

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.22663 of 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“to issue appropriate writ, direction or order more particularly one in the nature of Mandamus declaring action of the respondents 2 and 3 in lock and seal the premises in pursuance of the demand notice dated 19-07-2014 issued by the respondents 2 and 3 served on the petitioner on 21-07-2014 demanding license fee by levying in irregular, improper, exorbitantly, usurious manner by increasing 1500% of the existing usual current charges from the petitioner function halls under the demand notices enclosed without considering the request/representation of the petitioner and giving opportunity of being heard as illegal, arbitrary, whimsical, unjust, usurious, excessive and without jurisdiction, contrary to the provisions of HMC Act besides violative of Article 14, 16, 19(1)(g) and IX-A of the Constitution of India and consequently declare that the respondents have no power or authority to levy exorbitant increase of trade license fee from the current /previous license fee together with demand of solid waste management charges (user charges) from the petitioners function halls by directing the respondents to remove/ break open the lock and seal to Jaikisan kalyanamandapam situated in Steel palace, D.No.11-25-66, Main Bazar, Vijayawada-1 by withdrawing the impugned demand in the interests of justice and pass such other order/s as the Hon'ble court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of Sri P.Anand Seshu, learned counsel for the petitioner, of the learned Government Pleader for Municipal Administration and Urban Development (A.P.) appearing for the 1st respondent, and of Smt G.Jhansi, learned Standing Counsel appearing for the respondents 2 and 3. I have perused the material record.

3. The case of the writ petitioner is that the subject Kalyana Mandapam is one of the organisations & associations of M/s.Vijayawada Iron and Hardware Merchants Association, which is a registered association; that the trade license fee originally was Rs.2,396/-; that it is a very small Kalyana Mandapam of 1,500 sq.feet; that it is in the second floor of a building in the market area; that it is intended for small functions; that it is being run on a non-profitable basis by giving on license for purpose of small functions of workers and clerks etc., who are working in the shops of the iron and hardware merchants, who are members of the association; that while so, the impugned final notice was issued demanding an unreasonable amount of trade license fee and threatening to close the Kalayana Mandapam; that in fact, after issuance of the said notice, the Kalayana Mandapam was put under lock and key; and, that therefore, the writ petitioner filed the present writ petition.

4. On 07.08.2014, this Court, while admitting the writ petition, passed the following interim order:

“Heard the counsel for petitioner and the Standing Counsel for 2nd respondent.

The petitioner herein has questioned the sealing of its premises on 06.08.2014 by officials of 2nd respondent without issuing any prior notice or opportunity to petitioner. It is also pleaded that there is a dispute with regard to payment of enhanced Trade License Fee between petitioner and 2nd respondent.

Be that as it may, since the sealing of petitioner’s premises under Section 461-A of the Hyderabad Municipal Corporation Act, 1955 is without any prior notice, prima facie, it cannot be sustained. No doubt, Section 461-A of the said Act does not contain any provision for issuance of a prior notice to the person whose premises is sealed, but it also does not

exclude the application of principles of natural justice. Such principles therefore have to be read into Section 461-A of the said Act. Otherwise, the said provision would be arbitrary.

Compliance with principles of natural justice would ensure transparency and also indicate whether the action of sealing of the subject premises was a proportionate response to the conduct of the person whose premises is sealed. Therefore, there shall be a direction to remove the seal put on the petitioner's premises."

5. The respondents 2 and 3 filed a vacate petition seeking vacation of the afore-said interim order.

6. Both parties consented for the disposal of the writ petition instead of the vacate petition. Submissions are made in line with the pleadings of the parties. I have perused the pleadings and material record.

7. It is pertinent to note that prior to the final notice, dated 19.07.2014, a notice, dated 09.07.2014, was issued under Sections 521(i)f and 521(i)e(ii) of the Hyderabad Municipal Corporation Act, 1955 stating *inter alia* that the Kalyana Mandapam shall be run after getting renewal of the trade license and that on failure to so to do, appropriate action would be taken. Thereafter, the impugned final notice was issued. Admittedly, the petitioner is paying 50% of the enhanced trade license fee. Pursuant to the interim orders, the lock put on the subject premises was opened and the Kalyana Mandapam is now functioning. However, learned Standing Counsel for the Municipal Corporation stated that in response to the first notice, no representation is given and therefore, the final notice has come to be passed; and, that the writ petition is unsustainable.

8. Learned counsel for the petitioner, in reply, would submit that if the petitioner is reserved liberty to give a representation to the Commissioner of the Municipal Corporation and the Commissioner is directed to dispose of the same within a time frame in accordance with the procedure established by law and in the meantime, the interests of the petitioner are protected, the ends of justice would be met.

9. In the considered view of this Court, having regard to the submissions, the Writ Petition can be disposed of in a manner which meets the ends of justice.

10. Accordingly, the Writ Petition is disposed of directing both parties to maintain *status quo* pursuant to the interim orders granted by this Court, which are referred to supra, and reserving liberty to the petitioner to submit, within four (4) weeks from the date of receipt of a copy of this order, a representation to the 2nd respondent for fixation of an appropriate trade license fee having regard to the facts and circumstances of the case. In the event the petitioner submits such a representation, the Commissioner shall, within four (4) weeks thereafter, consider and dispose of the same, however, in accordance with the procedure established by law and communicate to the petitioner, the decision taken thereon within one week thereafter. It is made clear that the petitioner shall continue to pay 50% of the enhanced trade license fee as it is presently doing until an appropriate decision is taken by the Commissioner in the matter. It is needless to say that the petitioner is having liberty to assail the decision which the

Commissioner may take in the matter in the event it feels aggrieved of the same.

There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.SEETHARAMA MURTI

Date: 15.06.2018
AMD



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