

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 2211 of 2015 (B)

PETITIONER:

P.R.PAUL, S/O RAPPAL, AGED 64 YEARS,
PORATHOORKARAN HOUSE, CHENGAL,
KALADY P.O, ERNAKULAM.

BY ADV. SRI.S.NIDHEESH

RESPONDENT(S):

1. THE KANJOOR GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, KANJOOR,
CHENGAL, ERNAKULAM DISTRICT - 683 574.
2. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, ERNAKULAM-682020.
3. THE HEALTH INSPECTOR,
PUBLIC HEALTH CENTRE, KNAJOOR,
ERNAKULAM DISTRICT - 683 575.
4. THE SUB INSPECTOR OF POLICE ,KALADY - 683574.
5. LUCY JOSE, PONTHEMPILLY HOUSE,
CHENGAL, KALADY P.O, ERNAKULAM - 683 574.
6. SHYJU, S/O LUCY, PONTHEMPILLY HOUSE,
CHENGAL, KALADY P.O., ERNAKULAM - 685 574.

*ADDLD. R7 TO R9 IMPEADED

7. KUNJEESHO, S/O.OUSEPH, THEKKANATH HOUSE,
CHENGAL, KALADY.P.O., ERNAKULAM.
8. BAIJU, S/O. OUSEPH, PONTHEMPILLY HOUSE,
CHENGAL, KALADY.P.O., ERNAKULAM.

**9. VARGHESE, S/O.OUSEPH, PONTHEMPILLY HOUSE,
CHENGAL, KALADY.P.O., ERNAKULAM.**

**ADDL. R7 TO R9 ARE IMPEADED AS PER
ORDER DATED 30.07.2015 IN IA.10427/2015.**

**R1 BY ADVS. SRI.T.V.JAYAKUMAR NAMBOODIRI
SRI.K.VARGHESE KUTTY THOMAS
R2 BY SRI. M.AJAY, SC
R3 & R4 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN
R5 & R6 BY ADV. SRI.T.K.VENUGOPALAN
ADDL. R7 TO R9 BY ADV. SRI.SAJU J.VALLYARA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE LOCATION SKETCH.
- EXHIBIT P2: TRUE COPY OF THE COMPLAINT DATED 26.7.2013 OF THE PETITIONER.
- EXHIBIT P3: TRUE COPY OF THE COMPLAINT OF THE PETITIONER DATED 13.10.2014.
- EXHIBIT P4: TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT DATED 1.11.2014.
- EXHIBIT P5: TRUE COPY OF THE NOTICE DATED 17.10.2014.
- EXHIBIT P6: TRUE COPY OF THE COMPLAINT DATED 12.12.2014.
- EXHIBIT P7: TRUE COPY OF THE INFORMATION OBTAINED ON DATED 20.12.2014 FROM PUBLIC INFORMATION OFFICER.
- EXHIBIT P8: TRUE COPY OF STOP MEMO DATED 7.1.2015.
- EXHIBIT P9: TRUE COPY OF THE PETITION FILED BEFORE THE 4TH RESPONDENT DATED 22.12.2014.
- EXHIBIT P10: TRUE COPY OF THE ACKNOWLEDGMENT FOR THE PETITION FILED BEFORE THE 4TH RESPONDENT DATED 6.1.2015.

RESPONDENT(S)' EXHIBITS:

- EXT. R6(A) : TRUE COPY OF CONSENT AUTHORIZATION GRANTED BY THE 2ND RESPONDENT.
- EXT. R6(B) : TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT ON 27.3.2015.

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.2211 of 2015 - B

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Dated this the 30th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the respondents 5 and 6 are carrying on a nutmeg processing unit, which does not have a consent from the Pollution Control Board nor a licence from the Panchayat. The additional respondents impleaded herein are the residents of the locality, who support the petitioner.

2. I have heard the learned Counsel for the petitioner, learned Standing Counsel for the Pollution Control Board, the learned Counsel appearing for the respondents 5 and 6 as also the additional respondents and the learned Counsel for the Panchayat.

3. The controversy is in a narrow compass as to whether the respondents 5 and 6 have a valid licence from all the statutory authorities as prescribed under the various enactments.

The respondents 5 and 6 have now produced Ext.R6(a) consent, which has been obtained from the Kerala State Pollution Control Board. True, earlier, the Pollution Control Board and the Health Inspector of the Panchayat had inspected the property and found pollution, with respect to the operations conducted therein. The reports are produced at Exts.P4 and P8. However, now the Pollution Control Board has granted the consent after imposing stringent conditions is the submission of the learned Counsel for the respondents 5 and 6. The learned Counsel also points out Ext.R6(b), which is a communication of the Panchayat, indicating that the licence by the Panchayat is not considered due to the pendency of the writ petition.

4. The petitioner and the additional respondents contend that sulphur is used for fumigation in the unit of the respondents 5 and 6 and in such circumstance, respondents 5 and 6 have to obtain a licence under the Explosives Act, 1884 read with the Explosives Rules, 2008.

5. The learned Counsel appearing for the respondents

5 and 6 however would refute such submission made across the bar contending that there are no pleadings to that effect. In any event, the question now revolves around the operation of the unit without a licence from the Panchayat, which admittedly cannot be carried out. As to the licence to be issued from the Panchayat, there is a dispute with respect to whether the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules 1996 (for brevity, the Rules of 1996) applies.

6. Though the respondents 5 and 6 denied that they are using sulphur, the learned Counsel would submit that, in any event, the same would not come under the Rules of 1996, since, sulphur is not used for any of the activities specifically noticed in Schedule 1 of Item No.113 of the Rules of 1996, which reads as under:-

113. Sulphur- Storing, processing,
cleansing, preparing or selling.

7. Rule 3 of the Rules of 1996 describes the

dangerous and offensive trades as has been laid down in the first schedule and the purposes for which such materials are put to use have also been enumerated thereunder. A reading of Item No.113 as extracted herein above would show that even storing or processing would require a licence under the rules of 1996.

8. Hence if sulphur is used in fumigation, necessarily, respondents 5 and 6 would have stored such material in the unit and use in fumigation would definitely fall under the definition of 'processing'. Hence, there can be no dispute that the Panchayat has to consider the issuance of the licence under the Rules of 1996.

9. The Pollution Control Board have issued a consent to operate, produced at Ext.R6(a), which has again substituted by another order making stringent the conditions stipulated for operation of the unit. In such circumstance, it is for the Panchayat to consider the application made by the respondents 5 and 6 as indicated herein above. The Panchayat before consideration of such application, shall also hear the

representatives of the petitioner and the additional respondents before issuance of a licence. The question of whether the respondents 5 and 6 would require an explosive licence is left open. If a licence is granted by the Panchayat and when the respondents 5 and 6 commence operation, necessarily the Pollution Control Board would have to examine whether conditions in the consent to operate has been scrupulously followed and also conduct a physical inspection with notice to the respondents 5 and 6 as also the other residents of the locality, as to whether any pollution is caused on the actual operation of the unit. It is made clear that the respondents 5 and 6 shall not operate the unit until and unless all statutory permissions and licences are obtained.

In such circumstance, the writ petition would stand disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge.