

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C) .No. 17530 of 2012 (M)

PETITIONER(S) :

HINDUSTAN PETROLEUM CORPORATION LIMITED,
KOCHI RETAIL REGIONAL OFFICE, ERNAKULAM NORTH P.O.
KOCHI-682018,
REPRESENTED BY ITS SENIOR REGIONAL MANAGER.

BY ADVS.SRI.B.N.SHIVA SHANKAR
SMT.T.N.LEKSHMI SHANKAR
SMT.DHANYA PALAN
SMT.T.S.REMYA

RESPONDENT(S) :

1. CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM-695001.

2. SECRETARY,
PALLICKAL GRAMA PANCHAYATH, PALLICKAL, KILIMANOOR,
THIRUVANANTHAPURAM-695601.

3. STATE OF KERALA,
REPRESENTED BY SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM-695001.

R2 BY ADV. SRI.M.DINESH

R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 17530 of 2012 (M)

APPENDIX

PETITIONER(S) EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE LETTER OF INDENT DATED 12.10.2009.

EXHIBIT P2: TRUE COPY OF THE LETTER DATED 9.11.2010 ISSUED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM TO THE DISTRICT SUPPLY OFFICER.

EXHIBIT P3: TRUE COPY OF THE EXPLOSIVES LICENCE ISSUED BY THE EXPLOSIVES DEPARTMENT DATED 29.12.2010.

EXHIBIT P4: TRUE COPY OF THE LETTER FOR RENEWAL OF EXPLOSIVES LICENCE DATED 30.11.2011.

EXHIBIT P5: TRUE COPY OF THE CONSENT TO ESTABLISH THE RETAIL OUTLET ISSUED BY THE POLLUTION CONTROL BOARD DATED 2.2.2010.

EXHIBIT P6: TRUE COPY OF THE LETTER ISSUED BY THE EXECUTIVE ENGINEER, PWD ROADS DIVISION DATED 23.6.2010.

EXHIBIT P7: TRUE COPY OF THE REPORT OF TAHSILDAR OF CHIRAYINKEEZHU DATED 29.7.2010.

EXHIBIT P8: TRUE COPY OF THE NOC ISSUED BY THE SUPPLY OFFICER DATED 24.11.2010.

EXHIBIT P9: TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE SCHOOL AUTHORITIES DATED 6.2.2012.

EXHIBIT P10: TRUE COPY OF THE RECEIPT DATED 7.1.2011.

EXHIBIT P11: TRUE COPY OF THE LETTER DATED 1.10.2011 SENT BY THE 1ST RESPONDENT'S OFFICE.

EXHIBIT P12: TRUE COPY OF THE LETTER DATED 15.3.2011.

EXHIBIT P13: TRUE COPY OF THE ORDER DATED 29.3.2012.

EXHIBIT P14: TRUE COPY OF THE PLAN.

RESPONDENTS' EXHIBITS: NIL

okb.

//true copy//

P.A. to Judge.

K.HARILAL, J.

W.P.(C) No.17530 of 2012

Dated this the 16th day of November, 2015.

JUDGMENT

The petitioner is a Government of India Undertaking engaged in preparing and marketing of petroleum products and for this purpose they used to construct and run retail outlets. The petitioner has, after conducting selection process, issued a letter of indent to Sri.Vijayakrishnan Nair for starting a retail outlet dealership at Pakalkuri, Pallikkal, Thiruvananthapuram District by Ext.Pl. The property proposed for the outlet is owned by the said Vijayakrishnan Nair. Since the agreement between the petitioner and the said Vijayakrishnan Nair was executed on 'BOT basis', the petitioner has obtained all the necessary permits and 'No Objection Certificates' from all statutory authorities including the District Collector, Explosives Department, Pollution Control Board, Tahsildar, Police

Authorities, Executive Engineer (PWD Roads Division), District Medical Officer and the Headmaster and the Parent Teachers Association of the school situated near the proposed site and the same are evidenced by Exts.P2 to P9. Thereafter, the petitioner had submitted all the necessary papers for obtaining building permit for the construction of the petroleum outlet. It is learnt that the 2nd respondent had sent Ext.Pl2 letter dated 15.3.2011 to the 1st respondent as per the procedure contemplated under Section 61 of the Kerala Panchayat Buildings Rules, 2011 by and on the basis of which the 1st respondent rejected the application for building permit by Ext.Pl3. According to the petitioner, the reasons mentioned therein for rejecting the building permit are not at all cogent; but, contrary to the relevant law and hence perverse. The 1st respondent failed to note that all the necessary consents and permits from the appropriate Authorities are produced before him. But, the 1st respondent has exceeded his power under Rule 61 of the Kerala Panchayat Buildings Rules, 2011 and sat in appeal over

all the certificates produced by the concerned Authorities. In short, the grievance of the petitioner is that the 1st respondent has without application of mind exceeded power and rejected the application for building permit by Ext.P13.

