

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

W.P.Nos.9583, 9614, 13156 and 17649 of 2012

W.P.No.9583 of 2012

Between:

M/s. MNM Marketing Private Limited

... Petitioner/Appellant (s)

And

The Vijayawada Municipal Corporation,
and another

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 21.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

- | | | |
|---|--|--------|
| 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 |

-

-

-

-

-

-

-

-

-

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.9583, 9614, 13156 and 17649 OF 2012

COMMON ORDER:

These writ petitions are filed by the petitioners challenging the notices issued to the petitioners under Section 516, 521, 539, 622 and 623 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act').

Since the subject matter of the writ petitions is one and same, they are heard together and are being disposed of by this common order.

The case of the petitioners is that they are doing business in selling of wholesale and retail readymade garments and that they have obtained all necessary permissions from various departments like APGST Act under the Shops and Establishments Act and have been paying all the taxes and licence fee to the concerned departments. While so, the respondent authorities issued notices to the petitioners under Section 516, 521, 539, 622 and 623 of the Act, without jurisdiction and that the provisions mentioned in the notices also have no application to the trades carried on by the petitioners. Aggrieved by the same, the present writ petitions are filed.

Counter is filed in W.P.No.17649 of 2012 stating that Section 521 of the Act deals with the petitioner's trade i.e., selling of cloth. It is also stated that Section 521 of the Act deals with licensing of certain trades and operations, which in the opinion of the Commissioner is dangerous to life, health or property, or likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same is or is proposed to be carried on. The respondents denied the contention of the petitioners that the business relating to the cloth, hosiery, readymade garments, textiles are in no manner dangerous to life, health or property of the public and hence the Commissioner cannot impose license fee. The respondents further state that a trade or business relating to cloth, hosiery, readymade garments, textiles may not be dangerous but certainly can create nuisance by the customers by parking number of vehicles creating traffic conjunction, loading and unloading of goods in vehicles, throwing of refuse and packing material on the road. Such activity shall be regulated and

controlled by number of visits of the sanitary inspectors besides removing the waste and sweeping. Hence the notice issued by the commissioner is valid and are within jurisdiction.

It is also admitted that the petitioners were issued notices under Section 516, 521, 539, 622 and 623 of Municipal Corporation Act to pay license fee of an amount of Rs.9,470/- for the period from 01.04.2012 to 31.03.2013, but the petitioner paid only Rs.1,736/-. The petitioners contention that their business is totally out of the purview of Section 521 of the Act is denied by the respondents stating that Cotton is an article specified in part IV of schedule 'P' under Section 521 of HMC Act and cloth business has been mentioned in D & O trade schedule of Vijayawada Municipal Corporation as per the provisions of the Act under Section 521 (1)(e)(iii). The Corporation issued notices only to obtain permission and to pay the legitimate fee towards running of the trade and if the petitioners does not comply with the same, action will be initiated as per the provisions under Section 622 (4) (b) (c). Section 622(2) of the Act empowers the Commissioner 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.

Learned counsel for the petitioner submits that none of the Sections referred in the impugned notice are applicable to the case of the petitioners and no provisions in the Act empowers the respondents to direct the petitioners 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 the trades carried on by the petitioners is

dangerous to health, as such the impugned notices are issued to the petitioners under Section 521 of the Act. Even otherwise, the petitioners are liable to obtain trade licence as per the provision under Section 403, 404, 624 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 negated the contention of imposition of licence-fee on carrying on business in gunny bags and on storing/sale of cement.

In **Fertilizers, Pesticides and Seeds Dealers Welfare Association, Suryapet v. Municipal Council, Suryapet Municipality**^[3] this Court held that

“.....For instance the item ‘S’ provides for a levy of licence-fee on selling or storing cotton wholesale or retain. It cannot be said that all products made out of cotton like clothing material including shirts, dhotis, sarees or readymades dresses will be covered by the said item ‘S’. If the Legislature intended that the products of jute

should also be covered by item 'P' they would have expressly provided so by including jute products in item 'P'levy of licence-fee, the scope of the items mentioned in Schedule IV cannot be enlarged or extended on the supposed intention of the legislature.”

In view of ratio laid down in the above judgments, it is clearly found that the respondent authorities have no power to collect licence fee in respect of trade carrying on by the petitioners.

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 by the petitioners.

In view of the aforesaid provisions of the Act, the respondents have no power to levy trade licence fee on the petitioners, as such, the same is without jurisdiction.

Accordingly, these writ petitions are allowed setting aside the impugned notices. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 21.07.2015
dv

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

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

[\[3\]](#) 2006 (1) ALD 574