

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WA.No. 910 of 2015 IN WP(C).7597/2015

AGAINST THE JUDGMENT IN WP(C) 7597/2015 DATED 23/03/2015

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APPELLANTS/RESPONDENTS 1 & 2 :

1. CHELAKKARA GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, CHALAKKARA THRISSUR
2. THE SECRETARY CHELAKKARA GRAMA PANCHAYATH
CHELAKKARA THRISSUR PIN-680587

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENT/WRIT PETITIONER :

V.GOVINDAN KUTTY
MANAGING PARTNER
DIVYA METAL INDUSTRIES(HOT MIX PLANT) NATTYANCHIRA
CHELAKKARA, THRISSUR DISTRICT
RESIDING AT VELLAMKANDATH HOUSE, ENGAKKAD P.O.,
VADAKKANCHERRY THRISSUR DISTRICT 680 587

BY ADV. SRI.MILLU DANDAPANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 910 OF 2015

Dated this the 26th day of May, 2015

JUDGMENT

Shaffique, J.

The respondents 1 and 2 in the writ petition are the appellants. They challenge the judgment dated 23.03.2015 in W.P.(C) No.7597 of 2015.

2. The writ petition was filed by the respondent herein who is hereinafter referred to as the petitioner, seeking to quash Ext.P16, a decision taken by the Panchayat refusing to grant permission to the petitioner to set up a 'hot mixing plant' and for a declaration that the petitioner is having deemed license in terms of Section 233(3) of the Panchayat Raj Act r/w Rule 12(3)(3)(c) of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996.

3. Petitioner contended that though application was filed before the Panchayat seeking license, after obtaining all other statutory permissions including consent to establish the

unit from the Pollution Control Board, the Panchayat refused to grant license on account of which petitioner had to prefer an appeal before the Tribunal for Local Self Government Institutions. The Tribunal, in Appeal No.1150/2014, by judgment dated 07.0.12015, issued following directions:

"In the result, impugned decision and consequential notice are set aside and appeal allowed. Appellant is directed to cure the defect in the application by furnishing the site plans. Secretary shall have file a proper report as contemplated under Sub-section (3) of Section 233 of the Kerala Panchayat Raj Act. Panchayat shall obtain report as contemplated under Clause (b) and (c) of sub-section (4). Thereafter, in compliance with sub-section (3) of Section 233 of the Kerala Panchayat Raj Act, Panchayat shall consider the application and report of Secretary and the documents issued by authorities as provided under sub-section (4) and dispose the application in accordance with law."

4. Pursuant to the Tribunal's decision, the Panchayat, again took a decision as Ext.P16 whereby the request of the petitioner for putting up hot mixing plant has been rejected on the ground that it is dangerous to the public life and property. Further it is stated that the Grama Sabha unanimously took a

decision not to grant permission and hence retained the decision taken earlier.

5. The Panchayat by filing counter affidavit inter alia contended that the petitioner had no legal right to seek for the said relief. It is stated that the Panchayat Committee has taken a decision in accordance with law relying upon the statutory provisions. That apart, the Panchayat took an unanimous decision based on the decision of the Grama Sabha as there was apprehension regarding pollution being caused. It is also contended that the petitioner had not complied with the statutory obligations in the matter.

6. Learned Single Judge, after elaborately considering the factual and legal issues involved in the matter, allowed the writ petition and directed that the petitioner's application shall be processed and necessary D & O license has to be given to the petitioner within one week subject to the fulfillment of other statutory requirements. It was further observed that the D & O license being granted to the petitioner by the Panchayat shall be subject to the report of the Divisional Fire Officer.

7. Learned counsel for the appellants contends that the learned Single Judge ought not have issued such a direction as it is well within the realm of the jurisdiction of the Panchayat to issue license and issue of mandamus was not warranted under such circumstances. That apart, the Divisional Fire Officer's report, which was a mandatory condition, should not have been waived or kept pending by the learned Single Judge. In the absence of such report, the Panchayat is not under obligation to issue license to the petitioner. It is further contended that the learned Single Judge had made certain remarks about the committee for delaying the consideration of the application for license. Learned counsel submits that the facts involved in the matter and the documents produced reveal that there is no delay at all. However, a decision has been taken by the Panchayat in accordance with the statutory provisions. Therefore, remarks made by learned Single Judge has to be expunged.

8. Having heard the submissions of learned counsel for the appellants and having perused the records, we are of the view that the Panchayat has taken a decision well within the time

prescribed under the Statute and therefore, the learned Single Judge was not justified in making any remarks that the Panchayat had delayed the matter. However, as far as the direction to issue license to the petitioner is concerned, the learned Single Judge observed that the reasons stated by the Panchayat Committee for denying license was not justified. The decision was taken only on the basis that the members of the Grama Sabha had objected to the grant of license. In Ext.P16 decision no other infirmity had been pointed out. Under such circumstances it was well within the jurisdiction of the learned Single Judge to issue such directions especially when the Tribunal in its decision has directed the Panchayat to consider the application for license in the light of the observations made in the said judgment, which is also extracted above. Under such circumstances we do not think that the direction issued by learned Single Judge is in any way illegal.

9. As far as the report of the Divisional Fire Officer is concerned, appropriate directions had been issued by learned Single Judge by stating that the license issued will be subject to

the report of the Divisional Fire Officer. Under such circumstances even in the absence of report of Divisional Fire Officer, license can be issued to the petitioner and if the report is against the petitioner, Panchayat will be in a position to revoke the license.

Having regard to the factual circumstances as stated above, we do not think it necessary to interfere with the judgment of the learned Single Judge. We do not find any ground to interfere and accordingly the Writ Appeal is dismissed. The appellants are granted two weeks time to comply with the directions issued by the learned Single Judge.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

WA No. 910 of 2015

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