

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 7597 of 2015 (Y)

PETITIONER(S) :

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

BY ADVS.SRI.MILLU DANDAPANI
KUM.ANUPAMA SUBRAMANIAN.

RESPONDENT(S) :

1. CHELAKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, CHELAKKARA,
THRISSUR - 680 587.
2. THE SECRETARY,
CHELAKKARA GRAMA PANCHAYAT, CHELAKKARA,
THRISSUR - 680 587.

BY ADV. SRI.BINOY VASUDEVAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

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- EXT. P1 - TRUE COPY OF RELEVANT PORTION OF THE AGREEMENT DT. 04.11.13 ENTERED INTO BETWEEN THE PETITIONER AND SUPERINTENDING ENGINEER, PWD (R&B) CENTRAL CIRCLE, ALUVA, ON BEHALF OF STATE OF KERALA.
- EXT. P2 - TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT. 15.1.14, ALONG WITH ITS TRUE ENGLISH TRANSLATED VERSION.
- EXT. P3 - TRUE COPY OF INTIMATION NO. A 497/14 DT. 18.2.14 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT TO THE PETITIONER, ALONG WITH ITS TRUE ENGLISH TRNASLATED VERSION.
- EXT. P4 - TRUE OCPY OF REPLY DT. 17.9.14 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT. P5 - TRUE OCPY OF CONSENT, BEARING NO. PCB/DO/TSR/F/ICE/1237/2014 ISSUED BY THE POLLUTION CONTROL BOARD ON 23.7.14 TO THE PETITIONER, WHICH IS VALID UPTP 22.7.17.
- EXT. P6 - PHOTOCOPY OF SKETCH ISSUED BY THE POLLUTION CONTROL BOARD, ANNEXED ALONG WITH EXHIBIT P5..
- EXT. P6 (A) - PHOTOCOPY OF BUILDING PLAN AND MACHINERY LAYOUT OF DIVYA METAL INDUSTRIAL (TAR HOT MIX PLANT).
- EXT. P6 (B) - PHOTOCOPY OF BUILDING PLAN AND MACHIERY LAYOUT OF DIVYA METAL INDUSTRIES (TAR HOT MIX PLANT).
- EXT. P7 - TRUE COPY OF NOC DT. 05.9.14 ISSUED FROM THE OFFICE OF THE INSPECTOR OF FACTOREIS & BOILERS, THRISSUR, TO THE PETITIONER VIDE NO. A - 998/14.
- EXT. P8 - TRUE COPY CERTIFICATE DT. 12.10.11 ISSUED BY THE DEPARTMENT OF URBAN AFFAIRS ISSUED TO SHRI EDWIN BABU VIDE REG. NO. G6-2320/11/1169/SB REFERRED TO IN THE WRIT PETITION.
- EXT. P9 - TRUE COPY OF WEBSITE INFORMATION OF FIRE AND RESQUE DEPARTMENT RECEIVED BY THE PETITIONER.
- EXT. P10 - TRUE COPY OF WEBEBSITE INFORMATION OF FIRE AND RESQUE DEPARTMENT RECEIVED BY THE PETITIONER.
- EXT. P11 - TRUE COPY OF DECISION NO. A3/7424/14 DT. 20.10.14 OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER, ALONG WITH ITS TRUE ENGLISH TRANSLATED VERSION.
- EXT. P12 - TRUE COPY OF RESOLUTION NO.9 OF THE RESPONDENT PANCHAYAT DT. 15.10.14 ALONG WITH ITS TRUE ENGLISH TRANSLATED VERSION.

- EXT. P13 - TRUE COPY OF REPORT DATED NIL OF THE 2ND RESPONDENT, ALONG WITH IS TRUE ENGLISH TRANSLATED VERSION.
- EXT. P14 - TRUE COPY OF APPEAL DT. 28.10.14 PREFERRED BY THE PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM NUMBERED AS 1150/14.
- EXT. P15 - TRUE COPY OF THE ORDER DT. 07.1.15 IN APPEAL NO. 1150/14 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVT. INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT. P16 - TRUE COPY OF DECISION NO.7 DT. 28.2.15 OF THE 1ST RESPONDENT PANCHAYAT, ALONG WITH ITS TRUE ENGLISH TRANSLATED VERSION.
- EXT. P17 - TRUE COPY OF THE REPRESENTATION MADE ON 06.8.14 BY THE PETITIONER TO THE SUPERINTENDING ENGINEER, PWD (R&B) CENTRAL CIRCLE, ALUVA.
- EXT. P18 - TRUE COPY OF REPLY DT. 29.9.14 ISSUED BY THE SUPERINTENDING ENGINEER, PWD (R&B) CENTRAL CIRCLE, ALUVA VIDE NO. DT 1464/2013 UNDER COPY OF THE PETITIONER.
- EXT. P19 - TRUE COPY OF SUPPLEMENTAL AGREEMENT DT. 29.9.14 ENTERED INTO BETWEEN THE PETITIONER AND SUPERINTENDING ENGINEER, PWD (R&B) CENTRAL CIRCLE, ALUVA, ON BEHALF OF STATE OF KERALA.

RESPONDENT(S) ' EXHIBITS :

- EXT. R1 (A) : TRUE COPY OF THE MINUTES OF THE MEETING OF THE GRAMA SABHA IN WARD NO.4 OF CHELAKKARA GRAMA PANCHAYAT HELD ON 02/02/2014.
- EXT. R1 (B) : TRUE COPY OF REPORT SUBMITTED BEFORE THE PANCHAYAT COMMITTEE BY THE SECOND RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

"C.R"

DAMA SESHADRI NAIDU, J.

W.P.C. No. 7597 of 2015

Dated this the 23rd day of March, 2015.

J U D G M E N T

The petitioner, being a Class-1 PWD Contractor, on 15-1-2014, applied through Ext.P2 application to the respondent Grama Panchayath for Dangerous and Offensive Trade License (D & O License). When the respondent Grama Panchayath, through Ext.P3 reply, pointed out certain deficiencies, the petitioner is said to have complied with those deficiencies through Ext.P4 communication.

2. It seems that the petitioner has submitted to the first respondent Grama Panchayath all the material required to be submitted along with Ext.P2 application, including the consent of the Pollution Control Board valid up to the year 2017. Barring the certificates which are required to be obtained by the Grama Panchayat under Section 233 (4) of the Kerala Panchayath Raj Act, 1994, the petitioner is said to have strictly complied with the statutory stipulations to obtain the D& O license.

3. The Committee of the respondent Grama Panchayath has, however, rejected Ext.P2 application through Ext.P11 order, which has been duly appealed against by the petitioner before the learned Tribunal for Local Self Government Institutions, Trivandrum. Eventually, the learned Tribunal has allowed the appeal, directing the respondent Grama Panchayat to consider petitioner's application afresh.

4. The Committee of the respondent Grama Panchayath has, nevertheless, passed Ext.P16 order dated 28-2-2015 reiterating, literally, its earlier rejection in Ext.P11, notwithstanding the fact that the very Ext.P11 was set aside by the learned Tribunal, the Appellate Authority. Assailing Ext.P16 order, the petitioner has filed the present writ petition.

5. In the above factual back drop, the learned Senior Counsel for the petitioner has submitted that the petitioner has every other requisite permit or licence from all other authorities. The rejection in Ext.P11 and subsequently in Ext.P16 is in the face of the recommendation of the second respondent secretary, who has, after physically inspecting the property, opined that it can be granted.

6. The learned senior counsel, drawing my attention to Ext. P15,

has contended that the learned Tribunal has expressly set aside Ext.P11. According to her, the conduct of the respondent Grama Panchayat in reiterating the same stand in Ext.P16 in utter disregard of Ext.P15 of Order of the learned Tribunal is not only unsustainable, but also contumacious.

7. It is the singular contention of the learned Senior Counsel that there is no justification of whatever nature for the respondent Grama Panchayat to contumaciously disregard the judicial directive of the learned the Tribunal and persist with its refusal to grant licence, which the petitioner is, according to her, legally entitled to.

8. Per contra, the learned counsel for the respondent Grama Panchayat has made strenuous efforts to justify Ext. P16. According to him, though Ext. P15 has not been appealed against, in the face of persistent protests from the public in the vicinity, it has become impossible for the respondent Grama Panchayat to ignore the public resentment against issuing of the licence.

9. Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

10. Evidently, the petitioner, an "A" Class PWD licence contractor, was awarded a civil work of making improvements to Pazhayannur-Lakkidi Road, worth about Rs.5 crore, as is discernible from Ext. P 1. For carrying out the civil work thus awarded to the petitioner, he purchased a Tar Mixing Plant (Hot Mixing Plant) for the purpose of mixing metal components with tar. Having his own quarry and crusher unit within the limits of the respondent Grama Panchayat, the petitioner desired to install the machine therein. Accordingly, when the petitioner submitted Ext. P2 application to the respondent Grama Panchayat, the 2nd respondent issued Ext. P3 communication requiring the petitioner to produce certain documents.

11. On the basis of the certificates and other material produced by the petitioner, having processed the petitioner's application, the respondent grama panchayat, eventually, through Ext. P11, refused to grant Dangerous and Offensive Licence (D&O Licence). Evidently, the rejection is based on Ext. P12 resolution of the panchayat; nevertheless, the rejection is notwithstanding the positive recommendation of the second respondent, who, on inspection of the site, has felt that the application can be positively considered.

12. When Ext.P11 was appealed against, the learned Tribunal having set aside Ext. P11 order of rejection, issued a further direction in Ext.P15 Order to the respondent Grama Panchayat to consider petitioner's application afresh, after obtaining on its own the necessary documents under sub-clauses (a) and (C) of sub-section (4) of section 233 of the Panchayat Raj Act.

13. There is no cavil that Ext.P15 has attained finality, as it has not been appealed against. Despite the same, the respondent Grama Panchayat has again reiterated its earlier stand and rejected the petitioner's application through Ext. P16.

14. To begin with, it is quite essential to examine the initial rejection by the Committee of the respondent Grama Panchayat through Ext. P11, which reads as follows:

"Chelakkara grama panchayat board had considered very elaborately your request for planting 137.5 hp tar hot mix plant at Chelakkara grama panchayat Natianchira at a meeting held on 15/10/2014. Since there is already a decision of 4th Ward Grama Sabha with respect to the planting of the hot mixing Plant and there is already a complaint from the public wrt [with regard to] planting tar hot mix plant, your request referred as item No. 2 is decided to be rejected.

Hence you are reference No. 2 request has been rejected which is hereby informed to you."

15. As could be seen from Ext. P13, the inspection report submitted by the 2nd respondent, there is a clear recording of the fact that the petitioner has obtained the consent from the Pollution Control Board and also other necessary licenses from the statutory agencies concerned. The second respondent has, in fact, observed on site-inspection that no residence has been found within a hundred metre radius of the plant. At the end of the report is the recommendation of the second respondent that the application be considered.

16. The learned Tribunal while allowing the appeal filed by the petitioner has observed in Ext.P15 thus:

"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 file a proper report as contemplated under Sub Section (3) of section 233 of the Kerala Panchayath Raj Act. Panchayat shall obtain report as contemplated under clause (b) and (c) of section 233 of 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."

17. Now, we may examine Ext. P16, the 2nd rejection order passed by the respondent Grama Panchayat. It reads as follows:

"Secretary has read in the meeting the order of the appellate Tribunal in appeal No.1150/2014 and also the advice given by the advocate relating to the aforesaid appellate order. Request of the quarry owner, Divya

Metals, Sri Govindan Kutty, Natticharra for planting the hot mixing Plant, is decided not to be given since it is dangerous to the public life and their property. Hence the grounds of unanimously decided not to grant permission and also decided to stick on to the earlier decision already taken."

18. If we examine the statutory scheme, Section 233 of the Act deals with permission for construction of factories and installation of machinery. In fact, the petitioner has contended that he has complied with the said provision; on the other hand, the learned Tribunal, too, has directed the Grama Panchayat to consider the petitioner's application afresh strictly in compliance with the said provision.

Accordingly, it pays to examine Section 233, which reads as follows:

233. Permission for the construction of factories and the installation of machinery –

(1) No person shall, without the permission of the village panchayat and except in accordance with the conditions specified in such permission, -

(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power, or electrical power; or

(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the (provisions of this Act or the rules made there under).

(2) An application for permission under sub-section (1) shall be submitted to the village panchayat addressed to the Secretary in such form and with such details as prescribed.

(3) The secretary shall, as soon as may be after the receipt of the application, enquire and report to the village panchayat as to whether the establishment of the factory, workshop or workplace or other

installation of machinery or manufacturing plant for which permission is applied for is objectionable by reason of density of population in the neighbourhood and the possibility to cause nuisance or pollution and the village panchayat after having considered the application and the reports of the secretary, and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within sixty days, -

(a) grant the permission either absolutely or subject to such conditions as it thinks fit

to impose; or

(b) refuse the permission for the reasons to be recorded.

(4) Before granting or refusing permission under sub-section (3), the village panchayat, shall obtain and consider.

(a) a report of the Inspector of Factories appointed under the Factories Act, 1948 (Central Act 63 of 1948) or of an officer of the Industries Department not below the rank of an Industries Extension Officer having jurisdiction over the area regarding the adequacy of ventilation, light etc. and sufficiency of the height and size of the rooms and doors and the suitability of exists to be used in case of fire in the plan of factories, workshop workplace or premises if they came within the purview of the Factories Act, 1948 (Central Act 63 of 1948) and such other matters as may be prescribed ;

(b) a report of the District Medical Officer regarding the possibility of nuisance or pollution of the connected load of the machinery proposed to be installed exceeds 25 HP or if the nature of the machinery and installation are such that it may cause nuisance or pollution; and

(c) a report of the Divisional Fire Officer or any other officer authorised by him regarding the adequacy of fire prevention and fire fighting measures planned if the proposed industry involves the use of high tension power or inflammable or explosive materials;

Provided that, no report under clause (b) shall be called for in respect of any industry if the applicant produces a declaration recommended by an officer of the Industries Department authorised in this behalf or by the Kerala State Pollution Control Board to the effect that such industry would not cause pollution.

(5) The grant of permission under this section, -

(a) Shall be subject to the conditions to be observed in respect of the replacement of machinery the levy of fees and to such restrictions and conditions as may be prescribed;

(b) Shall not be deemed as exempted from observing the provisions contained in section 235 (F) and 235 (H) or 235 (P) and 235 (Q).]
(emphasis added)

19. As can be seen from the above provision, (3) The secretary, on receipt of the application, has to enquire and report to the village panchayat whether the installation of machinery is objectionable by reason of density of population in the neighbourhood and the possibility to cause nuisance or pollution. Once the Secretary submits his report, the Grama Panchayat, after taking into account not only the report of the Secretary, but also those of other authorities specified in sub-section (4), shall process the application and pass orders within sixty days. It can grant the licence with conditions or refuse the permission.

20. Indeed, before granting or refusing permission under sub-section (3), the Grama Panchayat, shall obtain and consider a report of the Inspector of Factories, or of an officer of the Industries Department not below the rank of an Industries Extension Officer having jurisdiction over the area regarding the adequacy of ventilation, light etc. and sufficiency of the height and size of the rooms and doors and the suitability of exists to be used in case of

fire in the plan of factories, workshop workplace or premises if they came within the purview of the Factories Act, 1948. The Grama Panchayat is also required to obtain a report of the District Medical Officer regarding the possibility of nuisance or pollution the machinery to be installed.

21. Further, a report of the Divisional Fire Officer, etc., is to be obtained regarding the adequacy of fire prevention and fire fighting measures planned, if the proposed industry involves the use of high tension power or inflammable or explosive materials. If there is a permit granted by the Kerala State Pollution Control Board, no report from the District Medical Officer is required. In the present instance, the petitioner has the consent from the PCB.

22. This Court only notices the developments in the present case with dismay and absolute concern for the Rule of Law. The action of the Committee of the respondent Grama Panchayath is nothing short of arrogant and brazen disregard for the statutory stipulations and judicial mandate.

23. It is not in dispute that the petitioner has all the requisite permits and licenses required to enable the respondent Grama

Panchayat to consider his application for D & O Licence. Indeed, the Act provides for an elaborate mechanism. Each authority has been assigned its role. This Court, however, is not inclined to observe that the public protest is to be disregarded with impunity, nor does it suggest that the safety of persons and property cannot be taken into account.

