

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 462 of 2015 (G)

PETITIONER:

SIYAD HASSAN, AGED 24 YEARS,
S/O.V.P MUHAMMED SHAJI, VALLIKKADA HOUSE,
MUVATTUPUZHA P.O, ERNAKULAM DISTRICT, PIN 686 661

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH

RESPONDENTS:

1. MARADY GRAMA PANCHAYAT,
MARADY P.O.,
MUVATTUPUZHA VIA, ERNAKULAM DISTRICT - 686 673,
REPRESENTED BY ITS SECRETARY.

ADDL.R2 IMPEADED:

2. HARIDAS P.R.,
S/O.RAMAN, PALACKAL HOUSE, PERUMBALLOOR,
MUVATTUPUZHA.

(ADDL.R2 IMPEADED AS PER ORDER DATED 15.01.2015 IN IA 479/15.)

R1 BY ADV. SRI.K.JAJU BABU (SR.)
R1 BY ADV. SMT.M.U.VIJAYALAKSHMI
RADDL.2 BY ADV. SRI.T.RAJESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 TRUE COPY OF THE ACKNOWLEDGEMENT BEARING FORM NO 184390 DATED 26-03-2014 ISSUED BY THE MANAGER,DISTRICT INDUSTRIES CENTRE,ERNAKULAM.

EXT.P1(a) TRUE COPY OF THE BUILDING PERMIT DATED 25-06-2014 ISSUED BY THE RESPONDENT.

EXT.P2 TRUE COPY OF THE APPLICATION DATED 25-04-2014 FOR CONSTRUCTION,ESTABLISHMENT OR INSTALLATION OF FACTORIES,WORKSHOP OR WORKPLACE SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

EXT.P3 TRUE COPY OF THE CONSENT NO PCB/EKM/DO2/ICE-117/2014 DATED 9-5-2014 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD,VALID UP TO 8-5-2017.

EXT.P4 TRUE COPY OF THE NOC DATED 12-12-2014 ISSUED BY THE MEDICAL OFFICER,COMMUNITY HEALTH CENTRE,PANDAPPILLY WITH ENGLISH TRANSLATION.

EXT.P4(a) TRUE COPY OF THE NOC DATED 23-06-2014 ISSUED BY THE ASSISTANT DIVISIONAL OFFICER,FIRE & RESCUE SERVICES,ERNAKULAM.

EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 26-12-2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT

RESPONDENTS' EXHIBITS:

EXT.R2(a): TRUE COPY OF THE RESOLUTION NO. 22 OF THE 1ST RESPONDENT PANCHAYATH.

EXT.R2(a) 1: TRUE COPY OF THE ENGLISH TRANSLATION OF R2(a).

EXT.R1(a): TRUE COPY OF THE RESOLUTION NO.22 TAKEN IN THE ORDINARY MEETING OF THE MARADY GRAMA PANCHAYAT HELD ON 04.05.2014 WITH ENGLISH TRANSLATION.

EXT.R1(b): TRUE COPY OF THE OBJECTION DATED 08.12.2014 SUBMITTED BY THE LOCAL RESIDENTS BEFORE THE SECRETARY, MARADY GRAMA PANCHAYATH WITH ENGLISH TRANSLATION.

EXT.R1(c): TRUE COPY OF THE WRITTEN OBJECTION DATED 01.01.2015 OF THE WARD MEMBER AGAINST THE LICENCE GRANTED BY THE GRAMA PANCHAYATH WITH ENGLISH TRANSLATION.

EXT.R1(d): TRUE COPY OF RESOLUTION DATED 04.01.2015 OF THE GRAMA SABHA OF WARD NO.VII WITH ENGLISH TRANSLATION.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 462 of 2015

Dated this the 9th day of February, 2015.

JUDGMENT

The petitioner, the Managing Partner of Ms. Superior Wires, Muvattupuzha, being desirous of establishing an industry of winding wires, applied to the first respondent, through Ext.P2, for the necessary permit in terms of Section 233 of the Kerala Panchayath Raj Act, 1994 (for short 'the Act') and Rule 5 of the Kerala Panchayath Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 (for short "the Rules"). In fact, the Grama Panchayath on 25.06.2014 issued Ext.P1(a) building permit to raise necessary structures for the purpose of establishing the industry. The petitioner is said to have secured Ext.P3 NOC from the Pollution Control Board on 08.05.2014, apart from securing Exts.P4 and P4 (a) NOCs from the Health Department and Fire and Rescue Services respectively.

