

(2022) 02 KL CK 0119

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 20081, 20807 Of 2021

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APPELLANT

Vs

Manakkad Grama Panchayath Puthupariyaram.P.O, Idukki
District 685608

RESPONDENT

Date of Decision : 14-02-2022

Acts Referred:

Kerala Irrigation and Water Conservation Act, 2003 — Section 40(2)
Kerala Panchayat Raj Act, 1994 — Section 185B, 232, 233, 233(2A), 236(3), 136(6)
Kerala Panchayat Raj (Issuance of Licence to Factories, Trades, Entrepreneurship
activities and other Services) Rules, 1996 — Rule 10

Citation : (2022) 02 KL CK 0119

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : K.Jaju Babu, M.U.Vijayalakshmi, Brijesh Mohan, T.R.Sadeesan,
T.Venugopal, R.Rajpradeep, Neetu Vinod, T.S.Athira, K.C.Vincent, Jobi Jose
Kondody, B.S.Syamanthak Philip J.Vettickattu

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The prayers in the above two writ petitions are as follows:

W.P.(C)No.20081/2021

2. The petitioners are owners of land in which the 3rd respondent is conducting mining operations on the basis of licence issued

by respondents 1 and 2. An agreement had been entered into on 01.11.2014 between the petitioners and the 3rd respondent regarding the quarrying

operation, a copy of which has been produced as Ext.P1. Ext.P1 was followed by Ext.P2 agreement dated 24.1.2020. The prayer in the writ petition is

for a direction to respondents 1 and 2 to consider Ext.P5 complaint filed by the

2nd petitioner on 16.7.2021 and a mass petition submitted by 17 local residents including petitioners 2 and 3, and, not to issue any licence to the 3rd respondent under the Kerala Panchayat (Licensing of Dangerous and Offensive Trades and Factories) Rules (the Rules for short).

W.P.(C)No.20807/2021

3. The writ petition is filed by the 3rd respondent in W.P. (C)No.20081/2021 against the Panchayat and its Secretary, praying to quash Exts.P11 and P15 issued by the 2nd respondent, and, to direct the 2nd respondent to renew Ext.P8 trade licence for the year 2021-22, for which Ext.P10 application had been submitted by the petitioner before the 2nd respondent on 15.3.2021. There is also a prayer for a declaration that the petitioner is entitled for a deemed licence under Section 236(3) of the Kerala Panchayat Raj Act, 1994 (the Act for short) for operating the quarry of the petitioner covered by Ext.P7, for the year 2021-22 and a direction to the 2nd respondent to issue a licence in the paper form.

4. The issues involved in the above writ petitions are intrinsically connected and hence they are being heard and disposed of together. The reference to the exhibits and parties are, unless otherwise specified, as they appear in W.P. (C)No.20807 of 2021.

5. The petitioner has obtained environmental clearance as per Ext.P2 dated 28.2.2018 for carrying out the quarrying operations. He has been issued with Ext.P3 Form LE III licence under the Explosives Rules, 2008, on 25.4.2012, for stocking explosives and using the same in his quarry, which has been renewed till 31.3.2023. Ext.P1 is the letter of intent granted by the Director, Mining and Geology on 27.7.2017 for operating the quarry. As per Ext.P1, the documents that are required to be produced by the petitioner are the EC, Consent from Pollution Control Board, Explosive Licence and the D&O Licence from the Local Government authorities concerned. The integrated consent to operate issued by the Pollution Control Board has been produced as Ext.P4 and it is valid till 1.3.2023. The petitioner approached the 1st respondent for trade licence by producing Exts.P1 to P4 under Section 232 of the Act and for permission to operate the quarry under Section 233 of the Act. The Committee of the 1st respondent granted permission. Ext.P5 is the minutes of the meeting of the Grama Panchayat held on 14.3.2018. On 26.3.2010, the 2nd respondent issued Ext.P6 no

objection certificate. Thereafter, Ext.P7 quarrying lease was executed between the State Government and the petitioner on 16.4.2018 which is valid

upto 15.4.2030. On the basis of the above licenses, the 2nd respondent granted trade licence for operating the quarry for the financial year 2018-19,

which was renewed till the year 2020-21. Ext.P8 is the trade licence issued by the 2nd respondent for operating the quarry for the period 2020-21.

