
(2011) 09 MAD CK 0306

In the Madras High Court

Case No : Writ Appeal (MD) No. 885 of 2010 and Writ Appeal (MD) Nos.14, 15, 97 and 238 of 2011

Kodanthur Village Panchayat and Others

APPELLANT

Vs

M/s. Supreme Poultry Private Limited and Others

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Constitution of India, 1950 — Article 19, 243, 252
Evidence Act, 1872 — Section 76
Tamil Nadu Panchayats (Quorum and Procedure for the Convening and Conduct of Meetings of Village Panchayat) Rules 1999 — Rule 14, 15
Tamil Nadu Panchayats Act, 1994 — Section 160, 2(11), 202, 202(2), 242(2)
Tamil Nadu Panchayats Building Rules, 1997 — Rule 2, 25, 29, 32, 33
Water (Prevention and Control of Pollution) Act, 1974 — Section 25

Citation : (2012) 1 LW 505

Hon'ble Judges : P. Jyothimani, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : T. Mohan, for Mr. M. P. Senthil in W.A. MD Nos. 885% 97 of 2011, Mr. Vijayan, for Mr. B. Saravanan in W.A. MD Nos. 14 and 15 of 2011 and Mr. K.M. Vijayakumar in W.A. MD Nos. 238/2011, for the Appellant; T. Mohan, for Mr. M.P. Senthil For Respondents 2 and 3, Mr. Vijayan, for Mr. B. Saravanan For Respondents 1 in W.A. (MD) Nos. 885 and 97/2011, Mr. K.M. Vijaya Kumar For Respondents 2 and 3 in W.A. No. 885 of 2011 and Mr. R. Karthikeyan, Government Advocate in W.A. Nos. 14, 15 and 97, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—Since all the writ appeals are relating to the same issue all of them were heard together and the common judgment is passed. While W.A. (MD)Nos.885 of 2010 and W.A.(MD)No.238 of 2011 are filed against the order of the learned single Judge, dated 28.07.2010 passed in W.P.(MD)No.8812 of 2010 by the Kodanthur Village Panchayat through its Vice President Aravakurichi Taluk, Karur District who was a third party in the writ petition and the second respondent(s) in the writ petition namely, the Commissioner, Karur Paramathi

Panchayat Union and the Chairman, Karur Paramathi Panchayat Union respectively, W.A.(MD)Nos.14, 15 and 97 of 2011 have been filed against the order of the learned single Judge, dated 03.12.2010 passed in W.P.(MD)Nos. 12948 and 13105 of 2010 by the writ petitioner and by the President of Kodanthur Village Panchayat, Aravakurichi Taluk, Karur District.

2. The issue involved in these writ appeals relate to the proposed poultry farm and feed mill to be set up in Kodanthur village (south) by the company called M/s. Supreme Poultry Private Limited (hereinafter referred to as "the Company") the appellant in W.A.(MD) Nos.14 and 15 of 2011 and the first respondent in W.A.(MD)Nos.97 of 2011, 238 and 885 of 2010. It is a Private Limited Company registered under the Companies Act stated to be running a poultry farm and feed mill in Pondurai Semoor. It is stated that with an intention of setting up a poultry farm and feed mill at Kodanthur village, 75 acres of land were purchased. The Tamil Nadu Pollution Control Board has granted consent to establish the said industry in the name of the said company at Survey No.696, Kodanthur village, Aravakurichy Taluk, Karur District as per Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 in the proceedings, dated 24.03.2010. That consent to establish was granted by the Pollution Control Board is valid for 2 years or till the industry obtained consent to operate u/s 21 of the abovesaid Act and the consent to establish was granted subject to the conditions in respect of the products and quantity namely:-

and for establishing the facility in manufacturing of products or bye products and quantity as stated above. The further conditions with which the consent for establishment of the industry was granted are relating to the equipments to be installed for measuring the control and emission generated from various sources of the plant apart from other general conditions stating that unless all conditions are complied with, consent to establish will not be issued.

3. Similarly, the Pollution Control Board has also granted consent to establish on the same day namely on 24.03.2007 u/s 25 of the Water (Prevention and Control of Pollution) Act, 1974 in respect of the site namely, Survey No.696, Kodanthur Village, Aravakurichy Taluk, Karur District also valid for two years with the special conditions which also include apart from the facility for manufacturing of products and bye products stated under the Air (Prevention and Control of Pollution) Act, 1981. The consent was granted prescribing the outlet for discharging of sewage/trade effluent stating that in respect of sewage maximum daily discharge as 2.50 KLD with the point of disposal on the industry's own land and without permission for trade effluent. The further special condition includes the provision for the Septic tank with sock pit as dimension of 3.3x1.2 x.2.40m for one unit and 3.30x2.4m for another unit apart from other general conditions stated above.

4. Similarly, in respect of S.F.Nos.698/1, 697, 718/A, 1B, 717/1, 704, 705, 706, 707, 708/2 and 709, Kodanthur village, Aravakurichi Taluk, Karur District as per Section 21 of Air (Prevention and Control of Pollution) Act, 1981, a consent to

establish was granted on 31.03.2010 for the purpose of manufacturing products or by products with description and quantity namely:

along with the special condition regarding the emission/noise sources and control measures and special conditions to achieve/emission standards and the general conditions. Similarly, for the abovesaid S.F.Nos, the consent to establish under the Water (Prevention and Control of Pollution) Act, 1974 was also granted by order, dated 31.03.2010 subject to the above said conditions as well as the conditions to be fulfilled.

