HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.13133 OF 2012

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 3rd respondent in issuing the impugned notice No.ROC.No.49/2010 dated 24.09.2011 as illegal and arbitrary and also in violation of the statutory provision under the Panchayat Raj Act, 1994 (for short 'the Act of 1994') and quash the same.

2. It is the case of the petitioner company that it was registered under the Companies Act, having its establishments at Vuyyuru and Lakshmipuram in Krishna District, A.P. That the establishment at Vuyyuru is functioning since 1941 and the factory establishments fall under the territorial jurisdiction of two panchayats, viz., Vuyyuru and Gurajada in Krishna District. It manufactures premium grade sugar, Molasses, rectified spirit, Anhydrous alcohol, ENA, Co2 gas plant, Bio-compost, Mycorrhiza Inoculum and Calcium Lactate items in its factory situated at Vuyyuru under the Licenses granted by the Licensing authorities both under the Central and State Governments. That the licence fee in respect of various licenses granted by the Departments under both the Central & State Governments is paid from time to time as prescribed under the provisions of the relevant Acts and Rules. It is stated that the petitioner company is engaged in the business for the last 70 years and is continuously carrying out its activities by complying with the provisions under various statutes,

without any sort of violation. While so, the 3rd respondent issued notice bearing Ref.No.Roc.49/2010, dated 02.08.2010 calling upon the petitioner to furnish information with regard to the products manufactured in the factory, annual turnover, audit report and also the details of sales tax paid by the petitioner company. It is further indicated in the said notice that the 3rd respondent proposed to fix the licence fee on the basis of the horse power of the machinery used in the factory, as it is a new industry established or yet to be commenced. That the representative of the petitioner had approached the Panchayat Secretary, Gurajada Gram Panchayat and brought to his notice that the factory was established 70 years ago in the year 1941 by duly obtaining the license under the statute and is holding the same continuously by way of renewal from time to time and that there is no requirement for obtaining a fresh license from the Gram Panchayat under whose jurisdiction, the factory establishment is located. That as per records of Gurajada Gram Panchayat, the license fee at the prescribed rate is being paid by the petitioner company as prescribed under rules and that the license originally granted under the provisions of Act of 1994 was in perpetuity and is subject to renewal as per the rules amended from time to time.

3. It is stated that in exercise of the powers conferred by sub-section (1) of Section 268 read with Section 119 and 120 of the Act of 1994, the government issued a Gazette vide A.P. Gazette G.O.Ms.No.16, Panchayat Raj Rural Development & Relief (Part-III), dated 10.01.1996 and that the said Rules are relating to the conditions for grant of license for installation of any machinery of

manufacturing plant within the limits of Gram Panchayats. It is stated that as per Rule 1 under the said Rules stipulates that the licence under Sections 119 & 120 of the Act of 1994 is valid for installation of any machinery or manufacturing plant driven b steam water and mechanical or electrical power in any premises may be in perpetuity and no periodical renewal is needed by subject to cancellation of violation of any law, terms and conditions of licence. As per Rule 2, the licence fee may be charged and collected for the licence granted under Rule-1 for a period upto 30 years at a time at the rate not exceeding the maximum specified in the schedule annexed to the Rules and that the petitioner company has been complying with the statutory requirements without any lapse and is holding the license continuously from inception. It is stated that the 3rd respondent had circulated the minutes of meeting held in Gurajada Gram Panchayat Office on 02.07.2010 under the Chairmanship of the Sarpanch. That the factor and establishment of the petitioner company falls under the class of N(a) under the said schedule and it is indicated that the maximum fee chargeable towards license fee for a period of 3 years for the installations upto 100 hp is Rs.7,000/- only. It is stated that the issue of initial notice dated 02.08.2010 by the 3rd respondent was illegal and unwarranted and in fact there was no requirement of furnishing the details such as annual turn over audit report, payment of sales tax etc., to the 3rd respondent. In spite of furnishing clarifications to the 3rd respondent, the impugned prosecution notice bearing Ref.No.ROC.49/2010, dated 24.09.2011 issued by the 3rd respondent is illegal. The 3rd respondent had also illegally demanded a sum of Rs.37,50,000/- as payable by the petitioner towards the dues of licence fee and also penalty for late submission of application in an illegal manner, which is without any basis. Aggrieved by the impugned notice dated 24.09.2011, the present writ petition is filed.

4. Counter affidavits are being filed by the respondents 2 and 3 denying the averments in the affidavit filed in support of the writ petition stating that the petitioner has not obtained any license or permission to establish factory from the Gram Panchayat Gurajada of Pamidimukkala Mandal, Krishna District but only obtained license and permission from Gram Panchayat, Vuyyuru and paying the required fee for manufacturing of sugar only. That the Bio-compost, Mycorrhiza incoulum, Calcium Lactate etc., items under name and style of 'Suraksha Bio-Teck-Vuyyuru and manufacturing of Bio-products under the Brand name of 'Maruthi' and manufacturing the products i.e., Maruthi Bio-Compost, Maruthi Azosperilium, Maruthi Fasfo-Bactor, Maruthi Myco Raiza, Maruthi Multi Gard and Maruthi Jaimosel and which are manufacturing by establishing the manufacturing units within the limits of Gurajada Gram Panchayat in R.S.No.214, 216, 217, 219 to 225, 227 to 229 of Gurajada Village to an extent of Ac.64.48 cents which is dry land but used as factory units without any license or permission of gram Panchayat Gurajada. That the owner of the K.C.P.Sugars and Industries Corporation, Vuyyuru, illegally established under guise of license of Vuyyuru Gram Panchayat and established the units within the limits of Gurajada

