

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 11030 of 2015 (C)

PETITIONER:

SANTU PETER, AGED 50 YEARS
S/O.(LATE) C.L.PATHROSE, PROPRIETOR
CHIRAYATH GRANITES, KOOVAPADY P.O, KOODALAPPAD
ERNAKULAM, 683 544.

BY ADVS.SRI.P.N.SANTHOSH
SMT.K.P.GEETHA MANI
SRI.P.N.APPUKUTTAN
SMT.ASWATHI APPUKUTTAN

RESPONDENTS:

1. OKKAL GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, OKKAL P.O
ERNAKULAM DISTRICT. 683 550.
2. E.M.JOSE
ETTIKATTIL HOUSE, KOOVAPADY P.O, KOODALAPPAD
ERNAKULAM, 683 544.
3. C.V.SUPRIYAN
CHIRAYATH HOUSE, KOOVAPADY P.O, KOODALAPPAD
ERNAKULAM, 683 544.
4. ROBIN PAPPACHAN
CHIRAYATH HOUSE, KOOVAPADY P.O, KOODALAPPAD
ERNAKULAM, 683 544.
5. M.A.ANWAR MUNDETH
PRESIDENT, OKKAL GRAMA PANCHAYAT, OKKAL P.O.
ERNAKULAM DISTRICT - 683 550.

R2 TO R4 BY ADV. SRI.ANIL KUMAR M.SIVARAMAN
R1 BY ADV. SRI.PHILIP J.VETTICKATTU, SC
R1 BY ADV. SRI.B.PREMNATH (E), SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07.10.2015, THE COURT ON 12.10.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. COPY OF THE NO OBJECTION CERTIFICATE DATED 12.12.96 ALONG WITH THE SITE PLAN ISSUED BY THE DISTRICT MEDICAL OFFICER, ERNAKULAM TO THE THEN SECRETARY, KOOVAPPADY GRAMA PANCHAYAT IN RESPECT OF THE CRUSHER OWNED BY THE PETITIONER.

EXHIBIT P2. COPY OF THE LICENCE DATED 20.03.07 ISSUED TO THE PETITIONER'S FATHER BY THE OKKAL GRAMA PANCHAYAT.

EXHIBIT P2(A). COPY OF ENGLISH TRANSLATION OF EXHIBIT P2.

EXHIBIT P3. COPY OF THE LICENSE DATED 17.4.13 ISSUED TO THE PETITIONER'S FATHER WHICH WAS VALID TILL 31.3.14.

EXHIBIT P3(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P3.

EXHIBIT P4. COPY OF THE ORDER DATED 13.12.13 IN APPEAL NO. 966/13 OF THIS HONOURABLE TRIBUNAL.

EXHIBIT P5. COPY OF THE LICENCE DATED 16.1.14 ISSUED BY THE OKKAL GRAMA PANCHAYAT FOR CONDUCTING THE CRUSHER UNIT WITH 49 HP MOTOR AND ALSO THE MATTIMANAL UNIT USING 80 HP MOTOR IN THE NAME OF THE PETITIONER.

EXHIBIT P5(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P5.

EXHIBIT P6. COPY OF THE LICENCE DATED 4.2.14 ISSUED BY THE OKKAL GRAMA PANCHAYAT IN THE NAME OF THE PETITIONER WHICH WAS VALID UP TO 31.3.14.

EXHIBIT P6(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6.

EXHIBIT P7. COPY OF THE COMMUNICATION DATED 18.11.00 ISSUED BY THE SECRETARY TO GOVERNMENT TO THE DISTRICT LABOUR OFFICER, ERNAKULAM WITH COPY TO THE PETITIONER'S FATHER.

EXHIBIT P8. COPY OF THE FITNESS CERTIFICATE DATED 30.09.05 ISSUED BY THE DISTRICT MEDICAL OFFICER, ERNAKULAM TO THE THEN SECRETARY, KOOVAPPADY GRAMA PANCHAYAT.