6. The quarry is being operated in the property belonging to the petitioners in W.P.(C)No.20081 of 2021. Ext.P9 dated 1.11.2014 is the agreement

executed between owners of the land and the petitioner. As per the agreement, the owners have granted permission to the petitioner to conduct the

quarrying operations for a period of 12 years. The petitioner applied for renewal of the trade licence for the period from 1.4.2021 to 31.3.2022, as per

Ext.P10 dated 15.3.2021.

On receipt of Ext.P10 application, the 2nd respondent informed the petitioner as per Ext.P11 dated 20.3.2021, that as per the agreement between the

petitioner and the land owners, there is a clause for re-fixing of the lease rent to be paid by the owners for the next seven years and that the petitioner

should produce copy of the said agreement also for the purpose of considering the application for renewal. It is the case of the petitioner that such a

condition could not have been imposed by the 2nd respondent, since the 2nd respondent is not concerned with the agreement between the petitioner

and the land owners regarding the amount payable to the land owners for granting permission for conducting quarrying operations. The Secretary need

not be and is not, privy to the said contract; is the contention. However, the petitioner says that in order to avoid confrontation, he got a fresh

agreement executed with the land owners and the copies of the same have been produced as Exts.P12, P13 and P14. Since Covid-19 pandemic was

spreading, the petitioner was asked by the 2nd respondent to deposit the agreements in a box provided at the reception counter and no receipt

acknowledging the same was issued to the petitioner by the 2nd respondent. When no action was being taken even after submitting all the papers

required for granting renewal, the petitioner informed the 2nd respondent that he will be constrained to challenge the inaction of the 2nd respondent

before the Court, upon which the petitioner was issued with Ext.P15 letter, wherein it is stated that the petitioner did not produce the ID proof of the

persons who have executed the agreement with the petitioner and the possession certificate relating to the property, despite being directed to produce.

The petitioner contends that the 2nd respondent has no authority to issue Ext.P15 directing production of possession certificate and ID cards of the

owners of the land. It is submitted that while renewing the trade licence, the 2nd respondent has to follow the procedure laid down in Rule 10 of the

Rules as per which the 2nd respondent can collect the fee for the renewal and has to renew the licence. The writ petition was filed on 20.9.2021. On

the very same day, the 2nd respondent issued Ext.P17 order to the petitioner informing him that since he had not produced the possession certificate

and the ID proof of the owners of the land as directed, the request for renewal is rejected. The decision of the Panchayat Committee dated 20.9.2021

to the above effect is also enclosed along with Ext.P17 and the same is produced as Ext.P18. The counsel for the petitioner contended that Exts.P15

and P18 issued by the Panchayat Committee are in violation of Section 185B of the Kerala Panchayat Raj Act, since they amount to interference with

the statutory function to be carried out by the Secretary. It is submitted that the licence under Section 232 has to be issued by the Secretary and so

also a renewal of the licence and it is not for the Panchayat Committee to interfere in such matters. Reliance is placed on the decision in Dharmadom

Paristhithi Samrakshana Samiti v. Dharmadom Grama Panchayat reported in [2010 (2) KLT 194]. Reliance is also placed on the judgment of a

Division Bench of this Court in Sudhakaran v. Pallichal Grama Panchayat [2016 (2) KLT 175], and that of a Full Bench of this Court in Abdul Kharim

v. Pazhayakunummel Grama Panchayat [2018 (4) KLT 1086(FB)] to contend that when the application is not defective and no orders issued within

the time fixed for consideration and communicated to the applicant within such time, the deeming provision under Section 233(6) of the Act will come

into operation.

7. The petitioner has filed a counter affidavit in W.P. (C)No.20081/2021 producing the documents relating to the quarrying permit issued to him. Apart

from that, Exts.R3(j) and R3(k) have been produced, which are the plaint in O.S.No.281/2019 pending on the files of the Munsiff's Court, Thodupuzha

and an order of injunction dated 15.10.2019 issued by the Munsiff's Court, Thodupuzha in I.A.No.1380/2019 respectively. The above suit has been

filed by the petitioner against petitioners 1 and 2 in W.P.(C)No.20081/2021 and certain others. By Ext.R3(a), there is an order of injunction restraining the defendants in the suit from obstructing the plaintiff therein from extracting granite from the properties and the peaceful conduct of the quarrying operation by the plaintiff in the suit property.

