

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WA.No. 144 of 2015 () IN WP(C).14530/2014

AGAINST THE JUDGMENT IN WP(C) 14530/2014 of HIGH COURT OF KERALA
DATED 11-12-2014

APPELLANT(S)/PETITIONERS :-

1. K.P.THOMAS AGED 55 YEARS
S/O.LATE POULOSE, KURIYAPARAMBAN HOUSE, MAROTTICHODU
MATTOOR, KALADY P.O., PIN - 683 574.
2. BABU C.P., AGED 50 YEARS
S/O.LATE C.C.POULOSE, CHIRACKAL HOUSE, MAROTTICHODU
MATTOOR, KALADY P.O., PIN - 683 574.

BY ADVS.SRI.SHAJI P.CHALY
SMT.C.S.SINDHU KRISHNAH

RESPONDENT(S)/RESPONDENTS :-

1. STATE OF KERALA REPRESENTED BY SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
SECRETARIATE, THIRUVANANTHAPURAM - 691 601.
2. DISTRICT COLLECTOR
CIVIL STATION, THRIKKAKARA P.O., KAKKANAD
ERNAKULAM - 20.
3. KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, KAKKANAD, ERNAKULAM - 682 020.
REPRESENTED BY THE SENIOR ENVIRONMENTAL ENGINEER.
4. SECRETARY,
KALADY GRAMA PANCHAYATH, KALADY P.O., PIN - 683 574.
5. MEDICAL OFFICER
HEALTH CENTRE, KALADY, PIN - 683 574.
6. SUB INSPECTOR OF POLICE
KALADY POLICE STATION, KALADY, PIN - 683 574.
7. THE FIRE OFFICER
FIRE STATION, ANKAMALY, PIN - 683 572.

8. M.T.JOSHY, PROPRIETOR, M/S.FIXTROL GUM INDUSTRIES,
11/179 B & C, MAROTTICHODU
MATTOOR, KALADY P.O., PIN - 683 574.

BY SRI.M.P.ASHOK KUMAR

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

BY SRI.SREEPRAKASH K.NAIR

R3 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BO

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-02-
2015 ALONG WITH W.A.No.218 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. Nos.144 & 218 of 2015

Dated this the 4th day of February 2015

J U D G M E N T

Shaffique, J.

These appeals have been filed against the common judgment dated 11.12.2014 in W.P.(C) Nos.14530 & 15026 of 2014.

2. W.P.(C) No.14530 of 2014 was filed by certain persons alleging that the Small Scale Industrial Unit (hereinafter referred to as 'SSI Unit' for short) functioning in the locality under the name and style 'Fixtrol Gum Industries' at Mattoor Village of Kalady Panchayat is causing pollution and therefore, the writ petition is filed seeking for a direction to the 3rd respondent, the Kerala State Pollution Control Board to withdraw the consent dated 18.6.2013 issued in favour of the Proprietor of the SSI Unit and for a further direction to the 3rd respondent to pass urgent orders on Ext.P1 complaint. It is also prayed for a direction to the 4th respondent - Secretary not to renew the D & O licence issued to the 8th respondent in respect of the very same Unit.

3. W.P.(C) No.15026 of 2014 was filed by the 8th

-: 2 :-

respondent in W.P.(C) No.14530 of 2014 seeking for a declaration that he has got deemed licence under Sec.236(3) of the Panchayat Raj Act and is entitled to conduct the SSI Unit. A further direction was sought for from the respondent Panchayat not to interfere with the functioning of the Unit. It is inter alia contended that the petitioner had started functioning of the Unit as per licence issued by the Panchayat on 27.3.2003 and the D & O licence was renewed upto 31.3.2014. When renewal application was filed for the subsequent years, the same was not considered by the Panchayat and hence, he had approached this Court seeking for a declaration as prayed for.

4. According to the petitioner, he is conducting the Unit on the strength of valid licence and permission issued from various statutory authorities including the Pollution Control Board and therefore, there is no reason for the Panchayat not to renew the licence. The petitioner also prayed for a direction to the Panchayat to renew the licence.

5. In W.P.(C) No.14530 of 2014, the petitioners are residents in the locality, where the aforesaid Unit is functioning and their complaint was regarding the large scale activities that was being carried on by the petitioner. It is inter alia alleged that though the Unit started as a SSI Unit, they are manufacturing

-: 3 :-

various other items and therefore, the Pollution Control Board ought not to have granted the consent to the petitioner. After considering the rival contentions, the learned Single Judge observed that since the Pollution Control Board had already granted licence, the residents in the locality has to challenge the consent by filing appropriate representations before the appropriate forum. Accordingly the writ petitions were disposed of with the following directions :-

- "1. The Secretary, the Kalady Grama Panchayat is directed to renew the licence issued to the operator within a period of two weeks from the date of receipt of a copy of this judgment.
2. The renewal of the licence will be subject to any challenge against the consent issued by the Pollution Control Board before the appellate authority.
3. The operator shall strictly comply with the conditions in the consent for operating the unit.
4. The Pollution Control Board Inspectors shall conduct surprise inspection of the premises during the currency of the consent to find out compliance of the directions in the consent letter."

6. Impugning of the aforesaid directions, W.A.No.144 of 2015 is filed by the petitioners in W.P.(C) No.14530 of 2014 and W.A.No.218 of 2015 is filed by the appellants seeking leave of this Court as they were not parties in W.P.(C) No.15026 of 2014.

7. Learned counsel for the appellants has mainly stressed on the fact that the first direction issued by the learned Single

Judge was contrary to law. It is pointed out that they had already preferred appeal before the appellate authority challenging the consent issued in favour of the Unit by the Pollution Control Board. However, the learned Single Judge committed serious error in directing the Panchayat to issue the licence. On account of such direction, the Panchayat was forced to issue the licence without considering the fact as to whether the Unit should be permitted to function in the said locality. It is argued that the Panchayat being a Local Self Government Institution is vested with independent powers to consider the application for renewing the licence in accordance with law and no mandamus could have issued in favour of the Panchayat to renew the licence. Learned counsel also relied upon the judgment of the Apex Court in **Action Council, Poovathode and others v. Benny Abraham and others** [(2002) 9 SCC 493].

8. On the other hand, the learned counsel appearing for the respondent, who is conducting the Unit contends that the Unit has been functioning since 2003 and until 2014, D & O licence has been renewed. Only on account of the objections raised by the persons in the locality that the Panchayat has failed to renew the licence for the period 2014-2015. In fact the Panchayat has called for certain reports from the District Medical

Officer and the delay in considering the application was on account of waiting for the said report. The report of the District Medical Officer also indicates that there is no pollution being caused in the locality and therefore, the Panchayat has after considering the factual situation in the locality and also having taken note of the consent given by the Pollution Control Board, renewed the licence.

9. Learned counsel has also placed reliance on Sec.233A of the Kerala Panchayat Raj Act to indicate that if during the operation of the Unit, it is found that any pollution arises, it is always open for the Panchayat to take appropriate action in accordance with law and direction can be issued to abate the nuisance or the pollution as the case may be.

10. Having regard to the aforesaid factual situation, the short question to be considered is whether there is any necessity to interfere with the judgment of the learned Single Judge.

11. As far as the appellants are concerned, their right to challenge the consent issued in favour of the petitioner has already been upheld by the learned Single Judge. The only ground taken by the appellants is that there has been change in circumstances and the Unit is now operating in a manner by increasing its capacity and also manufacturing several other

products which were not permitted during the initial period. On account of such increase of capacity as well as manufacturing of various other products, substantial pollution is being caused in the locality. There are about 100 residents near and around the Unit and the main reason for challenging the consent is on account of pollution.

12. It is true that the Panchayat is entitled to consider the application for renewal taking into consideration of the factual situation in the locality. But the fact remains that the Unit was functioning since 2003 and therefore, what is required to be verified is that no pollution is caused in and around the locality. As rightly argued by the learned counsel for the respondents, the Panchayat is entitled to ensure that the Unit is functioning in accordance with the standards prescribed. In fact the learned Single Judge itself has indicated in the judgment that periodic inspection has to be done by the Pollution Control Board. Apparently, the Panchayat is not entitled to find whether there is any pollution. It is for the Pollution Control Board and such other authorities to ensure that the Unit is functioning without causing any pollution to the neighbouring locality. Under such circumstances, we do not think that any interference with the direction issued by the learned Single Judge is required at this

-: 7 :-

stage of proceeding. We only observe that it shall always be open for the appellants to bring notice of the authorities if there is any pollution caused in and around the locality, in which event it shall be open for the Panchayat to invoke Sec.233A of the Kerala Panchayat Raj Act to abate the nuisance, after notice to the affected parties.

With this observation, this Writ Appeal is dismissed. It is made clear that the appellants are entitled to take any other proceedings as permitted under law.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

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P.A. TO JUDGE