

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 31ST DAY OF AUGUST 2017/9TH BHADRA, 1939

W.P(C).No.19278 of 2017 (H)

PETITIONER(S):-

LISSY PAUL,
PROPRIETOR,
M/S.MRS.CLEAN DRY-CLEANING AND POWER LAUNDRY SERVICES,
THENGATHARA ROAD, NJARAKKAL P.O., ERNAKULAM.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.AJITH GEORGE

RESPONDENT(S):-

1. NJARAKKAL GRAMA PANCHAYATH,
NJARAKKAL P.O., ERNAKULAM-682505,
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY, NJARAKKAL GRAMA PANCHAYATH,
NJARAKKAL P.O., ERNAKULAM-682505.
3. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER,
KOCHI-682020

ADDITIONAL 4TH RESPONDENT IMPEADED:

ADDL.R4. PAUL MENACHERY, AGED 70 YEARS, S/O.KOCHAPPU,
MENACHERY HOUSE, PULAYAS ROAD, NARAKKAL.

ADDITIONAL 4TH RESPONDENT IS IMPEADED AS PER ORDER DATED 7.7.2017
IN I.A.NO.10639 OF 2017.

R1 & R2 BY ADV. SRI.S.SHANAVAS KHAN
R3 BY STANDING COUNSEL SRI. T.NAVEEN.
R4 BY ADV. SRI.GEORGE SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-08-2017, ALONG WITH WP(C).NO.20955/2017-T, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE FIRM UNDER MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES.
- EXHIBIT P2 TRUE COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER ON 16.11.2015.
- EXHIBIT P3 TRUE COPY OF THE CONSENT TO OPERATE INSTALLING THE MACHINERY UPTO 5 HORSE POWER GRANTED BY THE POLLUTION CONTROL BOARD ON 29.3.2016.
- EXHIBIT P4 TRUE COPY OF THE D & O LICENSE NO.57/16-17 ISSUED BY THE PANCHAYATH TO THE UNIT ON 19.4.2016.
- EXHIBIT P5 TRUE COPY OF THE RENEWED LICENSE VIDE NO.14/17-18 DATED 27.03.2017 GRANTED BY THE 1ST RESPONDENT PANCHAYATH TO THE PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE CONSENT DATED 12.04.2017 GRANTED BY THE PANCHAYATH FOR BRINGING NEW IRONING MACHINE.
- EXHIBIT P7 TRUE COPY OF THE MATERIAL SAFETY DATA SHEET ISSUED BY THE CONSULTANTS M/S. V CLEAN CHEMICALS TO THE PETITIONER'S UNIT.
- EXHIBIT P8 TRUE COPY OF THE DATA SHEET REGARDING EFFLUENCE TREATMENT PLAN/WATER TREATMENT AT THE PREMISES OF PETITIONER'S UNIT.
- EXHIBIT P9 TRUE COPY OF THE ISO 9001: 2015 CERTIFICATE OF REGISTRATION VIDE NO.160723019152 ISSUED IN FAVOUR OF THE PETITIONER'S UNIT.
- EXHIBIT P10 TRUE COPY OF THE NOTICE NO.A7526/15 DATED 27.05.2017 (WRONLY TYPED AS 2016) ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P11 TRUE COPY OF THE REPLY DATED 30.05.2017 SUBMITTED BY THE PETITIONER BEFORE THE HEALTH INSPECTOR.
- EXHIBIT P12 TRUE COPY OF THE NOTICE NO.A7526/15 DATED 08.06.2017 (WRONLY TYPED AS 2016) ISSUED BY THE SECRETARY OF THE 1ST RESPONDENT TO THE UNIT.

RESPONDENT(S) ' EXHIBITS:-

- EXHIBIT R4 (A) A TRUE COPY OF THE APPLICATION DT.22.2.2017
SUBMITTED BY THE PETITIONER.
- EXHIBIT R4 (B) A TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER FOR LICENSE FOR THE PERIOD 2016-2017
DATED 27.2.2016.
- EXHIBIT R4 (C) A TRUE COPY OF THE APPLICATION FOR LICENSE DATED
19.11.2015 FOR LICENSE FOR THE YEAR 2015.
- EXHIBIT R4 (D) A TRUE COPY OF THE THE APPLICATION UNDER THE RIGHT
TO INFORMATION ACT DATED 4.7.2017 SUBMITTED BEFORE
THE 2ND RESPONDENT.
- EXHIBIT R4 (E) A TRUE COPY OF THE REPLY DATED 19.7.2017 ISSUED BY
THE 2ND RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.
- EXHIBIT R4 (F) A TRUE COPY OF THE APPLICATION UNDER THE RIGHT TO
INFORMATION ACT SUBMITTED BEFORE THE OFFICE OF THE
3RD RESPONDENT DATED 4.7.2017.
- EXHIBIT R4 (G) A TRUE COPY OF THE REPLY DATED 20.7.2017.
- EXHIBIT R4 (H) A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 18.7.2017
ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXHIBIT R4 (I) A TRUE COPY OF THE ASSESSMENT REGISTER ISSUED FROM
THE 1ST RESPONDENT GRAMA PANCHAYATH UNDER THE
RIGHT TO INFORMATION ACT.
- EXHIBIT R4 (J) A TRUE COPY OF THE BASIC TAX REGISTER ISSUED FROM
THE NJARAKKAL VILLAGE OFFICE.
- EXHIBIT R4 (K) A TRUE COPY OF THE REPORT DATED 1.6.2017 ISSUED BY
THE HEALTH INSPECTOR, TALUK HOSPITAL, NJARAKKAL.

VKU/-

[TRUE COPY]

K. Vinod Chandran, J

W.P.(C).Nos.19278 of 2017-H & 20955 of 2017-T

Dated this the 31st day of August, 2017

JUDGMENT

The petitioner in W.P.(C) No.19278 of 2017, who is a woman entrepreneur, has set up a Dry Cleaning and Power Laundry Service in her building. The petitioners in W.P.(C) No.20955 of 2017 object to the carrying on of the unit for multifarious reasons. The parties are referred to as “entrepreneur” and “objectors”.

2. The contention of the entrepreneur in her writ petition is that she had set up a small unit as seen from Exhibit P3, which is registered under the Ministry of Micro, Small & Medium Enterprises, Government of India, as per Exhibit P1. The entrepreneur has obtained a Consent to Establish at Exhibit P2 and a Consent to Operate at Exhibit P3, from the Kerala State Pollution Control Board [for brevity “PCB”]. The industry is classified as “green” category and the entrepreneur was issued with licenses for the respective years at Exhibits P4 and P5, by the Panchayat. While the entrepreneur was so carrying on the unit, the entrepreneur was

issued with Exhibit P12 stop memo, which directed the entrepreneur to get a report from the Medical Officer or permission from the PCB and also a No Objection Certificate from the Fire and Rescue Services Department. It was also directed in Exhibit P12 that the unit carried on with machinery, has to be stopped immediately.

3. The entrepreneur filed the above writ petition contending that the entrepreneur already has a Consent to Establish, and Operate from the PCB and also that the unit is under “green” category and in such circumstance, there is no requirement for a NOC from the DMO. It is also contended that the Panchayat had issued a licence based on which the entrepreneur is carrying on a small unit in the premises.

4. The learned Counsel for the respondent-Panchayat, however, submitted that there were no machinery permitted in the unit and if at all an unit with machinery had to be established, the entrepreneur has to obtain a permission for establishment under Section 233 of the Kerala Panchayat Raj Act, 1994 [for brevity “KPR Act”].

5. The learned Counsel appearing for the objectors has filed a counter affidavit producing various documents, which clearly

indicate that the entrepreneur was entitled to carry on only a small unit, that too without machinery. Exhibit R4(A) is the renewal application for D&O Licence, for the year 2017-18, filed before the Panchayat, in which the entrepreneur has specifically, at Column No.13, indicated that there are no machinery used in the premises. This is the declaration in Exhibits R4(B) and R4(C); applications of the previous years. The objectors also applied before the Panchayat, under the Right to Information Act, 2005 as evidenced from Exhibit R4(D), which was replied to by Exhibit R4(E). The Panchayat had specifically informed the objectors that there was no application to install any machinery in the unit, permitted to be operated by the petitioner. The PCB also, in response to an application under the RTI Act, has issued Exhibit R4(G); which observed that the permission granted was only for installation of 5 HP machinery and that on an inspection conducted there were noticed some defects which were directed to be rectified. Hence, though the Consent to Establish issued by the PCB indicated installation of machinery the petitioner had specifically declared before the Panchayath that there are no machinery installed in the Unit. However it is to be observed that Section 234B(h) provides for an exemption from Section 233 if the

machinery installed is less than 5 HP and there is a certificate from the PCB that the industry is non polluting. The PCB in the instant case has not issued such a certificate.

6. The further contention taken up by the objectors based on Exhibit R4(I), extract of the Register maintained by the Panchayat, is that the entrepreneur is carrying on the operations of a Dry Cleaning unit in a building which is categorized as “commercial”, coming under Group “F” of Rule 34(2) of the Kerala Panchayat Building Rules, 2011 [for brevity “Building Rules”]. In fact, a Dry Cleaning unit will come under Group “G1” as per the Building Rules, being a “Low and Medium Hazard Industry”. If the occupancy is under Group “G1”, then necessarily there should be a permission obtained from the Town Planner for usage of the plot for a low and medium hazard industry.

7. The learned Senior Counsel appearing for the entrepreneur would then contend that a proper application before the Panchayat and the Town Planner would be made and the same may be directed to be considered till which time the petitioner may be permitted to continue operations. If the objection was only with respect to the permission under Section 233 of the KPR Act having

not been obtained, this could have been done. However, the contention raised by the objectors is also of the building not being competent to house a low and medium hazard industry.

8. A reading of the Note to Rule 34(2)(h) [Group G1] makes it clear that a dry cleaning, dyeing and laundry units would come under the low and medium hazard industry. The entrepreneur's building admittedly comes under Group-F "commercial". Rule 59(2) of the Building Rules specifically provides for the usage of a plot for a low and medium hazard industry or a high hazard industry to have approval of the District Town Planner if the total floor area exceeds 300 square metres and/or lay out of building with total floor area of above 1000 square metres. Since the words "and/or" is used even for usage of plot, such an approval is required is the contention raised by the objectors; which has to be accepted.

9. This Court had directed the PCB to inspect the property in the presence of the Secretary of the Panchayat and file a report. The report is extracted hereunder:

"The nearby residents raised their protest against the working of the unit without providing proper control measures such as discharging untreated effluent into the nearby aqua culture fields, nuisance caused due to

running of boiler, smell of detergent emanating from the unit etc. During the time of inspection, it came to understand that effluent treatment facilities provided in the unit was not sufficient to treat the effluent generated in the unit. The untreated/partially treated water was seen stagnant in the premises of the unit. The capacity of the machinery given is 5HP. The following machineries are installed in the unit.

Washing Machine: 1 HP - 1 No ; 2HP - 1 No and an additional washing machine of capacity 6.2 Kg for washing soft clothes of children.

Extractor : 1 HP - 1 No ; 2 HP - 1 No

Drier : 2 HP - 1 No

Ironing Machine : 1 HP - 1 No and 2 Iron boxes that are operated manually utilizing direct supply of electricity (220V). Machinery with a total capacity of 9HP were installed in the unit during the time of inspection.

Based on the earlier complaints received in this office inspection were conducted on 01.07.2017 and 18.07.2017. A notice was issued to the unit on 18.07.2017 [Annexure R3(A)]. As repeated complaints had been received in this office regarding working of the unit till late night and the nuisance caused due to the running of boiler, a letter was issued on 05.08.2017 [Annexure R3 (B)]. During the inspection it came to understand that the unit had been operating the boiler disregarding the

instruction of the board. The complaints of the nearby residents are still existing. Hence the Court may intervene and the unit may be directed to function the unit in compliance with the instructions issued by the Board so as to get the grievances of the complainants redressed”.

10. Though the entrepreneur would contend that only 5 H.P. out of the 9 H.P. motors are being used, this Court cannot approve such a contention taken, especially when the installation has already been carried out, as revealed from the report, without a consent to establish from the Panchayat under Section 233. For the sake of argument; even if the machinery used is only of 5HP, as indicated in the Consent to Establish of the PCB; a further certification of the unit being a non polluting industry is required to exempt the rigor of Section 233. This cannot be issued going by the report of the PCB; which is after inspection of the premises.

11. As was noticed, the unit was granted a D&O Licence on an application which specifically declared that no machinery would be used. The petitioner obviously has installed the machinery far above the capacity exempted and the same has been installed in violation of the specific application made, which did not speak of any

machinery being employed. The PCB has also reported that there is hazardous pollution caused in the area. Further, it is to be noticed that the unit, which falls under “low and medium hazard industry”, is operated in a building which was granted occupancy as “commercial building”, which is not permitted. In such circumstances, W.P.(C) No.19278 of 2017, filed by the entrepreneur, would stand dismissed.

12. W.P.(C) No.20955 of 2017, filed by the objectors, would stand allowed; directing the Panchayat and the PCB to ensure that the unit is not carried on in the aforesaid building.

Ordered accordingly. Parties are left to suffer their respective costs.

vku/-

Sd/-
K.Vinod Chandran
Judge.

[true copy]