

CASE NO.:
Appeal (civil) 1691 of 2001

PETITIONER:
A.P. BANKERS & PAWN BROKERS ASSOCIATION

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF HYDERABAD

DATE OF JUDGMENT: 02/03/2001

BENCH:
A.P. Misra & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

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This Appeal is against a Judgment dated 27th November, 1998.

Briefly stated the facts are as follows :

The Appellants are an Association of money lenders and pawn brokers. The Respondent-Corporation had in the year 1972 by a Notification dated 14th/15th April, 1972, notified the business of money lenders and pawn brokers as one which required a licence under Section 521 of the Hyderabad Municipal Corporation Act. Having so notified a licence fee of Rs.50/- was charged from all money lenders and pawn brokers. At that time no challenge was made to the Notification. However, by another Notification dated 11th April, 1987, the licence fees was enhanced from Rs.50/- to Rs.500/- in case of money lending and pawn broking business and Rs.200/- in case of money exchange operations.

The Appellants filed a writ petition in the High Court of Andhra Pradesh challenging the Notification dated 11th April, 1987, inter alia, on the ground that Section 521 did not empower the Commissioner to notify the trades of money lending and pawn broking as being trades for which a licence is necessary. The Writ Petition came to be dismissed by a single Judge of the High Court on 18th of February, 1994. The single Judge, inter alia, held that the business of money lending and pawn broking were dangerous to property in the sense that they involved a risk to property of the persons who hypothecate the same with the money lenders and that having regard to the manner in which and the circumstances under which such business is carried on they are likely to create nuisance.

Against the judgment of the learned single Judge, the Appellants filed an Appeal. The Appeal came to be dismissed by the impugned Judgment dated 27th November, 1998. By the

impugned Judgment, the learned Judges have dis-agreed with the single Judge and held that the business of money lending or pawn broking is not dangerous to property. They have, however, held that these are operations which are likely to create a nuisance inter alia on the following reasoning: "Approaching the term in the background of the above meanings and definitions, more especially the concept of "nuisance in fact"/"nuisance per accidens", one can say that running of a money lending or pledge shop is likely to create nuisance to the residents of locality at times. Let us take a case where such a shop is set up in the thick of a residential locality inhabited by middle class and poor families and the proprietors resort to advertisements and other types of canvassing so as to lure the vulnerable sections of society to borrow money at high rates of interest by pledging the jewellery and so on. A section of population residing in that locality may feel annoyed or entertain a feeling of insecurity. The activity of pledging and money lending on security of articles held precious the families may affect the susceptibilities of the family members and other residents of the locality. The ramifications or the impact of the business may not necessarily be confined within the precincts of the shop, but it may stretch beyond that and percolate into the day to day life stream of the residents of the locality.

Let us take another example which equally holds good not only for the money lender's shop, but also for any other trade in a City. Supposing the shop is set up at a crowded place, just adjacent to, or encroaching on the foot path and the pursuit of the business involves visits by large number of customers. It is likely to cause obstruction or inconvenience to the passers-by. Thus, the location of a money lending or pawn broker's shop more often assumes good deal of importance. Viewed from this angle, the possibility of a professional money lender's shop causing nuisance in some degree or the other cannot be ruled out. It may not cause nuisance at all times and in all localities, but under certain situations or circumstances or at certain times, the running of such shop is likely to create nuisance to a section of members of public. That is enough to justify the formation of the opinion by the Commissioner. As already observed, the Court cannot substitute its own view on the question whether a particular trading activity is likely to create nuisance. If the Commissioner had reached the satisfaction that the trade or operation is likely to create nuisance either by its nature or by reason of the manner in which or the conditions under which the trading activity is carried on, that is sufficient to uphold the Commissioner's notification. The judicial review of the opinion reached by the Commissioner ought to be confined within limited parameters as indicated above.

We have heard the parties at length. The question for consideration is whether the Commissioner has powers under Section 521 of the said Act to insist that money lenders and pawn brokers only run their business on the basis of a licence issued by the Respondents. Section 521 reads as follows :

"521. Certain things not to be kept and certain trades and operations not to be carried on, without a licence :-
(1) Except under and in conformity with the terms and conditions of a licence granted by the Commissioner no person shall -

(a) keep, in or upon any premises, for any purpose whatever :

- (i) any article specified in Part I of Schedule 'P'.
- (ii) any article specified in Part II of Schedule 'P' in excess of the quantity of such article which may at any one time be kept in or upon the same premises without a licence;

(b) keep, in or upon any premises, for sale or for other than domestic use, any article specified in part III of Schedule 'P';

(c) keep, in or upon any building intended for or used as a dwelling or within fifteen feet of such building, cotton, in pressed bales or boars or loose, in quantity exceeding four cwts;

(d) keep or allow to be kept in or upon any premises, horses, cattle or other four footed animals -

(i) for sale;

(ii) for letting out on hire;

(iii) for any purpose for which any charge is made or any remuneration is received; or

(iv) for sale of any produce thereof;

(e) carry on, allow to be carried on, in or upon any premises -

(i) any of the trades or operations connected with trade specified in Part IV of Schedule 'P';

(ii) any trade or operation 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;

(f) carry on within the city or use any premises for the trade or operation of a carrier.

(2) A person shall be deemed to have known that a trade or operation is, in the opinion of the Commissioner, dangerous or likely to create a nuisance within the meaning of paragraph (ii) of clause (e) of sub-section (1), after written notice to that effect, signed by the Commissioner has been served on such person or affixed to the premises to which it relates.

