporation of Calcutta v. Liberty Cinema***^[3], ***Y. Venkateswar Rao and others v. Prohibition and Excise Superintendent, Khamman District and another***^[4]

On the other hand, Sri T.Balaswamy, learned Standing counsel for the respondents relies on Sections 403, 404, 624, 625 of HMC Act and states that respondents are justified in imposing the trade license fee.

Section 403, 404, 624 and 625 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.

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 any 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.

Section 6 of the Act reads as follows:

“6. Special Provisions for buildings constructed or reconstructed solely for cinematograph exhibitions:

(1) Nothing contained in the Hyderabad Municipal Corporations Act, 1955 (Act II of 1956), or in the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 (Act II of 1888) or in the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 (Act V of 1920) or in the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 (Act VII of 1920), or in the Andhra Pradesh (Andhra Area) District Boards Act, 1920 (Act XIV of 1920) or in the Andhra Pradesh (Andhra Area) Village Panchayats Act, 1950) in regard to-

(a) the grant of permission for the construction or reconstruction of a building, or

(b) the grant of licence for the use of any place or building for any purpose for which such licence is required under those Act, or

(c) the grant of permission to instal any machinery in any place or building,

Shall apply to the contruction or reconstruction of, or the use of, or the installation of any machinery in any place or building to be used exclusively for the holding of cinematograph exhibitions; and in every such case, an application for licence or permission referred to in any of the Clauses (a) to (c) above shall be made to the licensing authority under this Act, in accordance with the rules made in this behalf under this Act.

(2) Subject to the control of Government and to any rules made in this behalf, the licensing authority, after making such inquiry as it deems fit and consulting the Chief Executive Officer (by whatever designation he may be known) of the authority concerned, may, for reasons to be recorded either grant or refuse to grant the licence or permission applied for.”

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 will not justify the issuance of impugned notices. Since the petitioners have already obtained licence under Section 6 of the Act, by the licensing authority, the question of again obtaining fresh licence may not arise for the same purpose, as held by the Apex Court in ***A.P. Bankers & Pawn Brokers’ Association v. Municipal Corporation of Hyderabad***^[5] which reads as follows:

“Merely because a pawnbroker or a moneylender is likely to set up a shop in the thick of a residential locality or in a crowded place would be no ground for the Commissioner to come to a conclusion that the entire trade or occupation of moneylending and pawnbroking is dangerous or likely to create nuisance. It is clarified that this Court is not saying that the Commissioner cannot under Section 521(1)(e)(ii) notify a particular trade or operation, i.e., include all persons carrying on that particular trade or operation.”

When the very basis of imposition of trade license is set aside, the question of enhancement of trade license fee may not be relevant to the present issue.

Accordingly, this writ petition is allowed. 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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[\[1\]](#) 1952 (2) MLJ 410

[\[2\]](#) AIR 1981 MP 62

[\[3\]](#) AIR 1965 SC 1107

[\[4\]](#) AIR 2001 SC 1356

[\[5\]](#) (2001) 3 SCC 646