

(2015) 02 KL CK 0155

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 10575 of 2014 (V) and 12896 of 2013

K.P. Wilson

APPELLANT

Vs

Kozhinjampara Grama Panchayath and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 233, 233(4)(b)(c), 233(4)(c), 233(a)

Citation : (2015) 2 ILR Ker 884 : (2015) 2 KLT 536

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Babu Joseph Kuruvathazha and T.K. Biju, for the Appellant; A. Anilkumar and R. Ranjini, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Ramakrishna Pillai, J.

1. The grievance of the petitioner is that the respondent panchayat has not considered the application submitted by him for renewal of his existing licence to run a bone processing unit, despite the specific direction given by this Court in the judgment dated 27th June, 2012 in W.P.(C) No. 1920 of 2012. According to the petitioner, the respondent panchayat is refusing to consider his renewal application on the ground that he has failed to produce No Objection Certificate (NOC) from the District Medical Officer, which according to him, is not required for renewal of the licence.
2. For convenience of discussion, W.P.(C) No. 10575 of 2014 is taken as the leading case.
3. The petitioner is the managing partner of an industry involved in bone processing unit under the name and style "KGP Bone Products" functioning within the jurisdiction of the first respondent panchayat. The petitioner enjoys Ext. P2 "consent to operate" issued by the Pollution Control Board which is valid upto 30.6.2015. The petitioner alleges that all the conditions insisted in Ext. P2

have been strictly complied with.

4. The petitioner alleges that as per the proviso to Section 233(4)(c) of the Kerala Panchayat Raj Act, 1994 (for short the Act), NOC of the District Medical Officer is not necessary once the "consent to operate" is issued by the Pollution Control Board and, therefore, respondents 1 and 2 have no competence/jurisdiction/authority to insist for NOC of the District Medical Officer.

5. The petitioner points out that in an earlier round of litigation, this Court as per Ext. P8 judgment, stayed the operation of Exts. P6 and P7 orders of the panchayat until the application for licence submitted by the petitioner was considered and disposed of subject to the condition that petitioner would comply with all additional conditions as may be insisted by the panchayat. However, the direction issued in Ext. P8 judgment has not been complied with by respondents 1 and 2; it is alleged.

6. In the meanwhile, the petitioner submitted Ext. P18 application for renewal of licence of the panchayat. The required fee was also sent. The petitioner alleges that on an erroneous, perverse and arbitrary application of mind, Ext. P19 proceedings were issued by the first respondent informing that for want of NOC from the 4th respondent and the pendency of W.P.(C) No. 12896 of 2013, Ext. P18 application would not be considered. Challenging Ext. P19 order, the petitioner filed Ext. P20 appeal before the 2nd respondent which was dismissed by Ext. P21 stating that for want of production of NOC of the 4th respondent, the licence of the panchayat would not be renewed. It is with this background, the petitioner has come up before this Court.

7. In the detailed statement filed by the respondents 1 and 2, it was contended as follows:

The factory by name "KGP Born Products" is involved in crushing of bones and is situated at Ravanankunnupara of Kozhijampara Grama Panchayat. Their main product is the bones and remnants of meat. These products which are very old, decayed and stinky, are collected from various places and brought to the factory in open vehicles. The route of travel of the vehicles carrying the product is totally polluted by unbearable stink and pieces of meat and bones thrown from these vehicles, causes and spread grave and inexplicable health problems in the locality. The panchayat has received various complaints from the local people about the difficulty faced by them, owing to pollution and health problems caused by these activities undertaken in the factory. The panchayat has received complaints forwarded by the District Collector, Palakkad which was received by District Collector from the MLA of Palakkad constituency, pointing out problems caused due to running of the petitioner's factory. Copy of the complaint dated 10.11.2011 is produced as Ext. R1(1).

It was further stated that the first respondent on a consideration of the complaint on 9.12.2011, required the District Medical Officer, the 4th respondent, to submit a report after inspection of the factory. Photocopy of the communication dated

15.12.2011 is produced as Ext. R1(2). The 4th respondent has submitted his report dated 29.3.2012 informing that the first grade technical assistant of the District Medical Office inspected the factory. It has been reported by the 4th respondent that NOC from the Public Health Department is necessary for the functioning of the factory. The factory is functioning without obtaining such certificate and, therefore, the factory owner has to take appropriate measures for obtaining NOC from the District Medical Officer. It was suggested by the 4th respondent that on receipt of application from the owner of the factory, steps would be taken for removal of all difficulties faced by the people of the locality and NOC would be issued on specified conditions. It was also suggested to take appropriate action for restraining the functioning of the factory until NOC is obtained by the 4th respondent.

It was further stated that the contention that all the conditions insisted by the 3rd respondent have been strictly complied with by the petitioner in the factory and there is absolutely no pollution problem whatsoever is incorrect. Ext. P4 was served on the ground that the factory has caused grave health and pollution problems. The 1st respondent received various complaints on the functioning of the factory. Exts. P6 and P7 are consequential action of the 1st respondent in terms of law.

It was further stated that by Ext. P8, this Court disposed of writ petition directing the panchayat to call upon the petitioner to comply with any additional condition taking note of the complaints made by the residents of the area. After receiving Ext. R1(3), they brought the same to the notice of the petitioner and the petitioner submitted application dated 2.5.2012 and NOC. But, NOC dated 31.1.1997 submitted by the petitioner was the order of the 4th respondent specifying conditions for installation of 95 HP electric motor in the bone product factory of Sri. K.P. Anto. The 1st respondent intimated the petitioner vide Ext. P9 that the order dated 31.1.1997 is not of any use to the petitioner and for obtaining NOC from the Health Department, fresh application has to be submitted by the petitioner. Copy of the order dated 31.1.1997 referred to in Ext. P9 is produced as Ext. R1(4). The application dated 3.12.2012 submitted by the petitioner for NOC from the 4th respondent has been forwarded by the 1st respondent to the 4th respondent for appropriate action.

It was further stated that Section 233(4)(b)(c) of the Act is not applicable to the present case. It is stated that NOC from the Kerala State Public Health Department is highly necessary for running the petitioner's unit which deals with decayed meat and bone. Raw materials used in the factory are brought to the factory in open vehicles and the same cause grave and acute health problems in the locality. The same factory has, in the earlier years, produced the NOC of the 4th respondent along with the application for obtaining licence from the 1st respondent. Ext. R1(4) specifically specifies as a condition that "vacuum carriers should be provided for transporting bones to the factory". The factory is being functioned in violation of that condition. The foul smell and throw of remnants

from the carriers cause acute pollution and foul smell in the locality.

It was further contended that the petitioner has not produced NOC from the 4th respondent along with the application for licence for the year 2012-2013. Hence, the decision of the 1st respondent dated 2.3.2013 refusing to issue licence to the petitioner owing to non production of NOC from the 4th respondent has been intimated to the petitioner vide Ext. R1(5) letter dated 7.3.2013. It is stated that the petitioner has not taken any steps to rectify the anomalies pointed out by them. He has not taken any steps to prevent transporting of products used in the factory in open vehicles, so as to prevent pollution in the locality.

If licence is issued to the petitioner, it would result in grave law and order situation in the locality. It is specifically provided in the Act that licence shall be issued only after taking into consideration of the public health and safety. The petitioner has to be prevented from running the factory and transporting the product in a way which is highly hazardous to the health of the local people and pollutes the atmosphere.

According to the respondents merely because the petitioner enjoys the consent of the 3rd respondent that would not confer any right on the petitioner to run the factory without a valid licence from the 1st respondent who suggested preventive measures for the acute health and pollution problem caused by the running of the factory. According to the respondents, Ext. P15 proceedings of the 1st respondent is not illegal, arbitrary, erroneous, perverse or liable to be set aside by this Court. Ext. P16 was caused to be issued, since the petitioner was running the factory without a valid licence. It is true that by Ext. P17 order of this Court, operation of Ext. P16 has been stayed.

According to the respondents, the panchayat has issued Ext. P19 since the petitioner did not produce NOC from the Health Department. The activities done in the factory is hazardous and detrimental to the public health. Ext. P21 was passed by the panchayat since the petitioner did not produce NOC from the District Medical Officer which is mandatory for issuance of licence as public health issue being involved in the matter.

It was further stated that Exts. P19 and P21 are perfectly valid and issued after application of mind. None of the grounds raised by the petitioner are legally sustainable. The issuance of consent by the Pollution Control Board does not preclude the petitioner from producing NOC from the District Medical Officer (Health Department).

As per Public Health Act, it is mandatory to obtain NOC in respect of a factory, from the District Public Health Authority, before issuing licence in order to avoid any hazards to the public health that may arise owing to the functioning of the factory. The petitioner has to obtain NOC and produce supporting documents and those have to be produced before the District Public Health authority. The District Public Health Authority would conduct inspection and issue NOC on convincing that the activities do not cause health hazards to the public.

8. The 4th respondent has also filed a counter affidavit contending as follows:

It was contended that an application for NOC as stated in Ext. P11 was received in that office and the same was returned to the Secretary, Kozhinjampara Grama Panchayat for re-submission of the proposal along with required supportive documents specified therein. The same was not re-submitted yet. As such no report was sought for by respondent panchayat so far.

It was further contended that since the request for approval/NOC pertaining to the unit is not re-submitted by the Secretary, the 4th respondent is not in a position to pursue the subject. As per the Public Health Act, it is mandatory that the licence issuing authority should obtain NOC and final fitness certificate in respect of the proposed unit from District Public Health Authority before issuing licence in order to avoid nuisance to public health or outbreak of ill health which might arise by improper functioning of the unit.

