

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 10462 of 2015 (G)

PETITIONER:

KTS WOOD INDUSTRIES & VENEERS,
REPRESENTED BY ITS SOLE PROPRIETOR M.K.HASSAINAR,
S/O.KUNJU MUHAMMED, AGED 57 YEARS,
MENOKUDY HOUSE, MUDICKAL P.O.,
PERUMBAVOOR, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.R.PARAMESWARA IYER

RESPONDENTS:

1. THE SECRETARY,
VENGOLA GRAMA PANCHAYATH,
VENGOLA GRAMA PANCHAYATH BUILDING,
VENGOLA P.O. PERUMBAVOOR, KUNNATHUNADU TALUK.
2. VENGOLA GRAMA PACHAYATH,
REPRESENTED BY ITS SECRETARY,
VENGOLA GRAMA PANCHAYATH BUILDING, VENGOLA P.O.,
PERUMBAVOOR, KUNNATHUNADU TALUK.
3. THE DIVISIONAL FOREST OFFICER,
MALAYATTOOR DIVISION, MALAYATTOOR P.O.,
ERNAKULAM DISTRICT.

R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER
R BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST
R BY SRI.C.A.NAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-04-2015, ALONG WITH W.P.(C) NO. 11921/2015 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE LICENSE DT.3.2.1994 ISSUED FOR THE PERIOD UPTO 31.3.1994 BY THE 2ND RESPONDENT THE VENGOLA GRAMA PANCHAYATH.

EXHIBIT-P1(A): ENGLISH TRANSLATION OF EXT.P1.

EXHIBIT-P2: TRUE COPY OF THE ACKNOWLEDGEMENT (PARTII) ISSUED BY DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

EXHIBIT-P3: TRUE COPY OF THE RENEWAL LICENSE DATED 28.4.2005.

EXHIBIT-P3(A): ENGLISH TRANSLATION OF EXT.P3.

EXHIBIT-P4: TRUE COPY OF THE RECEIPT DATED 14.5.2007 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P4(A): ENGLISH TRANSLATION OF EXT.P4.

EXHIBIT-P5: TRUE COPY OF THE APPLICATION DATED 14.5.2007.

EXHIBIT-P5(A): ENGLISH TRANSLATION OF EXT.P5.

EXHIBIT-P6: TRUE COPY OF THIS LICENSE.

EXHIBIT-P7: TRUE COPY OF THE TAX PAID RECEIPT FOR 2012-13 AND 2013-14.

EXHIBIT-P8: TRUE COPY OF THE CONSENT DATED 29.01.2014 ISSUED BY THE POLLUTION CONTROL BOARD.

EXHIBIT-P9: TRUE COPY OF THE LICENSE DATED 22.12.2014 ISSUED BY THE DEPARTMENT OF FACTORIES AND BOILERS.

EXHIBIT-P10: TRUE COPY OF THE N.O.C.ISSUED BY THE FIRE AND RESCUE SERVICES DATED 28.01.2014.

EXHIBIT-P11: TRUE COPY OF THE CERTIFICATE DATED 3.4.2014 ISSUED BY DISTRICT MEDICAL OFFICER, ERNAKULAM.

EXHIBIT-P12: TRUE COPY OF THE APPLICATION DATED 16.12.2014.

EXHIBIT-P12(A): ENGLISH TRANSLATION OF EXT.P12.

EXHIBIT-P13: TRUE COPY OF THIS LETTER DATED 8.1.2015.

EXHIBIT-P13(A): ENGLISH TRANSLATION OF EXT.P13.

EXHIBIT-P14: TRUE COPY OF THE ORDER OF THE SUPREME COURT MENTIONED IN EXT.P13.

EXHIBIT-P15: TRUE COPY OF THE CLARIFICATOR ORDER ISSUED BY THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL

Dama Seshadri Naidu, J.

W.P.(C)Nos.10462, 10493, 10576, 10590,
10594, 10835, 10883, 10899, 11450, 11491,
11565, 11581, 11921, 11936 and 11957 of 2015

Dated this the 9th day of April, 2015

COMMON JUDGMENT

The petitioners in all the writ petitions have a common grievance: non-renewal of their trade licences by the respondent Grama Panchayat, which is the common respondent in all the writ petitions. Since the issue is common, involving the same set of respondents, this Court has proposed to dispose of the writ petitions through a common judgment. For ease of narration and reference, I take the facts as have been pleaded in W.P.(C)No.10590/2015 as the basis.

2. The petitioner, running a plywood industry, admittedly has all the requisite permits and licences. When he had applied for renewal of licence for the year 2014-

2015, it was kept pending by the second respondent on the ground that Exhibit P3 order of the Honourable Supreme Court restrained the Grama Panchayat from issuing any license. The Grama Panchayat, However, concedes that but for Exhibit P3 order of the Hon'ble Supreme Court, the petitioner is entitled to have the licence renewed.

3. The learned counsel for the petitioner has submitted that in Exhibit P3, while remanding the matter to this Court, the Supreme Court has made it clear that no fresh licences shall be issued for saw mills and wood-based industries in the area till this Court decides.

4. The learned counsel has further submitted that the petitioner's is only a renewal of licence, and that also the industry is based in some other area. According to him, on both court, the direction of the Hon'ble Supreme Court does not apply to the petitioner. The learned counsel for the petitioners in the other writ petitions have echoed the same submissions.

