

(1995) 10 KL CK 0034
High Court Of Kerala
Case No: W.A. No. 846/88

The Concrete Aggregate
Industries and Others

APPELLANT

Vs

The Kummanode Poura Samithi
and Others

RESPONDENT

Date of Decision: Oct. 5, 1995

Acts Referred:

- Kerala Panchayat Act, 1960 - Section 8, 96
- Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 - Rule 3
- Kerala Panchayat Raj Act, 1994 - Section 284(2)

Hon'ble Judges: K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench: Division Bench

Advocate: S. Venkitasubramanya Iyer and V. Giri, for the Appellant; K. Rama Kumar, Lal George, Government Pleader for Respondents 6 to 8, M.V. Bose, for Respondent 11, Pulikool Abubacker, for Respondent 12 and N.N. Sugunapalan, for Respondent 13 and 14, for the Respondent

Judgement

P. Shanmugam, J.

Respondents 8 and 9 in the Original Petition are the Appellants. The O.P. was filed by an Association and three other residents of Kummanode challenging the running of the quarry by the Appellants herein on the ground of pollution and violations of statutory provisions. Learned Single Judge held that the Appellant-firm has to obtain licences required under different statutes as indicated in the judgment before continuing its operations. Appeal is against this judgment.

2. Learned Counsel appearing on behalf of the Appellants fairly concedes that the Appellants ought to take out the required licences and permissions under the various statutes But their only objection is to the observation of the learned Single Judge that the Appellants should take out a separate licence under items 84 and 87

in the schedule to the Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1963, hereinafter referred to as the Rules. As the Appellants have obtained all other permissions and licences and they do not have any objection also to fulfil, satisfy and obtain any other required licences excepting separate licences as indicated by the learned Single Judge under items 84 and 87, only question that arises for consideration is whether separate licences are required under these items.

3. Admittedly the Appellants have obtained licence from the Panchayat Ext. R-8 (aa) for item No. 101 in schedule I to the Rules. The contention on behalf of Respondents 1 to 4 is that apart from the licence tender item No. 101, separate licences are required under items 84 and 87, as held by the learned Single Judge. Learned Counsel appearing on behalf of the Panchayat supports the case of the Appellants and submits that the licence issued under item No. 101 to the schedule would be sufficient for the running of the Appellant-firm since rock stone cutting and storing involves different processes and for each process no separate licence is required.

4. For the purpose of appreciating the contentions we extract below the items in the schedule referred by the counsel.

84. Manufacturing articles from which offensive or unwholesome smell, fumes, dust or noise arises.

87. Metals (including precious metals)- Beating, breaking, hammering, casting etc.

101. Rock stone-Cutting or storing.

The factory would not come under item 87 since they are not dealing with metals. "Metals" has been defined in the Concise Oxford Dictionary, 7th Edition as any of a class of elements such as gold, silver, (copper, iron, lead, tin, aluminium, uranium, etc., all of which are crystalline when solid and many of which are opaque, ductile, malleable, dense good conductors of heat and electricity, and characterised by a peculiar lustre. From the definition of metals, it is very clear that one of the vital ingredients of metal is its malleable nature. Whereas rock stone and stone cutting would not come under the category of metal.

5. Section 96 of the Kerala Panchayats Act, 1960 (hereinafter referred to as the Act) provides for the Panchayat to notify that no place in the Panchayat area shall be used for any purpose specified in the rules without a licence. Rule 3 enables the Government to specify in Schedule I to these Rules the purposes which are likely to be offensive or dangerous to human life or health or property. Thus the Government has specified the purposes which are likely to be offensive and the Panchayat has notified the places or area which could not be used for the said purposes without a licence. The purposes for which all the activities are mentioned in Schedule I are, therefore, according to the Government, likely to be offensive and dangerous to human life etc. Therefore, in so far as the present case is concerned,

the appellants have taken out a licence under item No. 101, the purpose being rock stone cutting or storing. Licence is required because rock stone cutting is likely to cause offense or danger to human life or health or property. Cutting rock stone may involve breaking, sizing, crushing etc., and in that process of manufacture it is likely that smell, fumes, dust or noise which are offensive or dangerous to human life are likely to occur. Therefore, item No. 101 overlaps the requirement of item 84 which generally is in the nature of manufacturing articles. Therefore, in our view no separate licence is warranted.

6. Most of the items in the schedule like for e.g. item No. 105-Seekai-Powdering by machinery, item No. 106-Shellack-Packing or preparing, item No. 82-Manure, are only few to be mentioned to illustrate the point that all these purposes also would involve manufacture from which offensive smell, fumes, dust or noise would arise. Therefore, item No. 84 would arise if the specified purposes are not separately mentioned in the schedule. That means if anybody is manufacturing articles from which offensive smell, fumes, etc., arise, licence will have to be taken if the manufacturing item is not specifically itemised. Otherwise it would be duplicating the issue of the licence.

7. The Panchayat which is the competent authority to issue licence has conceded the position. It is the case of the Appellants that when they applied for licence under item No. 101-Rock stone cutting or storing the Panchayat did not think it necessary that they would require any other licence under the different items. Therefore, we are of the view that the finding of the learned Judge that separate licence is required under item No. 84 is not correct.

8. Another plea raised by the learned counsel for Respondents 1 to 4 is that the Panchayats Act is having been replaced by the Kerala Panchayat Raj Act, 1994 (13 of 1994) and unless rules are framed under the new Act the Appellants would not be entitled to take out a licence as required by the learned Single Judge under item No. 84. Therefore, the Appellants are not entitled to run the factory. As we have taken the view that no separate licence is required under item No. 84 of the schedule, this argument is purely academic. Besides under Sub-section (2)(i) of Section 284 of the new Act all the order, licence, permission, rule, bye-law etc., issued or granted in respect of the Panchayat area under the old Act and in force immediately before the appointed day shall continue to be in force as if they had been made, issued or granted in respect of the corresponding Panchayat area under the new Act until superseded or modified. There is a specific provision for the continuation of all the orders, licences and rules then in force until they are modified.

9. A reference was made to the decision in [Air India Vs. Union of India and others](#), for the proposition that the repealing statute must say in so many words and by mentioning the title of the subordinate legislation, if the subordinate legislation is to survive the repeal. The Supreme Court was dealing with the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 and it was found that Section 8 of

that Act does not in express terms save the said Regulations, nor does it mention them. Therefore, the limited saving enacted in Section 8 does not extend to the said Regulations. The Supreme Court has also referred to the decision in *Watson v. Winch* (1916) 1 K.B. : (1916) All E.R. Reports 972, where Lord Reading, C.J. said: "It would follow that any bye-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the bye-law notwithstanding the repeal." The Supreme Court decision will not apply to the facts of our case where there is a provision for saving the then existing rules to be continued.

10. Learned Counsel referred to Anr. decision in [Rural Litigation and Entitlement Kendra Vs. State of U.P.](#), The facts of that case are entirely different wherein based on the report of the Committee appointed the Supreme Court took the view that mining in that area has to be stopped as far as practicable. We are concerned with an industry established under the Panchayats Act and Rules after obtaining a valid licence. Therefore, the ratio of the decision will not apply to the facts of this case.

In the light of our findings we confirm the judgment of the learned Single Judge subject to the rider that no separate licence under the Panchayats Act was required under item 84 or 87 of the schedule to the Rules. With the above modification the Writ Appeal is ordered.