

Khatki Ahmed Mushabhi

Vs

Limdi Municipality

Special Leave Petition (Civil) No. 2939 of 1978

(V. R. Krishna Iyer, A. P. Sen, P. N. Shinghal JJ)

20.11.1978

ORDER

1. 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. State of M. P.* ((1969) 1 SCC 853 : (1970) 1 SCR 156 : AIR 1970 SC 93). That decision hardly helps. There a bye-law was challenged as violative of Article 19(1)(g). Here there is no law whatever which bans the grant of meat licences. Indeed, there are three other licensed meat stall 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 context 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 Article 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.

2. The Limdi Municipality is stated to be a small one with a population of around 25,000. 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 of the strong feelings of the local people resulting in law and other problems. The proximity to schools, public institutions and also residents of the locality plus the reaction or impact on those institutions and residents may be 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 municipal authority will take care to be alert and alive to the fundamental rights of citizens and not refuse licences merely scared by mob sentiment or panicked by religious reaction.

3. In the instant case there is a composite lease-cum-licence-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.

4. We agree that municipal discretion should be exercised rationally, not 'religiously' nor ritually, but we also realize that judicial discretion should go into (sic) 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 guardian the rule of law against little tyrants trampling over people's rights or local factions fouling the council's verdict.

5. The special leave petition is, therefore, dismissed.

</html</html</h