

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

**WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937**

**WP(C).No. 14575 of 2014 (V)**  
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**PETITIONER(S) :**  
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- 1. ANIL KUMAR M.K.,  
MULLASSERY HOUSE, KODALAPPADU, KOOVAPPADY P.O.,  
PERUMBAVOOR, ERNAKULAM.**
- 2. PAUL BABY,  
VADAKKUMPADAM, KODALAPPADU, KOOVAPPADY P.O.,  
PERUMBAVOOR, ERNAKULAM.**
- 3. SHAIJU,  
CHIRAYATH, KODALAPPADU, KOOVAPPADY P.O.,  
PERUMBAVOOR, ERNAKULAM.**

**BY ADVS.SMT.P.M.SWAYAM PRABHA  
SRI.ANIL KUMAR M.SIVARAMAN**

**RESPONDENT(S) :**  
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- 1. THE DISTRICT COLLECTOR,  
COLLECTORATE, KAKKANAD - 682 030.**
- 2. THE OKKAL GRAMA PANCHAYATH,  
OKKAL, PERUMBAVOOR,  
REPRESENTED BY ITS SECRETARY - 683 550.**
- 3. THE SECRETARY,  
OKKAL GRAMA PANCHAYATH, OKKAL, PERUMBAVOOR - 683 550.**
- 4. THE CHIEF ENVIRONMENTAL ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD,  
DISTRICT OFFICE, GANDHI NAGAR, ERNAKULAM - 682 035.**
- 5. THE ASSISTANT FIRE OFFICER,  
FIRE & RESCUE DEPARTMENT, GANDHI NAGAR,  
ERNAKULAM - 682 035.**

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**6. PAUL THOMAS,  
MANAGING PARTNER, AISWARYA MODERN RICE MILL,  
KODALAPPAD, KOOVAPPADI, PERUMBAVOOR - 683 542.**

**R1 & R5 BY SR.GOVERNMENT PLEADER SRI.P.IDAVIS  
R2 & R3 BY ADVS. SRI.PHILIP J.VETTICKATTU  
SRI.B.PREMNATH (E)**

**R4 BY ADV. SRI. M.AJAY, S.C**

**R6 BY ADVS. SRI.DEVAN RAMACHANDRAN  
SRI.K.M.ANEESH  
SRI.ADARSH KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 16-09-2015, ALONG WITH W.A.NO.1692 OF 2015, THE COURT  
ON 28-10-2015 DELIVERED THE FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**

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- EXHIBIT P1 : TRUE COPY OF THE DESCRIPTION OF THE ROAD OBTAINED FROM OKKAL GRAMA PANCHAYATH.**
- EXHIBIT P2 : TRUE PHOTOSTAT SHOWING THE RISKY JOURNEY OF THE VEHICLE.**
- EXHIBIT P3 : TRUE PHOTOSTAT SHOWING THE CONTAMINATED DRINKING WATER IN THE NEIGHBOURING WELLS, BORE WELLS, WHICH WAS COLLECTED IN A BUCKET.**
- EXHIBIT P4 : TRUE COPY OF THE COMPLAINT DATED 22.03.2014 SUBMITTED BY THE LOCAL RESIDENTS TO THE RESPONDENTS 2 AND 3.**
- EXHIBIT P5 : TRUE COPY OF THE D & O LICENCE ISSUED BY THE 2ND AND 3RD RESPONDENTS IN FAVOUR OF 6TH RESPONDENT.**
- EXHIBIT P6 : TRUE COPY OF THE MINUTES OF THE MEETING HELD UNDER THE CHAIRMANSHIP OF PACHAYATH PRESIDENT TO ADJUDICATE THE DISPUTE BETWEEN THE PETITIONER AND 6TH RESPONDENT.**
- EXHIBIT P7: TRUE COPY OF THE RELEVANT PAGES OF THE CONSENT TO OPERATE ISSUED 19.10.2012.**
- EXHIBIT P8(SERIES): TRUE COPY OF THE APPLICATION UNDER RTI ACT AND ITS ANSWER DATED 23.10.2014.**
- EXHIBIT P9: THE COPY OF THE NOC DATED 12.01.2010.**
- EXHIBIT P10: TRUE COPY OF THE RELEVANT PAGES OF THE AGREEMENT DATED 05.02.2014.**
- EXHIBIT P11: TRUE COPY OF THE ANSWER DATED 31.05.2014 BY THE PANCHAYATH.**
- EXHIBIT P12: TRUE COPY OF THE REPLY ISSUED BY THE PANCHAYATH.**
- EXHIBIT P13: TRUE COPY OF THE APPEAL NO.A2-6712/14 PREFERRED BY THE PETITIONERS BEFORE THE PANCHAYATH COMMITTEE.**
- EXHIBIT P14: TRUE COPY OF THE COMPLAINT DATED 25.11.2014 SUBMITTED BY THE PETITIONERS BEFORE THE SUB INSPECTOR, KODANAD.**
- EXHIBIT P15: TRUE COPY OF THE COMPLAINT DATED 03.12.2014 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.**

**RESPONDENT(S)' EXHIBITS :**

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- EXHIBIT R6(A): THE TRUE COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DATED 19.10.2012.**
- EXHIBIT R6(B): THE TRUE COPY OF THE CONSENT VARIATION ORDER DATED 20.07.2013 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.**
- EXHIBIT R6(C): THE TRUE COPY OF THE NOC DATED 22.06.2013 ISSUED BY THE 4TH RESPONDENT.**
- EXHIBIT R6(D): THE TRUE COPY OF THE SAID NO OBJECTION CERTIFICATE ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, ERNAKULAM TO THE 6TH RESPONDENT DATED 12.01.2010.**
- EXHIBIT R6(E): THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE COMMERCIAL TAXES DEPARTMENT DATED 04.06.2008.**
- EXHIBIT R6(F): THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE COMMERCIAL TAXES DEPARTMENT DATED 04.04.2008.**
- EXHIBIT R6(G): THE TRUE COPY OF THE LICENSE OBTAINED UNDER THE FOOD SAFETY AND STANDARDS ACT FROM GOVERNMENT OF INDIA DATED 21.03.2012.**
- EXHIBIT R6(H): THE TRUE COPY OF THE ANALYSIS REPORT DATED 25.03.2014.**
- EXHIBIT R6(I): TRUE COPY OF THE ACKNOWLEDGEMENT.**
- EXHIBIT R6(J): THE TRUE COPY OF THE WEBSITE OF THE MOTOR VEHICLE DEPARTMENT.**
- EXHIBIT R6(K): TRUE COPY OF THE PETITIONERS FILED BY THE 6TH RESPONDENT RECEIPT ISSUED BY THE PANCHAYATH.**
- EXHIBIT R6(L): TRUE COPY OF THE LICENCE ISSUED BY THE RESPONDENT PANCHAYATH FOR THE YEAR 2015-2016.**

**//TRUE COPY//**

**P.A.TO JUDGE.**

**ASHOK BHUSHAN, CJ**

**&**

**A.M.SHAFFIQUE, J.**

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W.P.C.No.14575 of 2014

& W.A.No.1692 of 2015

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Dated this the 28<sup>th</sup> day of October 2015

**J U D G M E N T**

**Shaffique, J**

The petitioners in the writ petition are the appellants in the writ appeal. The subject matter involved in both the cases are with reference to the functioning of a rice mill by a concern by name Aishwarya Modern Rice Mill. Hence the writ petition and writ appeal are heard and decided together.

2. W.P.C.No.14575 of 2014 is filed by the petitioners seeking for a direction to the Grama Panchayat not to issue or renew the licence in favour of the 6<sup>th</sup> respondent to run the rice mill and to issue stop memo against them. 6<sup>th</sup> respondent is the Managing Partner of the Aishwarya rice mill.

3. W.A.No.1692 of 2015 arises from the judgment in W.P.C.No.15583 of 2015. The said writ petition was filed by Aishwarya Rice Mill seeking to challenge Ext.P10 by which they were asked to operate the rice mill only between 8 a.m to 6 p.m.

4. First, we shall deal with the averments in W.P.C.No.14575/2014. The petitioners in the said case alleges that the unit originally started as a small unit which was later developed into a large scale industrial unit by installing additional machineries. It is alleged that the unit is highly polluted and on account of the effluents being discharged from the unit, the adjacent wells, bore wells and ponds are being contaminated. It is alleged that the licence granted by the Panchayat has expired on 31/03/2014 and hence the petitioners sought for the reliefs aforesaid.

5. Counter affidavit was filed by the 6<sup>th</sup> respondent inter alia stating that they are in possession of necessary licence/permission from the competent authorities. When allegations are raised regarding pollution, they have engaged M/s.Poluchem Laboratories (P) Ltd which was approved by the Kerala State Pollution Control Board to monitor the quality of effluent. The report indicated that there is no pollution and the parameters of effluent are within the permissible limits. Respondents have denied the allegation of any pollution being caused to the nearby locality. With reference to the licence, it is

stated that the petitioners were operating the unit with valid licence since 1996 and an application was submitted on 03/02/2014 for renewal of licence for the period 2014-15. No reply had been received and therefore the petitioners are entitled for a deemed licence. The petitioners had filed a reply affidavit controverting the above stand of the 6<sup>th</sup> respondent and reiterating their stand. They also denied the fact that the 6<sup>th</sup> respondent is entitled to operate the unit with deemed licence.

