IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2020 / 23RD AGRAHAYANA, 1942

WP(C).No.20127 OF 2020(M)

PETITIONER:

LIZY ABY
AGED 61 YEARS
W/O.ABY ITTOOP, RESIDING AT MANDIRATHIL HOUSE,
KUMARAKAM P.O., KOTTAYAM DISTRICT.

BY ADVS.
SRI.T.MADHU
SMT.C.R.SARADAMANI
SRI.R.ANILKUMAR (KOTTAYAM)
SRI.SHAHID AZEEZ
SMT.CHANDRALEKHA SANU

RESPONDENTS:

1. **THE STATE OF KERALA**
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. **THE DIRECTOR OF PANCHAYATS,**
THIRUVANANTHAPURAM-695 001.

3. **THE DEPUTY DIRECTOR OF PANCHAYATS,**
COLLECTORATE, KOTTAYAM-686 002.

4. **THE KUMARAKAM GRAMA PANCHAYAT,**
KUMARAKAM P.O., KOTTAYAM DISTRICT-686 563,
REPRESENTED BY ITS SECRETARY.

5. **THE NODAL AGENCY/THE SINGLE WINDOW CLEARANCE BOARD,**
KOTTAYAM, CONSTITUTED UNDER THE PROVISIONS OF THE
KERALA MICRO SMALL AND MEDIUM ENTERPRISES
FACILITATION ACT 2019, REPRESENTED BY ITS
CONVENER/DISTRICT INDUSTRIES OFFICER, OFFICE OF THE
DISTRICT INDUSTRIES OFFICER, KOTTAYAM-686 001.

R4 BY ADV. SRI.T.A.SHAJI (SR.)
R4 BY ADV. SRI.ATHUL SHAJI
SRI.K.J.MANURAJ - GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-11-2020, THE COURT ON 14-12-2020 DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

W.P.(C) No.20127 of 2020

Dated this the 14th day of December, 2020.

J U D G M E N T

Petitioner obtained Acknowledgment Certificate in terms of the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 (the Act) for establishing an industrial enterprise for manufacture of polypropylene lumps. Ext.P7 is the Acknowledgment Certificate obtained by the petitioner on 15.7.2020. Ext.P7 is valid till 14.07.2023. It is stated by the petitioner that she has established the industry on the strength of Ext.P7 Acknowledgment Certificate and while the industry was in operation, the Secretary of the fourth respondent Panchayat issued Ext.P8 stop memo alleging that the operation of the industry by the petitioner is illegal since she has not obtained licence in terms of the provisions of the Kerala Panchayat Raj Act, 1994 (the Panchatyat Raj Act). Ext.P8 stop memo was challenged by the petitioner before this court in W.P.(C) No.18205 of 2020 and on 16.09.2020, when the said writ petition came up for

admission, the learned counsel for the Panchayat submitted that the Panchayat is proposing to withdraw Ext.P8 stop memo and that a communication to that effect would be issued to the petitioner forthwith. In the light of the submission made by the learned counsel for the Panchayat, the said writ petition was closed, permitting the petitioner to carry on her activity. Immediately thereupon, the Secretary of the Panchayat issued Ext.P10 stop memo to the petitioner alleging that complaints have been received concerning the pollution caused by the industry of the petitioner and therefore, she has to stop the activity undertaken by her. It is stated in Ext.P10 stop memo that the same is issued in terms of Section 233A of the Panchayat Raj Act. Ext.P10 stop memo is under challenge in the writ petition.

2. Heard the learned counsel for the petitioner as also the learned counsel for the Panchayat.

3. The learned counsel for the petitioner contended that in the light of the provisions contained in the Act, the Panchayat is precluded from invoking the power under Section 233A of the Panchayat Raj Act over an enterprise covered by an Acknowledgment Certificate issued under the Act. It was also contended by the learned counsel that even if it is found that the Secretary of the Panchayat could invoke the power under Section

233A of the Panchayat Raj Act over such an enterprise, Ext.P10 stop memo is illegal in so far as the same was issued otherwise than in accordance with Section 233A of the Panchayat Raj Act.

4. Per contra, the learned counsel for the Panchayat contended that the provisions of the Act do not take away the power of the Secretary of the Panchayat under Section 233A of the Panchayat Raj Act. It was also contended by the learned counsel that the Panchayat is empowered to issue stop memos in the nature of Ext.P10 under the said provision.

5. In order to resolve the issues in dispute between the parties, it is necessary to refer to the relevant provisions of the Act. Sections 2(c), 2(d), 5, 6, 7, 10 and 11 are the provisions in the Act which are relevant. The said provisions are extracted hereunder:

> 2. Definitions.—In this Act, unless the context otherwise requires,—
>
> x x x x x x x x x
>
> (c) “approval” means licenses, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State;
>
> (d) “Competent Authority” means any department or agency of the Government, statutory body, Corporation

owned by State, Local Self Government Institutions, Urban Development Authorities, or any other Authority or Agency constituted or established by or under any State law or under the administrative control of the Government, which is entrusted with the powers or responsibilities to grant or issue approval for establishment or operation of enterprises in the State;

x x x x x x x x x

5. Filing of Self Certification.—(1) Any person who intends to start an enterprise other than those not included as 'Red Category' by the Kerala State Pollution Control Board may, furnish before the nodal agency a Self Certification to start such an enterprise in such form and in such manner, as may be prescribed.

