

(2005) 06 KL CK 0027

High Court Of Kerala

Case No: I.A. No. 1347 of 2005 in W.A. No. 2125 of 2003

Hindustan Coca-Cola Beverages
(P) Ltd.

APPELLANT

Vs

Perumatty Grama Panchayat

RESPONDENT

Date of Decision: June 1, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 12, 226
- Kerala Panchayat Raj Act, 1994 - Section 276

Citation: (2005) 3 KLT 10

Hon'ble Judges: M. Ramachandran, J; K.P. Balachandran, J

Bench: Division Bench

Advocate: C.S. Vaidyanathan and A.M. Shaffique, for the Appellant; Rajan Joseph, A.A.G., K. Ramakumar, V. Chitambaresh, T.C. Suresh Menon and Babu Joseph Kuruvathazha, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Ramachandran, J.

This is an application, filed u/s 151 of the CPC read with Section 5 of the High Court Act, supported by an affidavit. It is prayed that the first respondent-Perumatty Grama Panchayat is to be issued with a direction to forthwith renew the licence of the petitioner-company. Further prayer is to take necessary action against the respondents, as may be deemed fit and proper, in the facts and circumstances of the case.

2. By judgment dt. 7.4.2005, in Writ Appeal No. 2125 of 2003 and connected cases, we had found that the first respondent--Panchayat was not justified in resorting to steps, whereby renewal of licence of the petitioner-company was rejected before a scientific assessment was made. It had also been found that the Panchayat had no

legal authority to cancel the licence for functioning of the unit for any of the reasons pointed out by them from time to time. Consequently, we had directed the Panchayat to consider the application for renewal of the licence for the coming year or block years.

3. Conditions had been prescribed that the application as above is to be filed within two weeks from the date of the judgment. It had also been indicated that the petitioner will have the obligation to apprise (typed as appraise) the Panchayat that they possess licences under the Factories Act and clearance received from the Pollution Control Board. If the above two conditions were satisfied, the Licensing Authority was to grant the licence. After the grant of licence, it would have been permissible for the Panchayat to make inspections as would have been relevant.

4. We had further directed that the appeal filed by the petitioner-company before the statutory authority, u/s 276 of the Kerala Panchayat Raj Act, was therefore not essential to be proceeded with, since this Court had opportunity to examine all relevant facts and come to a decision by itself.

5. The present petition has been filed by the petitioner--company pointing out that notwithstanding the directions a negative approach had been shown. They refer to the application dated 13.4.2005 and covering letter, which had been filed by them consequent to the directions in the judgment. A copy thereof is marked as Annexure-B. Renewal of the licence was sought for, for a period of five years from 1st April, 2005. The duly filled in application, in the prescribed format, was filed along with the licence fee. In paragraph 4 of the covering letter, the Panchayat has been informed that the company had all the necessary approval and licences under the Factory Act and Environmental laws. The approval and licences were current and valid till 31st of December, 2005.

6. The grievance highlighted in the affidavit is that by an order dated 26.4.2005 the Secretary of the Panchayat had informed them that the Panchayat in its meeting held on 26.4.2005 had considered all the aspects in detail and were convinced that the company has not submitted the application for renewal of the licence fulfilling the conditions stipulated by the High Court. According to the Panchayat, in the absence of clearance received from the Pollution Control Board and without the appraisal by the company that it possess licence issued under the Factories Act, the functioning of the company would be illegal.

7. The affidavit also refers to the letter next submitted by the petitioner, dt. 29.4.2005. Copies of clearance certificates and licences issued by the Pollution Control laws and Factories Act were enclosed and thereby a request was made that at least thereafter necessary steps may be taken to comply with the order of the High Court, in a manner as appropriate and just. The enclosures were the licences issued by the Director of Factories & Boilers; copy of contest letter dated 14.2.2004 issued under the Air (Prevention & Control of Pollution) Act, consent letter under the

Water (Prevention & Control of Pollution) Act, a copy of the application for renewal concerned, and Pay Order No. 472067 dt. 11.4.05 intended towards licence fee. However, no further orders had come, it is submitted.

8. Senior counsel Mr. Vaidyanathan, appeared on behalf of the petitioner. Being a factory which was functioning in the Panchayat, what was understood as required on the part of the petitioner, was to intimate the Panchayat about their credentials. A Local Authority, which is a State coming under Article 12 of the Constitution, it was not expected of them to resort to technicalities, with a closed mind. By serving a rejection order, the petitioner-- company is subjected to prejudice and discrimination. The benefit of an adjudication, at the behest of this Court, is thereby denied to them, and it disclosed a sorry state of affairs. It was also a case where a SLP in the Supreme Court had been filed, but the Court had refused to grant the Panchayat the benefit of a stay.