8. The petitioner would contend that the land owners are not entitled to challenge the licence being granted to the petitioner, since they are also beneficiaries of the quarrying licence in the sense the payment to be made to them depends on the conduct of the quarrying operation. Reference is made to the agreement between the parties to show that the payment itself is based on the amount of granite which is quarried and the land owners were receiving lease payments. It is hence submitted that land owners are actually parties to the quarrying and they cannot challenge licence being renewed in favour of the quarry operator. It is also contended that the Secretary had not noticed any defect in the application and the documents that were asked to be produced are totally unrelated for the purpose of renewal of the trade licence. It is pointed out that the agreement between the land owners and the petitioner was already available with the Secretary and what was directed to be produced was a further agreement which relates only to the compensation payable to the land owners. That is to say, the Secretary is only concerned with the lease and not with the lease rent and as far as the lease is concerned, the lease deed had already been submitted to the Secretary at the time of grant of trade licence in 2018. It is hence submitted that the renewal was being refused for some reason or other which had absolutely nothing to do with the legal requirement for the renewal.

The counsel further submitted that once there is a valid lease in favour of the petitioner and the consent of the owners had been submitted at the time of grant of the initial licence, there is no necessity to obtain consent of the land owners for every renewal of the trade licence. Reliance is placed on the judgments in *Sudhakaran v. Corporation of Trivandrum* [2016 (3) KLT 247 (SC)], *Marimuthu v. Director General of Police* [1999 (3) KLT 662], and *Babu C.S. v. Vijayan @ Raghavan & others* [2019(1)KLT 684].

9. This Court had heard the parties at length and during the course of the arguments, one of the issues that was raised by the Panchayat and the owners of the lands was that the quarrying activity was causing serious damage

to the nearby properties. In the above circumstances, this Court passed an order on 10.11.2021 in I.A.No.2/2021 in W.P.(C)No.20081/2021 appointing an Advocate Commissioner to report on the following facts;

â??(i) Whether there is thodu flowing from Mundanmala.

(ii) Whether the quarry waste is present in the thodu and the property of petitioners 3 & 4.

(iii) Whether stones are lying in the properties of the 2nd petitioner.

(iv) Whether quarrying is conducted without bench cutting.â??

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10. The Advocate Commissioner has filed a report which would show that there is nothing objectionable in the conduct of the quarrying activity.

Regarding the question whether bench cutting has been followed, the Advocate Commissioner has stated that even though the cutting in two levels on

the face of the quarry were brought to the notice of the Commissioner, the said cuttings have not developed into proper bench formations. The

Panchayat and the owners of the land strongly relied on the above aspect and submitted that the quarrying activity is not being conducted in

accordance with the permit granted and that the bench cutting has not been followed. Regarding other objections pointed out by them, the Advocate

Commissioner has already noticed that there is nothing objectionable. The petitioners in W.P.(C)No.20081 of 2021 do not challenge the grant of

licence to the petitioner, but only request for redressal of the grievances highlighted in Exts.P5, P6, P8 and P9 representations, which are supported by

the photographs produced in the writ petition.

11. The counsel for the Panchayat and the counsel for the land owners also contend that in view of Exts.P17 and P18, whereby the renewal

application stands rejected, the prayer in the writ petition has become infructuous and the petitioner is not entitled to any relief in the writ petition. The

counsel for the Panchayat contended that if the deeming provision is to take effect, the application for renewal of the licence ought to have been filed

along with all the relevant documents and if the application is defective, the deeming provision cannot come into operation. It is submitted that as long

as the petitioners did not produce the documents called for by the Panchayat, they cannot rely on the deeming provision. Regarding the question

whether the Secretary could have called for the documents at the time of renewal, the counsel submits that the renewal is based on the fresh agreement and hence there is nothing wrong in insisting that the petitioner should produce a fresh possession certificate. Yet another contention taken is under Section 40 (2) of the Kerala Irrigation and Water Conservation Act, 2003. It is contended that as per the said section, notwithstanding anything contained in any other law for the time being in force, no person shall, without the written permission of the Irrigation Officer, conduct mining or quarrying operation using explosives within a radius of one kilometre of any bridge, dam, check dam or any other work, structure or construction, owned, controlled or maintained by the Government, a local authority or any other authority. It is submitted that there is a water tank owned by the Kerala Water Authority with storage capacity of 1.5 lakh litres capacity near the quarrying site and hence the permission of the Irrigation Officer is required, which is not obtained. Reliance was placed on the decision in Sobin P.K. v. District Geologist, Ernakulam and others ¹ [2020 (1) KLT 79], in support of the above contention. In answer, the counsel for the petitioner submitted that the EC, the quarrying lease, the trade licence had all been granted to the petitioner much before the above decision was rendered. The decision in Sobin (supra) was one in which the Geologist had refused grant of the permit, unlike the case of the petitioner, who had been issued with the permission. It is submitted that the Panchayat cannot refuse renewal on the ground that permission was not obtained from the Irrigation Officer. Moreover, the rejection was not on that reason. It is further submitted that going by Rule 10 of Kerala Panchayat Raj (Issuance of Licence to Factories, Trades, Entrepreneurship activities and other Services) Rules, 1996, the Secretary was bound to renew the licence.