(2) If any person has filed any application before the competent authority to obtain all or any of the approvals as defined in clause (c) of section 2, before the commencement of this Act, such person may also opt to furnish self certification of intend to start an enterprise under sub-section (1);

(3) On receipt of a self certification completed in all respects, the nodal Agency shall, forthwith, issue an Acknowledgment Certificate, in the prescribed form, to the person who furnished the self certification under sub-section (1).

6. Effect of the Acknowledgement Certificate.—(1) An acknowledgment certificate issued under section 5 shall, for all purposes, have effect as if it is an approval as defined in clause (c) of section 2, for a period of three years from the date of its issuance and after the expiry of the said period of three years, such enterprise shall have to obtain required approvals as defined in clause (c) of section 2, within six

months from the date of such expiry:

Provided that the acknowledgement certificate shall not entitle a person to use a land contrary to the provisions contained in the Kerala Conservation of Paddy Land and Wetland Act, 2008 (28 of 2008) and it shall also not entitle a person to use the land in deviation to the land use specified in the master plan notified under the Kerala Town and Country Planning Act, 2016 (9 of 2016), wherever such plan is in force.

(2) During the period of three years specified in sub-section (1), no competent authority shall undertake any inspection for the purpose of, or in connection with, any approval as defined in clause (c) of section 2.

7. Grant of Exemption.—Where the Government or any authority under it is empowered to exempt any enterprise from any approval or inspection or any provisions relating thereto under any Central Act, the Government or any such authority, as the case may be, shall, subject to the provisions of such Central Act, exercise such powers to grant such exemption to an enterprise established in the State for a period of three years from the date of issue of the acknowledgment certificate under section 5.

x x x x x x x x x

10. Overriding effect of this Act on other laws.—(1) The provisions of this Act shall have overriding effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force.

(2) In particular and without prejudice to the generality of the foregoing provisions of this Act, such provisions shall have effect notwithstanding anything inconsistent

> therewith contained in the following enactments and the provisions of these enactments shall be read as amended in conformity with the provisions of this Act, namely:—
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> 1. The Kerala Panchayat Raj Act, 1994 (13 of 1994)
> 2. The Kerala Municipality Act, 1994 (20 of 1994)
> 3. The Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960)
> 4. The Kerala Lift and Escalators Act, 2013 (18 of 2013)
> 5. Travancore – Cochin Public Health Act, 1955 (XVI of 1955)
> 6. Madras Public Health Act, 1939 (3 of 1939)
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> 11. Savings.—Subject to the provisions of section 10, nothing in this Act shall be construed as exempting any enterprise from the application of the provisions of any law for the time being in force, or any regulatory measures and standards prescribed thereunder, except to the extent expressly provided in this Act.

A reading of Sections 2(c) and 6 extracted above would reveal that an Acknowledgment Certificate issued under the Act shall, for all purposes have the effect of the licences, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment of an enterprise for a period of three years. In other words, a person obtaining an Acknowledgment Certificate under the Act for the purpose of establishing an enterprise need not obtain licences, permissions, approvals, clearances, registration, consents, no objection

certificate and the like, required under any State law in connection with the establishment of the enterprise for a period of three years. Further, a reading of Section 10 of the Act would reveal that the provisions of the Act shall have overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, in particular anything inconsistent therewith contained in any of the statutes specified in sub-section (2) therein. In other words, the Act will have overriding effect over the provisions in any other law for the time being in force including the Panchayat Raj Act referred to in sub-section (2) of Section 10, which are inconsistent with the provisions of the Act. This aspect has been clarified in Section 11 of the Act also by providing that subject to the provisions of Section 10, nothing in the Act shall be construed as exempting any enterprise from the application of the provisions of any law for the time being in force, or any regulatory measures and standards prescribed thereunder, except to the extent expressly provided in the Act. Section 233A of the Panchayat Raj Act is a provision intended for abatement of nuisance caused by factory, workshop etc. In the absence of any provision in the Act dealing with abatement of nuisance caused by factory, workshop etc., the overriding effect provided for under Section 10 of the Act will not have any application over Section 233A of the Panchayat Raj Act.

The contention raised by the petitioner as regards the application of Section 233A of the Panchayat Raj Act over the industry of the petitioner is therefore, liable to be rejected and I do so.