9. Mr. K. Ramakumar, appearing for the first respondent--Panchayat, had shaped his arguments so as to establish that the petition as such is not in order, and it is also not maintainable. Advertnce had been made by the counsel to decisions in State of Kerala v. Govindan Nair 1980 KLT 186, Fr. Antony v. State of Kerala 1980 KLT 633, as also Corporation of Cochin v. Janardhanan 1982 KLT 386, pointing out that this Court had been taking a consistent stand that in a matter where final judgments had been pronounced, interlocutory applications thereafter are not to be entertained. In case of a fresh cause of action arising from the rejection, perhaps a fresh Writ Petition was to be filed. On the other hand, if the allegation was that there was disobedience of the orders, the normal remedy would have been to move this Court under the Contempt of Courts Act. The counsel had also submitted that this Court definitely would not have arrogated to itself the power of the Panchayat, or even that of the appellate authorities, and no orders were therefore to be expected by the petitioner, whereby there would be a direction to the Panchayat to issue the licence. As an authority for the proposition, counsel had invited our attention to a Division Bench judgment of this Court in T. Mohammed v. Secretary, R.T.A. Malappuram 1993 (1) KLJ 750. Counsel also had cited the decisions of the Supreme Court in [Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy](#), and [The State of West Bengal Vs. Kesoram Industries Ltd. and Others](#), .

10. Mr. Ramakumar had also adverted to a circumstance that invocation of Section 151 of the CPC may not be appropriate in proceedings under Article 226 of the Constitution of India, and the petition was therefore one filed without legal authority. But, this is countered by the petitioner submitted that since the petition was filed in connection with an appellate judgment in W.A.No. 2125 of 2003, the argument was misconceived, as it is well known that in such proceedings invocation of CPC was always permissible.

11. Mr. Vaidyanathan referred to the later decisions of the Supreme Court in [Kapildeo Prasad Sah and Others Vs. State of Bihar and Others](#), , [Union of India \(UOI\)](#)

[and Others Vs. Oswal Woollen Mills Ltd. and Others,](#) and [Union of India Vs. Paliwal Electricals \(P\) Ltd. and another,](#) . It would have been possible, in appropriate cases, according to the counsel, for the Court to take notice of the follow up action without driving the party to de novo proceedings. Especially in the present case, the rejection order was no order at all, as the Panchayat proceeds as if no valid application in compliance with the directions in the judgment had been passed.

12. Mr. Ramakumar also adverted to a communication issued by the Pollution Control Board, addressed to the petitioner dt. 23.8.2004 [marked as Ext.R1(b)] pointing out that there was a direction consequent to the orders of the Supreme Court for closing down the industry and it was highly relevant and went on to show that the industry deserved to be shut down. However, we feel that reference to such details in these proceedings might be inappropriate, especially since the petitioner on his part has made a submission that every draw back and difficulty pointed out by the Pollution Control Board had already been set right and an objection on that score would not have been sustainable at all.

13. We feel that the only question was as to whether there was relevance for a petition of the present nature. Normally, the Courts seldom chase their orders, as they are meant to discharge their obligations with a total sense of detachment. (See [Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others,](#) . But, at the same time, an attempt to sidetrack its order cannot be countenanced. The direction in the judgment was to consider the application, since this Court felt that the Panchayat was relying on extraneous factors so as to deny renewal of licence to a running establishment. We had found that the objections raised were without substance. Direction was given to the petitioner to inform the Panchayat about their possession of licences, since we hope that thereby a collision course could be avoided. In the application filed on 13.4.2005, vide paragraph 4, the petitioner had informed the Panchayat that they possessed licences as were prescribed, and referred to in the judgment.

14. Even after these, if the Panchayat had any doubt about the claim, it would have been prudent, and expected of them to require the further details to be furnished. However, after sitting over an application for a considerable period, what had been done was rejection of the application alleging that "In the absence of the clearance received from the Pollution Control Board and without the appraisal by the company that it possess licence issued under the Factories Act, the functioning of the company will be illegal". This was highly improper and per se shows a closed mind; the orders of the Court had been trifled with, and we restrain ourselves from using stronger words.

15. We find that they have been ill advised in the course followed, and if further directions are not issued, it may tantamount to shriking of responsibility, and we have to ensure that lawful orders are obeyed. A Panchayat is entitled to hold an opinion, but when the Courts have pronounced upon rights and liabilities, they have

to gracefully accept the verdict. This is the rule of law, as we understand it.

16. In the light of the above, we direct the Licensing Authority of the first respondent--Panchayat (President of the Panchayat), as could be gatherable from the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 to renew the licence, as has been requested for by the petitioner, in the application referred to in the petition, for an appropriate duration, within one week from today. The Panchayat will be entitled to demand the licence fee as might be payable in accordance with the Rules.

17. Taking notice of the contentions, that had been raised by the parties in these proceedings, we also direct that the authorities under the Pollution Control Board should make an inspection of the premises of the factory, after it commences functioning and within three months thereof for ensuring that all precautionary measures for safety are observed. They will be free to take measures that may be necessary in their discretion and issue directions, in areas of shortfall if any found.

18. If a formal licence is not issued by the first respondent--Panchayat within the time prescribed as above, it should be deemed that the petitioner possesses such licence as renewed and it will be within their rights to carry on the functioning of the company, effective from 10.6.2004, for a block of two years, subject of course to the restrictions that have already been laid down in the judgment.

Immediately after pronouncement of the orders, Mr. Ramkumar, counsel submits that the order may be kept in abeyance for a period of ten days, so that appellate remedy could be invoked. We are afraid such a course may not be warranted on the facts and circumstances of the case, and the directions issued.