

Khatki Ahmed Mushabhai vs Limdi Municipality on 20 November, 1978

Equivalent citations: 1979 AIR 418, 1979 SCR (2) 338

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, P.N. Shingal, A.P. Sen

PETITIONER:
KHATKI AHMED MUSHABHAI

Vs.

RESPONDENT:
LIMDI MUNICIPALITY

DATE OF JUDGMENT 20/11/1978

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SHINGAL, P.N.
SEN, A.P. (J)

CITATION:
1979 AIR 418 1979 SCR (2) 338
1979 SCC (1) 248

ACT:

Right to a licence-when the bye laws permit the licencing authority to. grant or to refuse licences, whether said to offend Art, 19(1) (a) of the Constitution of India, 1950.

HEADNOTE:

Dismissing the special leave petition, the Court,
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HELD: 1. No butcher, baker or circus manager can say that he has the unqualified right to get a licence on mere application. It is open to the licencing Council-Indeed, is obligatory on its part-to take note of all relevant circumstances and then decide whether, in the particular spot chosen by the particular applicant, a licence should be granted or not. [339C-D]

2. Various factors enter the verdict and the local

authorities are the best judge of the factual factors, not the Court especially, the Supreme Court at the third tier. The factual factors may be many, like the proximity to schools, public institutions and also residents of the locality plus the reaction or impact on those institutions and residents, the unreasonableness to grant licence to the same person or one for the father and another for the son, the need for an extra shop, other considerations which are germane from peace-keeping and welfare-oriented view-points etc. Certainly granting a lease solely because someone offers a large donation to the Municipality may not be correct. [339D. G, 340B]

3. No doubt Municipal discretion should be exercised rationally, not religiously nor ritually and judicial discretion should go into anxiously, not impetuously nor in disregard of the pragmatic guideline that local authorities are the best judges of local conditions. Of course, if irrelevant criteria or perverse application vitiate the decision, courts will guard the rule of law against little tyrants trampling over people's rights or local factions fouling the council's verdict. [340C-D]

In the instant case, the ground on which the Municipal body, has refused licence is not irrelevant and cannot be described as unreasonable within the meaning of Art. 19(6) of the constitution. [339C]

Mohd. Faruk v. M. P. State, [1970] 1 SCR 156; inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 2939 of 1978.

Appeal from the Judgment and order dated 4-10-1978 of the Gujarat High Court in Special Civil Application No. 1174 of 1977.

M. V. Gowswami for the Petitioner.

P. M. Raval, P. H. Parekh, C. B. Singh and M. Mudgal for the Respondent.

The order of the Court was delivered by KRISHNA IYER, J. The petitioner's counsel, in his fighting submission, argues that his client's fundamental right to a licence for a meat shop has been flouted by the little Limdi Municipality, founding himself on a decision of this Court in Mohd. Faruk, v. M. P. State⁽¹⁾. That decision hardly helps. There a byelaw was challenged as violative of Art 19(1)(g). Here there is no law whatever which bans the grant of meat licences. Indeed, there are three other licensed meat stalls and the petitioner himself had a meat licence in a shop leased to him by the same Municipality earlier which by efflux of time had expired. The law vests a discretion to be reasonably exercised in the content of citizen's fundamental right. The ground on which the

Municipal body has refused licence here is not irrelevant and cannot be described as unreasonable within the meaning of Art. 19(6) of the Constitution. The bye-laws permit the municipality, as the licensing authority, to grant or to refuse licences. No butcher, baker or circus manager can say that he has the, unqualified right to get a licence on mere application. It is open to the licensing council indeed, is obligatory on its part to take note of all relevant circumstances and then decide whether, in the particular spot chosen by the particular applicant" a licence should be granted. Various factors enter the verdict and the local authorities are the best judge of these factual factors, not the court, especially this Court sitting at the third tier.

The, Limdi Municipality is stated to be a small one with a population of around 25000. It is admitted that there are three licensed meat vendors including one who is the father of the petitioner. The claim of the petitioner is for a fourth licence. It is quite conceivable that the fourth may be supernumerary. It is quite understandable that the municipality may think that it is not reasonable to grant licence to the same person or one for the father and another for the son. Moreover, we cannot dismiss as irrelevant or obnoxious the consideration the strong feelings of the local people resulting in law and order problems. The proximity to schools, public institutions and also residents of the locality plus the reaction or impact on those institutions and residents maybe germane from peace-keeping and welfare oriented view-points. We agree that local bodies should not succumb to religious susceptibilities or fanatical sentiments in secular India and refuse licences where fundamental rights have to be respected. Even so, in the, totality of circumstances present in the present case, it is not possible for us to postulate that there has been an abuse of discretion or a perverse use of power. In this view, we decline to interfere. Certainly, the *municipi* (1) [1978] I SCR 156.

pal authority will take care to be alert and alive to the fundamental right of citizens and not refuse licences merely scared by mob sentiment or panicked by religious reaction.

In the instant case there is a composite lease-cum cum-lease of a meat shop and licence for carrying on trade in mutton. There is no obligation on the part of the municipality to grant a lease of its property to any one who asks for it merely for the asking. Granting a lease solely because some one offers a large donation to the municipality. as nearly happened here, may not be correct, which this local body will note. If the refusal of the lease or its renewal cannot be faulted, the question of grant of the licence does not arise. In this view also we (find it difficult to accede to the argument of the petitioner.

We agree that municipal discretion should be exercised rationally, not religiously nor ritually, but we also realize that judicial discretion should go into anxiously, not impetuously nor in disregard of the pragmatic guideline that local authorities are the best judges of local conditions. Of course, if irrelevant criteria or perverse application vitate the decision courts will guardian the rule of law against little tyrants trampling over people's rights or local factions fouling the council's verdict.

The Special Leave Petition is, therefore, dismissed.

S.R.

Petition dismissed

