

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WA.No. 304 of 2015 () IN WP(C).32209/2014

AGAINST THE JUDGMENT IN WP(C) 32209/2014 of HIGH COURT OF
KERALA

APPELLANT(S)/PETITIONER:

M/S. SECURE SANDS AND GRAVELS
OLAVATTOOR P.O., KONDOTTY VIA, MALAPPURAM DISTRICT
REPRESENTED BY ITS PARTNER, MR.MOHAMMED FAROOK.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.ANAND (SR.)
SRI.K.M.ANEESH
SRI.ADARSH KUMAR

RESPONDENT(S)/RESPONDENTS:

1. THE PULIKKAL GRAMA PANCHAYATH
PULIKKAL P.O., MALAPPURAM DISTRICT
PIN-673637, REPRESENTED BY ITS SECRETARY.

2. THE PRESIDENT,
PULIKKAL GRAMA PANCHAYATH, PULIKKAL P.O.
MALAPPURAM DISTRICT-673637.

3. THE KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, MALAPPURAM.

R1&2 BY ADV. SRI.T.R.RAVI & P.S.MURALI
ADV. SRI. K. RAMACHANDRAN FOR INTERVENING
RESPONDENTS
SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

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W.A. No. 304 of 2015 – A
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Dated this the 3rd day of March, 2015.

JUDGMENT

Shaffique, J.

Petitioner has approached this Court challenging the judgment dated 3-12-2014 in W.P. (C) No. 32209/2014. The Writ Petition was filed challenging Ext. P10 order passed by the Panchayath refusing to grant license to the petitioner for running an M Sand Crusher Unit. Ext. P10 order is dated 13-11-2014, in which it is stated that a decision has been taken by the Panchayath Committee to reject his application for the reason that there were complaints from the people of the locality for and against the establishment of the unit. It was, inter alia,

contended that by issuing Ext. P10 resolution, the Panchayath has not considered the application for license in terms of Section 233 of the Panchayath Raj Act. According to the petitioner, the Secretary, as per Ext. P7 order had given a report in terms of Sec. 233 (3) and thereafter it was for the Panchayath to consider the application, after taking into consideration various other reports to be obtained from the competent authorities in terms of sub Sec. (4) of Section 233. Since the Panchayath has not taken any such action, and it has passed only a resolution, basing its decision on the opinion of there had been objections as well as support to the petitioner, it is not a decision taken in accordance with law, is the complaint of the petitioner.

2. Learned Single Judge, at the admission stage itself dismissed the Writ Petition relegating the petitioner to avail the alternate remedy of appeal by approaching the Tribunal for Local Self Government Institutions .

3. It is aggrieved by the aforesaid judgment, this Writ

Appeal has been filed. The main contention urged by the petitioner was that the Panchayat has not expressed the jurisdiction vested in it, in accordance with law. The non-consideration of his application in accordance with the procedure prescribed, ought to have been considered by the learned Single Judge before relegating the petitioner to avail of the alternate remedy in the argument.

4. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the Panchayath, the learned counsel appearing for the intervening respondents as well as the learned counsel appearing for the Pollution Control Board.

5. There cannot be any dispute regarding the statutory provision, that when an application is filed by a person seeking permission for construction of factory and installation of machinery, the Panchayath is bound to consider the application strictly in terms of the provisions contained in Sec. 233 of the Panchayath Raj Act. On receipt of an application under Section

233 (1), the Secretary has to consider the same and prepare a report in terms with Section 233 (3) and thereafter place the same before the Panchayat for evaluation under Section 233 (4) of the Act. Ext. P7 is the report of the Secretary prepared under Section 233 (3) which favours the petitioner.

6. Going through Ext. P10, we do not think that the Panchayaath was justified in rejecting the application of the petitioner without considering the matter in terms of sub Sec. (4) of Section 233 which contemplates the Panchayath to consider the merits and demerits of the application based on the report from various authorities, including the Inspector of Factories, District Medical Officer and Divisional Fire Officer, etc. However, if the Industry is recommended by the Industries Department authorised by the Kerala State Pollution Control Board, such consideration can be dispensed. There is no such material to indicate the said fact.

7. The learned counsel appearing for the Panchayath

submits that there had been some objection from the people in the locality regarding the grant of license. This fact is supported by the learned counsel appearing for the intervening respondents as well. But we are of the view that despite any such objection from the people in the locality, when an application is submitted under Sec. 233 read with Sec. 232, the Panchayath is bound to consider the same in accordance with the procedure prescribed. Of course, they may be entitled to take into consideration the complaints of the people in the locality as well. But that does not mean that the apprehension expressed by the people in the locality alone is binding in the Panchayat. The Panchayath has to take a decision in accordance with law, and after getting the opinion of the competent authorities as prescribed under the Statute.

8. Under such circumstances, we are of the view that an opportunity has to be granted to the petitioner to get his application considered in accordance with law. For that reason,

the judgment of the learned Single Judge is liable to be set aside.

In the said circumstances, this Writ Appeal is disposed of as under:

- i) *We set aside the judgment of the learned Single Judge.*
- ii) *Ext. P10 in the Writ Petition is quashed.*
- iii) *There will be a direction tot he Panchayath to consider the application of the petitioner in terms of Sub Section (4) of Section 233 of the Panchayath Raj Act after hearing all the affected parties.*

Sd/-ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/-A.M.SHAFIQUE,
JUDGE

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P.S.toJudge