
(2008) 07 KL CK 0062

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16394 of 2008 B

Shanoj T.K. and Another

APPELLANT

Vs

The Wandoor Grama Panchayat and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 232, 233, 234

Citation : (2008) 3 ILR (Ker) 566 : (2008) 2 KLJ 913 : (2008) 3 KLT 674

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Babu S. Nair and K. Rakesh, for the Appellant; A. Sudhi Vasudevan, Mansoor B.H., G. Hariharan and M.K. Chandramohan Das, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—In this writ petition, though the petitioners sought several reliefs, the only one that was urged during the course of the arguments was for a declaration that in the absence of Gazette notification issued u/s 232 of the Kerala Panchayat Raj Act, the respondent Panchayat cannot insist that the petitioners should obtain licences under the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 (hereinafter referred to as D & O rules for short). The facts of the case are that the petitioners are owners of poultry farms in respect of which, they have obtained Exts. P7 and P8 consent orders from the Kerala Pollution Control Board. They were informed that they should obtain licence under the D & O rules and thereupon they made applications, the receipt of which have been acknowledged by the Panchayat by Ext. P11 and P12. Thereafter, according to them, they realised that in the absence of Gazette Notification issued u/s 232 of the Act, it was not a statutory requirement to obtain such licence and hence this writ petition was filed.

2. After the filing of the writ petition. Panchayat states that they have issued Ext. R3(f) proceedings of the Secretary rejecting the applications made by the

petitioners for licence. However, since the petitioners assert that they did not have the obligation to obtain the licence. I proceed to consider the arguments raised.

3. The relevant provision of the Kerala Panchayat Raj Act, which was pressed into service is Section 232. This section provides that the Village Panchayat may notify that no place in the Panchayat area shall be used for any of the purposes specified in the rules made in this behalf, being purposes which in the opinion of the Government are, likely to be offensive or dangerous to human life or health or property, without a licence issued by the Secretary and except in accordance with the conditions specified in such License. The Government have in exercise of their powers conferred by Sections 232, 233 and 234 of the Act framed the D & O Rules. In the schedule to the D & O Rules, the Government have specified the matters which in its opinion are likely to be offensive and dangerous to human life, health or property. Among the various items included in the schedule, poultry has been included at Sl. No. 130.

4. Rule 3 of the Kerala Panchayat Raj (Manner of Publication of Notification or Notice) Rules, 1996 provides that save as otherwise expressly provided in the Act or the Rules made thereunder, every notification issued under the provisions of the Act shall be published in the Government Gazette. The proviso to the said rule states that the Government shall have power to direct that any such notification shall, instead of being published in the Gazette, be published in any other manner specified by them.

5. Counsel for the Panchayat would concede to the position that Panchayat has not published any notification in the Government Gazette. However, it is argued that a notification in the Government Gazette is not necessary for the implementation of the provisions contained in Section 232 of the Act and the D & O Rules framed there under.

6. Though the argument of the learned counsel for the petitioner that a Gazette notification is u/s 232 of the Act is essential to implement D & O Rules, would appear to be attractive at the first blush, on a closer examination, it can be seen that the same is devoid of any merit. True u/s 232, a notification has to be issued and by virtue of the provisions contained in the Panchayat Raj (Manner of Publication of Notification or Notice) Rules, 1996, such publication, unless otherwise provided, should be in the Government Gazette.

7. Rule 4 of the D & O Rules provides as follows:

Publication of notification regarding dangerous and offensive trades:- The Village Panchayat may, by affixing notices in the notice board of the Officers of the Panchayat and in conspicuous places of every constituency in the Panchayat and by advertisement by way of pamphlets and loudspeakers, notify that no place in the Panchayat area shall be used for any purpose or purposes specified in Schedule I without the License issued by the President and except in accordance with the conditions specified therein. If the License is for running restaurants,

eating houses, hotels, coffee houses, tea shops or for barber shops, the License issued by the President shall always contain and shall be deemed to contain a condition that admission therein shall be available for every member of the Public.

8. Thus by Rule 4, Panchayat need only affix notices and issue advertisements by pamphlets and loudspeakers and this rule does not require the Panchayat to issue any notification in the Government Gazette as provided in Section 232 of the Act.

9. As already noticed, the manner in which publication of notification or notice is provided in Kerala Panchayat Raj (Manner of Publication of Notification or Notice) Rules, 1996 noticed above and the proviso to Rule 3 confers power on the Government to direct that any notification shall, instead of being published in the Gazette, be published in any other manner specified by them. In my view, such specification of another manner of publication of notification is available in Rule 4 of the D & O Rules, which provides notification, affixture of notices, advertisements by pamphlets and loudspeakers. Once there is such a prescription and that is complied with, it is not necessary that the Panchayat should publish notification in the gazette to implement the D & O Rules. If that be the position, the argument of the learned counsel for the petitioner that in the absence of a notification in the Government Gazette, they have no obligation to obtain D & O licence is only to be rejected.

10. Faced with this situation, learned counsel for the petitioner contended that Section 232 and Rule 4 of the D & O Licence Rules provides that separate notifications are to be issued under the Act and the Rules. On consideration of this submission, I am not in a position to accept this contention either and in my view no such separate notifications are contemplated by these provisions. Thus, in the light of the provisions contained under the Manner of Publication of Notification Rules and Rule 4 of the D & O Rules. I hold that it is not obligatory on the part of the Panchayat to issue notification in the gazette itself to insist that the petitioners should obtain licence under the D & O Rules.

Writ petition is only to be dismissed and I do so.