



W.P(MD)No.9206 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9206 of 2021

The Pasippattarai Street Mohaideen Andavar Pallivasal,
Represented by
Its Managing Trustee / Trustee
No.175, Therpasayanam Road,
Velipattinam (PO),
Ramanathapuram-623504.

... Petitioner

Vs.

- 1.The Principle Secretary to Government
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai.
- 2.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 3.The Commissioner,
Municipal Office,
Ramanathapuram-623501.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to respondent to renew the petitioner's private fish market license situated No.84, Arigar Anna Salai



W.P(MD)No.9206 of 2021

Ramanathapuram Town and No.152, Thapasayanam Road, Velipattinam, Ramanathapuram Town for the period of three years ie., 2019-2020, 2020-2021 and 2021-2022 within a stipulated time fixed by this Court.

For Petitioner : Mr.S.Parthasarathy
for Mr.J.M.Hassanul Bazari

For R1 & R2 : Mr.M.Prakash
Additional Government Pleader

For R3 : Mr.A.Kannan

ORDER

Heard the learned counsel on either side.

2. Pasippattarai Street Mohaideen Andavar Pallivasal has been running a private fish market at Door No.84, Arigar Annasalai, Ramanathapuram Town and at Door No.152, Therpasayanam Road, Velipattinam, Ramanathapuram Town from 1880.

3. Though the learned standing counsel for Ramanathapuram Municipality would strongly contend that the petitioner Pallivasal was granted only what is known as D & O license and not any license to run a private fish market, the fact remains that for more than a century, they have been running a fish market. That is evident from the show cause notice bearing Na.Ka.No. 1249/2021/H1, dated 15.09.2021 issued by the Commissioner,



W.P(MD)No.9206 of 2021

Ramanathapuram Municipality calling upon the said Pallivasal as to why an order for closure of the fish market should not be passed. The assertion of the writ petitioner that they have been running the fish market is reinforced by the waqf notification published in Government gazette dated 22.04.1959. It is futile on the part of the municipal council to claim that Pallivasal was not running a private fish market.

4. Now the only question that arises for consideration is whether the said Pallivasal is entitled to renewal of their license. It is stated that Pallivasal did not have any issue till 2019. There was no renewal of their license from 2019-2020 onwards. While so, the Ramanathapuram Municipality itself passed a resolution for constructing an integrated fish market. They entered into a joint venture with the fisheries department as well as the Government and invested a sum of more than Rs.50,00,000/- to put it up. They also granted license to the petitioner in W.P.(MD)No.19499 of 2021 to run the said market. The market put up by the local body comprises 56 shops. In these circumstances, this Writ Petition came to be filed.

5. While Pallivasal wants renewal of their license, the successful licensee wants the fish market run by Pallivasal to be closed. The primary issue that arises for consideration is whether the Ramanathapuram Municipality is



W.P(MD)No.9206 of 2021

justified in declining to recognise the right of Pallivasal to run the private fish market. Section 259 of the Tamil Nadu District Municipalities Act, 1920 deals with public markets. Section 262 talks about granting licence for private market. Section 262-A refers to the fixation of fee for such licence. The said provisions are as follows:-

“259.Public Market- All markets which are acquired, constructed, repaired or maintained out of the municipal fund shall be deemed to be public markets and such markets shall be open to persons of whatever caste or creed.

262.Licence for Private Market- (1) No person shall open a new Private Market or continue to keep open a private market unless he obtains from the Council a licence to do so.

(2) Application for such licence shall be made by the owner of the place in respect of which the licence is sought not less than thirty and not more than ninety days before such place is opened as a market, or the commencement of the year for which the licence is sought to be renewal as the case may be

(3) The Council shall as regards Private Markets already lawfully established and may at its discretion as regards new Private Markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, width of paths and ways, weighs and measures to be used and rents and fees to be charged in such market as the Council may think proper or the Council may refuse to grant any such licence for any new Private Market. The council may however at any time for breach of the conditions thereof, suspend or cancel any licence which has been granted under this Section. The Council may also modify the conditions of the licence to take effect from a specified dated.

(4) When a licence is granted, refused, suspended, cancelled or modified under this Section, the Council shall cause a notice of such grant, refusal, suspension, cancellation or modification in English and in a regional language of



W.P(MD)No.9206 of 2021

the district to be posted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

5. Every licence granted under this section shall expire at the end of the year.

262-A. Fee for licence- Where a licence granted under Section 262 permits the levy of any fees of the nature specified in sub-section 2 of Section 260, a fee not exceeding fifteen per cent of the gross income of the owner from the market in the preceding year shall be charged by the Municipal Council for such licence.”

These provisions were considered by a learned Judge of this Court in the decision reported in **1998 (1) MLJ 103 (E.Thangasamy Raja Vs. Executive Officer)**. Paragraph Nos.16 & 17 of the said decision read as under:-

“16. On the basis of the above legal principle, it cannot be doubted that the action of the respondent in refusing to renew the licence without hearing the petitioner is invalid. In the counter-statement, they have no case that they ever wanted the petitioner to show cause for the alleged violation of the conditions. As stated earlier, the contention raised is that it is within the discretion of the Panchayat either to grant or refuse to grant the licence. The said attitude of the respondent is only arbitrary and cannot be supported by law..

17. One of the main reasons that is stated in the counter for refusing the licence is that the respondent who is the licensing authority itself wants to conduct the same business. In the last sentence in para 4 of the counter, it is said that if a licence is granted to the petitioner, the Panchayat will continue to suffer great loss. This clearly shows the mala fide intention on the part of the panchayat in rejecting the petitioner's application. When the petitioner has got a fundamental right to carry on a trade, if he is permitted to continue the business, he becomes a competitor. Merely because there will be competition and consequently loss to one person that cannot be a ground for refusing the licence. If the reason stated in the counter affidavit is to be accepted, then it follows that the Panchayat alone has got a



W.P(MD)No.9206 of 2021

monopoly in doing the business. When the licensing authority itself indulges in such a business and deprives another man of his livelihood, it should have been a little more fair. When the licensing authority is in the position of a Trustee to the members of the public, it should not exploit the power of issuing license, to its own advantage.”

6. I also had an occasion to deal with the said provisions in ***WP(MD)Nos.16429 of 2018 etc batch, dated 13.03.2019 (Palani Town Muslim Dharma Paribalana Sangam Waqf, rep. by its Vice President, Palani Town, Dindigul District Vs. The Principal Secretary to Government).***

Paragraph Nos.16, 17 & 18 of the said order read as follows:-

“16.The writ petitioner sangam is a religious and charitable institution and it is certainly entitled to augment its revenues to putting its properties to optimal use. Section 262 (3) states that the Municipal Council may at its discretion as regards new private markets grant the license applied for subject to appropriate regulations. The council may also refuse to grant any such license for any new private market. But then, in the constitutional scheme of things, this power to grant or refuse license cannot be exercised in an arbitrary manner. It is not the case of the Palani Municipality that the place is unfit for running a market. It is also not the case of the municipality that there are other private markets in existence. If the field is saturated, then the authority would be justified in saying 'NO'. But that is not the case here.

17.We are in the age of globalization and liberalization. In those days, there was only one State-run T.V channel 'Doordarshan' which had a monopoly. But, now we have a slew of channels. It is for the customer and the general public to choose what they want. Merely because the private market is opened, that does not mean that the vendors are compelled to go there. The element of compulsion will be there only if there is a monopoly. Choice will be the guiding factor when there



W.P(MD)No.9206 of 2021

is competition. The Palani Municipality which is running its own market is also the authority to decide whether to grant license to an applicant for opening a private market. Any power to issue license will have to be exercised in a fair manner. In this case, Court is obliged to adopt a strict scrutiny approach because the licensor is having a stake in the subject-matter. If license is issued, the licensee will become a commercial rival to the licensor. That is the reason for the licensor to refuse to licensee in this case. But courts will hold the scales even. 18. Since the Palani Municipality has anchored its refusal to grant license by citing the loss it may to suffer, I hold that the discretion conferred on it under Section 262 of the Act has been exercised in an unfair manner. I therefore have no hesitation to set aside the order impugned in WP(MD)No.16429 of 2018. It is accordingly set aside. The Palani Municipality is directed to issue license in favour of the writ petitioner within a period of five weeks from the date of receipt of a copy of this order. It is open to the second respondent to incorporate such conditions as it deems fit as contemplated under Section 262 (3) of the Act. The Palani Municipality shall fix the annual fee payable by the writ petitioner sangam in terms of Section 262 (A) of the Act. Since it has been admitted that the writ petitioner has been conducting business in the site in question even without a license for all these years, the second respondent shall initiate independent proceedings for quantifying the charges payable by the petitioner sangam to the Municipality. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Accordingly, WP(MD)No.16429 of 2018 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed”

7. In my view, the issue raised in this writ petition can very well be answered in the light of the aforesaid decisions. Even though I have serious doubt as regards the reasonableness of the quantum of fee paid by Pallivasal to the local body, the fact remains that for more than 140 years, Pallivasal has been running the fish market. To say that they cannot continue to run it any



W.P(MD)No.9206 of 2021

further is highly unfair and unreasonable. This is all the more so because the Municipality wants to enter into the very same business. In the aforesaid decision also, only because the Municipality itself wanted to set up a public market, it wanted to close down the existing private markets. Such approach was clearly frowned upon by this Court.

8. Adopting the very same approach, I direct the third respondent to renew the Pallivasal license to run the private fish market at the aforementioned places. It goes without saying that the fee payable will have to be re-determined in the light of Section 262-A of the Tamil Nadu District Municipalities Act. The Municipality / Licensing Authority is also obliged to stipulate the conditions subject to which the private market can be run bearing in mind the interest of public health. It goes without saying that the Municipality is obliged to close down all other unauthorized places.

9. This Writ Petition is allowed. No costs.

28.07.2022

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.9206 of 2021

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W.P(MD)No.9206 of 2021

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W.P(MD)No.9206 of 2021

28.07.2022