

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT APPEAL NO.882 OF 2022 (LB-BMP)

BETWEEN:

ISLAND STAR MALL DEVELOPERS PVT. LTD.
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956
DEEMED TO BE REGISTERED UNDER
THE COMPANIES ACT, 2013
HAVING ITS OFFICE AT:
PHOENIX MARKET CITY, LOWER GROUND FLOOR
SY No.40 AND 41
DYAVASANDRA INDUSTRIAL AREA
KRISHNARAJAPURAM HOBLI
WHITEFIELD ROAD, OPPOSITE MAHADEVPURA
POST, BENGALURU-560 048
REP. BY ITS AUTHORISED SIGNATORY
GIRISH SHARMA
CHIEF FINANCIAL OFFICER

...APPELLANT

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI. SUNDARARAMAN M.V., ADVOCATE)

AND:

BRUHAT BENGALURU MAHANAGARA PALIKE
DEPUTY HEALTH OFFICER
MAHADEVPURA REGION
BENGALURU-560 048
REP. BY ITS COMMISSIONER

...RESPONDENT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SRI. B.L. SANJEEV, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER
DATED 13.07.2022 PASSED BY THE LEARNED SINGLE JUDGE IN
W.P. No.26090/2015 AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 12.08.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN**
J., PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This writ appeal is filed challenging the order dated 13.07.2022 passed by the learned Single Judge in Writ Petition No.26090/2015 (LB-BMP).

2. We have heard Shri. Dhyan Chinnappa, learned senior counsel as instructed by Shri. Sundararaman M.V, learned counsel appearing for the appellant and Shri. S.S. Naganand, learned senior counsel as instructed by Shri. B.L. Sanjeev, learned counsel appearing for the respondent.

3. The appellant is a Company incorporated under the Companies Act, 1956 and has established a shopping mall known as 'Phoenix Market City' at Dyavasandra Phase-II Industrial Area, Bengaluru. For the purpose of installing and operating a diesel generator set in the premises, the appellant obtained a power licence from the respondent on 30.12.2011 on payment of Rs.10,00,000/-. Pursuant to the demand dated 24.03.2012, the appellant had renewed the licence. By letter dated 19.02.2013, the appellant sought

clarification regarding the statutory provision under which such renewal was required. Pending clarification, the appellant paid Rs.10,00,000/- towards the renewal fee and Rs.2,50,000/- towards penalty on 17.04.2013, whereupon the licence was renewed up to 31.03.2014. By communication dated 19.03.2014, the respondent informed the appellant that the matter had been referred to its Law Department and called upon it to renew the licence. The respondent thereafter informed the appellant that the demand was made under Section 354 of the Karnataka Municipal Corporations Act, 1976. By reply dated 15.04.2014, the appellant informed the respondent that the said provision was inapplicable.

4. By notice dated 28.02.2015, the respondent called upon the appellant to renew the power licence under the Suvarna Arogya Paravanagi Scheme, 2007. By letter dated 12.05.2015, the appellant sought the relevant provisions of the Scheme and disputed its liability to obtain any further renewal. The appellant challenged the notice dated 28.02.2015 in Writ Petition No.26090/2015.

5. The learned Single Judge held that a diesel generator set is machinery which generates electrical energy by the combustion of diesel and that its installation, therefore, requires permission under Section 354 of the Karnataka Municipal Corporations Act. The contention that the said provision applies only to the construction or establishment of a factory, workshop or workplace and not to the installation of a diesel generator set was rejected, having regard to the express language of Section 354(1)(b) of the Karnataka Municipal Corporations Act, which applies to the installation, in any premises, of machinery or a manufacturing plant driven by steam, water, electric or other power. It was further noticed that the writ petitioner had obtained the requisite permission and had renewed the same from time to time. The learned Single Judge, therefore, held that the writ petitioner was bound to continue renewing the permission and accordingly dismissed the writ petition.

6. The learned senior counsel appearing for the appellant contends that Section 354 of the Karnataka

Municipal Corporations Act contemplates only prior permission for the construction or establishment of a factory, workshop or workplace, or for the installation of machinery specified therein. The permission contemplated by the provision relates only to the act of construction, establishment or installation and does not require periodical renewal for the continued operation of the machinery. Once permission for installing the diesel generator set had been obtained, the requirement under Section 354 of the Karnataka Municipal Corporations Act stood satisfied. The learned Single Judge, therefore, erred in treating such permission as a licence requiring renewal from time to time.

7. It is further contended that the Karnataka Municipal Corporations Act maintains a clear distinction between 'permission' under Section 354 and a renewable 'licence' under Section 353. The latter applies to the continued use of premises for the purposes specified in Schedule X, whereas Section 354 of the Karnataka Municipal Corporations Act contains no provision either for renewal of the permission or for the levy of a renewal fee. The Suvarna

Arogya Paravanagi Scheme, 2007, relied upon by the respondent, is an optional scheme applicable to trade licences under Section 353 of the Karnataka Municipal Corporations Act and not to permissions granted under Section 354 of the Karnataka Municipal Corporations Act. It is also submitted that the appellant's premises constitute a shopping mall and do not fall within the categories of factory, workshop or workplace within the meaning of Section 354(1)(a) of the Karnataka Municipal Corporations Act. The demands made on different occasions, without identifying any statutory provision authorising renewal or the levy of a renewal fee, are therefore contended to be arbitrary and without authority of law.

8. The learned senior counsel appearing for the respondent, on the other hand, contends that the installation and operation of the diesel generator set in the appellant's premises require permission under Section 354 of the Karnataka Municipal Corporations Act. It is contended that the Commissioner is empowered to regulate such installations and that the permission granted is required to

be renewed annually. Since the appellant had obtained the permission and had also renewed it from time to time, it cannot now dispute its obligation to renew the same.

9. The learned senior counsel would also contend that the provisions of Section 443 of the Karnataka Municipal Corporations Act have not been considered by the learned Single Judge. It is submitted that Section 443 of the Karnataka Municipal Corporations Act specifically reads as under:-

"Section 443 - General Provisions regarding licences, registrations and permissions.-(1) Every licence or permission granted under this Act or any rule or bye law made under it shall specify the period, if any, for which and the restrictions, limitations and conditions subject to which the same is granted and shall be signed by the Commissioner.

(2) (a) Save as otherwise expressly provided in or may be prescribed under this Act for every such licence or permission fees shall be paid in advance on such units and at such rates as may be fixed by the corporation:

Provided that not more than one fee shall be levied in respect of any purpose specified in more heads than one of Schedule X if such heads form part of a continuous process of manufacture and the fee so charged shall not

exceed the highest fee chargeable in respect of any one of the said purposes.

[Provided further that notwithstanding anything contained in this Act, fee may be paid in advance in a lump sum for a period of five years by the applicant for grant of license, registration or permission or at his choice for each year from the commencement of first year of such period]

(b) The corporation may compound for any period not exceeding three years at a time with the owner of any mill or factory for a certain sum, to be paid in lieu of the fees payable in respect of such mill or factory.

(c) Every order of the Commissioner or other municipal authority granting or refusing a licence or permission shall be published on the notice board of the corporation.

(3) Every order of the Commissioner or other municipal authority refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.

(4) [Notwithstanding anything contained in this Act], any licence or permission granted under this Act or any rule or bye-law made under it, may at any time be suspended or revoked by the Commissioner, if any of its restrictions or conditions is evaded or infringed by the grantee or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule, bye-law or regulation made under it, in any matter to which such

licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud.

(5) It shall be the duty of the Commissioner to inspect places in respect of which a licence or permission is required by or under this Act, and he may enter any such place between sunrise and sunset, and also between sunset and sunrise if it is open to the public or any industry is being carried on at the time, and if he has reason to believe that anything is being done in any place without a licence or permission, where the same is required by or under this Act, or otherwise than in conformity with the same, he may at any time by day or night without notice enter such place for the purpose of satisfying himself whether any provision of law, rules, bye-laws, regulations, any condition of a licence or permission or any lawful direction or prohibition is being contravened and no claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under this sub-section by the Commissioner or any person to whom he has lawfully delegated his powers or by the use of any force necessary for effecting an entrance under this sub-section.

(6) When any licence or permission is suspended or revoked or when the period for which it was granted or within which application for renewal should be made has expired, the grantee shall for all purposes of this Act, or any rule or bye-law made under it be deemed to be without licence or permission made until the order suspending or revoking the licence or permission is cancelled or subject to sub-section (10) until the licence or permission is renewed, as the case may be.

(7) *Every grantee of any licence or permission, shall at all reasonable times while such licence or permission remains in force, produce the same at the request of the Commissioner.*

(8) *Whenever any person is convicted of an offence in respect of the failure to obtain a licence or permission or to make registration required by the provisions of this Act, or by any rule or bye-law made under this Act, the magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the corporation the amount of the fee chargeable for the licence or permission or for registration and may in his discretion also recover summarily and pay over to the corporation such amount, if any, as he may fix as the costs of the prosecution.*

(9) *Such recovery of the fee under sub-section (8) shall not by itself entitle the person convicted to a licence or permission or to registration as aforesaid.*

(10) *The acceptance by the corporation of the pre-payment of the fee for a licence or permission or for registration shall not entitle the person making such pre-payment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration, but an applicant for the removal of a licence or permission, or registration, shall until communication of orders on his application, be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not communicated to the applicant within forty five days*

after the receipt of the application by the Commissioner, the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application and subject to the provisions of this Act, the rules, bye-laws, regulations and all conditions ordinarily imposed."

The contention is therefore that the trade licences have to be renewed in terms of Section 443 of the Karnataka Municipal Corporations Act and that the appellant, who has taken a trade licence for the diesel generator set cannot be then permitted to turnaround and contend that the trade licence need not be renewed.

10. The learned senior counsel appearing for the respondent has placed reliance on the following decisions:-

- ***M/s. Premier Sea Foods Exim Private Limited v. M/s. Caravel Shipping Services Private Limited*** reported in **2022 LiveLaw (SC) 54**; and
- ***Roche Products Limited v. Collector of Customs and Another*** reported in **1989 Supp (2) SCC 532**.

