

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Con.Case(C).No. 1265 of 2014 (S)

AGAINST THE JUDGMENT IN W.P.(C).NO.2656/2014, DATED 17-07-2014

PETITIONER(S) :

**M.P.PRASANNA KUMAR @ PRASANNAN, AGED 49 YEARS,
S/O.PRABHAKARAN, KALAI BHAVAN, OLAKETTIYAMBALAM.P.O,
PALLARIMANGALAM, KAYAMKULAM.**

**BY ADVS.SRI.DINESH R.SHENOY
SRI.SANIL JOSE**

RESPONDENT(S) :

- 1. RAJASREE KOMALATH, AGED 42 YEARS,
W/O.SURESH KUMAR, CHAIRPERSON,
KAYAMKULAM MUNICIPAL COUNCIL,
KAYAMKULAM MUNICIPALITY, KAYAMKULAM-690 502.**
- 2. U.MOHAMMED, AGED ABOUT 50 YEARS,
S/O.USMANKUTTY ALAMMOOTTIL, VICE CHAIRMAN,
KAYAMKULAM MUNICIPAL COUNCIL,
KAYAMKULAM MUNICIPALITY, KAYAMKULAM-690 502.**
- 3. R.PRADEEP KUMAR, AGED ABOUT 50 YEARS,
FATHER'S NAME NOT KNOWN TO THE PETITIONER, SECRETARY,
KAYAMKULAM MUNICIPALITY, KAYAMKULAM-690 502.**

**R1 BY ADVS. SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN**

R2 BY ADV. SMT.ANITHA M.N. (EKM)

**R3 BY ADVS. SRI.R.RAYA SHENOY
SRI.R.PRASANTH KUMAR
SRI.K.G.RAJAPPAN NAIR**

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY
HEARD ON 03-03-2015, THE COURT ON 20-03-2015 DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1: CERTIFIED COPY OF JUDGMENT DATED 17.07.2014 IN W.P(C).NO.2656/2014 HIGH COURT OF KERALA.
- ANNEXURE A2: TRUE PHOTOCOPY OF NOTICE DATED 16.09.2014 ISSUED BY DINESH R.SHENOY, ADVOCATE.
- ANNEXURE A3: TRUE PHOTOCOPY OF REPLY NOTICE DATED 17.09.2014 ISSUED BY ADVOCATE R.PRASANTH KUMAR.
- ANNEXURE A4: TRUE PHOTOCOPY OF ORDER DATED 29.10.2014 IN RP.NO.718/2014 OF HIGH COURT OF KERALA.
- ANNEXURE A5: TRUE PHOTOCOPY OF NOTICE DATED 21.11.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R1(A): TRUE COPY OF THE REQUEST DATED 15.01.2015 MADE BY THE 1ST RESPONDENT BEFORE THE SECRETARY CONGRESS PARLIAMENTARY PARTY.
- ANNEXURE R1(B): TRUE COPY OF THE GOVT. LETTER DATED 05.11.2014.
- ANNEXURE R1(C): TRUE COPY OF THE LEGAL OPINION IN W.P.(C).NO.2656/2014.
- ANNEXURE R1(D): TRUE COPY OF THE ENDORSEMENT NO.20398/D3/14(LAW)-NO.3862RC3/2014 LSGD DATED 25.10.2014.
- ANNEXURE R3(A): A TRUE XEROX COPY OF THE MANUSCRIPT DRAFT OF THE N.O.C. TO BE ISSUED TO THE PETITIONER PREPARED IN THE OFFICE OF THE THIRD RESPONDENT AS CORRECTED BY THE SUPERINTENDENT.
- ANNEXURE R3(A)1: A TRUE XEROX COPY OF THE TYPED DRAFT OF ITEM NO.2 ABOVE PREPARED IN THE OFFICE OF THE 3RD RESPONDENT.
- ANNEXURE R3(B): A TRUE XEROX COPY OF THE DIRECTION/ORDER OF THE CHAIRPERSON ON THE OFFICE FILE TO CONVENE AN EMERGENCY COUNCIL MEETING ON 22.11.2014 IN CONNECTION WITH THE ABOVE CASE.
- ANNEXURE R3(C): A TRUE XEROX COPY OF THE MINUTES OF THE MEETING OF THE COUNCIL HELD ON 22.11.2014 SIGNED BY THE FIRST RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE.

A.V.RAMAKRISHNA PILLAI, J

COC No.1265 of 2014
in WPC No.2656/2014

Dated this the 20th day of March, 2015

JUDGMENT

Alleging that the respondents are trying to rescind the resolution passed by the respondent Municipality to grant NOC to the petitioner in order to get over and nullify Annexure A1 judgment, the petitioner has filed this Contempt petition.

2. The writ petition was allowed directing the second respondent to issue formal orders conveying NOC for starting FL-3 bar in the petitioner's hotel within a period of one month from the date of receipt of a copy of the judgment. Though a review petition was filed, the same was heard on merits and it was dismissed as per order dated 29.10.2014. The petitioner points out that no appeal has been filed from Annexure-A1 judgment.

3. The first respondent filed a counter affidavit pointing out that she was not a party to the original

proceedings, but she has been arrayed as the first respondent in her capacity as Municipal Chairman. According to her, she took charge only on 10.11.2014. She has pointed out that the council was to meet on 8.1.2015. The petitioner had requested the Congress Parliamentary Party, of which the petitioner was elected as a leader, to include the grant of NOC to the petitioner in the agenda to be placed before the council. However, in view of the Government decision and the party's decision, the CPP was reluctant to include this item in the agenda. She has personally requested to include the question of grant of NOC, particularly, in view of the Contempt of Court Case pending against him. As per letter dated 15.1.2015, she requested to convene the meeting of the CCP and thereafter on the consensus, the matter was included in the agenda for the next council meeting. According to her, unless the CPP for Kayamkulam Municipality agrees, it may not be possible for her to table the matter for granting NOC before the Council and she alone cannot salvage the situation. She

also stated that she would abide by any orders that may be passed by this Court as the Chairperson of the Municipality.

4. In the counter affidavit filed by the third respondent, who is the Secretary, he has pointed out that on 22.11.2014, an emergent Municipal Council Meeting was held wherein he had expressed his opinion and informed the council that the NOC has to be issued to the petitioner immediately after complying with the directions of this Court for avoiding the contempt. However, as the councillors expressed differences of opinion, a poll was sought for and according to the decision of the majority of the councillors, a decision was taken to revoke the earlier Resolution No.13 passed by the Council on 16.1.2014 on the basis of the new Abkari policy declared by the Government and also to file an appeal against the judgment.

5. When the matter came up for hearing, both sides submitted that the petitioner has challenged the decision so taken by the Municipality to revoke the NOC. In the

light of the subsequent events, the contempt petition can be closed reserving the right of the petitioner to agitate the issue in the subsequent writ petition filed by him.

In the result, this Contempt of Court Case is closed expressing the displeasure of this Court regarding the way in which the issue has to be dealt with by wriggling out the order of this Court. The right of the petitioner to take all his contentions in the writ petition now filed by him challenging the order of the respondent Municipality revoking the earlier resolution to grant NOC to the petitioner is hereby reserved.

**Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE