

(1998) 08 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 15663 of 1998

K.T. Muhammed and Another

APPELLANT

Vs

Kurumannil Melemannil Abdhulsalam Haji and Others

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 — Rule 12
Kerala Panchayat Raj Act, 1994 — Section 276, 3

Citation : AIR 1999 Ker 8

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Sunny Mathew, for the Appellant;

Judgement

P. Shanmugam, J.—The Petitioners are residents of Ward No. VII of the Kavanoor Panchayat. They have filed this original petition challenging the order of the Deputy Director of Panchayat, Ext.P7, confirmed by the Government, Ext.P8 and for a declaration that decision No. 1 dated 28-12-1996 taken by the 2nd Respondent not to grant licence to the 1st Respondent to set up a fertilizer factory at Ward No. VII of the Kavanoor Panchayat as perfectly legal and valid, and for a declaration that the second Respondent is not bound to issue a licence to set up a factory as soon as no objection certificates are obtained from the District Medical Officer and the Kerala State Pollution Control Board and for quashing Ext.P4 order issued by the Government.

2. The bare facts necessary for the disposal of the original petition is as follows:

During the year 1991 an application was preferred by the first Respondent before the Kavanoor Panchayat to set up a fertilizer factory. The Panchayat as per Resolution No. 162 dated 7-12-1991 decided to issue licence subject to the approval of the District Medical Officer as well as the Pollution Control Board and granted permission for the first Respondent to set up the factory. However,

subsequently the Panchayat decided on 30-9-1994 not to grant the licence. As against that order an appeal was preferred before the Deputy Director. By Ext. P3 order the Director of Panchayat allowed the appeal and held that there is no justification for the denial of the licence and therefore, directed the Panchayat to reconsider the application to start a fertilizer factory. Being aggrieved by Ext.P3 order the Panchayat filed a revision petition which was dismissed by the Government by Ext.P4 order. This Court in O.P. No. 11810/96, at the instance of the first Respondent directed the Panchayat to reconsider the entire matter in accordance with law. Thereafter, by Ext.P6 Resolution after examining the recommendations of the Grama Sabha decided not to grant the licence. As against the second order of the Panchayat the first Respondent filed an appeal before the Deputy Director of Panchayat. By Ext. P7 order the Deputy Director directed the Panchayat to issue the licence to the first Respondent subject to the conditions imposed by the Pollution Control Board. Against Ext.P7 order the Petitioner filed a revision petition before the Government. By Ext.P8 order the Government dismissed the revision petition and confirmed the order of the Deputy Director of Panchayat. Against these confirming orders the original petition is filed.

3. The main contention of the learned Counsel for the Petitioner is that subsequent to the order of the Deputy Director to reconsider the decision, the Panchayat constituted Grama Sabha u/s 3 of the Kerala Panchayat Raj Act and based on the recommendations the Panchayat has rightly decided not to give the licence to start the factory. According to him, the Panchayat is entitled to take a decision as per the decision of this Court in Manjapra Grama Panchayat v. State of Kerala (1996) 2 KLT 719, wherein this Court held that the Panchayat is entitled to take an independent decision as to whether by setting up a factory unit within its area, it would affect the people of the locality. There is no dispute as to the right of the Panchayat to take an independent decision. The decision is not final under the Act. The said decision is subject to appeal and further revision u/s 276 of the Kerala Panchayat Raj Act which means that the appellate authority is entitled to revise and set aside the order of the Panchayat and issue such order in reference there to as they think fit.

4. In this case it can be seen that the Panchayat had earlier decided to issue the licence on 7-12-1991 subject to the approval of the District Medical Officer and the Pollution Control Board. Once the first Respondent obtained approval from the District Medical Officer and the Pollution Control Board and satisfies the conditions set out by the Panchayat, the second Respondent is entitled to consider; the application for granting the licence in accordance with law. The Panchayat by their resolution dated 30-9-1994 decided not to grant the licence on the ground of air pollution and health hazard. On appeal against this decision, the appellate authority, viz. Deputy Director reversed that order by Ext. P3 dated 29-4-1995 and directed the Panchayat to reconsider their decision. It was confirmed by the Government by Ext. P4 dated 12-3-1996. On the second round the Panchayat again refused to grant the licence on the ground of

recommendations of the Grama Sabha. Again the Appellate Authority, Deputy Director reversed that order and directed the Panchayat to grant the licence by Ext. P7. That order also is confirmed by the Government in the revision by Ext. P8. The Government in their order of revision found that the Panchayat got the power to decide whether a factory need be given licence or not but that power cannot be allowed to be misused. According to the Government, the District Medical Officer and the Pollution Control Board are competent authorities to take a decision on the pollution aspect of the matter and it is binding on the Panchayat. The Panchayat cannot have an independent machinery to decide on the technical aspect of the pollution or health hazard. Here lies the relevance of the certificate from the competent authorities on the subject. It is not stated by the Panchayat that those certificates were issued without application of mind or erroneously. However, the Panchayat is of the view that the running of the industry will cause permanent harm to the people of the locality and will adversely affect their health. The only ground available under law, namely as per Rule 12 of the Kerala Panchayat (Licensing of Dangerous and Offensive Trade & Factories) Rules, 1960 is on the ground of density of population and the likelihood of nuisance. In any event the decision of the Panchayat is not final. The appellate and revisional authorities have considered the matter.

5. The Government found that the Panchayat did not seek opinion of the public about the desirability of having a factory before initially granting permission. According to the Government order, once a person after obtaining permission and after spending huge amount puts up a factory, it is very bad to deny the licence to him. A licence cannot be denied simply because it is not liked by a group of people without reference to specific legally sustainable objection. A constitution Bench of the Supreme Court in Mohammed Faruk Vs. State of Madhya Pradesh and Others, had held that the prohibition imposed on the exercise of fundamental right to carry on an occupation, trade or business will not be regarded as reasonable if it is imposed not in the interest of the general public but merely to respect the susceptibilities and sentiments of a section of people.

The Supreme Court also held that an act which is dangerous, noxious or injurious to public health and safety it shall be done under a licence. No person may claim a licence to do that act as of right. Where the law providing for grant of a licence or a permit confers a discretion upon an administrative authority regulated by rules and exercisable in consonance with rules of natural justice, it will be to impose a reasonable restriction. But if the discretion is uncontrolled, the law will ex facie infringes the fundamental right under Article 19(1) of the Constitution of India.

6. In this case the revisional authority further found that the 1st Respondent is entitled to expect the licence in the normal course and the Panchayat cannot go back after having allowed the installation.

7. The Supreme Court in M.P. Oil Extraction and Another Vs. State of M.P. and Others, , took the view that the doctrine of "legitimate expectation" has been

judicially recognised by the Supreme Court and the doctrine operates in the domain of public law and in appropriate case constitutes a substantive and enforceable right. Thus both the principles of promissory estoppel and legitimate expectation the orders of the Deputy Director and Government are justifiable and are valid.

8. The argument of the learned Counsel for the Petitioner is that in spite of the statutory appellate and revisional orders, the Panchayat can independently decide not to give licence, in my view, cannot be sustained. They are subject to statutory appeal and revision. I find Exts. P7 and P8 orders are perfectly justifiable and there is no ground to interfere with the orders.

The original petition is dismissed.