12. On considering the contentions raised on either side in detail, I am of the opinion that there is considerable force in the contentions raised by the counsel for the petitioner in W.P. (C)No.20807 of 2021. It is not in dispute that the application for renewal of licence was preferred before the expiry of the licence, on 15.3.2021. The petitioner had produced the copies of all the documents required along with his application for renewal. By Ext.P11 dated 20.3.2021, the petitioner was asked to produce certain additional documents. Even though the petitioner was not obliged to produce the

documents required, he had submitted the same on 21.6.2021. Almost 3 months later, the petitioner was issued with Ext.P15 communication stating that since he did not produce the possession certificate regarding the quarrying site and the ID proof of owners, the renewal application can be considered only after production of the same and subject to the decision of the Sub Committee and Panchayat General Committee on a complaint filed by neighbouring residents. It is thereupon that the petitioner approached this Court on 29.9.2021. The documents required as per Ext.P15 are also not documents that are legally required to be submitted by the petitioner for the purpose of renewal of the licence. In Abdul Kharim (supra), the Full Bench of this Court had categorically held that if the application was in order and if no decision was taken within the time prescribed, a deemed permit would come into existence. Section 233(2A) requires the Secretary to scrutinise the application and inform the applicant about any missing documents within 5 days. The Secretary had required the petitioner to produce certain documents as per Ext.P11 and the same have been produced. It would appear from Ext.P15 that additional documents are directed to be produced, which are not documents that are specified either in Section 233 of the Panchayat Raj Act or in the Rules thereunder. As such, non-production of the said documents will not in any way make the application submitted by the petitioner defective. In such circumstances, the necessary conclusion can only be that, as the Panchayat had not issued any communication on the application, the deeming provision will come into operation and the licence issued to the petitioner as per Ext.P8 is deemed to have been renewed on the basis of Ext.P10 application.

13. Regarding the contention that the permission of the Irrigation Officer was required, I am of the opinion that the said objection cannot be raised by the Panchayat for not renewing the D & O Licence. The concerned statutory authority who is to grant EC and quarrying licence have issued the necessary permits to the petitioner. Even if there is an irregularity regarding the issuance of the said permits, the same are to be considered by the Geologist, who is functioning under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 2015. The decision in Sobin (supra), as already observed, was a case in which the Geologist had refused permission, while in the

case of the petitioner he had been issued with EC and a quarrying lease and the issue is at the stage of a renewal of the D&O licence by the Panchayat.

14. Coming to the prayers made in W.P.(C)No.20081 of 2021, on a reading of the report of the Advocate Commissioner, I find that the grievances

highlighted by the petitioners therein are not subsisting. The only issue that may appear to be relevant is that the benching is not seen to be fully

developed. This is a matter which will have to be considered by the Geologist and not by the Panchayat or the Pollution Control Board. I am hence of

the opinion that the petitioners in W.P.(C)No.20081 of 2021 will have to approach the Geologist. In the above view of the matter, I do not think that

any purpose would be served by directing the consideration of Exts.P5, P6, P8 and P9.

15. In the result, W.P.(C)No.20807 of 2021 is allowed. It is declared that the petitioner is entitled to a deemed licence under Section 236(3) of the

Kerala Panchayat Raj Act, 1994, for operating the quarry of the petitioner, covered by Ext.P7, for the year 2021-22. The 2nd respondent is directed to

issue a licence in paper form within two weeks from the date of receipt of a copy of this judgment. Since it is declared that the petitioner is entitled to

deemed licence, Exts.P17 and P18 are inconsequential and are hereby set aside. W.P.(C)No.20081 of 2021 is disposed of reserving the right of the

petitioners to approach the Geologist for redressal of their grievance regarding violation of the lease conditions, if any. It is made clear that this Court

is not making any observation regarding the issue whether there is any violation of the lease conditions as alleged.