

(2021) 04 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1060, 3346 Of 2021

Jerin J. Royees

APPELLANT

Vs

Secretary, Thycattussery Grama Panchayath And Ors

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Citation : (2021) 04 KL CK 0053

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : R. Sunil Kumar, A. Salini Lal, C.K. Sajeev, Nidhi Balachandran, Sabu George, Deepa Narayanan, T. Naveen, M. Gopikrishnan Nambiar, K. John Mathai, Joson Manavalan, Paulose C. Abraham, Raja Kannan

Final Decision : Dismissed

Judgement

1. Both these writ petitions relate to establishment of a Retail Petroleum Outlet in Thaikkattussery Grama Panchayat in Alappuzha District. The petitioner in WP(C) No.1060/2021 is the dealer selected by Indian Oil Company Ltd. for starting the outlet. The 1st petitioner in WP(C) No.3346/2021 is a School Management Committee and petitioners 2 and 3 are parents of students studying in the School. They are aggrieved since the outlet is proposed to come up near the School.

2. The Indian Oil Corporation issued Ext.P1 Letter of Intent to the petitioner in W.P.(C) No.1060/2021 to start a Petroleum Retail Outlet at 9.87 Ares of land in Re-Survey No.36/10A2-2 of Thaikkattussery Village. The Indian Oil Corporation made an application and the District Authority issued Ext.P2 No Objection Certificate dated 09.10.2020, under Rule 144 of the Petroleum Rules, to start the outlet. The petitioner made Ext.P3 application to Thaikkattussery Grama Panchayat for issuance of building permit. The Panchayat forwarded the application to the District Town Planner. The District Town Planner, as per Ext.P6, approved the application.

3. The petitioner states that on 07.01.2021, the Secretary to Grama Panchayat issued Ext.P7 letter to the petitioner stating that the Panchayat Committee has refused to allow the application for building permit, since there is a school near to the site. The petitioner seeks to quash Ext.P7 and to direct the Panchayat to issue building permit to the petitioner.

4. The 1st respondent-Secretary to the Grama Panchayat filed a counter affidavit. The 1st respondent stated that there arose a hue and cry from the local public and from the School Management Committee of the Government UP School, against the proposed petrol pump. The School is situated very near to the plot where the petrol pump is proposed. On 06.01.2021, the Panchayat Committee passed a resolution not to grant building permit to the petitioner. The 1st respondent contended that the petitioner has alternative efficacious remedy to redress his grievances under the Kerala Panchayat Raj Act.

5. The School Management Committee and two parents filed WP(C) No.3346/2021 challenging Ext.P10 Consent to Establish issued by the Kerala State Pollution Control Board (KPCB) and Ext.P12 NOC issued by the District Authority.

6. The petitioner in WP(C) No.1060/2021 contended that the Grama Panchayat is not competent to reject application for building permit on the ground of possible pollution. It is for the Environmental Engineer of PCB to decide the pollution aspect. The fundamental right of the petitioner to engage in any trade or business or to follow any occupation, cannot be deprived of by a resolution of the Panchayat Committee.

7. The petitioners in WP(C) No.3346/2021 contended that the PCB cannot fix the date and mode of implementation of the directions in Ext.P3 Guidelines. Ext.P10 Consent to Operate issued by the PCB is bad in law. The hearing conducted by the District Collector is a mockery. Rule 144 of the Petroleum Rules contemplates an enquiry before grant of NOC, which was not made. The School is situated in 21 cents of property. A well, which is the only source of drinking water to the school children, is within 10 metres of the proposed Petroleum Retail Outlet. Unloading and storage of petrol at the site would cause serious pollution causing potential health risk. In the circumstances, the proposed Petroleum Retail Outlet should not be permitted to operate anywhere near the School, contended the counsel for the petitioners in W.P.(C) No.3346/2021.

8. I have heard the learned counsel for the petitioners in both the writ petitions, the learned Assistant Solicitor General of India representing the Union of India, the learned Government Pleader representing governmental authorities, the learned Standing Counsel for the IOCL and PCB and the learned counsel for the Grama Panchayat.

9. The District Town Planner, Alappuzha has approved the lay out plan and granted permission for usage of plot for Petroleum Retail Outlet as per Ext.P6 order in WP(C) No.1060/2021, subject to conditions imposed therein. As regards

pollution aspects, the District Town Planner has stated that the Grama Panchayat should ensure that NOC from the Pollution Control Board is obtained. The PCB has issued Consent to Establish, on 22.09.2020.

10. However, the Grama Panchayat has passed a resolution on 07.01.2021 holding that building permit need not be granted to the petitioner for the reason that there are objections from the public, that there is a petition against establishing the outlet pending in the High Court and that the construction of the Petroleum Retail Outlet is against the circular of National Green Tribunal. None of these reasons justifies the decision of the Grama Panchayat to reject the application for building permit. An application for building permit has to be considered by the Grama Panchayat on its own merit. Objections from certain quarters by itself cannot be a justifiable reason for rejection, unless the application suffers from any statutory lacuna.

11. The pendency of writ petition relating to the Petroleum Retail Outlet before this Court also cannot be reason for rejection of an application for building permit. The PCB, which is the competent authority statutorily obligated to ensure environmental protection and to implement pollution control measures, has issued Consent to Establish the outlet. The Panchayat cannot reject an application for building permit on the ground that the construction will violate Circulars of the National Green Tribunal, when the competent authority has given statutory consent. The Panchayat Committee cannot act as an adjudicatory body over the statutory authorities under the PCB.

12. The case discloses a disturbing trend in Kerala followed by democratically elected bodies, in passing resolutions on subjects which are beyond their constitutional and statutory reach. Democracy is not just rule of majority. All constitutional and statutory bodies are bound by the Constitution of India and are expected to act within the Statutory boundaries fixed by legislatures. A constitutional democracy is not one enforcing majority dictation. A constitutional democracy is one where all act within the framework of the Constitution and the laws. A citizen is entitled to exercise his fundamental and statutory rights, uninhibited by the desire or dictates of majority, howsoever appealing the majority opinion may be. The Grama Panchayat Committee committed impropriety in passing a resolution in respect of a matter which is to be governed by statutory instruments.

13. The contention of the learned counsel for the petitioners in W.P.(C) No.3346/2021 is that as per Ext.P4 circular, new retail outlets shall not be located within a radial distance of 50 metres from schools, hospitals and residential areas designated as per local laws. As the retail outlet now proposed falls within this prohibited distance, the Pollution Control Board ought not have issued Consent to Establish. But, it may be noted that the Pollution Control Board issued Circular dated 18.08.2020 wherein it has been stated that if any requisite licence other than PCB consent is obtained by the applicant for establishing the petrol pump prior to the date of the Circular dated 24.02.2020, the siting criteria

mentioned in the Circular dated 09.08.2004 shall be applicable. The petitioner had obtained Ext.P1 Letter of Intent on 21.03.2019.

14. The contention of the petitioner that No Objection Certificate obtained by the petitioner from 10th and 11th respondents in W.P.(C) No.3346/2021 cannot be treated as licence, for the purpose of Ext.P6 Circular dated 18.08.2020, does not appear to be correct. In Ext.P6, the PCB has used the term "any requisite licence other than the PCB consent" in a broad sense. Therefore, any consent which is having statutory flavour, without which a petroleum outlet cannot be established should be taken as a licence for the purpose of Circular dated 18.08.2020 of the PCB. Principles governing statutory interpretation cannot always be applied to interpret Circulars and executive instructions.

15. The arguments of the petitioner in W.P.(C) No.3346/2021 based on Ext.P8 minutes are not supported by facts. The contention that there is no whisper of granting Consent for the outlet in Ext.P8 minutes and hence the hearing conducted on 26.11.2020 is a mockery, in view of subsequent issuance of consent, can also not be accepted because Ext.P8 minutes cannot be treated as an adjudicatory decision and Consent to Operate is to be given or refused based on prescribed principles.

16. The argument based on Rule 144 of the Petroleum Rules that the District Collector ought to have made an enquiry before issuing NOC, would not be of any help to the petitioner since there is nothing on record to show that the District Collector has not made any enquiry. Ext.P8 does not suffer from non-application of mind.

In the facts and circumstances of the case, W.P.(C) No.1060/2021 is disposed of setting aside Ext.P7 communication and directing the respondents therein to reconsider the application for building permit submitted by the petitioner and grant permit to the petitioner, if the petitioner is otherwise eligible for the same. W.P.(C) No.3346/2021 is found to be devoid of any merits and is hence dismissed.