

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WA.No. 1405 of 2015 () IN WP(C).9735/2015

AGAINST THE JUDGMENT IN WP(C) 9735/2015 DATED 01-04-2015

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APPELLANT/5TH RESPONDENT IN THE WPC :

ELIKUTTY SEBASTIAN
CHAMAKALAYIL HOUSE, ATHIRAMPUZHA PO, VEDAGIRI
KOTTAYM 686562

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4 IN WPC :

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1. JAMES EMMANUEL
CHENNAPRAYIL HOUSE, VEMPALLY PO, KOTTAYAM 686 633.
 2. THE POLLUTION CONTROL BOARD
REPRESENTED BY ENVIRONMENTAL ENGINEER
OFFICE OF THE POLLUTION CONTROL BOARD, KOTTAYAM 686 001.
 3. THE DISTRICT MEDICAL OFFICER, KOTTAYAM 686001
 4. THE MEDICAL OFFICER
PRIMARY HEALTH CENTRE, ATHIRAMPUZHA, KOTTAYAM 686 001.
 5. ATHIRAMPUZHA GRAMA PANCHAYAT
ATHIRAMPUZHA PO, REPRESENTED BY ITS SECRETARY 686 562.

R1 BY ADV. SRI.P.S.GEORGE
R2 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
R3 & R4 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS.
R5 BY ADV. SRI.RAJESH THOMAS,SC,ATHIRAMPUZHA G.PANCHAYAT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE I : TRUE COPY OF THE REPRESENTATION DATED 21.07.2014 BEFORE
THE DISTRICT COLLECTOR, KOTTAYAM.

ANNEXURE II : TRUE COPY OF THE PROCEEDING DATED 07.12.2009 ISSUED BY
THE ATHIRAMPUZHA GRAMA PANCHAYAT.

ANNEXURE III : TRUE COPY OF THE PROCEEDING DATED 18.11.2009 ISSUED BY
THE ATHIRAMPUZHA GRAMA PANCHAYAT.

ANNEXURE IV : TRUE COPY OF THE PROCEEDING DATED 23.12.2009 ISSUED BY
THE ATHIRAMPUZHA GRAMA PANCHAYAT.

ANNEXURE V : TRUE COPY OF THE PROCEEDING DATED 27.03.2014.

ANNEXURE VI : TRUE COPY OF THE MEDICAL CERTIFICATE DATED 01.06.2014.

ANNEXURE VII : TRUE COPY OF THE NOTICE DATED 13.10.2014 ISSUED BY THE
KERALA STATE POLLUTION CONTROL BOARD.

ANNEXURE VIII : TRUE COPY OF THE PETITION DATED 16.03.2015.

ANNEXURE IX : TRUE COPY OF THE REPLY DATED 26.03.2015.

ANNEXURE X : TRUE COPY OF THE PROCEEDING DATED 11.07.2014 ISSUED BY
THE SECRETARY, ATHIRAMPUZHA GRAMA PANCHAYAT.

ANNEXURE XI : TRUE COPY OF THE PROCEEDING DATED 16.02.2015 ISSUED BY
THE STATE PUBLIC INFORMATION OFFICER, ATHIRAMPUZHA.

ANNEXURE XII : TRUE COPY OF THE PROCEEDING DATED 29.06.2015 ISSUED BY
THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION
CONTROL BOARD.

ANNEXURE XIII : TRUE COPY OF THE D & O LICENSE ISSUED BY THE ATHIRAMPUZHA
GRAMA PANCHAYAT.

ANNEXURE XIV : TRUE COPY OF THE NOTICE DATED 10.07.2015 ISSUED BY THE
ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION
CONTROL BOARD.

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

PA TO JUDGE

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

W.A. No. 1405 OF 2015

Dated this the 11th day of August, 2015

JUDGMENT

Ashok Bhushan, C.J.

This writ appeal has been filed against the judgment dated 01.02.2015 passed in W.P.(C) No.9735 of 2015. The writ petition was filed by the 1st respondent praying for the following reliefs:

"i) issue a writ of mandamus or any other appropriate writ, direction or order directing the 1st respondent to communicate to the 4th respondent that Ext.P2 consent is still valid and the petitioner can operate his unit.

ii) issue a writ of mandamus or any other appropriate writ, direction or order directing the 2nd respondent to communicate to the 4th respondent that in view of Exzt.P8 and P9 none of the remarks in Ext.P6 survives.

iii) Declare that the petitioner is eligible to get Ext.P1 renewed in view of Ext.P2 consent, Ext.P3 licence, Ext.P8 report and P9 guidelines."

2. The appellant was the 5th respondent in the writ petition who has been objecting the manufacturing unit of the

writ petitioner. The case of the 5th respondent was that pollution is being caused by the petitioner's unit and hence it is not operating in conformity with the relevant provisions of law. The Pollution Control Board as well as the Panchayat has appeared in the writ petition. The case of Pollution Control Board was that consent was also given to the petitioner till 30.06.2015. Learned Single Judge disposed of the writ petition. It is useful to extract paragraph 5 of the judgment which is to the following effect:

"5. In the above circumstance, in so far as the consent already issued by the Pollution Control Board is valid as on date, there will be a direction to the 4th respondent Panchayat to consider the application preferred by the petitioner for renewal of D & O licence and the renewal shall be effected accordingly, if it is otherwise in order. This will not bar the way of the Pollution Control Board in conducting an inspection and to take further steps, if the requirement already specified by them are not complied with by the petitioner or if there is any violation of any of the terms of the consent or such other relevant provisions of law. Appropriate action shall be taken in conformity with the statutory provisions."

3. The 5th respondent in the writ petition aggrieved by the judgment of learned Single Judge has come up with this writ

appeal. Learned counsel for the appellant contended that even after the judgment of learned Single Judge the Pollution Control Board did not issue any notice to the appellant and letter dated 29.06.2015 has been issued by the Environmental Engineer to the Grama Panchayat informing that application for consent to operate the petitioner's unit is under process and Board have no objection in renewing the license by the Panchayat to the Unit of petitioner. Panchayat thereafter has renewed the license.

4. Appellant's case is that the letter of Environmental Engineer dated 29.06.2015 informs the Panchayat that they have no objection. That itself, according to the appellant, is in fact renewal of the license. He submits that the order of learned Single Judge was that it shall be open for the Board to issue notice to 5th respondent, i.e. the appellant herein.

5. We have considered the submissions of learned counsel for the parties and perused the record. Annexure XII issued by the Environmental Engineer states as follows:

"The application for consent to operate/renewal submitted by M/s.Southern Auto Products, Athirampuzha, Vedagiri, Kottayam is under processing for the verification

of formal issue of consent to operate renewal. It is informed that the Board have no objection in renewing Panchayat licence of the unit.”

6. A perusal of the aforesaid indicates that Pollution Control Board in fact informed the Panchayat that the application for consent to operate/renewal submitted by the petitioner is under process. Aforesaid clearly indicates that no final decision was taken by that time by the Pollution Control Board and the letter dated 29.06.2015 cannot be said to be renewal consent by the Pollution Control Board. Annexure XIV notice dated 10.07.2015 was issued to the appellant. It is still open for the appellant to file his detailed objection to the Pollution Control Board which may consider the same and take appropriate decision with regard to the consent/renewal of license to the petitioner.

7. Learned Single Judge did not commit any error in disposing the writ petition with the aforesaid directions. The consent which has been issued by the Pollution Control Board was valid till 30.06.2015, hence the Panchayat is under the obligation to consider the petitioner's application. We thus do not find any

good ground to interfere with the judgment of learned Single Judge. We, however, observe that as directed by learned Single Judge, the Pollution Control Board shall take a final decision on the renewal application of the petitioner after considering the 5th respondent's objection which he may file to the notice dated 10.07.2015. The appellant is allowed to submit his objection within two weeks from today which may be considered by the Pollution Control Board and disposed of.

The Writ Appeal is disposed of as above.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

WA No. 1405 of 2015

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