

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937**

**WP(C).No. 17182 of 2015 (W)**  
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**PETITIONER(S):**  
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**SABU MAMMAN, AGED 45 YEARS,  
S/O.MAMMAN, THURUTHIPARAMBY HOUSE,  
KUMBALAM NORTH, PIN-682 506.**

**BY ADVS.SRI.K.R.VINOD,  
MS.JENCY SUSAN JOSE,  
SRI.V.SRI NATH.**

**RESPONDENT(S):**  
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- 1. THE SECRETARY,  
KUMBALAM GRAMA PANCHAYATH,  
OFFICE OF THE KUMBALAM, PANANGAD-682 505.**
- 2. JAMEELA, W/O.ALI, AGED ABOUT 50,  
KUPPUKATTU HOUSE, KUMBALAM-682 505.**
- 3. T.V. USHA, W/O.NOT KNOWN,  
KALAPPURAKKAL HOUSE, KUMBALAM-682 505.**

**R1 BY ADV. SRI.AJITH GEORGE.  
R2 & R3 BY ADVS. SRI.J.JULIAN XAVIER,  
SRI.ROY JOSEPH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 13/08/2015, ALONG WITH WP(C).NO.18819 OF 2015 AND  
WP(C).NO.22753 OF 2015,THE COURT ON 19/11/2015 DELIVERED  
THE FOLLOWING:**

**rs.**

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- THE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 08.05.2015.
- P2- THE COPY OF THE OBJECTION FILED BY THE PETITIONER.
- P3- THE COPY OF THE JUDGMENT IN WP(C).NO.14664/2015 OF THIS HON'BLE COURT DATED 22.05.2015.
- P4- THE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 04.06.2015.

RESPONDENT'S EXHIBITS:-

- EXT.R3 COPY OF THE LICENSE DATED 28/07/2000 ISSUED BY THE 1ST RESPONDENT.
- EXT.R3A COPY OF THE LICENSE DATED 06/11/2004 ISSUED BY THE 1ST RESPONDENT.
- EXT.R3B COPY OF THE LICENSE DATED 05/04/2013 ISSUED BY THE 1ST RESPONDENT.
- EXT.R3C COPY OF THE RECEIPT DATED 28/09/2004 ISSUED BY THE 1ST RESPONDENT.
- EXT.R3D COPY OF THE ORDER DATED 23/02/2001 ISSUED BY THE REGIONAL MANAGER OF KERALA STATE BACKWARD DEVELOPMENT CORPORATION.
- EXT.R3E COPY OF THE EXPLANATION DATED 03/10/2013 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.R3F COPY OF THE ORDER DATED 21/10/2013 ISSUED BY THE 1ST RESPONDENT.
- EXT.R3G COPY OF THE REPORT DATED 25/10/2013 OF THE POLLUTION CONTROL BOARD PRODUCED BEFORE THE HON'BLE TRIBUNAL LSGD.
- EXT.R3H COPY OF THE REPORT DATED 25/09/2013 OF THE HEALTH INSPECTOR, PHC, PANANGAD, KUMBALAM.

**WP(C).No. 17182 of 2015 (W)**

**EXT.R3I      COPY OF THE ORDER DATED 10/03/2015 IN APPEAL NO.998/2013.**

**EXT.R3J      COPY OF THE APPLICATION DATED 25/02/2014 FILED BY THE  
1ST PETITIONER.**

**EXT.R3K      COPY OF THE LETTER DATED 30/10/2014 ISSUED BY THE  
1ST RESPONDENT.**

**EXT.R3L      COPY OF THE APPLICATION DATED 18/02/2015 FILED BY THE  
3RD RESPONDENT BEFORE THE 1ST RESPONDENT.**

**EXT.R3M      COPY OF THE RECEIPT DATED 18/02/2015.**

**EXT.R3N      COPY OF THE ORDER DATED 11/06/2015 ISSUED BY THE  
1ST RESPONDENT.**

**EXT.R3O      COPY OF THE BUILDING TAX RECEIPT FOR THE YEAR 2004-05  
ISSUED BY THE 1ST RESPONDENT.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**rs.**

**A.V.RAMAKRISHNA PILLAI, J.**

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W.P(C) Nos.17182, 18819 & 22753 of 2015

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Dated this the 19<sup>th</sup> day of November, 2015

**JUDGMENT**

These writ petitions relate to the grant of D&O licence for the functioning of a flour mill within the local limits of Kumbalam Grama Panchayat.

2. W.P(C) No.17182 of 2015 is filed by a local resident, who is the permanent resident of the aforesaid panchayat. He is aggrieved by the functioning of the flour mill by the third respondent. According to him, the D&O licence issued by the respondents to the third respondent expired. He alleges that the building constructed by the second respondent was in violation of the provisions of the Statutory Building Rules and the provisions of Coastal Zone Regulations. As a result, the first respondent had granted only a temporary building number for the temporary occupation of the second respondent subject to final orders. While so, the said building was taken on rent