11. We have considered the contentions advanced. Section 354(1) of the Karnataka Municipal Corporations Act, reads as follows:-

"354. Application to be made for construction, establishment or installation of factory or workshop or work-place in which steam or other power is to be employed.- (1) Every person intending to,-

- (a) construct or establish any factory, workshop or work-place in which it is proposed to employ steampower, waterpower, or other mechanical power or electric power, or*
- (b) to install in any premises any machinery or manufacturing plant driven by steam, water, electric or other power as aforesaid,*

shall before beginning such construction, establishment or installation make an application in writing to the Commissioner for permission to undertake the intended work.

12. It is therefore clear from the said provision that a person intending to install any machinery or plant driven by steam, water, electric or other power is required to make an application in writing for "permission" to undertake the intended work. The requirement therefore is only for a permission to undertake the work and not for taking a license for the said purpose.

13. The learned senior counsel appearing for the respondent fairly concedes that there is no provision in the Act, the Schedule or the Rules prescribed thereunder requiring a person who operates a generator in an establishment to take a license for the same. The provision in Section 354(1) of the Karnataka Municipal Corporations Act being for a permission, it is clear that, all that is required is a permission and not a trade licence. Though, the learned senior counsel would contend that there is a requirement to conduct periodical inspections and to certify the safety of the equipment, we are of the opinion that in the absence of a provision to take out a license for a diesel generator set installed in the premises of a mall, no amount of reasoning can do duty for a prescription that such licence/trade licence is required for the operation of such a generator. The parties are in *consensus* with the position that the only provision regarding the diesel generator set within the premises of a mall is Section 354 of the Karnataka Municipal Corporations Act and since the provision requires only a permission to undertake the intended work, the finding of the learned

Single Judge that the writ petitioner had obtained a trade licence and renewed it from time to time, cannot be a reason to hold that such trade license and its periodical renewal is required by law. Since, what is contemplated by the applicable section is only a one time permission, the fact that the appellant had taken a trade licence and cannot work to its detriment.

14. In the above view of the matter, we are of opinion that the judgment of the learned Single Judge requires interference. In the absence of any specific provision requiring renewal of a trade license for the installation of a diesel generator set every year, the finding of the learned Single Judge that the impugned notice issued by the respondent cannot be found fault with, is an incorrect proposition.

15. The shopping malls within the territorial jurisdiction of BBMP do not require any trade license. However, the individual business establishments/shops who carry on business within the shopping mall require a trade license from BBMP. The owners of shopping mall/commercial

complex/business establishments would only pay the annual property tax in terms of the relevant provisions of the BBMP Act. The shopping mall/business establishments require an uninterrupted power supply. For that purpose, they install power generators in the designated place within the compound of the mall. For the purpose of installation of the generator set for production of electrical energy, it is a requirement under Section 354 of the Karnataka Municipal Corporations Act to obtain permission from the BBMP. For the purpose of installation of the diesel generator set, the owner of the mall is required to obtain necessary permissions from the Electrical Department and Karnataka State Pollution Control Board. The applicant is required to submit a certificate of fitness issued by the agency, which maintains the diesel generator set, which is called as AMC. In addition, the applicant is also required to obtain necessary permission/NOC/ certificate from Fire Force Department once in six months.

16. In present case, the BBMP is requiring the appellant to obtain trade licence for diesel generator set and

renew it annually by paying the license fee. Except the paper work of issuance of the license by collecting the prescribed fee, no other service is being rendered by the BBMP, let alone the inspection and verification of the fitness of the diesel generator set. All the required inspections and certification are being done by the Electrical Inspector and the KSPCB. Therefore, the insistence of BBMP on the appellant to obtain the trade license, renewal of trade licence obtained annually by paying huge license fee cannot be sustained. If the diesel generator set is installed and maintained by the person/entity other than the owner/occupier of the mall, then it amounts to a Trade/business, which require a separate trade license. In the present case, the appellant itself is the owner of diesel generator set, it only maintaining the same.

17. It is well established that a license fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of *quid pro quo* must be there between the services rendered and the fee charged, so that the license fee is commensurate with

the cost of rendering the services, though, the exact mathematical precision/arithmetical equivalence is not expected. As observed above, there is no element of services rendered by the respondent while issuing power license, so as to demand huge sum of Rs.10,00,000/- that too in the year 2012-13 for mere issuance of license without there being any corresponding duties attached to it.

18. Having considered the contentions advanced, we are of the opinion that the contentions raised in this appeal as well as in the writ petition merit consideration by this Court.

19. In the result:-

- (i) The writ appeal is ***allowed***.
- (ii) The order dated 13.07.2022 passed by the learned Single Judge in Writ Petition No.26090/2015, is set aside.
- (iii) Writ Petition No.26090/2015 is *allowed-in-part*.
- (iv) It is declared that there is no requirement under law for renewal of trade licence in

respect of diesel generator set operated by the writ petitioner.

- (v) The further prayer for refund of the license fee already paid is declined.

All pending interlocutory applications shall stand disposed of.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

cp*