

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No.2102 of 2015 (K)

PETITIONERS:

1. **ARUNESH.A.K,AGED 36 YEARS,
S/O.BALAN,'A.K.HOUSE',PUTHIYAPPA,
PUTHIYANGADI PO.,CALICUT-21.**
2. **C.P SHAJI,AGED 40 YEARS,S/O.LAKSHMANAN,
PANDAKANDI THAZHATHU,PUTHIYAPPA,
PUTHIYANGADI PO.,CALICUT-21.**
3. **V.P.NJESH,AGED 36 YEARS,S/O.NARAYANA,
VAYALPENDIKAYIL,PUTHIYAPPA,
PUTHIYANGADI P.O.,CALICUT-21.**
4. **RATHEESH C.P,AGED 34 YEARS,S/O.RAGHU,
CHERIYAPURAYIL (H),PUTHIYAPPA,
PUTHIYANGADI P.O.,CALICUT-21.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.JOSEPH GEORGE(MULLAKKARIYIL)**

RESPONDENTS:

1. **STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FISHERIES AND PORTS,
SECRETARIAT,THIRUVANANTHAPURAM-01.**
2. **THE EXECUTIVE ENGINEER,
FISHING HARBOUR SUB DIVISION,
PUTHIYAPPA,PUTHIYANGADI P.O.,CALICUT-21.**
3. **DISTRICT COLLECTOR,CIVIL STATION,
KOZHIKODE-673 020.**
4. **THE COMMISSIONER OF POLICE,KOZHIKODE-673 009**
5. **SUB-INSPECTOR OF POLICE,
VELLAYIL PS,KOZHIKODE-673 011**

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WP(C).No.2102 of 2015 (K)

***ADDITIONAL 6TH RESPONDENT IMPEADED**

**ADDL.R6.M.K.RAMACHANDRAN,JOINT SECRETARY,
PUTHIYAPPA FISHERMEN AND BOAT OWNERS
WEFARE ASSOCIATION,PUTHIYAPPA,
PUTHIYANGADI PO.,KOZHIKODE,PIN - 673 021.**

ADDL.R6 IMPEADED AS PER ORDER DATED 05.02.2015 IN IA 1256/15.

**R1 TO R5 BY GOVT. PLEADER SRI.K.C.VINCENT.
ADDL-R6 BY ADV.SRI.PRAVEEN K. JOY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, ALONG WITH WPC.6132/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

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WP(C).No.2102 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:

EXT P1:TRUE COPY OF THE ORDER NO.D1/500/2013/AEE-A ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER,PUTHIYAPPA HARBOUR IN THE NAME OF 1ST PETITIONER FOR CRUSH NO.1 DATED 22.09.2014.

EXT P1(b):TRUE COPY OF THE ORDER NO.D1/307/14/AEE ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, PUTHIYAPPA HARBOUR IN THE NAME OF THE 4TH PETITIONER FOR CRUSH NO.5 DATED 22.09.2014.

EXT P2(a):TRUE COPY OF THE AGREEMENT BETWEEN DATED 24.10.2014 BETWEEN 1ST PETITIONER AND ASSISTANT EXECUTIVE ENGINEER FOR STATE GOVERNMENT.

EXT P2(b):TRUE COPY OF THE AGREEMENT BETWEEN DATED 22.12.2014 BETWEEN 4TH PETITIONER AND ASSISTANT EXECUTIVE ENGINEER FOR STATE GOVERNMENT.

EXT P3:A TRUE COPY OF THE LETTER DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT,KOZHIKODE.

EXT P4:A TRUE COPY OF THE LETTER DATED 04.12.2014 ISSUED BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.R. RAMACHANDRA MENON, J.

W.P(C). Nos. 2102 & 6132 of 2015

Dated this the 4th day of March, 2015

J U D G M E N T

The issues involved in these both cases are closely interlinked and hence dealt with together. W.P.(C) No. 2102 of 2015 has been filed by the petitioners therein, seeking for a direction to be given to the concerned respondent to take appropriate steps to close down the unlicensed/unauthorised 'ice crusher' and 'conveyor belt' units in Puthiyappa Fishing Harbour and to ensure that no unlicensed/unauthorised 'conveyor belt ice crusher' units is installed or set up in the harbour. The case projected is that, the right to set up and operate the 'ice crusher' unit and 'conveyor belt' was auctioned by the 2nd respondent by inviting tender. On coming across the advertisement, the petitioners submitted necessary tender and on coming out successful in the bid, they were given sanction/licence as per Exts. P1(a) and P1(b) dated 22.09.2014 and 30.10.2014 respectively. Pursuant to this, a formal agreement was also executed with the authorities of the Government as borne by Exts.P2(a) and P2(b). The rights and liberties flowing from Exts.

P2 series are for a period of 'one year' from 24.10.2014 to 23.10.2015 and from 22.12.2014 to 21.12.2015 respectively. The petitioners have already invested huge amount in this regard. However, without any regard to the exclusive rights given to the petitioners, somebody in the locality sought to install an unauthorised 'ice crusher' unit and 'conveyance belt'. Though the petitioners made an attempt to bring the same to the notice of the concerned authorities, no effective action has been taken so far. Hence the writ petition.

2. In the course of further proceedings, after filing I.A. No. 1256 of 2015, the additional 6th respondent came to be impleaded in the party array pursuant to the order dated 05.02.2015 passed by this Court. Notice was served to the additional 6th respondent through special messenger and the matter was listed for further consideration on 09.02.2015. After receipt of the notice, the additional 6th respondent, who is stated as an office bearer of Puthiyappa Fishermen and Boat Owners Welfare Association, preferred W.P.(C) No. 6132 of 2015 before this Court, seeking to direct the 3rd respondent to take up Ext.P3 application for granting licence for the 'ice crusher unit' and 'conveyor belt' in the

Puthiyappa Fishing Harbour area with such other incidental reliefs.

3. Heard both the sides in detail.

4. The learned counsel for the petitioners in W.P.(C) No. 2102 of 2015 points out that, true state of affairs is discernible from the proceedings of the 3rd respondent vide Ext. P3. The attempt made by the 6th respondent, who is the petitioner in other case, brought the machine to the beach area on 14.10.2014 in the lorry bearing No. KL07 S 2628, to have the same installed unauthorisedly, has been specifically adverted to. The consequence that resulted because of such unauthorised exercise was brought to the notice of the City Police Commissioner, who is respondent No.4 herein, seeking for immediate interference to stall the attempt. Nothing transpired in the positive, which made the 3rd respondent to write to the 4th respondent again, as per Ext. P4 dated 04.12.2014, referring to the sequence of events. The rights and liberties of the persons like the petitioners and unauthorised attempt being pursued by the 6th respondent have been specifically mentioned in Ext. P4. This in turn is sought to be remedied by way of W.P.(C) No. 2102 of 2015.

5. The learned counsel appearing for the 6th respondent

in WP(C) No.2102/2015 and the petitioner in WP(C) No.6132/2015 submits that, the said petitioner's unit was already in existence in the area and that the petitioner only sought to replace the old machinery/unit by new one. Absolutely, no material has been produced before this Court as to the existence of the unit earlier, such as the licence issued by the concerned authorities, the permission or sanction given by the local authority, satisfaction of the electricity charges, bills or such other documents with regard to the procurement as to the business done earlier in this regard. The only version of the said petitioner is that, he had also moved the 3rd respondent by filing Ext.P2 application on 26.02.2014 and that no action has been taken so far, in spite of receipt of the same as evident from Ext.P3.

6. There is no dispute that the unit has to be installed in the 'beach area' and admittedly, the property is not belonging to the 6th respondent in WP(C) No.2102/2015 or the petitioner in the other case. Same is the position with regard to the property where the unit is set up by the petitioner in WP(C) No.6132/2015. The right to install and operate the unit was decided to be given on contract by the 3rd respondent, who had issued necessary

advertisement in this regard. Nothing prevented the petitioner in WP(C) No.6132/2014 to have participated in the bid. It was on becoming successful in the bid, that the work was awarded to the petitioners in WP(C) No.2102/2015 as borne by Exts.P1(a) and P1 (b), leading to Ext.P2(a) and P2(b) contracts. The validity will expire only on 23.10.2015 and 21.12.2015 respectively. This being the position, this Court finds that the petitioners in WP(C) 2102/2015 are having exclusive rights to operate the 'ice crusher unit' and the 'conveyor belt'.

7. It is also pointed out by the learned counsel for the petitioners therein that in terms of the work order, the petitioners are charging only ₹8 per 'ice block' and the 'ice blocks' brought to the units are being crushed and taken on the conveyor belt to be loaded in the fishing vessels near the Jetty. Because of the unauthorised operation of the unit by the 6th respondent/petitioner in the other case, there is every chance to result extensive loss. This Court finds considerable force in the said submissions.

8. In the said circumstances, this Court finds that the petitioners in WP(C) No.2102/2015 are entitled to succeed. There

will be a direction to the respondents to take all necessary steps to prevent unauthorised 'ice breaking unit'/'conveyor belt', if at all any, set up in the beach area, so as to enable the petitioners in WP(C) No.2102/2015 to have the benefits flowing from Ext.P1(a), P1(b), P2(a) and P2(b) during the subsistence of the contract awarded by the 3rd respondent. If at all any unauthorised unit has been set up, necessary steps shall be taken by the respondents 2 to 5 forthwith to see that such unit is removed from the beach area. WP(C) No. 2102/2015 stands allowed. No cost. As a natural consequence WP(C) No.6132/2015 stands dismissed.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

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