It was contended that an application for NOC from the District Public Health Authority, Palakkad for the proposed unit has to be submitted by the Secretary, Kozhinjampara Grama Panchayat along with the copy of approval of the proposal by the Panchayat Governing Council with necessary supportive documents. After receiving such an application, the District Public Health Authority after conducting necessary inspection shall approve the proposal and issue NOC if the proposal is found to be not hazardous to the public in public health point of view. According to the respondent, the application for NOC other than as stated above would not be entertained or considered by the District Public Health Authority.

It was stated that it is the Panchayat Governing Council who decides whether NOC from District Public Health Authority has to be obtained. Therefore, the contention of the Secretary of the respondent panchayat in Exts. P15 and P19 that the applicant failed to produce the NOC of the District Public Health Authority seems to be not in order. For periodical renewal of licence, NOC from District Public Health Authority is not required. Therefore, the 4th respondent prayed for dismissal of the writ petitions.

9. Arguments have been heard.

10. The learned counsel for the petitioner would argue that Ext. P9 proceedings of the 1st respondent and Exy.P21 proceedings of the 2nd respondent are perverse, arbitrary, unsustainable and illegal. It was argued that the respondents should not have issued such orders especially in the light of Ext. P8 judgment of this Court and also in view of Section 233 of the Act. In Ext. P12 also, the petitioner relied on Section 233 of the Act. As per Ext. P12, it was specifically brought to the notice of the 1st respondent that the factory of the petitioner namely KGP Bone Products was enjoying the valid "consent to establish" issued by the Pollution Control Board and, therefore, in view of proviso to Section 233(4) (c) of the Kerala Panchayat Raj Act, 1994 respondents 1 and 2 have no authority/jurisdiction/competence to insist for NOC of the Health Service Department. In this context, it is profitable to quote Section 233 clause (4) which reads as under:

233. Permission for the construction of factories and the installation of machinery: - No person shall,. Without the permission of the Village Panchayat and except in accordance with the conditions specified in such permission-xxx xxx xxx xxxx

(4) Before granting or refusing permission under Sub-Section (3), the Village Panchayat, shall obtain and consider.

(b) a report of the District Medical Officer regarding the possibility of nuisance or pollution if the connected load of the machinery proposed to be installed exceeds 25 HP or if the nature of the machinery and installation are such that it may cause nuisance or pollution; and

(c) a report of the Division Fire Officer or any other officer authorized by him regarding the adequacy of fire prevention and fire fighting measures planned if the proposed industry involves the use of high tension power of inflammable or explosive materials.

Provided that, no report under clause (b) shall be called for in respect of any industry if the applicant produces a declaration recommended by an officer of the Industries Department authorised in this behalf or by the Kerala State Pollution control Board to the effect that such industry would not cause pollution."

(emphasis added)

11. It is clear from the proviso that no report under clause (b) shall be called for in respect of any industry, if the applicant produces a declaration recommended by an officer of the industries Department authorised on his behalf or by the Pollution Control Board to the effect that such industry would not cause pollution. It is evident from Ext. P2 that the petitioner enjoys the valid "consent to operate" issued by the Pollution Control Board. Therefore, the respondent panchayat was statutorily prevented from seeking NOC of the District Medical Officer. It is also crucial to note that as far as the industrial pollution is concerned, the competent authority is the 3rd respondent who is vested with powers to ascertain whether a particular industrial unit causes environmental pollution. Therefore, this Court is of the view that Ext. P19 order issued by the 1st respondent and Ext. P21 direction issued by the 2nd respondent are not legally sustainable and they shall not be allowed to stand.

12. It is relevant to note that the 4th respondent in his counter affidavit has admitted that the District Public Health Authority had already issued NOC to the petitioner's unit as per order dated 31.1.1992 and NOC from the said authority is not necessary for yearly renewal. Fresh NOC is needed only if an additional or alteration is proposed. The respondent has no case that any such alteration is proposed.

13. The learned standing counsel for the respondent panchayat would express the anxiety of the people of the locality regarding the obnoxious smell caused by the raw materials brought by the petitioner to his industrial unit in vehicles. This

situation can be remedied by giving a clear direction to the petitioner that raw materials to his unit shall be brought only in closed vehicles.

In the result, the writ petitions are disposed of quashing Exts. P19 and P21 in W.P.(C) No. 10575 of 2012 and directing the respondents 1 and 2 to issue renewed licence to the 1st respondent panchayat after receiving application fee, within a period of one month from the date of receipt of a copy of this judgment.

Considering the anxiety expressed by the respondent panchayat, the petitioner shall ensure that the raw materials shall be brought to his unit only in closed vehicles without causing any environmental pollution.

The authorised representative of the Kerala Pollution Control Board shall inspect the factory premises of the petitioner while it is working so as to ascertain whether the factory causes any environmental pollution and if it is certified by the respondent board that any nuisance is caused above the tolerance level, it is open to the respondent panchayat to proceed against the petitioner under Section 233(a) of the Act.

If there are only minor irregularities, it can be remedied by the petitioner. It shall be open to the respondent Pollution Control Board to suggest such remedial measures to the petitioner and in the event of such directions, defects shall be rectified by the petitioners within such time as would be decided by the Pollution Control Board.