

(2023) 03 KL CK 0161

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 30771 Of 2021 & 2580 Of 2022

Mohammed Sageer

APPELLANT

Vs

Kannambra Grama Panchayath Represented By Its Secretary,
Kannambra P.O., Palakkad District, Pin 678687

RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Constitution of India, 1950 — Article 21, 141, 226
Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 — Section 5, 6
Kerala Panchayat Raj Act, 1994 — Section 232, 233
Kerala Industrial Single Window Clearance Boards and Industrial Township Area
Development Act, 1999 — Section 2(c), 3, 4
Micro, Small and Medium Enterprises Development Act, 2006 — Section 10, 10(2)
Kerala Panchayat Building Rules, 2019 — Rule 4
Kerala Micro, Small and Medium Enterprises Facilitation Rules, 2020 — Rule 3, 4, 5

Citation : (2023) 03 KL CK 0161

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

Bench : Single Bench

Advocate : Renjith Thampan, V.M.Krishnakumar, P.R.Reena, Brijesh Mohan,
R.Rajpradeep, Jayasree K.P.

Final Decision : Disposed Of

Judgement

T.R. Ravi, J.

1. Whether a hot mix plant set up by the petitioner in W.P. (C)No.30771 of 2021 should be allowed to function, is the hotly contested issue in these writ petitions.

FACTS:

2. W.P.(C)No.30771/2021: The petitioner and his brother, who are PWD contractors entered into agreements with the Public Works Department and the Local Self Government Institutions for construction, improvement, repair works, etc. of PWD and Local Self Government Institutions. They are also involved in road laying works. To carry out the contract works under the Government, a large quantity of metal bitumen mix is required. To source the said requirement,

the petitioner decided to install a metal bitumen mix plant. An extent of 1 Acre of land in Sy.No.378/1 of Kannambra Village was purchased. An application was filed under the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 (hereinafter referred to as Facilitation Act) to the District Industries Centre, Palakkad, (DIC for short) in the prescribed form, seeking an acknowledgment certificate for starting the manufacture of metal bitumen mix unit in the property. Ext.P3 certificate was issued on 8.12.2021. Ext.P4 dated 26.10.2021 is the intimation regarding the online industry registration certificate. The very purpose of the Facilitation Act is to ensure that there are no roadblocks while starting industries and establishments in the State of Kerala. Based on Exts.P3 and P4, the petitioner started preparation for establishing the unit. It is alleged that there were threats from some local leaders of a major ruling political party, that the petitioner would not be permitted to function the unit if persons chosen by the obstructors were not engaged in the petitioners' establishment. The petitioner filed W.P. (C)No.29309/2021 and by Ext.P5 interim order dated 17.12.2021, this Court directed the Sub Inspector of Police, Vadakkencherry Police Station to afford adequate and effective protection to the petitioner and his employees, if the petitioner was functioning with valid consents and licenses from the competent statutory authorities. Apprehending issuance of stop memo by the 1st respondent Panchayat, since the petitioner had not obtained a building permit from the Panchayat, the petitioner has moved this writ petition. The petitioner contends that in view of the provisions of the Facilitation Act, there is no necessity for obtaining such permits from the Local Authorities for a period of three years. The petitioner seeks a direction to the respondents not to interfere with the establishment of the petitioner's metal bitumen mix unit on the strength of Exts.P3 and P4 and to declare that the petitioner is entitled to establish the Unit in view of Sections 5 and 6 of the Facilitation Act.

3. W.P.(C)No.2580/2022: The petitioners in this writ petition are owners of rubber plantations and residents of Kannambra Grama Panchayat. They submit that the rubber plantations owned by them were originally part of Arya Lakshmi Rubber Estate and that the 11th and 12th respondents in the writ petition are owners of rubber plantations adjacent to the estate of the petitioners. The 12th respondent referred to above is the petitioner in W.P.(C)No.30771 of 2021 and the 11th respondent is his brother. The petitioners have challenged the erection of the tar mixing plant in the properties of the 11th and 12th respondents. They submit that the property was originally a rubber plantation which was cleared and levelled by using a JCB and thereafter the plant was installed. The above action is challenged on the following grounds;

A. The area is densely populated and has schools, anganwadis, and Madrassa.

B. Two residential houses belonging to the 3rd petitioner are situated within 50 metres radius, and there are 50 residential houses within a 200 metres radius of the plant. It is also stated that there are 800 houses within a radius of 500 metres from the plant.

C. The tar mixing plant has been established without obtaining permission under Section 233 or the licence under Section 232 of the Kerala Panchayat Raj Act, 1994(hereinafter referred to as KPR Act).

D. The bitumen/hot mixing plant of permanent nature, intended to function for more than six months comes under the category of hazardous buildings in Group I, and the necessary permit and sanction as prescribed in KPR Act and Kerala Panchayat Building Rules, 2019 (KPB Rules for short) are required.

E. Once the hot mixing plant becomes operational, it will detrimentally affect the paddy fields lying on the slopes of the hill and pollute the drinking water project in the area.

F. The 7th respondent Kerala State Pollution Control Board has granted consent to operate to respondents 11 and 12 without complying with the prescribed Rules.

G. The installation of the plant will affect the right to life in a pollution-free environment, which is guaranteed under Article 21 of the Constitution of India.

H. Even though the petitioners have approached the Secretary of Kannambra Grama Panchayat, Revenue Divisional Officer, District Collector and the Kerala State Pollution Control Board, no action has been taken.

4. Heard Sri Renjith Thampan, Senior Advocate instructed by Sri V.M.Krishnakumar on behalf of the petitioner in W.P.(C) No.30771 of 2021 and respondents 11 and 12 in W.P.(C)No.2580 of 2022, Smt.Jayasree K.P. on behalf of the petitioners in W.P.(C) No.2580 of 2022/respondents 3 to 5 in W.P.(C)No.30771 of 2021, Sri R.Raj Pradeep on behalf of respondents 1 and 2 in W.P.(C) No.30771 of 2021 and respondents 1 and 2 in W.P.(C)No.2580 of 2022, Sri T.Naveen on behalf of respondents 7 and 8 in W.P.(C) No.2580 of 2022 and Sri Rajeev Jyothish George, Government Pleader on behalf of the State and its officers.

ARGUMENTS ADVANCED BY SRI RENJITH THAMPAN, SENIOR ADVOCATE:

5. The primary contention raised is based on the Facilitation Act. The counsel submits that under Section 5 of the Act, any person who intends to start an enterprise other than those not included as a red category by Kerala State Pollution Control Board, may furnish before the Nodal Agency, a self-certification in the prescribed manner. Nodal Agency must issue the acknowledgment certificate in the prescribed form to the person who has furnished the self-certification. As per Section 3, the Nodal Agency is the District Agency constituted under Section 4 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (SWCB Act short). Section 2(c) defines "approval" to mean licenses, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State. As per Section 6 of the Act, an acknowledgment certificate has the effect of approval as defined in clause (c) of

Section 2, for three years from the date of its issuance. Thereafter, such enterprises must obtain all the required approvals as defined in clause (c) of Section 2 within six months from the date of expiry of three years. Section 2(f) defines "enterprises" to mean micro small or medium enterprises. Section 2(h) defines "micro, small or medium enterprises" to mean micro, small or medium enterprises, as defined in the Micro Small and Medium Enterprises Development Act, 2006 (MSME Act for short). The Senior counsel submits that Exts.P3 and P4 have not been challenged before any forum. As per Section 10 of the MSME Act, the provisions of the Act shall have an overriding effect, notwithstanding anything inconsistent contained in any other law, for the time being in force. Section 10(2) says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the KPR Act, 1994, the Kerala Municipality Act, 1994, the Kerala Shops and Commercial Establishments Act, 1960, the Kerala Lift and Escalators Act, 2013, The Travancore-Cochin Public Health Act, 1955 and Madras Public Health Act, 1939. The Senior counsel submits that no licence under the KPR Act need be obtained for the first three years of the functioning of the Unit. Relying on Rule 4 of the KPB Rules, the Counsel submits that the permit contemplated is as mentioned in Section 2(c) of the Facilitation Act. It is submitted that there is no violation of the provisions of the Kerala Land Reforms Act (KLR Act for short) since what has been done is only the conversion of an exempted category of land into another exempted category. It is submitted that consent from the Pollution Control Board has already been obtained. Reliance is placed on the decisions in *Devassia R.V. & Anr.v. Sub Registrar, Idukki & Ors.* [2015 (1) KHC 805], *Mathew K.Jacob v. District Environmental Impact Assessment Authority* [2018 (4) KLT 913 (FB)], *Nazar v. Mathew K.Jacob* [2019 (4) KLT 82 (SC)] and *Elias T.V. & Ors. v. Sub Collector, Wayanad & Ors.* [2019 (2) KHC 881]. The Senior Counsel also referred to the powers of the Nodal Agency under the Facilitation Act as prescribed in Section 4 which includes maintenance of record of self-certification and acknowledgment certificate received under Section 5(3) of the Act. It is also pointed out that Section 5(3) says that the acknowledgment certificate has to be issued forthwith by the Nodal Agency, the intention being to promote the industry. Section 8 of the Act was referred to, to submit that there is a sufficient safeguard of penalising the enterprise if the self-certification conditions are contravened. Under Section 12 an appellate authority has been created for dealing with appeals preferred by any person who is aggrieved by the decision of the Nodal Agency. Since no challenge has been made to the certification given to the petitioner in W.P. (C)No.30771 of 2021, the Senior Counsel contends that the party is entitled to all the benefits that flow from such certification and acknowledgment certificate. The Senior Counsel referred to Kerala Micro, Small and Medium Enterprises Facilitation Rules, 2020, (MSME Rules for short) wherein a procedure has been prescribed under Rule 3 for grant of the acknowledgment certificate. Rule 4 reiterates the findings of the Nodal Agency and Rule 5 speaks of the effect of the acknowledgment certificate. The MSME Rules also prescribe the forms for self-certification and acknowledgment certificates. The schedule

