

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 11011 of 2015 (B)

PETITIONER :

**M/S.SOUTHERN GRANITE INDUSTRIES,
MOOKKUNNIMALA, EDACODE, NEMOM P.O.,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING PARTNER K.J.THOMASKUTTY.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN**

RESPONDENT(S):

- 1. PALLICHAL GRAMA PANCHAYAT,
VEDIVACHANKOVIL P.O, BALARAMAPURAM,
THIRUVANANTHAPURAM-695 501,
REPRESENTED BY ITS SECRETARY.**
- 2. SECRETARY,
PALLICHAL GRAMA PANCHAYAT, VEDIVACHNKOVIL P.O.,
BALARAMAPURAM, THIRUVANANTHAPURAM-695 501**

BY SRI.T.K.ANANDA KRISHNAN,SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-04-2015,ALONG WITH WP(C).NO.11012 OF 2015 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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C.R.

DAMA SESHADRI NAIDU, J.

**W.P.(c) No. 11011 of 2015,
W.P.(c) No. 11012/2015,
W.P.(c) No.11013/2015,
&
W.P.(c) No.11014/2015**

Dated this the 06th day of April, 2015

COMMON JUDGMENT

W.P. (C) Nos. 11011 and 11013/2015 were filed by two companies respectively seeking renewal of D&O licence by the respondent Grama Panchayat to enable the said companies to carry on with their quarry operations. The same companies have also filed W.P. (C) Nos.11012 & 11014/2015 respectively seeking the self same relief concerning their crusher units. Since identical issues have been raised, involving the same set of respondents, this Court proposes to dispose of all the four writ petitions through a common judgment.

2. To begin with, there is not much factual controversy in the writ petitions. The petitioners have their respective units – mining and crusher units – functioning for the past couple of years. Since the D&O licence was to come to an

end by 31.03.2015, which period has been disputed by the learned counsel for the petitioners saying that in some cases it is up to 30.04.2015, the petitioners are said to have submitted applications for renewal of the licences. Questioning the inaction on the part of the respondent Grama Panchayat in considering those applications, the petitioners have filed the present writ petitions.

3. The learned counsel for the petitioners has submitted that the petitioners have submitted applications for renewal of D&O licence in strict statutory compliance, having all the other requisite permits and licences. According to him, there is no hindrance whatsoever for the respondent Grama Panchayat to consider those applications expeditiously.

4. The learned counsel for the Grama Panchayat, on instructions, has submitted that though the Grama Panchayat is inclined to consider the applications, it could not take any initiative in that regard owing to public protest. To a specific query from this Court, the learned counsel for the Grama Panchayat has replied that, apart from the public protest, there is no other impediment for the Grama

Panchayat to consider the applications. He has also submitted that the units being functional, no violation has been brought to the notice of the Grama Panchayat.

5. This Court has observed in numerous writ petitions a common theme running through: the Local Self Governments are unable to discharge their statutory functions, despite the applicants' eligibility to obtain, as in this case, licences, solely on the ground that there have been public protests concerning the issues.

6. Indeed, peaceful protest is a constitutionally consecrated right under Article 19 of the Constitution of India. At any rate, it is used as a measure to bring to the notice of the executive the shortcomings in their administration or concerning any policy prerogatives that may have been affecting the public at large.

7. As public protests are the order of the day, exerting, some times justifiably and some other times not so justifiably, enormous pressure on the public functionaries, especially at the local government level, it is apposite to dwell on the issue with some detail in the present disposition.

8. Protest is a symbol of strident and vibrant democracy. It is thinking out loud in a democratic discourse — a discourse nevertheless. Public protest is a quasi-legal mechanism at the hands of the general populace for a policy change or even nullification, but not statutory annihilation; whereas the exercise of franchise is the very legal mechanism for the same purpose. Thus, the general elections being a constitutional and statutory protest against or affirmation of the executive and legislative policies, public protests, on the other hand, are the intermittent instances of 'thinking-aloud' in between. The core constitutional principle of a Republic is the notion that a democratic government, paradoxical as it sounds, is a government of laws, not of men of majority. In *Marbury v. Madison*, [5 U.S. 137, 163 (1803)], Chief Justice Marshall has, in unmistakable terms, echoed the words of John Adams that the Government of United States is a government of laws and not of men. It rings true of any other democratic republic, not particularly the U.S.

9. Erick J. Haynie in 'Populism, Free Speech, and the Rule of Law: The Fully Informed Jury Movement and its

Implications’, [88 J. Crim. L. & Criminology 343 (Fall 1997)], has said that under the rule of law, citizen behavior is regulated not according to the passions and prejudices of human beings, but according to objective, published laws formally sanctioned by elected representatives through a pre-ordained process. Nevertheless, this Court is of the view that there is no denying that populism vis-à-vis democracy is a highly contested concept, for democracy has the popular mandate as its base and the rule of law as its crown—a seeming contradiction cap-a-pie. Be that as it may, a popular protest is, perhaps, a symptom of policy discontent, but not at all a remedy in itself.

10. Dissent is the keystone of the democratic edifice, but it has to be in conformity with the very fabric of the edifice—the rule of law. Dissent thus being the legitimate stuff of democracy, its course altering potential is undeniable. It is not unknown that the success of the Allies during World War II or the defeat of Hitler and other Axis powers is attributed to the course correcting dissent in the Allied nations and its absence in Axis powers. Democracy is a cauldron of conflicting political ideologies and policy

preferences; the churning—orderly, though—must go on, so that the manna or nectar of common good emerges.

11. Indeed, the venerable principle that eternal vigilance is the price of liberty is the constant refrain of any democratic anthem. There is, however, a cause for caution and concern that with dissent sans conformity, a democratic society descends into anarchy; however, when regulated, it leads to progress. It is, in essence, a vice rather than a virtue to substitute public opinion for law, which in itself is the sanctified popular will. The line being thin, let us examine the constitutional contours of free speech and association vis-à-vis the rule of law. We may begin with the most felicitous words of Abraham Lincoln concerning the constant conflict between the law and public protests (Pg.320, The Oxford Dictionary of American Legal Quotations, 1993 Edn):

“Let me not be understood as saying there are no bad laws, nor that grievances may not arise, for the redress of which, no legal provisions have been made. I mean to say no such thing. But I do mean to say, that, although, bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, they should be religiously observed.”

12. 'Civil disobedience' can be defined as nonviolent direct action that breaks a law. Theorists of liberal democracy usually consider political actions to fall into the category of legitimate civil disobedience if they are deliberate, nonviolent, non-revolutionary, done in public and done mainly to educate or persuade the majority (*Vide* Zashin, Elliot M. 1972. *Civil Disobedience and Democracy*. New York: Free Press.)

13. Far from destabilising democracy, protest has been instrumental in forcing the introduction of most of the freedoms that now exist in liberal democracies. Direct action, mostly nonviolent, played a major role in the ending of slavery, extension of the franchise, curtailing ruthless aspects of the exploitation of labour and extending rights to women and minorities. Many of the so-called normal channels for working through the system, which are often recommended as prior to or preferable to direct action, have themselves been established through direct action. Many of the constitutions which embody the rights and restrictions which have come to be identified with the status quo were established not in calm contemplation but in the aftermath

of social revolution or turmoil (*Vide* Carter, April. 1973. *Direct Action and Liberal Democracy*. London: Routledge and Kegan Paul.)

14 Exercising one's franchise in a general election is a wholesale political action, whereas intermittent protests are the preludes to the eventual wholesale action. Thus the protests on a smaller scale involving people of particular areas, *a la* voting with feet, are usually confined to parochial pockets concerning the issues which are quotidian. They are essentially aimed at achieving immediate objectives of transitory nature, mostly. Essential as they are, they can never transcend the law, though.

15. In *Beenu Rawat v. Union of India*, (2013) 16 SCC 430, the Hon'ble Supreme Court has held thus:

"14. In Part III of the Constitution of India Article 21 enjoys special status. Right to life and right to liberty are of historical importance. Rise of modern democratic State is attributable to a long-drawn battle waged by ordinary people against the sovereign power. The law is now well settled that the State or its functionaries cannot deprive any person of his life which includes the right to live with human dignity except in accordance with law. The maximum threat to such fundamental right is perceptible when any kind of protest or agitation is directed against the police force for reasons which are self-evident. Police is licenced to carry arms for protecting the people. This itself creates a

situation where the power of arms may be misused under the mistaken belief in the absolutism of the police power or on account of lack of sensitivity to the democratic rights of the people to register peaceful protest, against wrongs, especially that of public functionaries. The submissions on behalf of the respondents that nobody can be permitted to paralyse the functioning of police or other State institutions in a name of public protest cannot be rejected off hand because it is only a corollary of the right to protest peacefully; proverbially the other side of the coin which corroborates the well-accepted principle that rights without duties tend to degenerate into licence for misuse of rights. In a given case, the facts may lead to such conclusions. Hence facts and circumstances in such cases need to be scrutinised carefully."

16. In *D.C. Saxena v. Chief Justice of India* [(1996) 5 SCC 216] the Apex has pertinently observed thus:

"31. If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious viz. that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation. Therefore, freedom of speech and expression is

tolerated so long as it is not malicious or libellous, so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right."

17. Having referred to the above pronouncements, the Apex Court in *Ramlila Maidan Incident, In re, (2012) 5 SCC 1*, has observed as follows:

"44. The distinction between "public order" and "law and order" is a fine one, but nevertheless clear. A restriction imposed with "law and order" in mind would be least intruding into the guaranteed freedom while "public order" may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, "security of the State" is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of "public order" and "law and order". However stringent may these restrictions be, they must stand the test of "reasonability". The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

18. After exhaustively considering the constitutional contours of the right to protest, their Lordship in *Ramlila Maidan Incident* (supra), have further observed thus:

"245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful

agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.

246. The "law and order" or "public order" are primarily and certainly the concerns of the State. Police, being one of the most important organs of the State, is largely responsible for ensuring maintenance of public security and social order. To urge that the police have no concern with the holding of public meetings would be a misnomer and misunderstanding of law. To discharge its duty, the police organisation of a State is a significant player within the framework of law. In this view of the matter, I may now refer to certain statutory provisions under the relevant Acts or the Rules.

19. Indeed, exalted as the right to protest is, as has been consecrated under Article 19 (1) (a) & (b) of the Constitution, albeit subject to the restrictions under Article 19 (2) thereof, the State is, equally under an obligation to

take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its people. So long as the democracy does not descend into mobocracy, the protest is paramount as a method of democratic discourse and also as a mode of dissemination of information. It is, to repeat, at best a method to exert pressure on the legislature or the executive to change or fine tune its legislative or administrative policies as the case may be. It is, without any cavil, to be asserted that however justified an instance of protest is, it cannot hold the rule of law for ransom and negate the statutory mandate. Thus, the officials can hardly be heard saying that they could not discharge their statutory duties on a mere premise that there have been protests.

20. In the present instance, the Grama Panchayat has been candid enough to admit that the petitioners are entitled to have their applications considered on merits and that had it not been for the public protest, the Grama Panchayat would have already disposed of the applications submitted by the petitioners in accordance with law.

21. In the facts and circumstances, this Court disposes of the writ petitions with a direction to the respondent

Grama Panchayat to consider petitioners' applications for renewal of D&O licence strictly in accordance with law, notwithstanding the so called public protests and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observations, these writ petitions stand disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-