2. Since the respondent Grama Panchayath has neither issued any licence in response to Ext.P2 application, nor has it expressly rejected the said application, the petitioner, taking advantage of Section 236 (3) of the Kerala Panchayath Raj Act — the deemed provision — went ahead establishing the industry. In course of time, notwithstanding the deemed licence in terms of Section 236(3) of the Act, the petitioner submitted Ext.P5 application on 26.12.2014 seeking a regular licence. Aggrieved by the inaction on the part of the respondent Grama Panchayath in considering Ext.P5, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that the petitioner has complied with all statutory parameters, but at no point of time has the Panchayat communicated any proceedings either accepting or rejecting Ext.P2 application. According to him, under those circumstances, because the

petitioner has all other requisite permits and licences, he invoked Section 236(3) of the Act and proceeded with establishing his industry.

4. The learned counsel has further submitted that, until the respondent Grama Panchayath filed its counter affidavit along with certain exhibits, the petitioner did not know anything about the steps allegedly taken pursuant to the petitioner's Ext.P2 application. In elaboration of his submissions, the learned counsel has submitted that, especially in the light of Ext.R1(a) resolution passed by the respondent Grama Panchayath, now the Grama Panchayat cannot be heard saying that there were objections from certain quarters, and that it could not process the petitioner's application only in the face of those objections. He has further submitted that this Court has time and again held that once the Grama Panchayath exercises its power under Section 233 of the Act, the decision thus arrived at is final and that it cannot be whittled down or made nugatory

through any extraneous post-decisional considerations.

5. The learned counsel has also drawn my attention to Rule 12(3) (c) of the Rules to stress that once a person obtains the necessary NOCs from the Departments concerned, if the Grama Panchayath does not issue the D & O licence within 45 days thereafter, it shall be deemed that the said person has the necessary licence to proceed further. Under those circumstances, the learned counsel has strenuously contended that the respondent Grama Panchayath is statutorily bound to issue the necessary licence. When this Court queried why the petitioner insists on having a paper licence despite his staking claim to deemed licence, the learned counsel has submitted that for the purpose of securing necessary working capital and to meet other eventualities, it is requisite that the petitioner should have the licence in the physical form, lest financial institutions, etc., should not process his request. Accordingly, the learned counsel has urged this Court to allow the writ petition.

6. The learned counsel for the first respondent Grama Panchayath, having taken me through the counter affidavit filed by the Grama Panchayath, has submitted that, though initially the Panchayath decided to issue licence by passing Ext.R1(a) resolution, later it received objections through Exts.R1(b) and R1 (c) from the residents of the locality and the ward member of Ward No.7 respectively. He has also drawn my attention to Ext.R1(d) resolution passed on 04.01.2015 by the Grama Sabha of Ward No.7, in which the petitioner proposed to establish his industry, to contend that in the face of those objections, the Grama Panchayat could not implement its Ext.R1(a) resolution. According to him, the petitioner cannot take advantage of the deemed provisions in the face of express objections from the people of the locality, as well as the resolution passed by the Grama Sabha of the ward concerned.

7. The learned counsel for the additional 2nd respondent, who came on record subsequently, claiming to be a person

residing in the locality, has straight away drawn my attention to Section 233 (3) of the Act. He has contended that, notwithstanding the NOCs or licences granted by other departments, the Secretary of the Grama Panchayath has got ample powers to look into the aspects such as the density of population and also the nuisance the industries is likely to cause. He has further submitted that even the very Ext.P2 application amply reveals that what was sought to be established by the petitioner is an industry; that is, a manufacturing unit involving employment of machinery, which essentially causes pollution and nuisance. According to him, Section 233 (3) of the Act is kept in statute book precisely to take care of such eventualities.

8. The learned counsel for the second respondent has further submitted that even in Ext.P3 — NOC granted by the Pollution Control Board — in the list of machinery submitted, there is a specific mention about oven. According to him, it

clearly establishes that it is not a mere winding of wires the petitioner has proposed to undertake, but, on the contrary, a unit for manufacturing wires, which process inevitably generates heat and pollution. He has further submitted that any positive direction from this Court to the respondent Grama Panchayath to grant licence will affect the right of the additional 2nd respondent and other similarly situated persons to lay a proper challenge against the decision of the Grama Panchayat by invoking Section 276 of the Act and Rule 12(4) of the Rules, 1996, the provisions for appeal. Accordingly, he has urged this Court to dismiss the writ petition.

9. Heard the learned counsel for the petitioner, the learned counsel for the respondent Grama Panchayath and the learned counsel for the additional second respondent, apart from perusing the record.

10. Indeed the issue in this writ petition lies in a narrow compass. The solitary issue that is required to be resolved is

whether the petitioner is entitled to the physical form of licence in terms of the deemed provisions he has taken advantage of, especially on the strength of Ext.R1(a) resolution passed by the respondent Grama Panchayat, despite the objections said to have been raised through Exts.R1(b) and R1(c) by the residents of the locality and the ward member of the Grama Panchayath respectively.

11. It is not in dispute that subsequent to the petitioner's submission of Ext.P2 application, till this day there has been no communication from the respondent Grama Panchayath either accepting or rejecting the petitioner's request for D & O licence in terms of Section 236 (3) of the Act, r/w Rule 12(3)(c) of the Rules. It could be seen that Ext.R1 (a) is the resolution passed by the respondent Grama Panchayath deciding in principle that the necessary licence should be granted to the petitioner. I am of the opinion that there is some force in the contention of the learned counsel for the petitioner that Ext.R1(a) resolution was

indeed passed by the respondent Grama Panchayath exercising its powers under Section 233 (3) of the Act. It appears that subsequent to Ext.R1 (a), the Grama Panchayath received Exts.R1 (b) objections from certain residents. Similarly, it also received objections through a resolution passed by the Grama Sabha of ward No.7, where the petitioner presently established his industry.

12. None of the counsel has brought to my notice any provision in the Act providing for any mechanism for persons affected to raise their objections and also the consequential redressal mechanism in that regard. I hasten to add that merely because there is no such provision, it cannot be said, much less concluded, that the people of the locality do not have any say concerning the establishment of any industry or manufacturing unit, provided it is fraught with hazardous consequences affecting their lives or livelihood. I am afraid, the respondent Grama Panchayath could not have remained inert or inactive on

a mere premise that it received certain objections, especially in the face of deeming provisions in the Act. The petitioner cannot be found fault with for taking advantage of what has been statutorily provided in the name of deemed provisions. At this juncture, if the respondent Grama Panchayath negates its claim through Ext.P5 to have a physical form of licence taking shelter under objections from other quarters, the petitioner would be left stranded in a no-man's land, so to speak. Having invested substantial amount of money, the petitioner has every legitimate expectation, more particularly having taken aid of the deeming provision, to obtain the physical form of licence so that it could proceed further. The respondent Grama Panchayath, being the local authority having the responsibility of civic administration, is expected to perform a balancing act of securing the interest of an individual vis-a-vis that of the residents of the Panchayath. It could have duly taken note of the objections and could have acted further, which it did not.

13. In the totality of circumstances, this Court is inclined to conclude that Ext.R1(a) was passed in terms of Section 233(3) of the Act after taking into account all the eventualities, such as the density of population and the nuisance the industry is likely to cause. Under those circumstances, it cannot reverse its earlier decision based on the objections of the people of the locality received later. At the same time, it is made clear that those objectors are not remedyless, inasmuch as they could as well take recourse to Section 276 of the Act r/w Rule 12(4) of the Rules.

14. In the facts and circumstances, having regard to the respective submissions of the learned counsel for all the parties concerned, this Court directs the respondent Grama Panchayath to issue the licence in physical form in response to the petitioner's Ext.P5 application, provided the petitioner has complied with all other statutory parameters, if any. This shall be done as expeditiously as possible, at any rate, within two

months from the date of receipt of a copy of this judgment.

15. Further it is made clear that the additional 2nd respondent or any other affected person is at liberty to lay challenge against the licence thus granted to the petitioner before the appellate forum. If any such challenge is made before an appellate forum, it is made clear that the said challenge shall be decided on merits uninfluenced by any observation made by this Court while disposing of the present writ petition.

Subject to the above observations, this Court allows the writ petition.

sd/- DAMA SESHADRI NAIDU, JUDGE.