(3) A person shall be deemed to carry on or to allow to be carried on a trade or operation within the meaning of paragraph (ii) of clause (e) of sub-section (1), if he does any act in furtherance of such trade or is in any way engaged or concerned therein whether as principal, agent, clerk, master, servant, workman, handicraftsman or otherwise.

(4) It shall be in the discretion of the Commissioner -

(a) to grant any license referred to in sub-section (1)

to such restrictions or conditions, if any, as he shall think fit to impose; or

(b) to withhold any such licence.

(5) Every person to whom a licence is granted by the Commissioner under sub-section (3) shall keep such licence in or upon the premises, if any, to which it relates.

(6) Nothing in this section shall be deemed to apply to mills for spinning or weaving cotton, wool, silk, or jute to any other large mill or factory which the Commissioner may, from time to time, with the approval of the Standing Committee specially exempt from the operation thereof."

It is admitted that the Notification is under Section 521(e)(ii). Section 521 provides for "certain things not to be kept and certain trades and operations not to be carried on without a licence". Sub-section 1 starts with the words Except under and in conformity with the terms and conditions of a licence granted by the Commissioner." Thus the whole purpose of Section 521 is to ensure that the Commissioner is in a position to regulate the trade or operation or to prevent things from being kept except on certain terms and conditions, which may be fixed by the licence. It, therefore, automatically follows 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 a useless formality and would not be authorised by Section 521.

It is with this view in mind that this Court had on 23rd of January, 2001 called upon the Respondents to produce a licence, which had been issued to money lenders and pawn brokers. This had been done with a view to see whether there was any term or condition which could be imposed by the Respondents on money lenders and pawn brokers.

At this stage it must also be mentioned 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 pursuance of the direction issued on 23rd of January, 2001, a copy of the licence issued by the Respondents had been produced. On a perusal of the licence it was clear that there was not a single term or condition, in that licence, which could apply to this trade or occupation. It was, however, sought to be submitted that there were blank spaces provided in the licence. It was submitted that in those blank spaces the terms and conditions regulation such trade and operations were hand-filled before a licence was issued. This oral submission was denied by the Appellants. The Appellants

pointed out that no licence was being issued and that all that was being done was that a receipt for the licence fee was being issued. Counsel for the Respondents was asked to verify this fact and let this Court know what the correct position was.

Written submissions have since been filed. In the written submissions it is admitted that no licence is being issued to the members of the Petitioner Association. It is now admitted that only receipts for the fees collected are issued. Now it is sought to be stated that on the receipt it is stamped that the offices should be kept clean. It is now stated that the regulation is to the extent of deciding the location, maintenance of cleanliness and regulating noise pollution. These are new points made out for the first time in the written submission. Uptill now the case has been that the Commissioner was of the opinion that this particular trade or operation was dangerous to life or is likely to create a nuisance i.e. under Section 521(e)(ii). Maintenance of cleanliness deciding location and regulating noise pollution would not fall within Section 521(e)(ii). Also factually it has not been shown how cleanliness is ensured or location is being controlled by means of licence. There is also no explanation as to how and by what term or condition noise pollution is sought to be regulated. In the receipt issued there is no regulation regarding noise pollution or location.

Faced with this position Mr. Nageshwar Rao relied upon the case of Chief Constable of the North Wales police V. Evans 1982 All E.R. 141, RV Radio Authority, ex parte Bull & another 1997 ALL.E.R. 561, M.A. Rasheed & Ors. vs. The State of Kerala 1974) 2 S.C.C. 687 and Narayan Govind Gavate & Ors. vs.

State of Maharashtra & Ors. (1977) 1 S.C.C. 133. Based on these authorities it is submitted that the opinion of the Commissioner as to whether any activity is dangerous or is likely to create nuisance is a subjective opinion. He submits that judicial review in such a case is very limited and the Court would not substitute its opinion for the opinion of the Commissioner. There can be no dispute with the legal proposition. However the opinion has to be based upon some relevant material. In the present case no material has been placed before us to show on what basis the Commissioner considers such businesses to be dangerous and are likely to cause nuisance. More importantly it has not been shown how such trades and occupation are regulated by the Respondent. The only circumstances are those extracted above from the impugned Judgment. However, it is not shown or averred that all shops are in residential areas inhabited by middle class and poor families or that all members of the Appellant Association issue advertisements or that all shops are in crowded areas. If one or two or some shops are set up on the thick of a residential locality inhabited by middle class or poor families or set up in a crowded place or issue an advertisement, the entire trade or occupation cannot be termed to be dangerous to life, health or property or likely to create a nuisance. To be noted that the opening part of Section 521 talks of "trades and operations". Similarly Section 521(e)(i) also talks of trades and operations. However, Section 521(e)(ii) uses the word "trade or occupation". Thus if a shop or some shops are set up in crowded areas or require any regulation, then it would be a matter for regulating that particular shop or

those particular shops by laying down appropriate conditions. Merely because a pawn broker or a money lender 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 money lending and pawn broking is dangerous or likely to create nuisance. It is clarified that this Court is not saying that the Commissioner cannot under Section 521(e)(ii) Notify a particular trade or operation, i.e. include all persons carrying on that particular trade or operation. In this view of the matter we are of the opinion that the impugned judgment cannot be sustained. The same is accordingly set aside. The Writ Petition of the Appellants is allowed. The Appeal stands disposed of accordingly. There shall be no Order as to costs.

JUDIS