
(2021) 06 KL CK 0207

High Court Of Kerala

Case No: Writ Petition (C) No. 28643 Of 2020

Alwyn Jose

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: June 11, 2021

Acts Referred:

Kerala Panchayat Building Rules, 2019 " Rule 68#Kerala Panchayat Raj Act, 1994 "

Section 233

Citation: (2021) 06 KL CK 0207

Hon'ble Judges: P.B.Suresh Kumar, J

Bench: Single Bench

Advocate: Shaji Thomas, Binu Paul, Jen Jaison, Peeyus A.Kottam, T.Naveen, K.J.Manuraj

Final Decision: Disposed Of

Judgement

P.B.SURESH KUMAR, J.

1. The issues arising for consideration in these matters are closely interlinked and they are, therefore, disposed of by this common judgment. Parties

and documents are referred to in this judgment, as they appear in W.P.(C) No.28643 of 2020.

2. The petitioner is a contractor undertaking works of the Public Works Department. The petitioner took a land on lease for erecting a hot mix plant

for executing a road work. Thereupon, he obtained permission from the concerned Panchayat in terms of Rule 68 of the Kerala Panchayat Building

Rules, 2019 (the Rules) and Ext.P2 consent to establish the hot mix plant from the Pollution Control Board in terms of the Water (Prevention and

Control of Pollution Act), 1974 and Air (Prevention and Control of Pollution Act), 1981. It is stated by the petitioner that later, when he was carrying

on the levelling work of the leasehold for the purpose of erecting the hot mix plant, police intervened alleging that the petitioner ought to have obtained

permission of the Geologist for carrying out the levelling work. The petitioner, therefore, approached this court by filing W.P.(C) No.25457 of 2020

and obtained Ext.P3 judgment interdicting the Geologist from interfering with the erection and operation of the hot mix plant in the land so long as the

petitioner does not remove any mineral from the land. It is stated by the petitioner that later, when he attempted to erect the hot mix plant, the

Secretary of the Panchayat issued Ext.P5 stop memo stating that the activities carried on by the petitioner is unauthorised. It is alleged by the

petitioner that later, the petitioner was issued Ext.P8 stop memo by the Secretary of the Panchayat stating that in so far as the term of the permit

issued to him under Rule 68 of the Rules for erecting the hot mix plant has expired, the petitioner is not entitled to undertake any work in the land until

the permit is renewed. Exts.P5 and P8 stop memos are under challenge in the writ petition. The petitioner also seeks a direction to the Secretary of

the Panchayat to refrain from obstructing him from erecting the hot mix plant. He also seeks a declaration that the activity proposed to be undertaken

by the petitioner making use of the hot mix plant does not come within the scope of Section 233 of the Kerala Panchayat Raj Act, 1994 and the

petitioner is therefore, not required to obtain licence under the said provision from the Panchayat for the said purpose.

3. W.P.(C) No.724 of 2021 is instituted by a few persons residing in the neighbourhood of the land where the petitioner proposes to erect the hot mix

plant. They seek, among others, a direction to the Secretary of the Panchayat to refrain from issuing any permit to the petitioner under Rule 68 of the

Rules for erecting the hot mix plant.

4. Heard the learned counsel for the petitioners in the writ petitions as also the learned counsel for the Secretary of the Panchayat.

5. The materials on record indicate that the petitioner is contemplating to erect a hot mix plant temporarily for the purpose of executing a road work

assigned to him. As admitted by the petitioner, he is required to obtain a permit for the said purpose from the Panchayat as provided for under Rule 68

of the Rules. It is admitted by the petitioner that the term of the permit issued to the petitioner under Rule 68 of the Rules expired on 13.12.2020 and

the application preferred by the petitioner for renewal is pending. The learned counsel for the Panchayat submitted that no orders have been passed

on the application preferred by the petitioner for renewal of the permit. In other words, the petitioner does not possess as on the date of institution of

the writ petition viz, 21.12.2020 a permit under Rule 68 of the Rules for the purpose of erecting the hot mix plant. In the aforesaid circumstances,

according to me, it is unnecessary to consider the entitlement of the petitioner for the various reliefs sought for in the writ petition. As noted, the

petitioners in W.P.(C) No.724 of 2021 seeks directions to the Panchayat to refrain from granting permit to the petitioner under Rule 68 of the Rules.

In the circumstances, I am of the view that the writ petitions can be disposed of directing the fourth respondent to consider and pass orders on the

application preferred by the petitioner for renewal of the permit issued under Rule 68 of the Rules, after affording the petitioner as also the petitioners

in W.P.(C) No.724 of 2021 an opportunity of hearing. Ordered accordingly. This shall be done as expeditiously as possible, at any rate, within one

month from the date of receipt of a copy of the judgment. The hearing ordered can certainly be through video conferencing. All other issues are left

open.