

(1988) 01 KL CK 0027

In the High Court Of Kerala

Case No : Writ Appeal No. 572 of 1987

K.S. Aboobacker and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 — Rule 12(4)

Citation : AIR 1988 Ker 242 : (1988) 2 ILR (Ker) 59

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : C.P. Sudhakara Prasad, for the Appellant; Govt. Pleader, P. Santhalingam and K.S. Menon, for the Respondent

Final Decision : Allowed

Judgement

Malimath, C.J.—Though we are inclined to agree with the view taken by the learned single Judge that we should not interfere with the grant of licences to the rival industrialists we cannot refrain from examining the validity of Ext. P4 Government order particularly when the complaint is that that order has been made in violation of the statutory provisions. Ext. P4 dated 25-10-1986 is the order of the State Government which purports to deal with simplification of the procedure for the issue of licences by local bodies for small-scale industries. It is with that object in view that certain instructions have been issued. We are concerned here with two instructions contained in Ext. P4, which we propose to extract for the sake of convenience as follows :

"I. Reference to other Agencies by local bodies :

(A) For units in the Industrial Development Plots/Development Areas/Industrial Growth Centres and Industrial Estates set up by the Industries Department as well as local bodies or Government sponsored organisation. --

(i) x x x xx

(B) Units in other areas :

(i) No reference to the Health Department is required for industries with connected load not exceeding 25 HP except in respect of the categories of industries listed in Annexure-I. Even in respect of these categories of industries licences can be issued without reference to the Health Department on the recommendation of the General Manager, District Industries Centre concerned if the unit gives a declaration stating that no effluent is involved. A clause to the effect that "the licence is issued on the declaration given by the applicant that no effluent is involved and that the same is liable to be cancelled if this undertaking is violated" will be added to the certificate so issued.

(ii) No reference to the Fire Force Department is required in respect of industries with connected load not exceeding 25HP except in respect of categories of industries listed in Annexure-II."

The relevant rule governing the grant of licences in this behalf is contained in Rule 12(4)(b) and (c) of the Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1963, for short the Rules, which reads as follows :

"12. Application to be made for construction, establishment or installation of factory, workshop or workplace in which steam or other power is to be employed.

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(1) x x x x x

(4) Before granting permission under sub-rule (3) the Panchayat -- --

(a) x x x x x

(b) shall consult and have due regard to the opinion of the District Medical Officer of Health or any other officer authorised in this behalf as regards the suitability of the site of

the factory, workplace or premises for the purpose specified in the application; and

(c) in respect of matters to be specified by the Director by general or special order shall, also consult the Divisional Fire Officer as regards the precautionary measures to be taken against the outbreak of fire."

It is clear from the statutory provisions contained in Rule 12(4)(b) and (c) of the Rules that they are intended to ensure the health of the citizens in the locality as also their safety having regard to possible fire hazards. There is no provision entitling the Government to relax these provisions. That being the position the State ought to take every possible step to ensure that the statutory provisions bearing on the subject intended for ensuring safety of the citizens are strictly obeyed and complied with. Instead of doing that what has been done is to issue an executive fiat contrary to the provisions contained in Rule 12(4)(b) and (c) of

the Rules and permit licences being granted without complying with the relevant rules which are required to be complied with for the purpose of ensuring the health and safety of the citizens of the locality. As the executive fiat issued in Ext. P4 Government order which we have extracted above is clearly contrary to the provisions of Rule 12(4)(b) and (c) of the Rules the same cannot be sustained. Hence the same is quashed.

2. As licences might have been granted obeying the direction contained in Ext. P4 we direct that the quashing of the aforesaid clauses in Ext. P4 shall not come in the way of the continuance or the operation of the licences already granted. At the time of renewal of these licences and when an occasion arises hereafter in the matter of granting fresh licence we direct that the clauses struck down by us contained in Ext. P4 shall not be taken into consideration by the licensing authority.

In the result, the judgment of the learned single Judge is set aside to the extent indicated above. The appeal accordingly thus stands disposed of. No costs.