(2009) 07 KL CK 0121

In the High Court Of Kerala

Case No : O.P. No. 11105 of 2003

Travancore Rubber and Tea Co. Ltd. — APPELLANT

Vs

Peruvanthanam Grama Panchayat — RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 232, 233, 243, 245, 246

Citation : (2009) 3 KLT 852

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Joseph Markose and Thomas Vellapilly, for the Appellant; K. Jaju Babu and Mathew Vadakkel, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging arrears of licence fee claimed by the Panchayat for running a Crumb Rubber factory within the Panchayat area without licence in terms of Sections 232 and 233 of the Kerala Panchayat Raj Act. I heard counsel for the petitioner and counsel appearing for the Panchayat.

2. The first contention raised by the petitioner is that licence fee cannot be demanded for want of quid pro quo. However, this Court has in the decision in OEN Connectors Ltd. v. Chottanikkara Grama Panchayat 2007 (4) KLT 342 held that no quid pro quo is required for demanding licence fee by the Panchayat. Therefore, this contention is rejected. The next contention raised by the petitioner is that u/s 243 of the Act, arrears could not be recovered beyond three years. I am of the view that licence fee cannot be demanded until petitioner is given a licence. Admittedly prior to or after coming into force of the Panchayat Raj Act, 1994, petitioner has not taken a licence for the factory. So much so, arrears of licence fee cannot be demanded from the petitioner and therefore, there is no need to look into the provision on limitation. Licence cannot be retrospectively granted and so much so, Panchayat cannot grant retrospective licence and demand arrears. On the other hand, conducting a factory without

licence is an offence that too, a continuing offence, for which Panchayat can prosecute the petitioner. However, Section 246 of the Panchayat Raj Act provides for composition of offence on collection of compounding fee. The Kerala Panchayat Raj (Compounding of Offences) Rules, 1996 provides for Rules for compounding. In the Schedule to the said Rule, an offence for running factory or workshop without licence u/s 233 is compoundable on payment of fine which is Rs. 3,000/-. Since the offence is a continuing offence under proviso to Section 245, the Secretary of the Panchayat is entitled to treat each year of violation as a separate offence and demand compounding fee for all the years during which the factory was run without a licence. However, counsel for the petitioner rightly pointed out that penalty could not be levied ever since commencement of the factory because running of the factory was within the knowledge of the Panchayat. Even though counsel for the Panchayat disputes this fact, I feel penalty should be limited to the period after the commencement of the new Act. In the circumstances, O.P. is disposed of vacating the arrear demand against the petitioner, but directing the Secretary of the Panchayat to grant compounding from 1994 onwards until date of grant of licence in terms of the provision stated above, by collecting compounding fee for each year petitioner has carried on business without licence. If excess is paid, the balance should be refunded to the petitioner without any delay or adjust against any other demand due to the Panchayat.