24. The legislature, in fact, has taken the necessary care in that regard. The Grama Panchayat has been assigned a particular role and charged with a particular duty, which alone it is mandated to discharge. It cannot arrogate to itself the powers of every other authority; much less can it trample upon all the statutory norms by projecting the phantom of public protest or concern.

25. If we examine Section 233 A of the Act, which deals with abatement of nuisance, evidently it contains sufficient safeguards concerning the public safety. If the machinery causes, in the opinion of the Grama Panchayat, nuisance by reason of a particular kind of fuel being employed or by reason of the noise or vibration created, or effluent discharged or by reason of noxious odour, smoke or dust omitted, the secretary may direct the person in charge of the machinery for the abatement of such nuisance within a reasonable time.

26. Further, the Grama Panchayat may, if required, obtain expert opinion with regard to the determination of the nuisance or its abatement, at the cost of the owner or person in charge of the machinery concerned. If there is any wilful default in carrying out the instructions, or under the existing circumstances the abatement of nuisance is found impracticable, the secretary may prohibit the working of the machinery till such time the person concerned takes necessary steps to the satisfaction of the secretary for the abatement of the nuisance. In the present instance, apart from a mere, and unfounded in my view, apprehension, the respondent Grama Panchayat has not made any effort to ascertain the alleged hazards with the help of experts and place the same before the learned Tribunal.

27. In the alternative, it may have to be observed that if at all the respondent Grama Panchayat has come to a conclusion that Ext. P15 order of the Tribunal could not be sustained, nothing prevented it from assailing the said order. It is axiomatic that so long as an order of a judicial or quasi judicial body is in operation, all those who are parties to the proceedings are inexorably bound by the judicial directive. In a Democratic Republic, the Rubicon of Rule of Law is inviolable; it's

crossing is annihilation of institutional integrity and obliteration of public order, for the Rule of Law subordinates every other aspect of life in a nation of constitutional ethos.

28. Evidently, the Committee has tried to take shelter under public protest as a matter of justification for its conduct, which can only be termed as contumacious. Not only Courts, but also the legislature, at times, in the interest of public, acts in a way that is counter-majoritarian. Once statute permits, mere protest from any quarter can nullify neither the statutory mandate nor judicial verdict, both of which are inviolable.

29. Though this Court is initially inclined to initiate suo motu contempt against the conduct of the officials, it has, however, restrains itself from taking any such step, with a fond hope that the committee comprising elected representatives of a constitutionally recognised institution will realise the importance of adherence to the statutory mandate and the judicial verdicts. It is to be observed that if the respondent Grama Panchayath had any grievance against Ext.P15 order, it could have laid proper challenge against the order. For the reason not known, it has not done that. Succinctly stated, the price of

power is restraint and responsibility.

30. In the facts and circumstances of the case, this Court sets aside Ext.P16. Consequently, this Court directs the committee of the respondent Grama Panchayath to consider Ext.P2 application, expeditiously, especially in terms of the order of the learned Tribunal in Ext.P15 and pass appropriate orders thereon, within one week from the receipt of copy of this order.

31. It is made clear that in terms of Section 233(4), the Grama Panchayath is required to obtain the necessary reports from the District Medical Officer and the Divisional Fire Officer. At any rate, in the light of Ext.P5 consent given by Ext.P6, the requirement of obtaining the report from the District Medical Officer stands dispensed with.

32. Given the inordinate delay that has already occurred, the committee of the respondent Grama Panchayath cannot hold up the proceedings in the name of obtaining a report from the Divisional Fire Officer. This Court is of the opinion that the delay, if any, on that count has occurred only on account of the erroneous approach adopted by the respondent Grama Panchayath.

33. The petitioner's application, therefore, shall be processed

and the necessary D & O license given to the petitioner, within one week, subject to its fulfilment of other statutory requirements, awaiting the reports of the Divisional Fire Officer, etc. It is thus made clear that any D &O license being granted to the petitioner by the respondent Grama Panchayath shall be subject to the report to be submitted by the Divisional Fire Officer.

The writ petition is allowed. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

smm