EXHIBIT P9. COPY OF THE ACKNOWLEDGMENT (PART II) DATED 4.4.08 ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM IN RESPECT OF THE CRUSHER UNIT OWNED BY THE PETITIONER'S FATHER.

EXHIBIT P10. COPY OF THE CONSENT NO. PCB/DO-EKM/IC-CR 22/R1/2010 DATED 27.3.10 WHICH WAS VALID UP TO 30.6.12 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.

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EXHIBIT P11. COPY OF THE CONSENT TO OPRATE/RENEWAL ORDER DATED 28.2.13 WHICH IS VALID UP TO 30.6.15 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.

EXHIBIT P12. COPY OF THE CONSENT VARIATION ORDER DATED 26.4.13 ISSUED BY THE STATE POLLUTION CONTROL BOARD TO THE PETITIONER.

EXHIBIT P13. COPY OF THE DEALER'S LICENCE DATED 2.5.13 WHICH IS VALID UP TO 31.3.14 GIVEN TO THE METAL CRUSHER UNIT.

EXHIBIT P14. COPY OF THE DEALERS LICENCE DATED 7.7.14 WHICH IS VALID UP TO 31.3.15 ISSUED UNDER RULE 48C, OF THE KERALA MINOR MINERAL CONCESSION RULES, 1967.

EXHIBIT P15. COPY OF THE D&O LICENCE DATED 31.5.14 ISSUED BY THE RESPONDENT PANCHAYAT TO THE PETITIONER.

EXHIBIT P15(A). THE ENGLISH TRANSLATION OF EXHIBIT P15.

EXHIBIT P16. COPY OF THE ORDER DATED 20.6.14 ISSUED BY THE PRESIDENT OF THE RESPONDENT PANCHAYAT.

EXHIBIT P16(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P16.

EXHIBIT P17. COPY OF THE ORDER NO.A2.4832 DATED 19.12.13 ISSUED BY THE RESPONDENT TO THE FATHER OF THE PETITIONER FOR INSTALLATION OF THE ADDITIONAL MACHINERY.

EXHIBIT P17(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P17.

EXHIBIT P18. COPY OF THE APPLICATION DATED 24.02.14 ALONG WITH THE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF THE AMOUNT FOR RENEWAL OF HIS LICENCE.

EXHIBIT P18(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P18.

EXHIBIT P19. COPY OF THE PROCEEDINGS DATED 04.09.13 ISSUED BY THE RDO AGAINST THE PANCHAYATPRESIDENT AND HIS METAL CRUSHER UNIT.

EXHIBIT P19(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P19.

EXHIBIT P20. COPY OF THE DECISION NO.30 DATED 22.7.14 OF THE PANCHAYAT COMMITTEE WHICH WAS RECEIVED UNDER THE RIGHT TO INFORMATION ACT

EXHIBIT P20(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P20.

EXHIBIT P21. COPY OF THE DECISIOON NO. 7 OF THE COMMITTEE CONVENED ON 12.8.14 OF THE RESPONDENT PANCHAYATALONG WITH THE COVERING LETTER DATED 18.08.14.

EXHIBIT P21(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P21.

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EXHIBIT P22. COPY OF THE JUDGMENT DATED 02.09.14 IN WPC 22000 OF 2014 OF THE HONOURABLE HIGH COURT OF KERALA.

EXHIBIT P23. COPY OF THE ORDER NO.HC 5605 DATED 19.09.14 ISSUED BY THE RESPONDENT HEREIN DIRECTING THE PETITIONER TO STOP THE FUNCTIONING OF THE CRUSHER UNIT.

EXHIBIT P23(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P23.

EXHIBIT P24. COPY OF THE REPRESENTATION DATED 27.09.14 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT PANCYAYAT.

EXHIBIT P24(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P24.

EXHIBIT P25. COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT PANCHAYAT

EXHIBIT P25(A). COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P-25.

EXHIBIT P26. COPY OF THE DECISION NO.2 DATED 18.10.14 OF THE IST RESPONDENT PANCHAYAT ALONG WITH THE COVERING LETTER DATED 23.10.14.

EXHIBIT P26(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P26

EXHIBIT P27. COPY OF THE REVISION PETITION NO. 143/14 FILED BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS THIRUVANANTHAPURAM.

EXHIBIT P28. COPY OF THE STAY ORDER DATED 25.10.14 IN IA 2464/14 IN REVISION PETITION NO.143 OF 2014 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT THIRUVANANTHAPURAM.

EXHIBIT P29. COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS 2 TO 4 IN THE IA 2464/14 IN RP NO.143/14 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM.

EXHIBIT P29(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P29.

EXHIBIT P30. COPY OF THE WRITTEN STATEMENT FILED BY THE IST RESPONDENT IN RP 143/14 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM.

EXHIBIT P31. COPY OF THE ORDER DATED 17.12.14 IN IA 2464/14 IN RP 143/14 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM.

EXHIBIT P32. COPY OF THE ORDER DATED 3.3.15 IN RP 143/14 OF THE HONOURABLE TRIBUNAL FOR LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM.

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EXHIBIT P33. COPY OF THE IA 7268/14 IN WPC 1282/14 FILED BY THE RESPONDENTS 2 TO 4 BEFORE THIS HONOURABLE COURT.

EXHIBIT P34. COPY OF THE ORDER DATED 11.07.14 IN IA 7268/14 IN WPC 1282/14 OF THIS HONOURABLE COURT.

EXHIBIT P35. COPY OF THE APPLICATION FOR RENEWAL SUBMITTED BY THE PETITIONER ON 18.2.15 BEFORE THE 1ST RESPONDENT.

EXHIBIT P35(A).COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P35.

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(a) – TRUE COPY OF THE d&o LICENSE ISSUED BY THE PANCHAYAT FOR RUNNING THE ABOVE 49 HP METAL CRUSHER UNIT.

EXHIBIT R2(b) – TRUE COPY OF THE ORDER DATED 22.8.2012 IN W.P.(C) NO.20091/12.

EXHIBIT R2(c) – TRUE COPY OF THE APPLICATION FOR LICENCE SUBMITTED BY the FATHER OF PETITIONER SEEKING PERMISSION FOR INSGTALLING THE ADDITIONAL MACHINERIES.

EXHIBIT R2(d) – TRUE COPY OF THE ORDER DATED 15.1.2014 IN W.P.(c) NO,1282/2014.

EXHIBIT R2(e) – TRUE COPY OF THE JUDGMENT DATED 31.5.2014 IN W.P.(C) NO.1281/2014.

EXHIBIT R2(f) – TRUE COPY OF THE D & o LICENSE DATED 31/5/2014 ISSUED TO THE RESPONDENT FROM OKKAL GRAMA PANCHAYAT.

EXHIBIT R2(g) – TRUE COPY OF THE JUDGMENT DATED 4.11.2014 IN W.P.(c) NO.28866/2014.

//TRUE COPY//

P.A TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C) No.11030 of 2015

Dated this the 12th day of October, 2015

JUDGMENT

This writ petition is filed by the defeated petitioners in R.P. No.143/2014 dated 03.03.2015 of the Tribunal for Local Self Government Institutions, Thiruvananthapuram (hereinafter referred to as "the Tribunal" for short).

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner is the owner of a Crusher Unit functioning from the year 1996 onwards. While so, petitioner has applied for installing an additional capacity of 99 HP Motor, which was rejected by the 1st respondent Panchayat. The said order was challenged before the Tribunal and the same was allowed directing the 1st respondent to pass appropriate orders on the application. Since the 1st respondent failed to pass any order, petitioner has again approached the Tribunal and thereupon the Tribunal by Ext.P4 order dated 13.12.2013 has declared that petitioner has obtained deemed licence under Section 236 (3) of

the Kerala Panchayat Raj Act. The said order was challenged by respondents 2 to 4 before this Court by filing W.P.(C) No.1282/2014 and obtained a stay of Ext.P4 order. But when the validity of the permit itself has expired on 31.03.2014, the said writ petition was disposed of by this Court by Ext.P29 judgment holding that the Unit in question is not functioning, that no fresh application for licence has been submitted and in view of the same the grievance of the petitioners in the writ petition is no longer surviving.

4. Pending the above writ petition, petitioner has submitted an application for renewal of his D&O licence on 24.02.2014 by remitting the required licence fee. Thereafter, on dismissal of the writ petition, licence was renewed by the Secretary. It is the contention of the petitioner that the President of the Panchayat who is also the proprietor of another Crusher Unit within a distance of 400 meters of the Crusher Unit owned by the petitioner, has issued an order staying the licence issued by the Secretary of the 1st respondent invoking power under Sections 276(1) and (2) of the Kerala Panchayat Raj Act. Thereafter, the Panchayat Committee has cancelled the licence given to the

petitioner based on a petition filed by respondents 2 to 4 which was challenged by the petitioner before the Tribunal and obtained a stay order. However, consequent to the written statement filed by respondents 2 to 4, Tribunal has vacated the stay order. Even though petitioner has filed W.P.(C) No.35445/2014 challenging the order vacating the stay, the same was dismissed as withdrawn consequent on the dismissal of the Revision Petition itself. Petitioner contends that consequent to the complaint filed by respondents 2 to 4 an industrial unit functioning for the past 18 years was stopped.

5. To cut a long story short, on the basis of an appeal filed by respondents 2 to 4 against the grant of licence, by Ext.P26 order dated 23.10.2014, 1st respondent Panchayat allowed the appeal and thereby cancelled the granted permit to the petitioner. The said order was challenged before the Tribunal by filing R.P. No.143/2015 and by Ext.P32 impugned order the revision filed by the petitioner was dismissed. It is thus challenging the said order of the Tribunal, this writ petition is filed.

6. First respondent has filed a counter affidavit contending

that the Panchayat Committee in view of the complaints received from the general public decided to refuse establishment permit to the said proposed expansion sought for by the petitioner. In view of the decision of the Panchayat Committee, the Secretary of the Panchayat has issued notice directing the petitioner to stop functioning of the Unit on 19.9.2014. It is further contended that Ext.P32 order is legal and valid and therefore, any interference in the same is uncalled for.

7. Respondents 2 to 4 has filed a counter affidavit narrating the entire history of the case and contended that without securing a licence from the Panchayat, petitioner has started the weather sand production unit by employing additional machinery and further that the functioning of the unit was causing innumerable difficulties and nuisance to the public at large. Apart from the same, it is contended that the observations made by this Court in its judgment in W.P.(C) 28866/2014 is worth noting. Further learned counsel contended that the impugned order of the Tribunal is in accordance with law and therefore, no interference is warranted.

8. I heard learned counsel for the petitioner

Sri.P.N. Santhosh, learned counsel for the 1st respondent Sri.Philip J. Vettickattu and learned counsel for respondents 2 to 4 Sri.M.S. Anil Kumar.

9. Learned counsel for the petitioner contended that Ext.P26 order passed by the Panchayat in appeal preferred by respondents 2 to 4, no reasons are assigned apart from saying that the unit of the petitioner was causing innumerable difficulties to the general public and therefore, no permit can be granted for expansion of the unit. Learned counsel also contended that in Ext.P32 impugned order passed by the Tribunal the reasons for dismissal are stated in paragraph 9 and 10 which read as follows:

“9. According to learned counsel for the counter petitioners 2 to 4 the contempt case was closed at 12.35 pm but on the same day while the retirement party of the Secretary was going on he issued fresh D&O licence to the revision petitioner in violation of the undertakings made before the Hon'ble High Court and bypassing the orders of the Hon'ble High Court for extraneous consideration renewed the licence on the same day, i.e. 31.05.2014, the copy of which is produced as document No.7 from the side of the revision petitioner by which the licence is renewed upto 31.03.2015. That was challenged before the Panchayat Committee by the counter petitioners 2 to

4. In view of the closure of the contempt case by the Hon'ble High Court as per the unconditional apology offered by the Secretary and further finding that the unit is not functioning and stop memo was issued, the contempt case was closed on 31.05.2014 but on the same day the licence is renewed up to 31.03.2015 by the Secretary. So as rightly contended by the learned counsel for the counter petitioners 2 to 4 the act of the Secretary in renewing the licence in spite of the unconditional apology offered before the Hon'ble High Court is seems to be highhanded and arbitrary. It is also relevant in this context to note that the writ petition filed by the counter petitioners 2 to 4 against the judgment in Appeal 966/2013 as W.P.(C) No.1282/2014 declaring deemed permit is also closed by the Hon'ble High Court taking note of the submission of the counsel for the revision petitioner herein, which reads as follows:

“According to the counsel for the additional 6th respondent as well as 2nd and 3rd respondents (Okkal Grama Panchayat and Secretary) the term of deemed licence to which the Tribunal had held the 4th respondent entitled to, has expired on 31.3.2014. The unit in question is not functioning. No fresh application for licence has been submitted. Therefore, no licence has been issued to the unit also.

In view of the above, the grievance of the petitioners in the writ petition is no longer surviving. This writ petition is therefore dismissed as infructuous.”

10. Contrary to that the application for renewal of licence has been submitted by the revision petitioner before the counter petitioner Panchayat, copy of which is produced as document No.6. Licence also renewed on 31.5.2014 for the period 2014-15. So from the above fact situation without any further discussion it can safely be concluded that the act of the Secretary in renewing the licence is arbitrary and illegal and is also contrary to the submission made before the Hon'ble High Court while dismissing the writ petition filed by the counter petitioners 2 to 4 challenging the deemed permit granted by this Tribunal in Appeal 966/2013. So the Panchayat has rightly set aside the licence so issued by the Secretary in the impugned decision in appeal. So I find no reason to interfere with the same."

10. Now I am called upon to consider whether there is any illegality in the order passed by the Tribunal in order to judicially review the same. I have gone through Ext.P26 order passed by the Panchayat Committee in which the sole reason stated for allowing the appeal and cancelling permit issued to the petitioner is that the public at large will be put to difficulties consequent to various diseases that can occur and it will affect the water source depending by the local people. According to me, that was not a sufficient ground to decline a permit to the petitioner. Provisions are prescribed under the Panchayat Raj

Act and other allied Rules providing parameters for granting and declining licence. I do not think that the reason stated in Ext.P26 is sufficient enough to decline a licence/permit to an applicant.

11. Any how when this was challenged before the Tribunal, the Tribunal was carried away by other reasons like suppression of material facts before this Court in earlier proceedings. This is reflected from the paragraphs extracted supra. The Tribunal has further failed to assign any reason at all convincing under law to justify its order. When a revision was filed by the petitioner challenging an order passed by the Panchayat Committee, the Tribunal ought to have assessed and evaluated the legality of the said order and passed an order on merit, taking into account the grounds raised by the revision petitioner and objections raised by the respondents to the same. On a perusal of the impugned order, it is clear that, Tribunal was carried away the contentions raised by the party respondents and certain observations made by a learned Single Judge of this Court in an earlier proceedings. That by itself was not a sufficient ground for the Tribunal to dismiss the revision petition filed by the petitioner. Tribunal has

to make an objective assessment of the circumstances raised by the revision petitioner and the objections raised by the respondents. Having not done so, I am of the considered opinion that Ext.P3 impugned order of the Tribunal is liable to be quashed and accordingly I do so.

For the foregoing reasons, the Tribunal is directed to reconsider the revision petition filed by the petitioner taking into account the contentions raised by the petitioner as well as the objections raised by the respondents. In view of the nature of the case, I direct the Tribunal to take a decision after hearing all concerned within a period of two months from the date of receipt of a copy of this judgment untrammelled by any observations contained in this judgment.

Sd/-
SHAJI P. CHALY
JUDGE

smv
07.10.2015