

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 124 of 2015 (M)

PETITIONER :

**SMT. BEENA BENCY, AGED 47 YEARS,
W/O. BENCY JOHN, PROPRIETRIX,
ST. THOMAS HOLLOW BRICKS,
KIZHAKKUMBHAGOM.P.O., NIRANAM,
RESIDING AT KANNAMMALIL PUTHENPARAMBIL,
VEEYAPURAM P.O, HARIPAD, ALAPPUZHA DISTRICT-690 514.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.ASHA BABU
SMT.AMMU CHARLES
SRI.G.RENJITH
SMT.JINNU SARA GEORGE**

RESPONDENT(S):

- 1. NIRANAM GRAMA PANCHAYAT,
KIZHAKKUMBHAGAM.P.O., NIRANAM,
PATHANAMTHITTA-689 621.**
- 2. THE LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM-695 001.**

**R1 BY ADVS. SRI.S.NARAYANAN NAIR
SRI.K.PUSHPARAJAN ACHARY
R2 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015 , THE COURT ON 29-10-2015 DELIVERED THE
FOLLOWING:**

WP(C).No. 124 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE ORDER DATED 4-3-2014 ISSUED BY R1 ALONG WITH TRANSLATION.
- P2. TRUE COPY OF THE ORDER DATED 15-12-14 IN APPEAL NO. 420 OF 2014 ON THE FILE OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- P3. TRUE COPY OF THE RECEIPT NO.83 DATED 11/5/2009 ISSUED BY THE NIRANAM GRAMA PANCHAYAT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.124 of 2015

Dated this the 29th day of October, 2015

JUDGMENT

The petitioner is running a hollow bricks unit within the Niranam Grama Panchayat in Building No.4/105B in Pathanamthitta District. The petitioner alleges that the unit was started after obtaining consent from the neighbours and all requisite licenses from the Panchayat. The Kerala State Pollution Control Board, the Inspector of Factories and Boilers and the Industries Department have also issued the necessary consent and other letters enabling the petitioner to run the unit; it is alleged.

2. According to the petitioner, when the license granted by the first respondent Panchayat expired due to some unfounded objections levelled by somebody, the first respondent Panchayat refused to renew the license. The Secretary declined the

license by order dated 4.3.2014. Since the order has been issued by the Panchayat as the Panchayat alone has powers to grant or decline a license, the Tribunal for Local Self Government Institutions was moved which stayed the order for a short while. The Panchayat filed an objection taking the ground that the application is not maintainable before the Tribunal since there is a provision for appeal to the Panchayat against the refusal to grant license by the Secretary. Taking the view that the Tribunal has no jurisdiction, the appeal was rejected on the ground of lack of jurisdiction. Licenses are granted by the Panchayat under Section 232 of the Kerala Panchayat Raj Act. The petitioner points out that since the grant of license is within the power of the Panchayat, renewal is also within the powers of the Panchayat. The Secretary on his own accord, therefore, has no authority to pass orders. It is with this background the petitioner has come up before this Court.

3. In the counter affidavit filed by the first

respondent, it was contended as follows:

The license was refused to the petitioner on account of a complaint by one Shri.Yohannan residing adjacent to the unit of the petitioner who is a necessary party. He has not been impleaded in the writ petition. Hence, the writ petition is bad in law for non-jointer of the necessary parties. It is contended that on 11.5.2009, the petitioner managed to obtain a license for the manufacture and sale of hollow bricks for a period up to 31.3.2010. The license was obtained without disclosing the details of machinery used in the unit with an intention to avoid the permission from the Panchayat required under Section 233 of the Kerala Panchayat Raj Act. During the subsequent years, she had not obtained the renewal of the license. It is contended that the petitioner applied for the license during 2013-2014 which was rejected by the Secretary of the Panchayat. The rejection was challenged by filing Appeal No.1099/2013 before the Tribunal for

Local Self Government Institution. However, at the time of hearing, it was withdrawn as not pressed. Thereafter the petitioner again applied for license under Section 233 of the Kerala Panchayat Raj Act.

It is contended that as per the direction of this Court in WPC No.14005/2013 filed by the petitioner and WPC No.11258/2013 filed by Sri.Yohannan, the Secretary disposed of the application for license by rejecting the application. The said proceedings dated 4.3.2014 bearing No.C4/2348/13/ was challenged before the Tribunal by filing Appeal No.420/2014. The Tribunal found that the appeal was filed against the refusal of license by the Secretary and the same would not come in any of the categories specified under Sub Sections 4 and 5 of Section 276 of the Kerala Panchayat Raj Act 1994. Therefore, it was held that the appeal was not maintainable and accordingly, the Tribunal dismissed the appeal with option to file appeal under Section 276(1) before the Panchayat within thirty days. The scheme of

Panchayat Raj Act has been laid down giving different legal footings to the Secretary and Panchayat. The term Panchayat has been defined as a body corporate. The Secretary is the licensing authority to allow licenses under Sub Section (1) of Section 232. Rule 5 of Kerala Panchayat Raj (Issue of License to Dangerous and Offensive Trades and Factories) Rules 1996 which provides that the owner or occupier of every place used for the purposes specified in Schedule I should submit application for license before the Secretary who shall dispose of the application either by issuing or refusing in public interest as stipulated under Rule 6. Therefore, it is an independent power envisaged under Section 185 (B) which prevents the interference of the Panchayat. The third schedule appended to Section 166 has enumerated the powers, duties and functions of the Village Panchayat under the third schedule. The Government has issued the above said rules vesting the authority within the Secretary under Rule 6 in

respect of trades coming within the schedules of the said rule. In respect of matters enumerated under schedules 3 and 4, the application has to be filed before the Panchayat through Secretary as provided under Rule (12). There is specific provision enabling the Panchayat to grant or refuse permission in respect of power, machinery or plant.