6. W.A.No.1692/2015 is filed by the petitioners in W.P.C.No.15583/2015, after seeking leave of court, aggrieved by the judgment of the learned Single Judge, by which the learned Single Judge had set aside Ext.P10 and permitted the petitioners to operate the rice mill on the basis of the valid consent obtained by the petitioner from the Pollution Control Board. The learned Single Judge found that no counter affidavit has been filed in the case and the materials available on record clearly indicated that the petitioner was to have a continuous process of operating 24 hours in three shifts which is permitted by the Inspector of Factories and Boilers and therefore the restriction imposed by the Panchayat is not valid. The appellants submit that in so far as

the permission had been granted by the Panchayat only for operating the unit from 5.30 a.m and 9.30 p.m, the petitioner shall not be permitted to operate the unit beyond the said time. Learned counsel also relied upon Annexure A1, an order dated 07/12/2009 by which permission has been granted to the unit to install machinery having capacity of 300 HP. It is argued that condition No.9 clearly indicates that the unit should not be operated within 9.30 p.m and 5.30 a.m. It is also argued that since the unit is causing large scale pollution by discharging the effluents without any treatment, it causes pollution in the neighbouring locality.

7. Heard the learned counsel for the appellants, learned counsel appearing for the 1<sup>st</sup> respondent/Aishwarya Rice Mill, the learned Government Pleader and the learned Standing Counsel appearing of the Pollution Control Board. Learned counsel appearing for the 1<sup>st</sup> respondent in W.A.No.1692 of 2015 submits that Annexure 1, which is relied upon by the petitioner, is only a permission to increase the capacity by installing a machinery having horse power of 300 HP. Though it is stated that the unit can be functioned between 5.30 a.m and 9.30 p.m, the process

requires 24 hours functioning of the unit in three shifts. That apart, the Inspector of Factories and Boilers as well as the Pollution Control Board had granted permission for operating the unit for 24 hours. It is stated that this Court had already held in **Kadaplamattom Grama Panchayat v. Johnny Roy** [2013 (3) KHC 857 (DB) that permission granted under Sections 233 and Section 232 of the Kerala Panchayat Raj Act are independent and separate provisions had been provided under the Kerala Panchayat Raj Act and the Rules framed thereunder. Under such circumstances, when no restrictions have been imposed while issuing licence under the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996, the restrictions imposed in Annexure 1 relied upon by the appellants have no relevance. It is also pointed out that the sound level emanated from the unit is well within the specified limit and it is evident from the reports available with the Pollution Control Board.

8. Having regard to the aforesaid contentions urged, it is clear that the appellants' only contention is with reference to the pollution being caused by the unit in question. If there is

pollution, the same has to be identified by the competent authorities and it shall always be open for the Panchayat to call upon the unit to abate the nuisance. There are competent agencies like Pollution Control Board to verify and report on whether the unit is actually causing pollution or not. According to the learned counsel for the 1<sup>st</sup> respondent unit, it is a zero discharge unit and there is no effluent which is being discharged. Still, if the appellants have a case that there is discharge of effluents which is not within the specified parameters, their remedy is to approach the competent authorities and not to seek a mandamus, as prayed for, in W.P.C.No.14575/2014.

9. At any rate, during the pendency of W.P.C.No.14575/2014, the Panchayat has called upon the 1<sup>st</sup> respondent to function the unit only between 8 a.m and 8 p.m. As already indicated, when a unit has been established which has to work for 24 hours, restricting the same to function only during day time, is virtually denial of licence/permission. The unit has been functioning since 1996. Of course, its capacity has been increased. The Panchayat has to verify whether it causes any sound pollution while it is functioning during night hours. If there

is no sound pollution and no nuisance to any person in the neighboring locality, there is no reason for the Panchayat to restrain the unit from functioning in its full swing. As already indicated by the learned counsel, being a rice mill, it has to function throughout day and night, failing which the process will not be completed. The Panchayat, being the local authority, will have to take into consideration such facts also. Merely for the reason that certain persons in the locality had objected to the functioning of the unit, by itself, should not be a reason for the Panchayat to restrict the unit from functioning day and night. They have to verify and get necessary report from the Pollution Control Board as to whether the unit causes any sound pollution during night hours so that appropriate measures could be taken to abate the nuisance.

10. Under such circumstances, we are of the view that the learned Single Judge has correctly exercised jurisdiction to quash Ext.P10. However, we observe that it shall always be open for the Panchayat to ensure that the unit is functioning without causing any nuisance or pollution. It shall be open for the Panchayat to obtain appropriate report from the competent authorities like

Pollution Control Board, District Medical Officer etc. and thereafter take necessary action, in accordance with law. As already indicated, there is no reason why W.P.C.No.14575/2014 is to be entertained especially on account of the fact that the Panchayat has already issued Ext.P10, which is the subject matter in W.P.C.No.15583/2015.

In the result, W.P.C.No.14575/2014 is dismissed and W.A.No.1692 of 2015 is disposed of permitting the Panchayat to monitor the activities of the 1<sup>st</sup> respondent after getting appropriate reports from the competent authorities and to take appropriate action, in accordance with law.

(sd/-)  
**(ASHOK BHUSHAN, CHIEF JUSTICE)**  
(sd/-)  
**(A.M.SHAFFIQUE, JUDGE)**

True Copy

PA to Judge

jsr

W.P.C.No.14575 of 2014  
& W.A.No.1692 of 2015

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