attached to the Rules would show that no permission will be required for the construction of buildings with plinth areas up to 20000 Sq. ft. and heights up to 15 metres, for a period of three years as far as Panchayats are concerned. A similar provision is contained for construction in the Municipality area also. The Counsel also referred to the counter affidavit filed in W.P.(C)No.2580 of 2022, wherein it is specifically contended that there are no buildings within 50 metres of the unit. As regards the challenge to Ext.P22 Consent to operate, it is submitted that the remedy is to approach the National Green Tribunal and is not by means of a writ petition under Article 226.

CONTENTIONS RAISED BY SMT.JAYASREE K.P.

6. The counsel referred to the Industries Development Regulation Act, 1951 (hereinafter referred to as the IDR Act) to submit that a hot mix plant cannot be treated as an "enterprise", since it is not specifically included in the IDR Act, on a reading of the First schedule of the Act. It is pointed out that though hot mix plant as a category has not been included, there is a reference in Sl. No.8B, to general items of machinery used in several industries, such as the equipment required for various 'unit processes', size reduction equipment, crushers, ball mills and the like, conveying equipment, bucket elevators, skip hoist, cranes, derricks and the like, size separation units, screens, classifiers and the like, mixers and reactors, kneading mills, turbo mixers and the like.

7. It is submitted that "enterprise" as defined in the MSME Act, means an industrial undertaking or business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the IDR Act or engaged in providing or rendering of any service or services. It is also contended that the petitioner in W.P.(C)No.30771 of 2021 has not produced any registration under the 2006 Act to show that they come within the definition of "enterprise." It is also contended that Ext.P22 consent to operate is not valid since it is issued without consideration of the relevant facts.

8. Another contention that is raised is that Ext.P3 has been issued by General Manager, DIC, who is not the authorised person under the Facilitation Act and the Rules to issue an acknowledgment certificate. Counsel referred to the decisions in *One Earth One Life & Ors. v. State of Kerala & Ors.* [2019 KHC 221], *State Human Rights Protection Centre & Ors. v. State of Kerala & Ors.* [2009 (3) KHC 682] and *Jilmon John & Anr. v. Manakad Grama Panchayath* [2017 (1) KLT 794] to submit that the plant should not have been allowed to function in a rubber plantation and it affects the nearby rubber plantations, paddy fields and the drinking water project. Another contention that is taken is that even if the industry is to be considered an "enterprise" under the Facilitation Act, a building permit is required. The decision of the Full Bench of this court in *Tomy Thomas v. State Environmental Impact Assessment Authority* [2019 (3) KLT 987] was also referred to.

9. The counsel refers to the Kerala Investment Promotion and Facilitation Act, 2018 as amended by Act 14 of 2018 whereby the constitution of the District Single Window Clearance Board was amended. It is submitted that the Board consists of Officers at several levels and from several departments who have been shown against Sl.Nos.a to r, like the officers of the Tourism Department, Public Works Department, and Department of Mining Geology. It is submitted that this Board is the Nodal Agency under the Facilitation Act, and the acknowledgment certificate does not appear to have been issued by such a Board. It is further contended that even if the acknowledgment certificate is to be treated as valid going by the judgment of the Division Bench regarding the setting up of hot mix plants, the petitioner in W.P. (C)No.30771 of 2021 will have to approach the Secretary of the Panchayat for necessary licenses.

10. The counsel for the Panchayat contended that the hot mix plant has been set up without getting any permission from the Panchayat. It is submitted that going by the Facilitation Rules, the petitioner in W.P.(C)No.33771 of 2021 should have complied with the requirements under the Building Rules. It is further submitted that the hot mix plant comes under hazardous occupancy under Rule 25 of the KPB Rules. Reliance is placed on the Division Bench decision in Jolly George & Anr. v. George Elias and Associates [2022 (1) KHC 1] to submit that if the hot mix plant is to be established for a period of more than six months, it requires compliance of the Building Rules, 2019 including building permit, to satisfy the Rules. The Court in the above judgment has further said that the permanent nature of a hot mix plant is to be identified based on the period for which the plant is installed rather than the capacity or the permanent fixtures to be employed for the setting up of the plant. The Court held that under the KPB Rules, all that the Secretary needs to ascertain is the period for which the plant is proposed to be put up. If it is for a period of six months or below, permission under Section 68 alone is required from the Secretary, but if it is exceeding the said period, it will have to comply with the other requirements of the Rules. The counsel also referred to paragraph 3 of the judgment to submit that the Division Bench had also considered the certificate issued under the Facilitation Act.

11. In reply, Senior Counsel Sri Renjith Thampan contended that the judgment of the Division Bench in Jolly George (supra) has to be held to be sub silentio, since the Court did not consider the provisions of the Facilitation Act and Rules while coming to the conclusion. It is pointed out that except for noting the argument regarding the Facilitation Act and Rules, the effect of the provisions have not been considered in the judgment in the subsequent paragraphs and the Court has only considered the provisions of the KPB Rules and the KPR Act while arriving at the decision that a permit is required. It is hence submitted that the judgment can apply only to cases where the applicant is not an "enterprise" having an acknowledgment certificate under the Facilitation Act. The counsel relied on the decision in Fr.Sebastian Vadakkumpadan v. Shine Varghese & Ors. [2018 (3) KHC 590]. In paragraph 55 of the said decision, a Division Bench of this Court considered several Supreme Court decisions and held that the rule of

sub silentio is that "that which has escaped in the judgment is not the ratio decidendi". The Court noticed the observations of the Hon'ble Supreme Court that a decision not expressed, not accompanied by reasons, and not based on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Reference is also made to the decision in Bindu K.B. v. State of Kerala & Ors. [2014 (4) KHC 772], in which a learned Single Judge of this Court referred to the decision in Gerard v. Worth of Paris Ltd. (K) [1936] 2 All ER 905 (CA)] wherein it was observed that a decision which is rendered without argument, without reference to the crucial words of the rule, and without any citation of authority is not binding and need not be followed. The Court further observed that precedents sub silentio and without argument are of no moment.

CONSIDERATION

12. I shall first consider the contentions raised in W.P. (c)2580 of 2022, wherein the petitioners object to the setting up of the hot mix plant. The prayers (i) and (ii) are for a declaration that the respondents 11 and 12 in the writ petition are not entitled to establish the hot mix plant and for a direction to the said respondents not to operate the tar mixing plant. The main ground raised in support of the prayer is that the property is a plantation and the establishment of the plant is prohibited under Ext.P9 rules. Ext.P9 rules lays down the procedure for giving effect to Section 81(4) of the KLR Act, which permits the use of exempted land for the purpose of construction of hotels, resorts, or other tourism projects upto an upper limit of 10 acres. The said provision has no application to the facts of this case. As regards the contention that exempted land (plantation in this case) cannot be put to use for any other purpose, the law is settled that the consequence of such use can only be that the excess area liable to be surrendered under the KLR Act will have to be re-worked. [See Mathew K.Jacob (supra), Nazar (supra)]. In One Earth One Life (supra), this Court was concerned with the transfer of Kinalur Estate to several persons including the employees and legal heir, causing a fragmentation of the entire plantation. This Court did not accept the contention that the fragmented estate will remain to be a plantation. The Court held that the object of the enactment in granting exemption was to ensure that the plantation remained a plantation contributing to the economy of the State and welfare of the people as a whole. This Court however did not consider all the situations in which a fragmentation can occur. For instance, a plantation which is owned by a single owner, can by operation of law of succession, get fragmented on the death of the owner. There can be ever so many like situations. The above decision cannot in any way be of support to the contention of the petitioner, particularly in the light of the categoric pronouncement by the Hon'ble Supreme Court in Nazar (supra). In State Human Rights Protection Centre (supra), this Court was concerned with the question whether a land assigned for industrial purpose can be alienated. The decision does not apply to the situation on hand. In the light of the above discussion, I am of the view that the petitioner is not entitled to the reliefs prayed for in