5. As per the proceedings of the President of the Village Panchayat, the second respondent in W.A.(MD)Nos.14 and 15 of 2011, dated 05.04.2010, building permission was granted in respect of S.F.No.696 in favour of the said appellant company valid from 05.04.2010 to 04.04.2011. It is stated that Karur Paramathi Panchayat Union Council has also resolved on 16.04.2010 to issue no objection for starting poultry farm and feed mill in S.No.691, 679/A-2, 696/1, 696/2, 693/3, 696/4, 698/1, 697/1, 865/1, 859/1, 862/2, 355/1, 718/A, 717/1, 505, 706, 707, 708/2, 719, 718/1B, 704 and 705. The Commissioner of Karur Paramathi Panchayat Union who is the second respondent in W.A. (MD)No.885 of 2010 and the first appellant in W.A.(MD)No.238 of 2011 has passed the consequential order, dated 28.04.2010 granting permission to run the poultry farm and feed mill subject to various conditions mentioned therein. It is stated that the Deputy Director, Public Health and Family Welfare, Karur has granted permission to the company for installation of electronic motor apart from no objection certificate issued by the Fire Department. It is stated that the said company has paid various amounts to the Karur Paramathi Panchayat Union Council apart from various other authorities. It appears that at that stage, the residents of Udayampalayam, Natchipalayam, Kariamapudur, Vettupalayam, karukkampalayam and Mudaligoundanpudur hamlets of Kodanthur village have filed a suit in O.S.No.225 of 2010 on the file of the District Munsif Court, Karur for a declaration that the erection and running of poultry farm in the said survey number by the above said company as an objectionable and actionable nuisance to the inhabitants of the area and also for a permanent injunction. It was thereafter, Karur Paramathi Panchayat Union has passed a resolution on 01.07.2010 cancelling the earlier resolution, dated 16.04.2010 on the ground of public health and to prevent pollution as requested by the public by way of representation and as per the request of the members of the panchayat union council. Consequent to the same, the Commissioner of Karur Paramathi Panchayat Union, by his order dated 05.07.2010 has communicated the company cancelling his earlier order of permission, dated 28.04.2010.

6. The Company, appellant in W.A.(MD)Nos.14 and 15 of 2011, has challenged the said proceedings of the Commissioner cancelling the permission as per the resolution in W.P.(MD)No.8812 of 2010 before this Court on the basis that when once the authority contemplated under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act,

1974 has given consent for establishment based on which the Panchayat Union Council itself has granted approval and the Company has invested huge amount of money in purchasing the lands and installing various machines in compliance of the conditions issued by the authorities, under the abovesaid Acts, the Panchayat Union Council has no authority to pass such resolution since the issues are relating to and within the domain of the Pollution Control Board.

7. This Court while allowing the writ petition in the order, dated 28.07.2010 has set aside the said impugned communication of the Commissioner of the Panchayat Union Council, dated 05.07.2010 in accordance with the resolution of the council dated 01.07.2010 holding that the cancellation has been done without notice to the Company to whom permission was granted earlier; that the Pollution Control Board being the authority having exclusive domain to say about the emanation of water pollution and air pollution has granted consent to establish and that as per the provisions of the Water Act and Air Act, the Civil Court would not have any jurisdiction to entertain any suit. The portion of the order which is relevant is as follows:

13. Surprisingly, it appears that the second respondent has passed the resolution on 01.07.2010. The resolution would read that the second respondent received some complaint from the public on the ground that the establishment of such Poultry Farm and Poultry Feed Mill would adversely affect the public health and the environment would also be polluted.

14. Firstly, the second respondent has not taken the petitioner into confidence by issuing notice to him before ever such a resolution was passed. In all fairness, the second respondent should have issued notice to the petitioner, as the second respondent has proposed to give a go by to the earlier resolution passed by it and has proposed to pass a resolution adverse to the interest of the petitioner. Secondly, as rightly pointed out by the learned Senior Counsel appearing for the petitioner, no enquiry was embarked upon by the second respondent based on the alleged complaint received from the public. Thirdly, the petitioner was not given any opportunity to counter the plea of the second respondent that the earlier resolution passed by it was given a go by only on account of the objections raised by the public. Fourthly, it is only the Pollution Control Board, which has the exclusive domain to say whether such an industry would emanate water pollution or air pollution. The second respondent is not a scientific expert to jump to a conclusion based on some alleged complaint that such a factory proposed to be established within its jurisdiction would create pollution and affect the health of the public. If such a stand of the second respondent is sustained, all the Poultry Farm and Poultry Feed Mill located in and around Namakkal will have to be shut down on mere resolution passed by the Municipality.

15. The provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 would specifically state that even the civil Court would not have any jurisdiction to entertain any suit or proceeding in respect of any matter decided under the Act. The provisions under

this Act would have an overriding effect, despite the fact that some inconsistent provisions are found incorporated in these Special Acts. The Civil Court has been barred even to grant an order of injunction in respect of matters falling within the domain of these Special Acts.

16. Surprisingly, the second respondent, who is not a scientific expert, has jumped to a hasty conclusion without affording any opportunity to the petitioner to put forth its claim and upset all the consent orders passed by the Pollution Control Board and left the petitioner virtually in the lurch.

17. In view of the above facts and circumstances.

the arbitrary and unreasonable resolution passed by the second respondent and the consequential impugned order passed by the first respondent will have to be quashed. Accordingly, the resolution passed by the second respondent and the consequential impugned order passed by the first respondent are quashed and the Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. There is no order as to costs.

8. It is as against the said order of the learned single Judge, the Vice President of the Kodanthur Village Panchayat which is a third party in the writ petition and the respondents in the said writ petition namely, Commissioner, Karur Paramathi Panchayat Union and the Chairman, Karur Paramathi Panchayat Union have filed W.A.(MD)Nos.885 of 2010 and 238 of 2011 respectively, on the ground that the village panchayat and the panchayat union are having statutory responsibility of maintaining health and livelihood of inhabitants of the village and even if the impugned order is in violation of principles of natural justice it ought to have been remanded the issue for fresh orders; that creation of such massive poultry farm will have direct impact on the living condition of the people who are living in the hamlets; that in spite of the consent order obtained from the Pollution Control Board, it is open to the village panchayat and panchayat union to grant licence or approval for establishment or reject the same based on the local conditions; that the power to grant approval includes the power to cancel; that the right of the company to carry on business under Article 19 of the Constitution is subject to reasonable restrictions and that the earlier permission given by the President of the Kodanthur Village Panchayat to the company, in his proceedings, dated 05.04.2010 is without the support of any resolution passed by the panchayat apart from other grounds.

9. In the meantime, by an order dated 04.10.2010, as per the proceedings of the President, Kodanthur Village Panchayat, the building permission granted to the company came to be cancelled on the ground that the previous permission of the President of the village panchayat, dated 05.04.2010, was granted without any resolution by the panchayat and on the basis that by establishing poultry farm, the environment will become unhygienic and there is a possibility of epidemic diseases due to insects and mosquitoes as represented by the public thereby directing the company to stop further construction. The said order refers about

the resolution of an emergency meeting of the panchayat, dated 01.10.2010 and 02.10.2010. The District Collector being the Inspector of Panchayats who is the first respondent in W.A.(MD)Nos.14 and 15 of 2011 has passed an order on 11.10.2010 stating that the permission granted in favour of the company for construction to establish the poultry farm and feed mill without resolution passed by the panchayat is not valid.

10. The company has filed W.P.(MD) No.12948 of 2010 challenging the abovesaid order of the District Collector dated 11.10.2010 and W.P.(MD)No.13105 of 2010 challenging the proceedings of the Panchayat President signed by the Vice President, dated 04.10.2010 on various grounds including that the said orders are illegal and without jurisdiction and without affording an opportunity and in violation of the principles of natural justice; that the executive authority of the Village Panchayat alone is entitled to grant building plan/permission and it is not necessary to be approved by the Panchayat Union Council; that even otherwise under the Tamil Nadu Panchayats Act, 1994 permission has been granted by the panchayat union council for the purpose of installation of the feed mill; that the District Collector cum Inspector of Panchayats is not vested with any power under the Tamil Nadu Panchayat Act, 1994 to cancel the order passed by the President of the Village Panchayat; that the impugned orders are tainted with mala fide; that the cancellation of building permission having been granted by the President of the village panchayat in the manner known to law, is not valid in law apart from other grounds.

11. When the writ petitions came up before the learned single Judge, there was an interim order passed on 21.10.2010 granting interim stay stating that any construction put up by the writ petitioner would be subject to the result and the final orders passed in the writ petitions. The writ petitions have been resisted by the village panchayat in the counter affidavit reiterating that the panchayat has got every jurisdiction and obligation to see that the health condition is not harmed by any of the industrial activities and the Collector being the Inspector of Panchayats has every right to exercise his powers u/s 202 of the Tamil Nadu Panchayat Act apart from other various other grounds.

12. Learned single Judge while taking up both the writ petitions W.P.(MD)Nos. 12948 and 13105 of 2010 by a common order, dated 03.12.2010 which is impugned in Writ Appeals (MD)Nos.14 and 15 of 2011 dismissed the writ petitions filed by the company, however directed the District Collector cum Inspector of Panchayats to hold an enquiry after giving sufficient notice to the Company and such other persons or local bodies etc. since the impugned orders challenged in the writ petitions were passed without opportunity and notice to the appellant company. The operative portion of the order of the learned single Judge is as follows: "42. As seen from the provisions of Section 202 of the Tamil Nadu Panchayats Act, 1994, the District Collector, Karur District, who is the Inspector of Panchayats, has the power to suspend or cancel any resolution passed, order issued or licence or permission granted, if such resolution, order or

