



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2022

PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD)No.20544 of 2021

and

W.M.P. (MD)No.17181 of 2021

WEB COPY

S.Parthiban

... Petitioner

vs.

1.The District Collector / Inspector of Panchayat,
Office of the District Collectorate,
Thoothukudi District.

2.The Commissioner and Block Development
Officer (Panchayat),
Alwarthirunagari Panchayat Union,
Thoothukudi District.

3.The Chairperson,
Alwarthirunagari Panchayat Union,
Thoothukudi District.

4.The President,
Meerankulam Panchayat,
Meerankulam Village, Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order of the second respondent in his proceedings in A2/2438/2021, dated 30.10.2021 and quash the same as illegal.

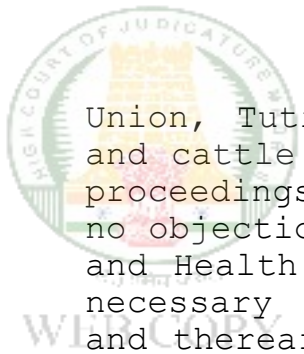
For Petitioner	:Ms.Jasima Yasmin for M/s.Ajmal Associates
For R1	:Mr.S.Kameswaran Government Advocate
For R2 to R4	:Mr.D.Ghandiraj Special Government Pleader

O R D E R

This Writ Petition has been filed in the nature of Certiorari calling for the records relating to the impugned order of the second respondent/Commissioner and Block Development Officer, dated 30.10.2021 and to set aside the same.

2.The petitioner, S.Parthiban, is the owner of the lands in S.No.987/21 in Meerankulam Village, Alwarthirunagari Panchayat

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Union, Tuticorin District. He sought licence to run a vegetable and cattle market in the aforesaid lands. The second respondent by proceedings, dated 29.06.2021 had directed the petitioner to obtain no objection certificate from the Police Department, Fire Department and Health Department. The petitioner claims that he had obtained necessary no objection certificate from the concerned departments and thereafter, on the basis of the resolution passed by the third respondent/Chairperson, Alwarthirunagari Panchayat Union and on the basis of the no objection certificates received and also on the basis of a report from the Regional Deputy Block Development Officer, dated 26.10.2021, the second respondent/Commissioner and Block Development Officer (Panchayat), Alwarthirunagari Panchayat Union, by proceedings in A2/2438/2021, dated 05.10.2021, but signed on 28.10.2021 had granted licence to run vegetable and cattle market in the aforementioned lands. Conditions were also imposed.

3. Within two working days, ie., on 30.10.2021, the second respondent cancelled the licence of the petitioner claiming that the petitioner had not made any arrangement to establish the market and was actually trying to put up a bar in the said area. It was also stated that the petitioner had not obtained permission from the Meerankulam Village Panchayat. It had been also stated that there was apprehension of law and order problem. Claiming that the petitioner was not put on notice prior to such cancellation of the licence, the Writ Petition has been filed seeking interference with the said order.

4. A counter affidavit had been filed by the second respondent/Commissioner and Block Development Officer (Panchayat), Alwarthirunagari Panchayat Union, justifying the impugned proceedings. It had been stated that only a conditional permission had been granted to the petitioner to run vegetable and cattle market and the right to cancel the licence was reserved with the respondents, if there was violation of any of these conditions. It was also stated that the petitioner had suppressed the fact that the villagers of Meerankulam Village as well as the President of Meerankulam Village Panchayat had raised objections stating that the petitioner in the guise of establishing a vegetable and cattle market, was actually attempting to run a liquor bar.

5. It was also stated that for the past 40 years, the villagers have their own market every Wednesday. It was stated that the Village Panchayat Council had passed a resolution on 29.10.2021 protesting against the licence granted to the petitioner to run a private market. In order to maintain peace, the second respondent had with no other option, withdrawn the earlier permission granted to the petitioner. A Peace Committee Meeting was held by the Tahsildar on 01.11.2021 and it was evident that there was an underlying unrest justifying the cancellation of licence in the interest of public.



6.It had been stated that the fundamental right to do lawful business as envisaged under Article 19(1)(g) of the Constitution of India was subject to restrictions. In the counter affidavit, reference was also made to Section 148 of the Tamil Nadu Panchayats Act, 1994, which contemplates granting of licence to run a private market and Rule 7 of Tamil Nadu Panchayats (Opening and Maintenance of Market) Rules 2000, which also regulates the manner in which a private market should be run. It was therefore, stated that the cancellation is justified and the Writ Petition should be dismissed.

7.Rejoinder was filed by the petitioner herein, wherein, he had stated that the complaints given by the villagers or by the President of Meerankulam Village Panchayat had not been served on the petitioner and he had not been heard. He further stated that the respondents had not stated the specific condition, which the petitioner is alleged to have violated. It was stated that the petitioner was not afforded with reasonable opportunity prior to cancellation.

8.Heard arguments advanced by Ms.Jasima Yasmin, learned Counsel for the petitioner, Mr.S.Kameswaran, learned Government Advocate for the first respondents and Mr.D.Ghandiraj, learned Special Government for second to fourth respondents

9.The petitioner had sought permission to run a vegetable and cattle market in a premises, which he owns at S.No.987/21 in Meerankulam Panchayat, Alwarthirunagari Panchayat Union in Tuticorin District. He is the owner of the said land. The second respondent by proceedings, dated 29.06.2021, had directed the petitioner to obtain no objection certificates from the Police department, Fire department and Health department. The petitioner had obtained permission on 26.08.2021 from the District Fire and Rescue Officer, Tuticorin District and also from the Deputy Director, Health Services, Tuticorin on 12.10.2021. The Panchayat Union Council by resolution, dated 30.09.2021, granting concurrence for running the private market. Based on those documents, the second respondent by proceedings, dated 05.10.2021 but signed on 28.10.2021 granted permission to the petitioner to run the private market.

