

(1960) 03 KL CK 0059

High Court Of Kerala

Case No: O.P. No. 425 of 1959

Narayana Pillai

APPELLANT

Vs

Thazhakkara Panchayat

RESPONDENT

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**Date of Decision:** March 14, 1960**Acts Referred:**

- Travancore-Cochin Panchayat Act, 1950 - Section 25(1)(h), 71

**Citation:** (1960) KLJ 1197**Hon'ble Judges:** S. Velupillai, J**Bench:** Single Bench**Advocate:** M. Krishnan Nair, S. Neelakanta Iyer and K.S. Rajamoni, for the Appellant; T.K. Narayana Pillai (N), for the Respondent**Final Decision:** Dismissed

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### Judgement

Velu Pillai, J.

The petitioner was conducting a private market in his own property for a number of years. His licence was due to expire on March 31, 1959. He applied by Ext.P. 2 for the renewal of his licence on February 19, 1959. The application was addressed to the Panchayat Committee, but the outer cover was addressed to the Executive Authority of the Panchayat and was forwarded by registered post. The cover was returned to the petitioner, with an endorsement of refusal by the Executive Authority to accept it. Ext.P. 2 was accompanied by a money order remittance of Rs. 50/- towards licence fee and this was returned unaccepted by the Executive Authority, Ext.P. 3 being the money order. Later, by Ext.P. 1, the Panchayat issued a notice to the petitioner, restraining him from conducting the private market from April 1, 1959, on the ground, that a public market was going to be opened by the Panchayat. This petition is to quash Ext.P. 1, and for the issue of appropriate direction or order regarding the right of the petitioner to hold his private market. The contention of the Panchayat, which is the respondent, represented by its Executive Authority, was, that the application for renewal should have been addressed to the Panchayat and not to the

Executive Authority and was therefore rightly refused by the latter. On the other hand, the petitioner's stand was, that u/s 71(3) (a) of the Travancore-Cochin Panchayats Act, hereinafter referred to as the Act, the Panchayat was bound, subject to certain rights as to supervision, inspection, etc., to renew the licence for the petitioner's private market and that the application might well have been addressed to the Executive Authority. u/s 25(1) (h) of the Act the Executive Authority is empowered to "exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purposes of this Act". The Act of course has nowhere made provision, as to whom the application for renewal is to be made; but it is more than clear u/s 71, that the licence has to be renewed by the Panchayat and not by the Executive Authority. This however does not mean, that an application forwarded to the address of the Executive Authority is not in order. The material part of Section 83(12), which finds a place in Chapter VI of the Act entitled "General Provisions Regarding Licences and Permissions", is as follows:

save as otherwise specially provided in this Act, if orders on an application for licence or permission are not communicated to the applicant within thirty days after the receipt of the application by the executive authority, the application shall be deemed to have been allowed for the year.

This furnishes a clear indication, that an application may or can, be received by the Executive Authority. There is no reason to restrict the operation of this provision, as contended for the respondent, to licences which may be granted by the Executive Authority without reference to the Panchayat. On the other hand, the context in which this provision finds a place in the Act, makes it quite clear, that it is a general provision applicable to licences, whether issued by the Panchayat or by the Executive Authority. In my opinion, Section 83(12) places the matter beyond doubt, that the Executive Authority has the power to receive an application for the renewal of a licence.

2. The learned counsel for the respondent drew my attention to Section 91(2) of the Act, which prescribes the manner in which a notice of suit may be issued against the Panchayat or any member or officer thereof, and may be delivered; this is a special provision which has no application whatever to the issue or renewal of licences. The reliance on Rule 83 of the Travancore-Cochin Panchayat Rules, 1951 is misplaced, because it provides primarily for the holding of meetings. This falls particularly within the scope of the duties of the President of the Panchayat u/s 20 of the Act. It is true that there is no provision in the Act empowering the Executive Authority in specific terms to receive an application for the issue of a licence; but I consider, that a provision of this description is not essential, as the Executive Authority is clothed with the full executive power of the Panchayat u/s 25(1) (h) of the Act as stated above. I am not also clear, how the application came to be refused by the Executive Officer without opening it and examining its contents. I therefore come to the

conclusion, that the refusal of the Executive Authority to receive the cover and place its contents before the Panchayat, was not justified.

The period of the licence applied for, will expire within seventeen days from today. It is not necessary to issue a mandamus to the respondent to renew the licence, especially on the terms in which relief (b) in the petition is prayed for. It is open to the petitioner to apply for the renewal of his licence for the next year, and it is expected, that the application will be disposed of by the respondent in due course of law. With these observations, this petition is dismissed, but without costs.