

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 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 647 of 2015 () IN WP(C).462/2015

AGAINST THE JUDGMENT IN WP(C) 462/2015 of HIGH COURT OF KERALA
DATED 09-02-2015

APPELLANT(S)/ADDITIONAL 2ND RESPONDENT :-

HARIDAS P.R. AGED 48 YEARS
S/O. RAMAN, PALACKAL HOUSE, PERUMBALLOOR
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN-

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA

RESPONDENT(S)/PETITIONER AND 1ST RESPONDENT :-

1. SIYAD HASSAN, AGED 24 YEARS
S/O. MUHAMMED SHAJI, VALLIKKADA HOUSE, MUVATTUPUZHA PO
ERNAKULAM DISTRICT, PIN-686661
2. MARADY GRAMA PANCHAYATH
MARADY PO, MUVATTUPUZHA VIA, ERNAKULAM DISTRICT
PIN-686673 REPRESENTED BY ITS SECRETARY

R2 BY ADV. SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
BY SRI.BABU JOSEPH KURUVATHAZHA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.647 of 2015

Dated this the 24th day of March 2015

J U D G M E N T

Shaffique, J.

This appeal has been filed by the additional 2nd respondent in W.P.(C) No.462 of 2015 challenging the judgment dated 9.2.2015, by which, the writ petition filed by the first respondent herein was allowed and a direction was issued to the second respondent Panchayat to issue the licence in favour of the writ petitioner (hereinafter referred to as 'petitioner') in physical form.

2. The writ petition was filed by the petitioner seeking the following reliefs :-

- "(i) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondent to issue formal licence in physical/paper form, certifying that petitioner enjoys the licence as contemplated under Kerala Panchayat Raj (Issue of Licence to Dangerous, Offensive trades and Factories), Rules 1996, in pursuance to Ext.P2 application, forthwith;
- (ii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondent to consider and dispose of Ext.P5 representation, forthwith."

3. The facts involved in the writ petition would disclose that the petitioner submitted Ext.P2 application for getting

licence under Sec.233 of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act'). Since no orders were passed, he again submitted Ext.P5 representation for issuing the D & O licence. Since no orders were passed by the Panchayat, the writ petition was filed inter alia contending that the petitioner has entitled to deemed licence in terms of Secs.233 and 232 of the Act.

4. After taking into consideration the respective contentions urged by the parties, the learned Single Judge formed an opinion that since the application, Ext.P2 has not been rejected within the time specified in terms of Sec.233 of the Act, the petitioner is entitled for deemed licence. Further, the D & O licence also ought to have been issued in terms of Rule 12(3)(c) of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 within 30 days from the date of application and since the same has not been done, a direction was issued to the Grama Panchayat to issue licence in physical form in response to Ext.P5 application.

5. It is inter alia contended by the appellant that the petitioner had misrepresented the whole facts. Though in

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Ext.P2 application no manufacturing process has been stated, there are certain lacuna in the application and the petitioner had misled the Panchayat by giving wrong information. Though the Panchayat decided to permit the petitioner to start a Unit for packing of winding wires, the petitioner's intention was to have a manufacturing process, by which, the winding wires are brought, it is heated, extended, reduced to a particular size and thereafter it is winded, bundled and packed. This, according to the appellant, amounts to manufacturing process, which is clear from the Consent to operate issued by the Pollution Control Board (Ext.P3). It is also submitted that Ext.P1, the certificate issued by the District Industries Centre indicates that there is some sort of manufacturing being carried out. The item of manufacture is shown as Straightened Wire Rods, Binding Wires and HB Wires of various size, which, according to the learned counsel for the appellant, clearly indicates that the intention of the petitioner is to have an establishment of manufacturing process and therefore, Ext.P2 application or Ext.P5 representation for issuing D & O licence cannot be the basis for deemed licence.

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6. Learned counsel appearing for the first respondent/petitioner would however submit that they do not intend to have any manufacturing process and what they intend to do was as requested in Ext.P2 application. Further it is stated that they have all the required permission from the competent authorities and therefore, there is no question of the Panchayat refusing to grant the licence.

7. Learned counsel appearing on behalf of the Panchayat would submit that they have taken a decision to issue D & O licence in terms of Ext.R1(a) dated 4.5.2014, the translation of which reads as under :-

"Committee discussed the applications for D&O Licence submitted by Sri.Syad Hassan, Binu Elias, Fasil K Meeran and Valuka (M) Moovadupuzha. Committee considered the application submitted for setting up a Unit for packing up of Winding Wires in bundles of 25 Kg. Unit envisage bringing Winding wire bundles weighing 400 Kg and to re-bundle them into bundles weighing 25 Kg. Since no other manufacturing process is involved Committee decided to permit Secretary to issue Licence in due after NOC is given by other departments."

It is therefore submitted that as far as the Panchayat is concerned, the licence will be granted in terms of Sec.233 r/w Sec.232 of the Act only for the limited purpose of packing of

Winding Wires in bundles of 25 Kg from a larger bundle weighing 400 Kg.

8. Having regard to the aforesaid submission, we do not think that the apprehension expressed by the appellant is called for at this stage. The learned Single Judge has further stated that the Grama Panchayat shall issue licence in physical form only on the petitioner complying all other statutory parameters, if any. Since the Panchayat has decided to grant the licence in terms of Ext.R1(a) decision of the Panchayat by using 68 HP as per the Consent issued by the Pollution Control Board, we do not think that the aforesaid judgment calls for any interference.

9. If the appellant has a case that in violation of the conditions of licence issued to the petitioner, he is undertaking a manufacturing process, it shall always be open for the appellant to take up the matter before the Panchayat or other competent authorities. The Panchayat also shall ensure that no activity other than what is permitted in terms of Ext.R1(a) and by using the motor as specified in the Consent issued by the Pollution Control Board is being conducted by the petitioner.

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We do not find any reason to interfere with the judgment of the learned Single Judge. Hence, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt