
(1965) 11 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No's. 2342 and 2878 of 1964

N.P. Paul and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Rice Milling Industry (Regulation) Act, 1958 — Section 5(4)

Citation : AIR 1967 Ker 71 : (1966) 10 KLJ 210

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : K.S. Paripoornan and T. Devassia, in O.P. No. 2342/64, T.K. Narayana Pillai and N. Govindan Nair, in O.P. 2878/1964, for the Appellant; Govt. Pleader for Nos. 1 and 2, P.K. Kesavan Nair and K.N. Narayana Pillai for No. 3 in O.P. 2342/64, Govt. Pleader Nos. 1 and 2 in O.P. 2878/1964, George Vadakkal, Varghese Kalliath, M.A. Joseph, Jose Vithayathil and K.J. Kurien for No. 3 and K.P. Abraham and K.K. Poullose for No. 4 in O.P. 2878/1964, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, J.—A common question arises for determination in these writ applications. The petitioners in these petitions it is said, are aggrieved by the grant of permits pursuant to Section 5 of the Rice Milling Industry (Regulation) Act, 1958, to respondents 3 and 4 in O. P. No. 2878 and the third respondent in O. P. No. 2342. The petitioners are those who had obtained permits earlier and had obtained licences and were carrying on the business of rice milling. Their case is that due to the proximity of the new mills permitted to be commenced near the place where their rice mills are situate, they are adversely affected.

2. The grounds on which the permits issued to the respondents mentioned above are challenged are that the statute requires a quasi judicial determination as to whether a permit should be granted to an applicant and since the petitioners are those who are likely to be affected by such grant of permits, they should have been heard. The complaint of the petitioners is that they have not been heard

and that they were not aware of any enquiry conducted as contemplated by Section 5(4) of the Act. If any such enquiry had been conducted and any materials had been collected those materials should have been made available to the petitioners.

3. From the above contentions, it is clear that the only question is whether the enquiry contemplated u/s 5(4) of the Act is a quasi judicial one or not. I shall read Section 5(4) of the Act.

"54. Before granting any permit under sub-section (3), the Central Government shall cause a full and complete investigation to be made in the prescribed manner in respect of the application and shall have due regard to --

- (a) the number of rice mills operating in the locality;
- (b) the availability of paddy in the locality;
- (c) the availability of power and water supply for the rice mill in respect of which a permit is applied for;
- (d) whether the rice mill in respect of which a permit is applied for will be of the huller type, sheller type or combined sheller-huller type;
- (e) whether the functioning of the rice mill in respect of which a permit is applied for would cause substantial unemployment in the locality;
- (f) such other particulars as may be prescribed."

There is no other provision in the Act regarding the procedure to be adopted before the grant of the permit. The statute and/or the rules framed thereunder do not provide for a hearing. The manner in which material is to be collected is not indicated. In the above circumstances it is not possible to say from the provisions of the Act that the enquiry under the Act is intended to be a quasi judicial one. Nor can I say that the determination contemplated by the Act is a quasi judicial determination

4. It is a well-accepted principle that the question as to whether an enquiry to be held under the statute is a quasi judicial enquiry an decision to be taken under the statute is a quasi judicial decision must be determined with reference to the provision of the statute and/or the rules framed under the statute. Viewed from that angle it is not possible to come to the conclusion that the investigation to be conducted u/s 5(4) of the Act is intended by the legislature to be a quasi judicial enquiry. Nor can a decision for the grant or refusal of the permit under the Act be intended to be a quasi judicial decision.

5. It is not as though in all cases where a decision should be taken on facts to be ascertained before it is decided to issue or refuse a licence or permit, the enquiry and the decision are of a quasi judicial nature. So I have to conclude that the contention is not well founded. I think the true position is what is stated in *Rex v. Richmond Confirming Authority; Howitt, Ex parte* reported in (1921) 1 KB 248.

The learned Chief Justice enunciated the principle thus:

"I believe that to be the true principle upon which this Court acts. Here the applicant had an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered."

No doubt their Lordships in that case considered a statute wherein provision had been made that notice should be issued before the question is determined. Even when there is no such provision, the position must be the same.

6. Whenever an interest distinct from the general Inconvenience which may be suffered by the law being wrongly administered, is adversely affected, the person whose interest is so affected will have a right to insist that the law should be properly administered. So a writ application may lie whenever there has been an infringement of such an interest because the statute has not been followed.

7. The only question therefore to be determined is whether the State Government, it is admitted that the State Government is the authority, have had due regard to the factors mentioned in Section 5(4) of the Act. I perused the files concerned and I am satisfied that the relevant factors with reference to which the decision should be taken have been adverted to. More than this, the petitioners have no right to insist upon. I see therefore no grounds on the merits to interfere with the grant of the permits to respondents 3 and 4 in O. P. 2878 of 1964 and to the third respondent in O. P. 2342 of 1964.

8. In the result, I dismiss these petitions. There will be no order as to costs.