licence has not been legally passed, issued or granted, or if it is found that it is not in exercise of powers conferred by the Act or any other law, or an abuse of such powers or if it is considered to be otherwise undesirable, or if it would cause danger to the human life or health or safety. In such circumstances, this Court is not inclined to interfere with the impugned order of the first respondent, dated 11.10.2010 and the impugned order of the third respondent in the writ petition, in W.P.No. 13105 of 2010, dated 04.10.2010. Therefore, the writ petitions stand dismissed. No costs. However, in view of the fact that no notice had been issued to the petitioner company before the impugned order had been passed and no opportunity had been given to the petitioner company to put forth its views, it would be appropriate for the first respondent to hold an enquiry, after giving sufficient notice to the petitioner company and to such other persons, authorities and local bodies as the first respondent may consider to be necessary, and pass appropriate orders thereon, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. If the petitioner company is in a position to convince the first respondent that no pollution or health hazard or ecological imbalance or degradation of the environment would be caused, due to the establishment of the poultry farm and the feed manufacturing mill, the petitioner company may be permitted to establish the poultry farm and the feed manufacturing mill, at Udaiyanpalayam, as already proposed by the petitioner company".

13. As stated above, the company which is the appellant in W.A.(MD) Nos.14 and 15 of 2011 has challenged the order of the learned single Judge in dismissing the writ petitions holding that the District Collector being the Inspector of panchayats as per Section 202 of the Tamil Nadu Panchayat Act, 1994 has power to suspend or cancel any resolution passed or cancelled any licence or permission etc., if it is considered to be otherwise or would cause to damages to the livelihood.

14. Likewise, the President of Village Panchayat has filed W.A.(MD)No.97 of 2011, in respect of the portion of the impugned order of the learned single Judge remitting the matter to the District Collector for reconsideration while approving the powers of the District Collector u/s 202 of the Tamil Nadu Panchayat Act.

15. Mr.K.M.Vijayan, learned Senior Counsel for the company which is the appellant in W.A.(MD)Nos.14 and 15 of 2011 while taking to the various factual aspects of obtaining consent for establishment as required under the Air Act and water Act as narrated above would submit that at the first instance, as per the provisions of the Tamil Nadu Panchayats Building Rules, 1997 framed in accordance with the powers conferred u/s 242(2) of the Tamil Nadu Panchayats Act, 1994 especially under Rule 29, the executive authority being the President of the Village Panchayat need not get any prior approval from the meeting of the panchayat. It is just sufficient that such decision by the executive authority shall be placed in the next meeting of the Panchayat for information and therefore, according to the learned Senior Counsel, there is no necessity for passing such resolution by the panchayat. Therefore, in his submission, the permission

granted originally, by the President of the Village Panchayat in his proceedings, dated 05.04.2010 for the purpose of construction cannot be held to be improper. Therefore, the cancellation of such permission passed in the proceedings of the President of the Village Panchayat signed by the Vice President challenged in W.P. (MD)No.13105 of 2010 on the ground that approval of the village panchayat has not been obtained is contended to be against statutory rules.

16. It is his further contention that power of the District Collector/Inspector of Panchayats u/s 202 of the Tamil Nadu Panchayat Act, 1994, is only in respect of suspension or cancellation of resolution. On the facts of the present case, according to the learned Senior Counsel, inasmuch as no resolution is required as per the Rules, the question of invoking powers by the Inspector of panchayats namely, the District Collector u/s 202 does not arise and therefore, the order of the District Collector, dated 11.10.2010 impugned in W.P.(MD)No.12948 of 2010 is without jurisdiction.

17. His further contention is that even otherwise as per the provisions of Section 202 of the Tamil Nadu Panchayats Act itself, the District Collector cannot pass any order without giving opportunity to the persons concerned for explanation.

18. It is his further submission that even though the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 respectively are the earlier Acts in point of time when compared to the Tamil Nadu Panchayats Act, 1994, specialised Acts having overriding effects of other Act makes the order of consent given under the special Acts as superior only subject to the conditions based on which such consent has been given.

19. According to him, when once the authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, passed appropriate orders for consent to establish a poultry farm and feed mill, it cannot be set at naught by the local bodies like village panchayat or even panchayat union council on the basis of pollution, inasmuch as the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 have the overriding effect over any other enactments.

20. Further, he would submit that when once the Panchayat Union Council has passed a resolution taking note of the order of the Pollution Control Board, the no objection certificate granted by the Fire and Health Departments and granted due permission, thereafter, it is not open to such Panchayat Union Council to re-open the case on the ground of pollution safety or public health for the purpose of withdrawing the permission granted by it.

21. He would further submit that when once the High Court passed order setting aside the resolution passed by the Panchayat Union Council and cancelling the earlier order passed by the Council, it is not open to the vice president of the panchayat in the name of the proceedings of the executive authority and the District Collector being the Inspector of panchayats to pass the impugned orders

dated 04.10.2010 and 11.10.2010 respectively and that it would amount to ignoring the orders of the High Court and what cannot be done directly, has been done indirectly in disobedience of court order.

22. His further submission is that when once the consent to establish has been granted by the authorities the panchayat cannot scuttle it in the starting stage itself merely on the apprehension and based on the alleged objections by the village people.

23. He would submit that the judgment of the Hon''ble Supreme Court in Action Council vs. Benny Abraham, (2002) 9 SCC 493 cannot be taken as a precedent and it was on the facts and circumstances of the said case.