2. The 1st respondent filed a counter statement contending as follows:-

“It is submitted that as per Rule 34(3)(1) of the Kerala Panchayat Buildings Rules 2011, the proposed construction is included in Group I(2) hazardous occupancy. Rule 61(2) stipulates that the usage of plot and building shall be decided by the Chief Town Planner and Rule 61(9) further stipulates that the location of automobile fuel filling stations and their layout shall be decided by the Secretary in consultation with the District Collector and Chief Town Planner, after considering the width of roads, traffic generated, location with respect to points of intersections and nearness to occupancies of educational, assembly, mercantile, storage and hazardous uses. Town Planner, Thiruvananthapuram had reported vide letter No.D/1247/11 dtd. 12.5.2011 that a Government High School is located at a distance of 3.6 m from the northern boundary of the plot and another LP School is located on the western side of the plot with a distance of 3.10 metres-9.10 metres from the plot boundary. In addition to this, the Town Planner has also reported vide D/1677/11 dtd. 16.11.11 that as the construction violates rule 61(9). the proposed construction is not recommended for the issue of layout approval. Following this, the Chief Town Planner had informed Secretary, Pallickal Grama Panchayat vide

D4/2489/11 dtd. 5.1.12 that layout approval is not being issued to the proposed construction as the proposed construction violates Rule 61(9) of KPBR 2011. Also the site verification report as well as the recommendations of the Panchayat Secretary was not submitted along with the application. Subsequently, a site verification report as well as a No Objection Certificate submitted by the Panchayat Secretary vide letter No.A2-418/11 dtd. 23.2.12. The Chief Town Planner again informed the applicant vide D4/2489/11 dtd. 29.3.12 that layout approval cannot be issued taking into consideration the proximity of schools, the accident and hazard prone nature of the construction, pollution and traffic hazards generated due to the proposed construction."

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. Even though the 1st respondent has filed a detailed counter affidavit before this Court, to justify the negative observations made in Ext.Pl3, going by Ext.Pl, apparently, it is seen that the 1st respondent has not applied his mind properly in accordance with the procedure contemplated under Rule 61 of the Kerala Panchayat Buildings Rules, 2011; on the other hand, the 1st respondent has exceeded his jurisdiction and power by sitting in judgment over the permissions and No Objection Certificates granted by various

statutory Authorities under various enactments. It is to be remembered that the power under Rule 61 of the Kerala Panchayat Buildings Rules, 2011 is not an appellate or revisional jurisdiction over the permission or 'no objection' certificates granted by statutory Authorities, constituted under various special statutes. But, at the same time, as regards the construction of the building, the Panchayat is the competent authority and the Panchayat shall, in consultation with the District Collector and the Chief Town Planner, approve the plan, grant building permit or reject the same. Put it differently, their power is confined to the matters pertaining to the acceptability of land and construction of the building thereon and if the allocation is not sufficient for making construction in accordance with the Building Rules and Petroleum Rules, they can reject the application on that ground; But, where the statutory Authorities are specifically authorised to grant or deny permission after examining the issues relating to pollution, road traffic hazard etc., either the 1st

respondent or the 2nd respondent is not expected to sit in judgment over the concerned certificates granting permission issued by the statutory authorities, after enquiry and impact assessment, on various subject matters. But, going by Ext.P13, it appears that the 1st respondent is more concerned with the issues relating to subject matter, for which the competent statutory Authorities have already granted permission. At the same time, nothing stated about acceptability of building plan or allocation of land for construction of the building etc. Therefore, it can be safely concluded that at the time of passing Ext.P13 order, the 1st respondent has not applied his mind in accordance with the procedure contemplated under Rule 61 of the Kerala Panchayat Buildings Rules, 2011.

5. In the above view, Ext.P13 will stand quashed and the 1st respondent is directed to pass order afresh, after affording an opportunity of being heard to the petitioner, in accordance with the power granted to him under Rule 61 of the Kerala Panchayat Buildings Rules, 2011, and Rule 144 of the Petroleum Rules, 1976,

at any rate, within two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.

// True copy //

P.A. to Judge