6. I shall now consider the contention of the petitioner as regards the legality of Ext.P10 stop memo. Section 233A of the Panchayat Raj Act reads thus:

> "**233A. Abatement of nuisance caused by factory, workshop etc.**
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> 1. Where any factory, workshop, workplace or machinery causes, in the opinion of the Secretary nuisance by reason of a particular kind of fuel being employed or by reason or 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 such factory, workshop, workplace or machinery for the abatement of such nuisance within a reasonable time to be specified for that purpose.
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> 2. The Secretary may obtain expert opinion from the departments concerned, with regard to the determination of the nuisance or its abatement, at the cost of the owner or person in charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished, as soon as possible, but not later than fifteen days of reporting of such nuisance.
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> 3. Where there has been wilful default in carrying out a direction given under subsection (1) or where in the existing circumstances the abatement of nuisance is found impracticable, the Secretary may prohibit the working of the factory, workshop, workplace or machinery till such time the

> person concerned takes necessary steps to the satisfaction of the Secretary for the abatement of the nuisance."

A reading of the provisions in Section 233A would indicate that an activity undertaken by a person in a factory, workshop or workplace could be prohibited by the Secretary of the Panchayat under sub-section (3) of Section 233A in two situations namely, where there has been willful default in carrying out a direction given under sub-section (1) or where in the existing circumstances, the abatement of nuisance is found impracticable. The provisions would also indicate that even under such situations, the Secretary of the Panchayat is empowered to prohibit the working of factory, workplace or workshop and machinery only till such time the person concerned takes necessary steps to the satisfaction of the Secretary of the Panchayat for the abatement of the nuisance. In Ext.P10 notice, the Secretary has no case that there has been willful default in carrying out a direction given under sub-section (1) of Section 233A of the Panchayat Raj Act or that the abatement of nuisance is found impracticable in the existing circumstances. On the other hand, the allegation in Ext.P8 notice is only that complaints have been received to the effect that the industry of the petitioner is causing pollution. The power of the Secretary of the Panchayat under sub-section (3) of Section 233A cannot be invoked on that

ground. Going by the provisions contained in sub-sections (1) and (2) of Section 233A of the the Panchayat Raj Act, the subjective satisfaction of the Secretary of the Panchayat that the factory, workshop, work place or machinery concerned causes 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, is a mandatory prerequisite to exercise his power under sub-section (1) to direct the person in charge of such factory,workshop or work place or machinery to abate the nuisance. Sub-section (2) of Section 233A which enables the Secretary of the Panchayat to obtain expert opinion from the departments concerned with regard to the determination of the nuisance or its abatement, at the cost of the owner or person in charge of the factory, workshop, work place or machinery, for arriving at the said subjective satisfaction, reinforces the said mandatory prerequisite. In other words, without arriving at a conclusion based on materials including expert opinion obtained in terms of sub section (2) of Section 233A of the Panchayat Raj to the effect that the factory, workshop, work place or machinery concerned causes 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 cannot issue a prohibitory order under sub-section (3) of Section 233A. In the case on hand, Ext.P10 stop memo does not indicate that such a conclusion was arrived at by the Secretary of the Panchayat before issuing Ext.P10 stop memo. Ext.P10 stop memo is, therefore, unsustainable in law.

In the result, the writ petition is allowed and Ext.P10 stop memo is quashed. It is however, made clear that this judgment will not preclude the Secretary of the Panchayat from invoking the power under Section 233A of the Panchayat Raj Act, over the industry of the petitioner, in accordance with the provisions therein.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**THE TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE HUSBAND OF THE PETITIONER DATED 18.06.2019.**
EXHIBIT P2	**THE TRUE COPY OF THE STOP MEMO DATED 16.09.2019 ISSUED BY THE FIRST RESPONDENT.**
EXHIBIT P3	**THE TRUE COPY OF THE INTERIM ORDER DATED 12.12.2019 IN WPC NO.34081/2019 ON THE FILES OF THIS HONOURABLE COURT.**
EXHIBIT P4	**THE TRUE COPY OF THE ORDER DATED 24.02.2020 OF THIS HONOURABLE COURT IN WPC NO.34081/2019.**
EXHIBIT P5	**THE TRUE COPY OF THE KERALA MICRO SMALL AND MEDIUM ENTERPRISES FACILITATION ACT 2019 DOWNLOADED FROM THE WEBSITE OF KERALA GOVERNMENT.**
EXHIBIT P6	**THE TRUE COPY OF THE KERALA MICRO SMALL AND MEDIUM ENTERPRISES FACILITATION RULES 2020 DOWNLOADED FROM THE WEBSITE OF KERALA GOVERNMENT.**
EXHIBIT P7	**THE TRUE COPY OF THE ACKNOWLEDGMENT CERTIFICATE DATED 15.07.2020 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**
EXHIBIT P8	**THE TRUE COPY OF THE STOP MEMO DATED 25.08.2020 ISSUED BY THE FIRST RESPONDENT.**
EXHIBIT P9	**THE TRUE COPY OF THE JUDGMENT DATED 16.09.2020 IN WPC NO.18205/2020 ON**

THE FILES OF THIS HONOURABLE COURT.

EXHIBIT P10	**THE TRUE COPY OF THE STOP MEMO DATED 23.09.2020 BEARING NO.A2 1517/2020 ISSUED BY THE FOURTH RESPONDENT.**