prayers (i) and (ii).

13. The prayers (iii) to (v(b)) relate to the question whether respondents 11 and 12 are required to obtain permission from the Panchayat as per the KPR Act and the rules thereunder, for establishing the hot mix plant. Ext.P20 is the Acknowledgment certificate issued under Section 5(3) of the Facilitation Act. It specifically mentions the nature of the unit. It also states that the certificate entitles the enterprise to claim exemption from approval under the various enactments mentioned in the Facilitation Act. Under Section 6 of the Facilitation Act, Ext.P20 shall for all purposes, have effect as if it is an approval as defined in section 2(c), for a period of 3 years. Section 6(3) prohibits the competent authorities from undertaking any inspection for the purpose of, or in connection with any approval as defined in section 2(c). Section 2(c) says that "approval" means licenses, permissions, approvals, clearances, registration, consents, no objection certificate, and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State. As per Section 10, the provisions of the Facilitation Act shall have an overriding effect, notwithstanding anything inconsistent contained in any other law, for the time being in force. Section 10(2) specifically refers to KPR Act, Kerala Municipality Act, Kerala Shops And Commercial Establishments Act, Kerala Lift and Escalators Act, Travancore-Cochin Public Health Act, and Madras Public Health Act and says that the provisions of the said enactments are to be read as amended in conformity with the provisions of the Facilitation Act. There can be no doubt that the intention of the legislature is to provide exemption from certain approvals and inspections required for the establishment and operation of micro small and medium enterprises in the State, as stated in the Preamble to the Facilitation Act. The petitioners have not challenged the provisions of the Facilitation Act in the writ petition. An acknowledgement certificate Ext.P20 having been issued in favour of respondents 11 and 12 in the writ petition, there can be no further objection for a period of 3 years that the enterprise has not obtained any of the necessary licences under the enactments specified in the Facilitation Act.

Whether hot mix plant is an enterprise ?

14. A reading of sections 2(f) and (h) would show that an enterprise means micro small or medium enterprise as defined in the MSME Act. Section 2(e) of the above Act defines an "enterprise" as an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to an industry specified in the First Schedule to the IDR Act or engaged in providing or rendering of any service or services. The contention of the petitioners is that "hot mix plant" is not specifically included in the First Schedule to the IDR Act. The First Schedule has categorized industries into 38 headings with several sub-headings under each heading. The schedule includes any industry engaged in manufacturing or producing articles mentioned under each heading or sub-

headings. It is true that there is no specific reference to a hot mix plant. The Senior Counsel appearing for respondents 11 and 12 submits that there is no requirement of a specific mention, so long as the enterprise can be brought under any of the headings or sub-headings. Specific mention is made to Heading No.8 "Industrial Machinery". The said heading is sub-divided into "A.Major items of specialized equipment used in specific industries" and "B.General items of machinery used in several industries, such as the equipment required for various 'unit processes'." Item (1) under 8B is "Size Reduction equipments" which includes crushers. Item (4) under 8B is "Mixers and Reactors". Explanation 1 to the schedule says that the articles specified under heading 8 shall include their component parts and accessories. It is hence contended that a hot mix plant will come under the above-said headings and sub-headings and that such a unit is hence an "enterprise". I find considerable force in the arguments advanced by the Senior Counsel. Having regard to the fact that industrial activity has undergone several changes after coming into force of the IDR Act in 1951, and specialized activities which facilitate/supplement/ complement a larger industry are being undertaken by entrepreneurs, the contention of the petitioners that the First schedule should be subjected to a strict interpretation and only industries specifically included by name should be treated as an enterprise cannot be accepted.

15. The next contention of the petitioners is that Ext.P20 is invalid since it is not issued by the Board as defined in the Act. Ext.P20 has been issued by the DIC. As per Rule 3 of the MSME Rules, the enterprise must furnish self-certification before the Nodal Agency in the prescribed form, electronically on the web portal designed for the purpose. The Acknowledgment certificate is also issued instantly by the electronic web portal in Form II. Section 3 of the Facilitation Act says that the District Board constituted under Section 4 of the SWCB Act shall be the nodal agency for the purposes of the Act. Section 5(3) requires the nodal agency to issue an Acknowledgment certificate in the prescribed form forthwith. Rule 4 of the MSME Rules states that the Nodal Agency shall act as the co-ordinating and implementing agency for carrying out the purposes of the Act. It further provides that the Nodal Agency shall appoint one or more Authorised officers for the purpose of verification and issuance of an Acknowledgment Certificate under the Act, in case there is a failure of the electronic web portal. The electronic portal is to be maintained by the Nodal Agency for carrying out the purposes of the Act and to keep record of Self Certification and Acknowledgment Certificate. It is the duty of the Nodal Agency to forward the self-certification and Acknowledgment Certificate to the competent authorities. The Nodal Agency shall also be responsible for coordination between the competent authorities and the enterprise and is to resolve any dispute that may arise between the enterprise and the competent authority. Ext.P20 has been issued in terms of the provisions of the Facilitating Act and the Rules and there is nothing to show that the DIC has not been authorized by the Nodal Agency to issue the certificate. Nor is there anything to show that Ext.P20 has not been issued by the Nodal Agency, except

that the DIC is shown as the issuing agency. To conclude that Ext.P20 is invalid for the above reason alone is not warranted. The fact remains that the certificate is issued in electronic format through the website of the Nodal Agency, following the prescribed procedure. Hence the contention regarding the validity of Ext.P20 on the above ground fails.

16. The petitioner has relied on the decision in Jilmon John (*supra*), Tomy Thomas (*supra*) and Jolly George (*supra*), to submit that even if respondents 11 and 12 have obtained an acknowledgment certificate under the Facilitation Act, they necessarily have to obtain licenses from the Panchayat. In Jilmon John (*supra*), a Division Bench of this Court held that for erecting a hotmix plant, there is a necessity to obtain a building permit. When the said judgment was rendered, the Facilitation Act had not come into force and the Division Bench did not have an occasion to consider the effect of the Act. The said judgment cannot hence be considered as a precedent for the position that a building permit is to be obtained even by a person who has an acknowledgment certificate under the Facilitation Act. In Jolly George (*supra*), a Division Bench held that as far as a portable hotmix plant is concerned, a permission under Rule 68 alone is required from the Secretary and if the period of installation exceeds six months, the applicant will have to secure necessary permits/permission under the Kerala Panchayat Raj Act. Even though a contention had been raised on the basis of the certificate obtained under the Facilitation Act, the Division Bench did not consider the issue on merits. The contention was noticed in paragraph 9 of the judgment, but not answered. The Division Bench held that only the Secretary has power under Rule 68 to grant permission for a hotmix plant of temporary nature. The above said judgment also cannot be a binding precedent for the question whether a person who has been issued with an acknowledgment certificate under the Facilitation Act requires further permissions from the Local Self Government. As contended by the learned Senior Counsel, the decision cannot be deemed to be a law declared to have a binding effect on the question, since the point of law has not been consciously determined. [See *Arnit Das v. State of Bihar* [(2000) 5 SCC 488], *Gerard* (*supra*)], *Fr. Sebastian Vadakkumpadan* (*supra*) and *Bindu K.B.* (*supra*)]. *Tomy Thomas* (*supra*), decided by the Full Bench of this Court also does not deal with the question on hand.

17. In view of the above discussions, W.P.(C)No.2580 of 2022 is dismissed.

18. I shall now consider W.P.(C)No.30771 of 2021. In view of the findings already expressed and held with regard to W.P.(C) No.2580 of 2022, the petitioners in this writ petition are entitled to succeed. The petitioners are entitled to establish their unit on the strength of Exts.P3 and P4 produced in the writ petition, in view of Sections 5 and 6 of the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 .

19. The above declaration of law will not in any way prejudice the respondents, since there are sufficient safeguards in the Facilitation Act to ensure that the benefit given to an enterprise who has been issued with an acknowledgment

certificate for a period of three years, is not misused. W.P. (C)No.30771 of 2021 is disposed as above.