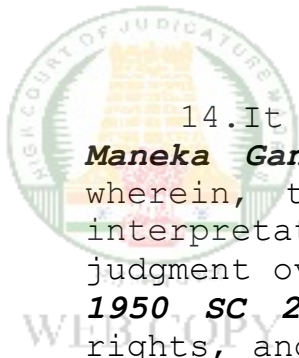
10.A perusal of the impugned order, dated 30.10.2021, shows that even in the subject, there is reference to complaints received from the general public and also from the Village Council. It was stated that the licence granted in favour of the petitioner has been cancelled owing to law and order situation. In the references, reference No.6 was a letter from the President, Meerankulam Village Panchayat, dated 29.10.2021 and a complaint from the general public of Meerankulam Panchayat, dated 29.10.2021. In the impugned order, after extracting the conditions under which the licence was granted to the petitioner, it had been stated that the petitioner had not taken any steps to set up vegetable market and had also not obtained permission from the Meerankulam Panchayat Council.



11.It was also stated that the petitioner was taking steps to set up a liquor bar. It was also stated that the petitioner was trying to shift the weekly market run on all Wednesday by the villagers to another place. It was also stated that complaints in these regards have been received. It was therefore stated that the permission granted to the petitioner had been cancelled. A caveat was also placed that if the petitioner complies with the rules and regulations and the conditions in future and obtains permission from the Meerankulam Village Panchayat, then he may run the market.

12.It is clearly evident that the complaints alleged against the petitioner by the village people and by the President of Meerankulam Village Panchayat, were not forwarded to the petitioner. He was not heard. Further, when serious allegations have been made that he was trying to run a liquor bar, the petitioner should have been put on notice of such allegations and explanations should have been received from him and thereafter, an order either accepting the explanation or rejecting the explanation or finding that as a matter of fact he was actually taking steps to run a liquor bar should have been passed. These are all exercises which the respondents should have undertaken before issuing the notice cancelling the licence of the petitioner. Violation of principles of natural justice stares in the face of the order of the second respondent.

13.The learned Counsel for the petitioner had placed reliance on two judgments of two learned Single Judges of this Court in the case of ***E.Thanga Raja vs the Executive Officer, Ettayapuram Selection Grade Town Panchayat***, reported in ***2004 SCC Online Mad 302***. and ***E.Thanga Raja vs the Executive Officer, Ettayapuram Selection Grade Town Panchayat***, reported in ***(1998) 1 MLJ 103***. A perusal of those judgments reveal that E.Thanga Raja, the petitioner therein had been engaged in long winding struggle to establish a private market. He had applied for licence and it was granted. Its renewal was rejected. Renewal was directed by a learned Single Judge. A Division Bench however directed the respondents to consider renewal. After inspection, the renewal was again rejected. A learned Single Judge again held that the rejection of renewal was not justified. Again, the matter went before the Division Bench, which set aside the rejection and directed fresh consideration and thereafter, since the period had run out, a further application for renewal was filed and it was again rejected and it came up before another learned Single Judge of this Court. The principles laid therein need not be examined by me at this juncture. But let me rest with reiterating the fact that to fulcrum of any administrative act or proceedings is to ensure that the order was passed keeping in mind the principles of natural justice.



14.It is a principle and a binding principle laid down in **Maneka Gandhi v. Union of India**, reported in **AIR 1978 SC 597**, wherein, the Honourable Supreme Court significantly expanded the interpretation of Article 21 of the Constitution of India. The judgment overruled **A. K. Gopalan v. State of Madras**, reported in **AIR 1950 SC 27**, which had implied the exclusiveness of fundamental rights, and the judgment established a relationship between Articles 14, 19, and 21 of the Constitution, the 'golden triangle' or 'trinity' and held that a law depriving a person of 'personal liberty' must not violate any of them. It was also held that a procedure under Article 21 cannot be arbitrary, unfair and reasonable.

15.In this case, the petitioner was not served with copies of the complaints referred in the impugned order. He was not even put on notice. There was no possibility of him being heard. There was no intention of hearing him or giving an opportunity to be heard. The proceedings are certainly vitiated on this one ground itself. The impugned order is therefore set aside.

16.The second respondent is directed to proceed in manner known to law by forwarding copies of the complaints received to the petitioner and thereafter, make a spot inspection of the land in which the petitioner proposes to set up a private market and after receiving an explanation from the petitioner and after coming to an independent subjective satisfaction, take a decision in manner known to law. The entire exercise must be completed within a period of twelve weeks from the date of receipt of a copy of this order. Till such further order is passed in manner known to law and after following the aforementioned procedure, the petitioner shall also await such order and shall not open the market.

17.Though the impugned order is set aside, since observations are made, the Writ Petition stands disposed of. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

cmr

To

1.The District Collector / Inspector of Panchayat,
Office of the District Collectorate,
Thoothukudi District.

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2.The Commissioner and Block Development
Officer (Panchayat),
Alwarthirunagari Panchayat Union,
Thoothukudi District.

+1 CC to M/s.JASIMA YASMIN (AJMAL ASSOCIATES), Advocate (SR-1591[F]
dated 12/01/2022)

+1 CC to M/s.SPL.GP (SR-1687[F] dated 19/01/2022)

Order made in
W.P. (MD) No.20544 of 2021
12.01.2022

NSN (CO)
GC (28.01.2022) 6P 5C