

(2023) 03 KL CK 0322

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16037 Of 2021

Anil Chandran R.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Kerala Public Health Ordinance, 2021 — Section 21
Kerala Panchayat Raj Act 1994 — Section 233(4)(b)

Citation : (2023) 03 KL CK 0322

Hon'ble Judges : S. Manikumar, CJ;Murali Purushothaman, J

Bench : Division Bench

Advocate : Elvin Peter P.J., K.R.Ganesh, Sidharth Sudheer, Gouri Balagopal, Sreelakshmi, Kr.Deepa,

Final Decision : Dismissed

Judgement

S. Manikumar, CJ.

1. The petitioner has sought for the following reliefs:

(i) Issue a writ of certiorari calling for the records leading to Exhibits P4 & P5 and quash the same;

(ii) Issue a writ of mandamus or any other writ, direction or order, directing the respondents not to allow any establishments, factories Hotels etc to operate without obtaining Sanitary Fitness Certificate as provided in Ext.P3 and Section 21 of the Kerala Public Health Ordinance, 2021;

(iii) Declare that Exts.P4 and P5 allowing the Local Self Government to grant D & O license to any trade on production of just ID proof and lease deed/legal occupancy certificate is illegal, unfair, arbitrary, unreasonable, unconstitutional and the same is violative of Article 14 and 21 of the Constitution of India;

2. The petitioner, a public spirited person is working as a Regional Sales Manager

of Acrysil Limited, a firm engaged in the business of manufacture and supply of kitchen appliances. The petitioner has approached this Court for a direction to the respondents not to allow any establishments, factories, hotels ect., to operate without obtaining Sanitary Fitness Certificates as provided in Ext.P3 and Section 21 of the Kerala Public Health Ordinance, 2021 as also to stay the operation of Ext.P4 Government Order and Ext.P5 Circular, which simplifies the existing procedure for providing D& O licence for conducive and fast-track environment for starting business enterprises.

3. The impugned proceedings challenged in this writ petition are as under:

GOVERNMENT OF KERALA

ABSTRACT

Local Self Government Department- Ease of Doing

Business – Reforming and simplifying the existing

procedures for providing conducive and fast-track

environment for starting business enterprises-D & O

license-Orders issued.

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LOCAL SELF GOVERNMENT (RC) DEPARTMENT

G.O(RT) No. 3361/2017/LSGD Dated. Thiruvananthapuram. 23/10/2017

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Read: D.O letter dt. 14 08/2017 from Sri Paul Antony, Additional Chief Secretary to Government. Industries and Power Department.

ORDER

The Department of Industrial Policy and Promotion (DIPP), Govt. of India has laid emphasis on simplification and rationalization of the existing Rules and inclusion of Information Technology for Ease of Doing Business. Accordingly, the Industries Department has identified and recommended certain reforms required for making favourable and conducive atmosphere for starting new business enterprises.

The Industries Department in the letter read above has recommended to reduce the number of documents required for obtaining trade license (D & O license) to only two ie. ID Proof, Lease Deed/Legal Occupancy Certificate.

Government have examined the matter in detail and are pleased to order that LSG Institutions shall reduce the number of documents to be submitted for obtaining trade license (D & O license) to only two ie. ID Proof, Lease Deed Legal Occupancy Certificate.

(By Order of the Governor)

T.K. JOSE

Principal Secretary to Government.

To

The Director of Panchayath. Thiruvananthapuram. The Director of Urban Affairs. Thiruvananthapuram. The Industries & Power Department The M/s KPMG.

The Kerala State Industrial Development Corporation The Local Self Government (RA & RB) Department The Stock File Office Copy.

Government of Kerala

No.R.C.3/228/2020/LSGD

Local Self Government (RC) Department

Thiruvananthapuram Date:09/07/2021

CIRCULAR

Sub:- Local Self Govt. Department Documents to be submitted when renewing business license in Local Self Government Institutions Issuing-clarification

Ref:- 1. Circular No.66562/RC3/12/LSGD dated 10.01.2013

2. Judgment dated 22.02.2017 in WP(C) No.5938/2017(N) of the Hon'ble High Court

3. GO(Rt)No.3361/2017/LSGD Dated 23 10 2017

As per ref (1) circular, directed that the Health Inspector should investigate all license applications and maintain a personal register for the same. The Hon'ble High Court as per reference cited (2) judgment in WP(C)No.5938/2017(N) has also directed the Njarakkal Grama Panchayat Secretary to consider the application for the license without seeking a Sanitation Certificate of Sri.Rimold Perera, the second petitioner in the petition.

Section 233 (4) b of the Kerala Panchayat Raj Act, as amended by the Kerala Investment Promotion and Facilitation Act, 2018, stipulates that the certificate of District Medical Officer is required only for health institutions such as hospitals. There is no provision regarding sanitation certificate.

To facilitate the process of trading licenses as part of the Ease of Doing it has been ordered under reference 3 that only I.D.proof, lease deed / legal occupancy certificate should be produced.

Despite the above orders and directives, the Government is aware that different procedures are followed in each district for renewal of business licenses while applying for trade licenses in the local bodies. Clarification is issued on the basis

of the complaints received from the Government in this regard and on the basis of reference orders regarding the documents to be produced at the time of renewal of trade license in the Local Self Government Institutions as given below.

(1) Sanitation certificate is not mandatory when renewing business licenses of local self-governing bodies. It is sufficient to renew the license on the basis of the Inspection report of the officer investigating the applications.

(2) When taking a new business license in the local self- government, lease agreement and ID. Proof must also be produced. If the license thus obtained is renewed in time, the lease agreement need not be re-presented. In case the license is not renewed in time, the consent of the building owner should be produced when applying for renewal.

Bishwanadh Sinha

Principal Secretary

Director of Panchayath, Thiruvananthapuram

Director of Urban Affairs, Thiruvananthapuram

All Deputy Directors of Panchayat (Through Panchayat Director)

Regional Joint Director, Kollam, Kochi,

Kozhikode (Through Director of Urban Affairs)

Principal Accountant General (Audit I/Audit II) Thiruvananthapuram

Director, Kerala State Audit Department, Thiruvananthapuram

Executive Director, Information Kerala Mission, Thiruvananthapuram

I & P.R.D. Web & New Media

Stock File/Office Copy (RC3/228/2020/LSGD)

By Order

Sd/-

Section Officer

4. Mrs.K.R.Deepa, learned Special Government Pleader has filed a counter affidavit dated 08.07.2022, refuting the averments and prayers sought for in the writ petition.

When this writ petition came up for further consideration today, Mrs.Sreelakshmi, learned counsel appearing for the petitioner submitted that the petitioner is not pressing the writ petition. Placing on record the above submission, writ petition is dismissed as not pressed. We make it clear that the petitioner will not be at liberty to approach this Court again with the same cause of action.