5. The learned counsel for the respondent Grama Panchayat has submitted that the Grama Panchayat does not have any objection other than the judgment of the Hon'ble Supreme Court referred to above.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

7. It is, indeed, evident that the petitioners have all the requisite permits and licences; the respondent Grama Panchayat, however, has refused to renew their licences on the premise that there is a direction from the Hon'ble Supreme Court that until the issue is decided by this Court, there shall be no renewal of licences. It is, therefore, apposite to examine the judgment of the Hon'ble Supreme Court.

8. The appellant therein initially filed a writ petition by way of Public Interest Litigation before this Court complaining of pollution caused by plywood factories in

Kuttipadam area; he prayed for an interim order suspending the operation of the plywood factories and the saw mills in the area. By the impugned order dated 15.07.2011, this Court declined to suspend the operation of the plywood factories and the saw mills. Aggrieved, the appellant has filed an appeal by way of special leave in SLP (Civil) No. 22856/2011.

9. Eventually, in Civil Appeal No.4858/2014, the Hon'ble Supreme Court has found that the matter has already been examined by the Central Empowered Committee (CEC), which, in fact, found that a number of plywood units were functioning without statutory terms, licences, NOCs and consents from various authorities. In that context, the CEC is said to have recommended that the State Government should prepare a comprehensive environmental management plan for Vengola Gram Panchayat, apart from its reviewing the status of compliance with the applicable rules, regulations and the

orders by the wood based industries and taking necessary follow-up action including permanent or temporary closure of the defaulting wood based industries.

10. Having observed thus, since the matter was still pending before this Court, the Supreme Court has felt it desirable that this Court should consider passing fresh orders, interim or final, after considering the report of the CEC and objections, if any, filed by the parties. Accordingly, the matter was remanded to this Court. While remanding the matter, the Apex Court has directed that no fresh licenses should be issued for saw mills and wood-based industries in the area till this Court decides. It has also observed that this Court may as well consider whether it should stop the functioning of any of the units referred to in the CEC report.

11. In the first place, the Hon'ble Supreme Court, while remanding the matter, has observed that no fresh licences shall be issued; in the present instance, the

industries are in existence seeking only renewal of their licences. That apart, the learned counsel representing the rival parties — the petitioners and the respondent Grama Panchayat — have submitted that the area that fell for consideration before the Supreme Court is Kuttipadam, whereas the petitioners industries are situated at some other places. Further, none of the learned counsel for the respondent Grama Panchayat could bring to my notice any of the petitioners' industries having been mentioned in the CEC report.

W.P.(C)No.10493/2015:

12. Insofar as W.P.(C)No.10493/2015 is concerned, earlier the respondent Grama Panchayat instated on the petitioner producing an NOC from the Forest Department. It is the contention of the petitioner that getting D & O licence from the respondent Grama Panchayat is a precondition for the Forest Department's considering the petitioner's application for NOC. Accordingly, the petitioner

filed W.P.(C)No.32332/2014 and obtained Exhibit P10 interim order to the effect that the respondent Grama Panchayat should not insist on the petitioner's producing NOC from the Forest Department.

13. On the strength of Exhibit P10 interim direction when the petitioner once again submitted an application for renewal of licence, the respondent Grama Panchayat is said to have taken, yet again, certain objections, including that, since the application for renewal was not submitted when the previous licence had been subsisting, the present application should be treated as the one filed for a fresh licence. Under those circumstances, the petitioner has filed the present writ petition. It is made clear that, as has been directed by this Court in Exhibit P10, the respondent Grama Panchayat shall consider the petitioner's application without insisting on an NOC from the Forest Department, but any licence to be granted by the Grama Panchayat shall be subject to the petitioner's getting an NOC from the

Forest Department, subsequently.

W.P.(C) Nos.11565 & 11921 of 2015:

14. In these two writ petitions, instead of renewal of D & O licence, the petitioners have sought a fresh licences. Both of them are said to have all the other requisite licences, including NOCs from the Forest Department. Since, these are the cases involving fresh licences, we may have to examine, once again, the Order of the Hon'ble Supreme Court in Civil Appeal No.4858/2014 in a fresh perspective.

15. While remanding the matter, the Apex Court has, inter alia, observed thus:

“We make it clear that no fresh licences will be issued for saw mills and wood-based industries in the area till the High Court decides.

We also make it clear that it would be for the High Court to consider whether it should stop the functioning of any of the units referred to in the CEC report.”

(emphasis added)

16. From the above directions of the Hon'ble Supreme Court, it is evident that no fresh licences shall be issued for saw mills and wood-based industries in the area; no units referred to in the CEC report should be allowed to function further. In the present instance, the industries being established by the petitioners are both situated in a different area, namely Vengola Grama Panchayat, where the industries do not have any adverse findings rendered against them by CEC or any other agency. It is further not in dispute, the petitioners have all other requisite licences and permit granted by the other statutory authorities.

17. In the facts and circumstances, this Court disposes of all the above writ petitions with a direction to the respondent Grama Panchayat to consider the petitioners' applications for fresh or renewal of licences, as the case may be, subject to the petitioners' fulfilling all other statutory parameters.

With the above observations, the writ petitions are disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv/DMR