village and Gram Panchayat. That the Gram Panchayat Vuyyuru limits and the Gram Panchayat, Gurajada limits clearly specified on field by dividing the canal by name "Upper Pulleru" which is running from Kankipadu and joins at Marrivada rives canal and that the said manufacturing units are within the limits of Gurajada village of Gram Panchayat Gurajada, without obtaining permission from the said Grampanchayat, as such, the management of the units are liable for imposition of penalty for violation of rules issued there under and that the 3rd respondent issued the show-cause notice in accordance with the Rules for payment of licence fee together with the penalty. It is stated that instead of furnishing information called for in the impugned notice dated 02.08.2010, the petitioner has filed the present writ petition, which is not maintainable. It is stated that the petitioner had not obtained any license and permission from Gram Panchayat, Gurajada even though it established and extended the factory units from Vuyyuru Panchayat limits to Gurajada Panchayat limits. It is stated that the survey numbers 214, 216, 217, 219, 225, 227 to 229 falls within the jurisdiction of 3rd respondent Gram Panchayat and under the guise of old permissions and licenses which are obtained from Gram Panchayat, Vuyuru extended its units within the limits of Gurajada Gram Panchayat illegally without any permission and license. It is stated that the Gram Panchayat, Gurajada made bye-law through R.O.C No.24/2010, dated 15.04.2010 for its places for use of manufacturing of industries as per A.P.Panchayat Raj Act and same is valid and in force. The petitioner had not mentioned about its license particulars to Gram Panchayat, Gurajada and did not pay any single payment of license fee at any point of time since establishing the units within the limits of Gram Panchayat, Gurajada. That the petitioner misrepresented that the license fee and renewal fee is being paid regularly for every three years. As per Rule 2 of G.O.Ms.No.16 dated 10.01.1996, the licensee has to pay three years license fee at a time, as specified in the schedule but not once in three years. That the Gram Panchayat, Gurajada had issued impugned show-cause notice dated 24.09.2011. It is stated that as the petitioner failed to comply to furnish information for license fee for its renewal of license fee and the information available provisionally assessed and levied the licence fee according to law and as per Section 106 of Act of 1994, the levied fee is proper and valid and that the petitioner had not filed any appeal to the Gram Panchayat and sought for dismissal of the writ petition.

5. Heard learned counsel for the petitioner, learned Assistant Government Pleader for Panchayat Raj, for respondents 1 and 2, Sri Ravi Cheemalapati, learned Standing Counsel for the 3rd respondent.

6. Learned counsel for the petitioner submitted his arguments reiterating the averments in the affidavit filed in support of the writ petition.

7. Sri Ravi Cheemalapati, learned Standing Counsel for the 3rd respondent submits that though the petitioner was issued notice in the year 2010, which was admitted by the petitioner in the affidavit filed in support of the writ petition, no information was

furnished to the 3rd respondent, as such, the impugned notice was issued. He also submits that the impugned notice is only a show-cause notice and petitioner can submit explanation and furnish information to the same. He further submits that no particulars are mentioned in the writ petition about the payment of licence fee and permission obtained from the 3rd respondent, except a bald statement stating that they have paid the amount.

8. In this case, it is to be seen that as per Section 119 of the Act of 1994, any industry within the limits of Gram Panchayat has to obtain license. Section 120 of the Act reads as follows:

> "120. Applications to be made for construction, establishment or installation of factory, workshop or work-place in which steam or other power is to be employed:- (1) Every person intending:-
>
> (a) to construct or establish any factory, workshop or work-place in which it is proposed to employ-steam power, water power or other mechanical power or electrical power."

Even in the writ affidavit, at third paragraph, it is stated that the petitioner company is having its establishments at Vuyyuru and Lakshmipuram in Krishna District, A.P. The establishment at Vuyyuru is functioning since 1941 and the factory establishments fall under the territorial jurisdiction of two panchayats, viz., Vuyyuru and Gurajada in Krishna District. Though it is stated that the petitioner had obtained permission and license, no particulars are furnished in the writ affidavit and document is filed along with the writ petition evidencing the same, except a bald statement, that they have paid licence fee and obtained licence. The statement is disputed in the counter affidavits by the respondents 2 and 3 and no reply is also filed rebutting the same and no documents are filed disputing the said averments in the counters. When once the petitioner company is located under the jurisdiction of 3rd respondent, they are obligated to obtain permission under Section 120(a) of the Act of 1994 by paying necessary fees. More so, it is admitted by the petitioner that notice was issued in the year 2010, but there is no explanation to the said notice till date. If really, the petitioner had obtained permission and paid license fees, he should have produced the same before the 3rd respondent. Instead of doing same, he rushed to this Court by filing writ petition, without filing any documents in support of the writ petition.

In view of the above facts and circumstances, I do not see any merit in the writ petition. But, however, since there was interim order continuing from 27.04.2012, it is open for the petitioner to file explanation to the impugned show-cause notice dated 24.09.2011, by raising all the objections, which have been raised in the writ petition, by enclosing the documents in proof of their averments, within a period of four weeks from today. On such explanation, the 3rd respondent shall, after giving an opportunity of hearing to petitioner, pass orders, in accordance with law, within a period of four (4) weeks thereafter. Till passing of such final orders by the 3rd respondent, the 3rd respondent shall not take any coercive steps against petitioner. If explanation is not filed within four (4) weeks from today, it is open for the 3rd respondent to take appropriate action accordingly.

Accordingly, this writ petition is disposed of. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand disposed of.

A.RAJASHEKER REDDY,J

08-06-2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13133 OF 2012

Date: 08.06.2017

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