

Kerala High Court

T.S.Saji Mon, Managing Partner vs Thiruvannandoor Grama Panchayat on 4 January, 2010
IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 33151 of 2009(L)

1. T.S.SAJI MON, MANAGING PARTNER

... Petitioner

Vs

1. THIRUVANVANDOOR GRAMA PANCHAYAT

... Respondent

2. SECRETARY, THIRUVANVANDOOR GRAMA

3. KERALA POLLUTION CONTROL BOARD,

For Petitioner :SRI.T.M.ABDUL LATHEEF

For Respondent :SRI.P.K.SURESH KUMAR

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :04/01/2010

O R D E R

ANTONY DOMINIC, J.

W.P.(C.) No.33151 of 2009 (L)

Dated, this the 4th day of January, 2010

J U D G M E N T

The petitioner is a partnership firm, which owns a crumb rubber factory at Kallissery, situated within the jurisdiction of the 1st respondent Panchayat. Ext.P1 is the licence granted by the Panchayat under the Dangerous and Offensive Trades and Factories Rules, which was valid till 31/03/2008. Ext.P2 is the consent issued by the Pollution Control Board, which is valid till 30/06/2012. In this writ petition, the petitioner is aggrieved by Ext.P12, a notice issued by the 2nd respondent on 11/11/2009 requiring the petitioner to stop functioning of the unit.

2. The contention raised by the petitioner is that on an earlier occasion, the Panchayat had issued Ext.P6 notice requiring the petitioner to stop functioning of the industrial unit. According to the petitioner, Ext.P6 was challenged before this Court in WP(C) No.31770/2008 which was disposed of by Ext.P8 judgment dated

06/04/2009 with the following directions:- WP(C) No.33151/2009

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"In the result, writ petition is disposed of with the following direction.

(i) First respondent, Panchayat, shall consider Ext.P28 application for renewal/extension of the incensing period, submitted by the petitioner in accordance with law and take a decision thereon, within six weeks from the date of receipt of a copy of this judgment.

(ii) If the Panchayat refuses to renew the licence, then, subject to any order that the appellate Tribunal deems fit to grant him in that regard, petitioner shall stop functioning of the factory and shall resume operation only after licence is issued in that behalf. (iii) The Chief Environmental Engineer of the Pollution Control Board shall conduct fresh inspection of the factory premises and ascertain the status of the factory for both air and the water pollution. He shall forward an intimation to the Panchayat specifically affirming whether the continued functioning of the factory results in pollution and also whether the Panchayat should refrain from renewing the licence on account of any pollution that is being caused. His opinion will not be conclusively binding on the Panchayat but shall nevertheless be taken into account. (iv) Any report given by the Chief Environmental Engineer in this regard, shall also include suggestion as to any steps which the petitioner should take to abate pollution and if on completion of the steps, the petitioner requests to the Chief Environmental Engineer to again conduct an inspection and certify absence of pollution, then the Chief Environmental Engineer shall without any delay conduct a re-verification and issue a suitable verification report.

(v) Status quo obtaining today shall continue till orders are passed by the Panchayat, as directed above, and further continuation of the factory will be subject to renewal of the WP(C) No.33151/2009

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licence, if any, as decided by the Panchayat."

3. It is stated that although the Panchayat was required to consider the application made by the petitioner for renewal of Ext.P1 licence, it was without complying with the said direction, Ext.P12 notice was issued to the petitioner.

4. In this writ petition, the additional 4th respondent has filed I.A.No.10/2010 producing Exts.R4(s) and R4(t), the decision taken by the 1st respondent Panchayat on 31/12/2009, and the communication issued by the Panchayat intimating Ext.R4(s) decision to the petitioner. By Ext.R4(s) for the reasons mentioned therein, the application made by the petitioner for renewal of Ext.P1 licence has been rejected. In view of Ext.R4(s), it is for the petitioner to seek his remedies against Ext.R4(s) independently.

5. In so far as the challenge against Ext.P12 is concerned, as already stated, the complaint of the petitioner is that the said notice has been issued in violation of the directions of this Court in Ext.P8 judgment. True, the notice was issued before orders were passed by the Panchayat on the application made by the petitioner for renewal / extension of Ext.P1 licence and there is substance in what the petitioner contends. However, the fact remains that WP(C) No.33151/2009

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pursuant to the orders of this Court passed on 04/12/2009 and 15/12/2009, the Kerala Pollution Control Board has inspected the premises and filed two reports. From these reports, it is evident that the directions of the Pollution Control Board, in so far as shifting of the packed system in the chimney for scrubbing to the

scrubber unit, enhancing the efficiency of alkali scrubbing provided in the chimney, and increasing of the draft in the chimney by providing adequate fans to avoid fugitive emission from the scrubbing unit are still not complied with. The petitioner also has no case that these requirements have been complied with. On the other hand, the petitioner submits that he needs further time to satisfy the aforesaid directions of the Pollution Control Board. In view of the admitted non-compliance of the aforesaid directions of the Pollution Control Board the only possible inference is that the unit was causing pollution and for that reason, I am not prepared to think that the Panchayat was not justified in issuing Ext.P12 notice, requiring the petitioner to stop functioning of the unit.

6. The learned counsel for the petitioner submits that the petitioner in taking steps for the expeditious compliance with the aforesaid requirements of the Pollution Control Board and that WP(C) No.33151/2009

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pending such rectification, the Unit should be allowed to resume its operations. This prayer of the petitioner is vehemently opposed by the respondents, in particular, the additional 4th respondent, who is stated to be a resident in the area. According to him, if the unit resumes manufacturing without complying with the directions of the Pollution Control Board, there will be environmental pollution, and the life in the area will be miserable. In the light of the fact that the complaint of the additional 4th respondent is one of environmental pollution resulting in violation of his fundamental rights guaranteed under Article 21 of the Constitution of India, I do not think that at this stage, it will be proper for this Court to direct resumption of activities in the petitioner's industrial establishment. Therefore, the only order which is called for is that it will be open to the petitioner to comply with the directions of the Pollution Control Board as contained at serial Nos. (c), (d) & (e) of the reports filed before this Court, and thereafter seek restoration of the licence from the Panchayat, which has passed Ext.R4(s) resolution rejecting the petitioner's application only for reasons of environmental pollution.

7. In the result the writ petition is disposed of with the following directions.

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8. It is directed that if the petitioner files certificate issued by the Chief Environmental Engineer of the Board that the Unit has complied with all directions issued by the Board, the Panchayat shall reconsider the application made by the petitioner for renewal / extension of Ext.P1 licence and pass fresh orders in the light of the certificate so produced.

It is further directed that if the Pollution Control Board certifies satisfaction of the conditions imposed by it, and the petitioner produces a certificate to that effect before the Panchayat, along with necessary application for renewal / extension of Ext.P1 licence, the petitioner will be free to resume manufacturing activities in its industrial unit from that date onwards. On receipt of the certificate and application from the petitioner, the Panchayat should consider the matter afresh, and pass orders in the matter within seven days thereafter, and the further operation of the petitioner's industrial unit will depend upon the decision to be taken by the Panchayat. This writ petition is disposed of as above. (ANTONY DOMINIC, JUDGE)

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