Section 233 empowers the Village Panchayat only to grant permission for construction of factories and installation of machinery for which application has to be submitted to the Village Panchayat addressed to the Secretary as provided under Section 233(2) read with Rule 12(2) of the above said Rules. In Sub section 4 of Section 233, it is specifically laid down that the authority to grant/refuse permission is the Village Panchayat. In view of the above said provisions, it is very clear that the license issued by the Secretary under Section 232 shall never be construed as a power to be exercised by Village Panchayat; it is contended. Therefore, the Village

Panchayat can never act as the licensing authority.

In the instant case, the petitioner has never applied for permission of the Panchayat as required under Section 233. Since it is a polluting factory unit installed with machinery having the capacity of 9.5 HP, the permission of the Panchayat for the installation of machinery is mandatory. The appellant has challenged the order passed by the Secretary before the Tribunal for Local Self Government Institutions and not the decision taken by the Panchayat. Since the Secretary and Panchayat are having different legal footings, specific provisions have been incorporated under Section 276 to challenge such order except orders under Section 235(I), 235(J), 235(N), 235(w) and 235(x) before the Panchayat under Sub Section (I); so contended the respondents.

4. The petitioner has filed a reply affidavit refuting the allegations in the counter affidavit.

5. Arguments have been heard.

6. The learned counsel for the petitioner would submit that the view taken by the learned Tribunal is unsustainable in law under Section 232 of the Kerala Panchayat Raj Act as it is only the Panchayat which can grant a license and that power is not vested with the Secretary. As long as it is the Panchayat which issues the license, the Secretary has no powers to renew the license as the granting authority alone has got the power to refusal also and this fact has escaped the attention of the learned Tribunal.

7. The learned standing counsel for the respondent Panchayat, per contra, would submit that the subject matter of the appeal was pertaining to Section 232 of the Kerala Panchayat Raj Act and even if the order of the Secretary refers to the powers of the Panchayat vested under Sections 232 and 233, the order has been passed by the Secretary not based on any decision of the Panchayat. Therefore, according the learned counsel for the first respondent, the order in question would not come

within the scope of Section 235(i)(j)(n)(w) and (x) and therefore, such appeal shall lie only to the Panchayat as the Tribunal is empowered to entertain only on appeals against any notice issued, order passed or action taken by the Panchayat under Sub Section (5) of Section 276. The Tribunal is also empowered to entertain revision or a decision taken on any appeal; it was argued. It was also pointed out by the learned standing counsel that the provision for appeal to the Panchayat under Section 276(1) has been incorporated with a view to enable the petitioner to get his grievance redressed easily without much cost at his own place. It was pointed out that in this case, there was some ulterior motive for by passing the statutory appellate authority at her place and moving the matter before the Tribunal for Local Self Government Institutions.

8. Though it was contended by the first respondent that the petitioner has never applied for permission under Rule 233, Ext.P3 produced by the

petitioner is a receipt for payment of installation fee as early as in May 2009. It is also crucial to note that the Panchayat was a party before the Tribunal and at no point of time, the Panchayat had raised a contention that it was the secretary who alone took a decision. In the objections filed by the Panchayat before the Tribunal, there is no contention that the license was issued by the Secretary, who, no doubt, signs the license on behalf of the Panchayat. The expression 'Village Panchayat' used in the Kerala Panchayat Raj Act cannot be construed as Secretary of the Panchayat. The contention raised by the Panchayat by way of preliminary objection before the Tribunal is, therefore, wholly without any substance. In addition to that under Section 276(5)(b), grant of permission and license for trades, factories, etc. are clearly appealable. The refusal to renew the license by the Panchayat clearly falls within that expression. An appeal, therefore, is perfectly maintainable in law and the view taken by the Tribunal is wholly

unsustainable in law. In addition to that a reference to the Tribunal for Kerala Local Self Government Institutions Rules, 1999 also spells out the powers in the Tribunal to entertain an appeal concerned. Rule-8 of the said Rules clearly provides an appeal even against a notice or order of the Secretary. The rule is made consistent with the provisions contained in the Act and therefore, an appeal clearly lies to the Tribunal. Unfortunately, the Tribunal has not referred to the aforesaid rules. The Tribunal has been constituted to prevent exercise of arbitrary powers by the Panchayat or its officers. Ordinarily, a running establishment, trade or business is entitled to renewal unless there are compelling circumstances forbidding such renewal under the Act or Rules. No clear reasons have been mentioned for refusal in this case. In addition to that, even the requirement of the license is not notified under Sections 232 or 233 of the Kerala Panchayat Raj Act. In the absence of such a notification issued and duly published in the

gazette, the Panchayat cannot even insist for a license. The petitioner, therefore, is entitled to continue the running of the Hollow Bricks Unit on the strength of the license already granted.

In the result, Exts.P1 and P2 are quashed. The first respondent is directed to grant renewal of the license, if such a license is needed as notified in terms of Sections 232 and 233 of the Kerala Panchayat Raj Act and in its absence not to forbid the petitioner from functioning her unit. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE