

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 1182 of 2015 (W)

PETITIONER(S):

**M.M. YACOOB, S/O. MOHAMMED IBRAHIM,
AGED 60 YEARS, CRA 74-B, SULTHANA,
VAZHOTTUKONAM, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM - 13.**

**BY SMT.SUMATHY DANDAPANI, SENIOR ADVOCATE.
ADVS. SRI.MILLU DANDAPANI,
SRI.PREMCHAND R.NAIR.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
LOCAL SELF ADMINISTRATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 65 001.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION BUILDING,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM - 695 005.**
- 3. THE STATE POLICE CHIEF,
KERALA STATE, VAZHUTHACADU,
THIRUVANANTHAPURAM - 695 014.**
- 4. THE CIRCLE INSPECTOR OF POLICE,
MUSEUM CIRCLE, THIRUVANANTHAPURAM - 695 033.**
- 5. THE STATION HOUSE OFFICER,
MUSEUM POLICE STATION,
THIRUVANANTHAPURAM - 695 033.**
- 6. THE CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM - 675 033.**

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**7. THE EXECUTIVE ENGINEER,
PED ROADS DIVISION, PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM - 695 033.**

**8. J. DEEPA,
D/O. LATE STEPHEN, TC NO. 12/800, BARTON HILL,
KUNNUKUZHY, THIRUVANANTHAPURAM - 695 033.**

**9. S. RAJAN,
TC 49/503(18), KONCHIRAVILA, MANACAUD P.O.,
THIRUVANANTHAPURAM - 695 009.**

**R1 TO R5 & R7 BY SR. GOVT. PLEADER SRI.GIKKU JACOB.
R6 BY SRI.N.NANDAKUMARA MENON, SENIOR SC.
ADV. SRI.P.K.MANOJKUMAR, SC.
R8 & R9 BY ADV. SRI.D.KISHORE.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-10-2015, ALONG WITH WP(C).NO.18787 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE NO OBJECTION CERTIFICATE DTD. 30.10.1985 ISSUED BY THE EXECUTIVE ENGINEER, B&R DIVISION, TRIVANDRUM TO THE COMMISSIONER, CORPORATION OF TRIVANDRUM.
- P2 - TRUE COPY OF THE RECEIPT NO. 01/11307106786 DTD. 05.02.2014 FOR PAYMENT OF LICENSE FEE FOR THE YEAR 2014-15 IN RESPECT OF BUNK NO. 407 OF THE PETITIONER ISSUED BY THE 6TH RESPONDENT CORPORATION.
- P3 - TRUE COPY OF THE REGISTRATION CERTIFICATE DTD. 15.01.2013, ISSUED BY THE GOVERNMENT OF INDIA, FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA, TO THE PETITIONER VIDE REGISTRATION NO. 21312011002021.
- P4 - TRUE COPY OF THE CERTIFICATE NO. 64/GL/08/CITN DTD. 16.01.2008 ISSUED BY THE CIRCLE INSPECTOR OF POLICE, TRAFFIC POLICE STATION, TRIVANDRUM REFERRED TO THE WRIT PETITION (CIVIL).
- P5 - TRUE COPY OF JUDGMENT OF THIS HONOURABLE COURT DTD. 07.10.2008, RENDERED IN WP(C).NO.28367/2008.
- P6 - PHOTOGRAPH INDICATING THE POSITION OF THE VEHICLE OF THE 8TH RESPONDENT BEFORE THE MUSEUM POLICE STATION.
- P7 - TRUE COPY OF THE NOTICE DTD. 27.11.2008 ISSUED BY THE HEALTH OFFICER, CITY CORPORATION OF TRIVANDRUM TO THE 8TH RESPONDENT, VIDE H10/47525/08.
- P8 - TRUE COPY OF THE REPORT BEARING NO. 1290/13 DTD. 01.11.2013 ISSUED BY THE VILLAGE OFFICER, KOWDIAR, TO THE 2ND RESPONDENT.
- P9 - TRUE CPY OF THE SAID NO OBJECTION CERTIFICATE DTD. 09.01.2008 ISSUED BY THE 7TH RESPONDENT.
- P10 - TRUE COPY OF THE APPLICATION DTD. 29.10.2013 SUBMITTED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT BEFORE THE STATE PUBLIC INFORMATION OFFICER, THIRUVANANTHAPURAM.
- P11 - TRUE COPY FO THE REPLY DTD. 20.11.2013 ISSUED BY THE 7TH RESPONDENT TO THE PETITIONER, VIDE NO. E3/R.I/57/13-14.
- P12 - TRUE COPY OF THE PERMISSION/LICENSE ISSUED BY THE 2ND RESPONDENT, DTD. 18.10.2007 TO THE 8TH RESPONDENT VIDE NO. A6-71302/07/K.DIS.

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- P13 - TRUE COPY OF THE COMMUNICATION ISSUED BY THE DIRECTOR OF MUSEUM AND ZOO DTD. 18.11.2013 TO THE 4TH RESPONDENT VIDE NO. MZ(J) 5090/13.**
- P14 - TRUE COPY OF THE COMMUNICATION ISSUED BY THE DIRECTOR OF MUSEUM AND ZOO DTD. 18.11.2013 TO THE 6TH RESPONDENT VIDE NO. M.Z(J) 5090/13.**
- P15 - TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT, DTD. 19.02.2014, RENDERED IN WP(C).NO.30518/2013.**
- P16 - TRUE COPY OF THE COMMUNICATION DTD. 28.05.2014 ISSUED BY THE 6TH RESPONDENT TO THE 1ST RESPONDENT VIDE NO. H 10/47528/07.**
- P17 - TRUE COPY OF REPRESENTATION DTD. 11.08.2014 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT, CIRCLE INSPECTOR OF POLICE.**
- P18 - TRUE COPY OF THE REPRESENTATION DTD. 20.09.2014 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT STATE POLICE CHIEF.**
- P19. TRUE COPY OF THE LAWYER NOTICE ISSUED ON BEHALF OF THE PETITIONER THROUGH ADV.DOUGHLES LINSBAY N.R. TO THE MAYOR, THIRUVANANTHAPURAM DATED 01/09/2014.**
- P20. TRUE COPY OF THE RELEVANT PAGE OF THE LICENCE CONDITIONS OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.**
- P21. COPY OF THE NOTE NO.H10/47528/07 ISSUED TO THE TOWN PLANNING OFFICER, THIRUVANANTHAPURAM CORPORATION BY THE HEALTH OFFICER, DATED 06/01/2008.**
- P22. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT DATED 19/03/2015.**
- P23. COPY OF THE NOTIFICATION NO.24823/HI/09/PWD DATED 08/12/2009 BY PUBLIC WORKS (H) DEPARTMENT.**

RESPONDENT'S EXHIBITS:-

- EXT.R8A COPY OF THE NO OBJECTION CERTIFICATE DATED 09/01/2008 ISSUED BY THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT.**
- EXT.R8B COPY OF THE NO OBJECTION CERTIFICATE DATED 16/02/2015 ISSUED BY THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT.**

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EXT.R8C COPY OF THE LICENSE IN FORM NO.5 DATED 18/08/2008 ISSUED BY THE 6TH RESPONDENT TO THE 8TH RESPONDENT.

EXT.R8D COPY OF THE LICENSE DATED 31/05/2013 ISSUED BY THE 6TH RESPONDENT TO THE 8TH RESPONDENT.

EXT.R8E COPY OF THE JUDGMENT DATED 07/10/2008 IN WP(C).NO.28367/2008.

EXT.R8F COPY OF THE ORDER DATED 23/11/2011 IN HRMP NO.3188/11 OF KERALA STATE HUMAN RIGHTS COMMISSION.

EXT.R8G COPY OF THE PROCEEDINGS NO.C1/1785/12 DATED 17/08/2013 OF THE HON'BLE MAYOR OF CORPORATION OF THIRUVANANTHAPURAM.

EXT.R8H COPY OF THE MINUTES OF THE MEETING DATED 22/02/2013 OF THE CORPORATION COUNCIL OF THE 6TH RESPONDENT.

EXT.R8I COPY OF THE ORDER DATED 19/03/2014 IN WP(C).NO.7927/2014 OF THIS HON'BLE COURT.

EXT.R8J COPY OF THE COMMUNICATION DATED 11/03/2014 ISSUED BY THE HALTH OFFICER OF THE 6TH RESPONDENT CORPORATION.

EXT.R8K COPY OF THE DECISION DATED 26/04/2008 OF THE CORPORATION COUNCIL.

EXT.R8L COPY OF THE LICENSE IN FORM NO.B ISSUED ON 30/06/2011 BY THE 6TH RESPONDENT.

EXT.R8M COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA DATED 21/06/2012.

EXT.R8N COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA DATED 21/06/2014.

EXT.R8O COPY OF THE ORDER DATED 07/01/2015 IN I.A. 15062/2014 IN WP(C).NO.28367/2008 OF THIS HON'BLE COURT.

EXT.R8P COPY OF THE MEMORANDUM OF REVIEW PETITION IN RP.317/2014 IN WP(C).NO.7927/2014.

EXT.R8Q COPY OF THE NO OBJECTION CERTIFICATE DATED 16/02/2015 ISSUED BY THE 7TH RESPONDENT.

EXT.R8R COPY OF THE RECEIPT DATED 10/03/2015 ISSUED BY THE 6TH RESPONDENT TO THE 8TH RESPONDENT.

EXT.R8S COPY OF THE LICENSE DATED 06/05/2015 ISSUED BY THE 6TH RESPONDENT.

//TRUE COPY//

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P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.1182/2015 & 18787/2015**  
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Dated this the 26th Day of September, 2015

J U D G M E N T

These writ petitions are filed at the instance of the same petitioner, in connection with operation of a mobile Icecream unit by one J.Deepa. J.Deepa is the 8th respondent in W.P.(C).No.1182 of 2015 and the 4th respondent in W.P.(C).No.18787 of 2015. The other party respondent in both the writ petitions appears to be the person engaged by J.Deepa. W.P.(C).No.1182 of 2015 is filed alleging that J.Deepa is causing nuisance to the petitioner by placing the mobile Icecream unit in front of the petitioner's bunk, which is a no parking area. And further that on account of placing the mobile Icecream unit, his business is being affected. W.P.(C).No.18787 of 2015 is filed to take action against J.Deepa for violation of the terms and conditions of Ext.P8 licence issued by the Corporation.

2. It appears from the pleadings of the writ petitioner that the writ petitioner is now very much aggrieved by the operation of the mobile Icecream unit by J.Deepa or her employee in front of his bunk. The limited question therefore arises is whether any nuisance is being caused by the mobile Icecream unit operated by J.Deepa.

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3. J.Deepa has filed a detailed counter affidavit. She refers to an earlier writ petition and submits that she is operating the mobile Icecream unit, scrupulously, following the terms and conditions.

4. It is to be noted that the litigation has a chequered career. Now, the fact remains that the Corporation has issued a vending license to J.Deepa which is not challenged before this Court. Therefore, the only question to be considered is whether the mobile Icecream unit causes any nuisance to the petitioner or not. The licence issued by the Corporation is produced as Exhibit R5(d) in W.P.(C).No.18787 of 2015. Exhibit R5(a) produced therein is the no-objection certificate issued by the PWD Roads Division which would show that the operational area is in front of the Museum and through R.K.V. road.

5. This Court is of the view that since J.Deepa is operating the mobile unit, the Corporation may identify the location through which the mobile Icecream unit has to be operated and also the area for parking the mobile unit by J.Deepa so as not to cause any hindrance or obstruction to the petitioner's business. The mobility of the unit need not be restricted as permission has been granted for operating through R.K.V road. Identification has to be done only to avert any of possible complaint on the part of the petitioner, alleging obstruction to his bunk's function. The

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Corporation shall identify such other location to facilitate business of J.Deepa and also ensure not to cause any hindrance to the petitioner's business. The Corporation shall specify the same after conducting site inspection.

The writ petitions are disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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