24. It is his further submission that when once the panchayat union council has given permission by passing a resolution especially after the Pollution Control Board has given consent to establish, there is no necessity for the company to approach the village panchayat for passing the resolution when the President of the Village Panchayat as an executive authority has already given permission. According to him, the permission granted by the President of the Village Panchayat under Rule 29 of the Tamil Nadu Panchayats Building Rules, 1997 is equivalent to the permission granted by the Panchayat Union Council u/s 160 of the Tamil Nadu Panchayats Act.

25. He would also refer to the Rules 14 and 15 of the Tamil Nadu Panchayats (Quorum and Procedure for the Convening and Conduct of Meetings of Village Panchayat) Rules 1999 which show that the proceedings and record of the meetings shall be with the President of the Village Panchayat and the copies shall be certified by him as per Section 76 of the Indian Evidence Act. In the impugned proceedings of the Vice President of the Village Panchayat, dated 04.10.2010 challenged in W.P.(MD)No.13105 of 2010, a reference has been made about the proceedings of the emergency meeting of the panchayat, dated 01.10.2010 and 02.10.2010 and such order has been passed knowing that the earlier order of cancellation has been set aside by the High Court and the order has been signed not by the President of the Village Panchayat but by the Vice President which is not the Executive Authority.

26. It is his further submission that under Article 243 (g) of the Constitution of India, the State Legislature is empowered to enact a law by necessary notification in respect of the matters listed in the 11th schedule and in the 11th schedule, item-4 contains poultry and therefore, in the absence of specific notification issued by the State Government enabling the Village Panchayat to formulate a scheme, the exercising of the power stated to have been made by the panchayat by way of resolution culminating into the impugned order challenged in the writ petitions is without jurisdiction.

27. He would also refer to Section 57 of the Tamil Nadu Panchayats Act, 1994 which enables the State Government to pass notification in respect of items mentioned in schedule-4 which is also a reproduction of schedule-11 of the

Constitution of India and schedule-4 of the Tamil Nadu Village Panchayats Act also relates to poultry, the Water (Prevention and Control of Pollution) Act, 1974 passed by the Parliament is made applicable to the States by virtue of Article 252 of the Constitution of India and the authority constituted under the Act by the State namely, the Pollution Control Board having given consent for establishment, it should be construed that in respect of pollution, the exclusive jurisdiction lies to the Parliament and therefore, the Panchayat has no power to interfere in the name of prevention of pollution and there is no necessity for any harmonious construction with Section 160 of the Tamil Nadu Panchayats Act in the absence of any precedent on the scheme of the Act in respect of pollution.

28. It is his submission that the findings by the learned single Judge as if the Inspector of Panchayats has got an overriding effect u/s 202 of the Act has to be set aside.

29. On the other hand, it is the submission made by Mr.T.Mohan, learned counsel for the Village Panchayat as adopted by Mr.K.M.Vijayakumar, learned counsel for the appellant in W.A.(MD)No.885 of 2010 that u/s 84 (c) of the Tamil Nadu Panchayats Act, 1994, the executive authority has to carry out the resolutions passed by the Village Panchayat. He would also submit that even in respect of S.No.696, the permission or consent for establishment was given not for poultry farm but for manufacturing of poultry feed and therefore, it cannot be said that the company is having a consent to establish a poultry farm. It is his submission that the orders passed by the Pollution Control Board shows that the Pollution Control Board has never applied its mind. He would further submit that when the company has made an application on 19.03.2010 which happens to be Friday, the consent has given on 24.03.2010 on Wednesday and the zonal council has passed orders on the next day itself and that shows the hasty manner with which the Company is able to obtain the consent order.

30. He has also submitted that even the no objection certificate from the Fire Department and other Departments was obtained so hastily when application was made on 12.05.2010, no objection certificate has been issued was easily on 17.05.2010 itself and therefore, it is his submission that in such circumstances no reliance can be placed on mere consent granted by the Pollution Control Board for the purpose of deciding as to whether the local village panchayat ceases to have any jurisdiction in spite of the fact that such a large industry will result in unhygienic condition of the entire mass of the area. Such a view will be inconsistent with the concept of the village panchayat which is the constitutional goal.

31. He would also rely heavily upon the judgment of the Division Bench of this Court in Kings India Chemicals Corporation Limited Vs. The District Collector cum Inspector of Panchayats reported in 2010(1)CWC 319 and the judgment of the Division Bench of the Kerala High Court reported in AIR 2002 Kerala 65, (Action Council, Poovathode and others Vs. Benny Abraham and others) which has discussed the entire issue and the powers about the panchayat and contend that

while the powers of the panchayat are wide, the Pollution Control Board is restricted. While the Pollution Control Board thinks about the location of the industries, the panchayat looks into the location itself as to whether it is appropriate to have a such a huge industry. His submission is that when once even as per the consent order issued by the Pollution Control Board 40,000, cull birds are to be killed and 4 lakhs eggs are to be produced, the resultant feature will be the huge wastage in water, movement of lorries, employees which are all the local concern. Therefore, according to him, the panchayat when once has decided to withdraw the permission, the company cannot claim as a matter of right since the panchayat has decided on the health ground that even under the consent order of the Pollution Control Board, the survey number differs; that the resolution passed by the Panchayat has not been challenged by the Company and in fact, the order of the District Collector need not be challenged by the Company which has become infructuous inasmuch as the Panchayat has passed resolution and his contention is that there is no purpose for sending it back to the District Collector to reconsider the issue since the Panchayat having seized of the entire matter has taken a decision in accordance with law.

32. We have heard the respective learned counsel and gone through the impugned judgments passed by the learned single Judges and given our anxious thought to the issue involved in these cases.

33. As far as the two writ appeals in W.A.(MD)Nos.885 of 2010 and 238 of 2011 filed by the Kodanthur Village Panchayat and the Commissioner of Karur Panchayat Union respectively are concerned, it is an undisputed fact that originally the President of the Village Panchayat in his proceedings, dated 05.04.2010 has granted approval for the plant for putting up construction by the company for a period of one year namely 05.04.2010 to 04.04.2011.

34. Under the Tamil Nadu Panchayats Act, 1994, Section 2(11) defines "executive authority" means as "a person notified as such by the Government u/s 83". Section 83 of the Tamil Nadu Panchayats Act is as follows:

83. Executive authority of village panchayat:-The Government may, by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the executive authority of a village panchayat.

Therefore, by virtue of notification issued by the Government or by framing the rules an executive authority can be appointed by the Government.

35. In exercise of the powers conferred u/s 242 which enables the Government to make rules, the Government has framed the Tamil Nadu Panchayat Building Rules 1997. Under the said statutory Rule 2(e) "executive authority is defined as "the President of the Village Panchayat". Under the Rules which relate to permission to be granted for building and approval for site for buildings, the procedure are contemplated. Rule-4 contemplated the application to be made for approval for site, for building and huts to the executive authority with various

stipulations. Rule-25, however, deals with the construction of multi-storeyed and public buildings in which event, the Multi- Storeyed and Public Building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920 is directed to be followed and in such event, the executive authority namely, the President of the Panchayat cannot grant approval for construction, reconstruction, addition or alteration without consulting the concerned Joint Director or Deputy Director of Town and Country Planning. On facts of the present case, it is not for the multi-storeyed public building, the Company has made application under Rule 29 which is as follows:

29. Grant of approval by executive authority:-1) All approvals granted under these rules in the panchayat shall be placed in the next panchayat meeting, for information.

(2) Any appeal against the orders of the executive authority under sub-rule (1) shall be made to the Collector of the revenue district concerned within thirty days from the date of receipt of the such orders. The orders of the Collector on such appeal shall be final.

36. The approval granted by the executive authority or any other person as contemplated under Rules including as that of the Rule 25 has to be placed before the next meeting of the panchayat for information. As stated above, under Rule 29, anyone who is aggrieved by the approval that may be granted by the executive authority has a right of appeal to the District Collector.

37. Rule 32 enables the executive authority to require alteration of work, if the work is executed otherwise than the plan approval or the specification granted or any contravention of the rules or contravene the approval.

38. Under Rule 33 if any construction endangers human life, the executive authority may stop construction. The executive authority has also powers under Rule 34 to demolish or alter the building work which has been unlawfully done. Therefore, when the President of the Panchayat being the executive authority as per the Act and Rules granted building permission to the company on 05.04.2010 which was alive between 05.04.2010 to 04.04.2011 in the absence of any appeal filed by any person against such permission, it is not known as to how the Commissioner, Karur Paramathi Panchayat Union has cancelled the said order in the name of cancelling a resolution passed by the Paramathi Panchayat Union, dated 16.04.2010 by which, in fact the same Panchayat Union, has approved the permission granted by the executive authority namely the President of the Panchayat, dated 05.04.2010.

39. It is not in dispute that by the time, the executive authority namely the President of the Panchayat has granted permission on 05.04.2010, the Pollution Control Board has in fact given its consent for establishment on 24.03.2010 itself. Even assuming that the Panchayat Union Council which has earlier passed resolution on 16.04.2010 approving the executive authority's permission to the company can cancel its earlier resolution, as it is stated to have been done on

01.07.2010 based on an alleged representation of public and also to avoid pollution, such resolution itself, in the absence of any mandatory requirements under the Rules for granting approval from the panchayat cannot indirectly nullify the permission granted by the executive authority, dated 05.04.2010, for, what cannot be done directly shall not be done indirectly also. Even otherwise, when approval has been granted to the company on 05.04.2010, if the executive authority or any other higher authority like District Collector, either on representation on public or suo motu on a finding that there is a pollution problem and desire to cancel the permission, it is elementary that such cancellation can be only done after giving opportunity to the company which has stated that pursuant to the permission granted by the executive authority apart from the consent to establish from the Pollution Control Board, Fire and Health Departments, has proceeded to put up construction in accordance with the approved plan. In the absence of following the elementary principles of natural justice, the order of the Commissioner of Karur Paramathi Panchayat Union, dated 05.07.2010 challenged in W.P.(MD)No.8812 of 2010 cannot be sustained in the eye of law. It was in those circumstances, the learned single Judge in the order dated 28.07.2010 has set aside the impugned proceedings of the Commissioner of Karur Paramathi Panchayat Union, dated 05.07.2010. There is absolutely no illegality in the said order especially when the authorities under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 have given consent to establish the unit. Therefore, there is nothing to interfere with the order of the learned single Judge. However, quashing of the order of the Commissioner, dated 05.07.2010 by which the original order of the executive authority, dated 05.04.2010 stands restored does not in our view take away the right of the authorities contemplated under the Tamil Nadu Panchayat Building Rules, 1997 in cancelling or modifying the same in accordance with law. in all fairness, in our considered view especially during the subsistence of the permission granted by the executive authority, when a contrary decision was attempted to be taken by the Commissioner of Panchayat Union, he ought to have heard the company before passing such orders.

40. In such view of the matter, the writ appeals filed by the Vice President of the Kodanthur Village Panchayat and the Commissioner of Karur Paramathi Panchayat Union namely in W.A.(MD)Nos.885 of 2010 and 238 of 2011 stand dismissed. However, it is always open (sic) the Executive Authority, to act as per the said provision of the rules enumerated above in the event of any contingency in respect of the grant of permission.

41. In respect of the other three appeals namely, W.A.(MD)Nos.14, 15 and 97 of 2011, a crucial point has been raised as to whether the village panchayat or the panchayat union council or for that matter, the District Collector cum Inspector of Panchayats or the Pollution Control Board is having supremacy to decide about the devices to be formulated to avoid pollution in respect of the alleged starting of poultry farm and feed mill. It is strange that in the name of proceedings of the

President of the village panchayat being the executive authority, the vice president of the village panchayat who has tiled the third party appeal namely in W.A.(MD)No.885 of 2010 which has been dismissed as stated above has passed an order of directing the company to stop work. As stated above, as per the Rules elicited above, the executive authority is defined exhaustively as the President of the village panchayat and therefore, one cannot imagine that the vice president can claim to be the executive authority. Even assuming that there has been any endangering human life because of the approval granted for construction, it is the executive authority who has granted permission to construct who alone can issue a stop of work notice that is contemplated under Rule 33 of the Tamil Nadu Panchayat Building Rules 1997, which is as follows:

33. Stoppage of work endangering human life:-Notwithstanding anything contained in any of the preceding provisions, the executive authority may at any time stop the construction or reconstruction of any building if in his opinion the work in progress endangers human life.

42. Whiles, simply because it is stated to be the proceedings of the President of the Panchayat when it is not signed by the President of the Panchayat who is the executive authority and signed by somebody else as the vice president that can never be considered as a stop work notice issued by the executive authority. On that score itself, the impugned order which is challenged in W.P.(MD)No.13105 of 2010 which is the subject matter of W.A.(MD)No. 15 of 2011 ought to have been set aside. However, this aspect has not been considered by the learned single Judge.

43. The finding by the learned single Judge that permission has been originally granted to the company by the executive authority against the provisions of the Tamil Nadu Panchayats Building Rules, 1997, in our view, is totally contrary to the provision of the Rules. As stated above, when the resolution of the panchayat union council or panchayat union itself is not a condition precedent for the purpose of granting approval by the executive authority, there is no question of the impugned order passed by the vice president on 04.10.2010 based on any resolution passed by the village panchayat. This aspect has not been considered by the learned single Judge. Accordingly, the stop work notice issued by the vice president of the panchayat, dated 04.10.2010 challenged in W.P.(MD) No. 13105 of 2010 cannot sustain in the eye of law, when the Company has been issued a permission by the executive authority by way of a building permission as per the Tamil Nadu Panchayats Building Rules 1997. Insofar as it relates to the order of the Inspector of Panchayats on 11.10.2010 which has been challenged in W.P. (MD)No. 12948 of 2010, it has to be remembered that the power of the executive authority namely the President of Village Panchayat in issuing permission for building as per the Tamil Nadu Panchayats Building Rules, 1997, or the power of Inspector to suspend any resolution passed by the village panchayat or cancel any licence or permission granted is certainly unassailable. That power is available to the District Collector being the Inspector of Panchayats

u/s 202 of the Tamilnadu Panchayat Act, 1994 which is as follows:

202. Power to suspend or cancel resolution, etc., under the Act:-(1) The Inspector may, by order in writing:-

(i)suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii)prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in his opinion.

a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or

c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that nothing in this sub-section shall enable the Inspector to set aside any election which has been held.

2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation.

3) The power conferred on the Inspector under clause (c) of sub-section (1) may be exercised by the collector in accordance with the provisions of that clause.

44. But while passing such orders, the District Collector being the Inspector of Panchayats, before taking any such action must give opportunity for explanation to the person who is going to be affected by such action even in the absence of any specific provision akin to Section 202(2) of the Tamil Nadu Panchayats Act elicited above. Law is well settled that if statutory right has accrued on a person and such right is sought to be taken away the following of the principles of natural justice is inbuilt in any statute, But as stated above, there is a specific provision to Section 202 of the Tamil Nadu Panchayats Act, 1994 imposing an obligation upon the Inspector of Panchayats namely, the District Collector to give opportunity to the person who is likely to be affected either by cancelling the licence or suspend the resolution etc., Admittedly, while passing such order on 11.10.2010, the Inspector of Panchayats namely, the District Collector has not given opportunity or heard anything from the company which is the appellant in W.A.(MD)Nos.14 and 15 of 2011. This aspect has also not been considered by the learned single Judge.

45. Even assuming that u/s 160 of the Tamil Nadu Panchayat Act, 1994 which in our considered view is applicable to a factory or workshop or installation of

machinery or manufacturing plant as it is stated in the Section itself which is as follows:

160. Permission for construction of factories and the installation of machinery:- No person shall, without the permission of the panchayat union council in panchayat villages and except in accordance with the conditions specified in such permission,

(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or

(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the rules".

46. By virtue of the power u/s 202, the Inspector of Factories can even nullify such permission for construction of factories or installation of machinery granted u/s 160 of the Act. But that can be only on complying with the principles of natural justice.

47. Inasmuch as we are of the view that the authority competent namely, the executive authority under the Tamil Nadu Panchayats Act, 1994 being the President as per the Tamil Nadu Panchayats Building Rules, 1997, has granted permission to the company which is the appellant in W.A.(MD)Nos.14 and 15 of 2011. Unless and until, that is varied either by the executive authority himself in the manner known to law as enumerated above or set aside or suspended by the Inspector of panchayats namely, the District Collector as per the provision of Section 202 by following the principles of natural justice as provided therein, it is certainly not open to the District Collector unilaterally to come to a conclusion as if the resolution passed by the panchayat on 16.04.2010 approving the approval granted by the executive authority, dated 05.04.2010 is invalid or without jurisdiction or such approval has been granted unilaterally by the President without resolution of the panchayat when such resolution is not a condition precedent as per the statutory rules or based on any other reasons. This aspect has also not been considered by the learned single Judge.

48. Even though elaborate argument has been advanced about the supremacy of the Pollution Control Board which has been opposed by Mr.T.Mohan, learned counsel stating that the Pollution Control Board has been granting permission in a hasty manner, taking note of the fact that the Pollution Control Board has not yet granted any consent for starting manufacturing activity and consent has been given only for establishment, we propose not to enter into such controversy as to whether the Pollution Control Board is the superior authority in deciding about the Pollution matters or the Village Panchayat or Panchayat Union Council or the Inspector of Panchayat for that matter who are entitled to consider the local implication of starting of such unit. Such construction, in our considered view would arise only after the village panchayat or panchayat union council or the

Inspector of panchayats have followed the principles of law and passed appropriate orders. Unless and until such orders are passed, we are of the considered view that the order of the District Collector, dated 11.10.2010 is not valid in law. With respect, the contrary decision rendered by the learned single Judge in this regard is not acceptable.

49. There is one other aspect, the learned single Judge having found that the impugned orders of the Vice President of the village panchayat passed in the name of the proceedings of the executive authority, dated 04.10.2010 and the Inspector of Panchayats namely, the District Collector, dated 11.10.2010 as valid in law and dismissed the writ petition in spite of such finding, chosen to direct the Inspector of Panchayats to give sufficient opportunity to the company and such other persons or local bodies as the District collector may consider it necessary. This is totally in our considered view a contradictory order. We do not subscribe to the views of the learned single Judge in this regard also. Accordingly, W.A.(MD)Nos.14 and 15 stand allowed and the orders of the vice president issued in the name of the President, dated 04.10.2010, impugned in W.P.(MD) No.13105 of 2010 and the impugned order of the Inspector of Panchayats, dated 11.10.2010 impugned in W.P.(MD)No.12948 of 2010 stand set aside and the order of the learned single Judge contrary to our view stands set aside.

50. Insofar as W.A.(MD)No.97 of 2011 filed by the Kodanthur village panchayat is concerned, we agree with the contention raised by the appellant that the finding of the learned single Judge in upholding the impugned orders but at the same time, directing the District Collector to conduct proper enquiry after giving opportunity, is contradictory. Therefore, W.A.(MD)No.97 of 2011 stands ordered permitting the President of the panchayat or the Inspector of Panchayats namely, the District Collector to act in accordance with the provisions of Tamil Nadu Panchayats Building Rules. 1997 and the Tamil Nadu Panchayats Act, 1994 particularly as per Section 202 of the Act and pass appropriate orders after giving opportunity to the company as well as all other persons concerned including any public who may be aggrieved by the starting of the poultry farm and feed mill regarding the permission granted by the executive authority namely, the President of the village panchayat, dated 05.04.2010. In the result.

i)W.A.(MD)Nos.14 and 15 of 2011 are allowed and the impugned orders, dated 11.10.2010 and 04.10.2010 are set aside.

ii)W.A.(MD)No.97 of 2011 stands ordered with a direction to the President of the Panchayat and the Inspector of Panchayats, namely, the District Collector, to act as per the provisions of the Rules as well as the Act after giving opportunity to the writ petitioner as well as the public and others who are likely to be affected in respect of granting of permission by the executive authority namely, the President dated 05.04.2010 and pass appropriate orders.

iii)The writ appeals No.885 of 2011 and 238 of 2011 stand dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.