by the third respondent for conducting a flour mill and she applied before the first respondent to issue D&O licence in her name. Though the first respondent had mistakenly granted a licence in her favour, subsequently, he issued Ext.P1 order temporarily suspending the licence issued. The third respondent challenged Ext.P1 and obtained an order from the Appellate Tribunal in her favour. By the time, the licence issued to the third respondent expired and she approached the first respondent for issuance of a fresh licence in her favour. The petitioner filed Ext.P2 written objection before the first respondent praying not to issue the licence to the third respondent and when the objection of the petitioner was not being considered by the first respondent pursuant to Ext.P3 order of this Court, the petitioner was heard by the first respondent wherein he stated his objections in granting D&O licence to the third respondent. The said application of the third respondent is still pending consideration of the first respondent. However, the third respondent is continuing the

functioning of the mill, in spite of non issuance of D&O licence in her favour by the first respondent. Even though the petitioner submitted Ext.P4 representation pointing out the said aspect, the first respondent has not taken any steps to stop the illegal functioning of the flour mill by the third respondent. It is with this background, this writ petition is filed.

3. The respondents 2 and 3 filed a detailed counter affidavit contending as follows:

The third respondent is running a flour mill in the building bearing No.1/138-A (Old No.125A) in Ward No.1 of first respondent panchayat. The building is owned by the second respondent and the third respondent is the tenant. The third respondent is conducting a flour mill from 2000 onwards in a nearby building No.1/429-D and shifted the building in the year 2004 to building No.125-A presently 1/138A of the first respondent panchayat. The first respondent was pleased to renew the licence from time to time and finally renewed upto 2013-14. Copies of the licence dated 28.7.2000, 6.11.2004 and 5.4.2013 issued by the respondent panchayat are produced as

Ext.R3, Ext.R3(a) and Ext.R3(b). The change of building was with the approval of the first respondent by remitting the installation fee as well. Copy of the receipt dated 28.9.2004 issued by the first respondent is produced as Ext.R3(c). The flour mill is being functioning in conformity with the sanitary provisions without causing any nuisance and complaint from any quarters. The third respondent is a member of other backward community and started the flour mill with the loan sanctioned by the Kerala State Backward Development Corporation. Copy of the order dated 23.2.2001 issued by the Regional Manager of Kerala State backward Development Corporation is produced as Ext.R3(d). Exts.R3(a) to R3(d) clearly show that the licenses given to the building which was given permanent building number. The respondent panchayat has no case that the building is temporarily numbered.

It was further stated that while so, certain persons under the leadership of one Paulachan Maniyamcot, Kumbalam, who is an influential political leader of the locality and a close associate of the president of the panchayat started to cause obstruction and hindrance to the smooth functioning of the flour mill. The said Paulachan Maniyamcot made efforts for the last so many years to encroach upon the Vembanad Kayal (backwaters) and

Kayal puramboke within the respondent panchayat. The said attempt was objected by the people of the locality and the husband of the second respondent was leading the agitation. This has caused animosity among the husband of the second respondent and the said Paulachan Maniyamcot. Hence, Sri.Paulachan Maniyamcot, his henchman and the petitioner herein was looking for an opportunity to close down the running of the flour mill since the attempt to fill up the kayal puramboke was stalled at the instance of the second respondent's husband.

It was further stated that thereafter at the influence of Paulachan Maniyamcot, the panchayat committee issued a notice to the third respondent directing to close down the flour mill alleging that the third respondent has not complied with the conditions in the licence and directed to show cause why the flour mill shall not be closed. On receipt of the notice, the third respondent filed a detailed explanation before the respondent panchayat. Copy of the explanation dated 3.10.2013 filed by the petitioner before the second respondent is produced as Ext.R3(e). However, without considering the objection, the first respondent passed a temporary order directing the third respondent to close down the flour mill. Copy of the order dated 21.10.2013

issued by the respondent panchayat is produced as Ext.R3(f). Challenging Ext.R3(f) respondents 2 and 3 approached the Tribunal for Local Self Government Institutions, Thiruvananthapuram and filed Appeal No.998/2013. Before the Tribunal, the Pollution Control Board filed a report stating the steps taken by the third respondent to abate pollution problems. Copy of the report dated 25.10.2013 of the Pollution Control Board produced before the Tribunal LSGD is produced as Ext.R3(g). The Health Inspector also conducted an enquiry and was fully satisfied with the functioning of the flour mill. Copy of the report dated 25.9.2013 of the Health Inspector, PHC, Panangad, Kumbalam is produced as Ext.R3(h). The Tribunal after elaborately analysing the issued passed an order setting aside Ext.R3(f) and allowed the appeal. Copy of the order dated 10.3.2015 in Appeal No.998/2013 is produced as Ext.R3(i).

It was further stated that during the pendency of the appeal before the Tribunal, the third respondent submitted applications for renewal of licence. Copy of the application dated 25.2.2014 filed by the third respondent is produced as Ext.R3(j). Thereafter the first respondent vide letter dated 30.10.2014 intimated the third respondent that since stay order has been passed by the Tribunal, the licence would be issued only after the disposal of

the appeal. Copy of the letter dated 30.10.2014 issued by the first respondent is produced as Ext.R3(k). It was further stated that since the first respondent was not ready to renew the licence on technical reason, the third respondent filed another petition before the panchayat samithi requesting to renew the licence. In the petition, the third respondent pointed out that there are many flour mills in the panchayat and two other flour mills are in Ward No.1 within a radius of 400 metres and the first respondent was pleaded to renew the licence except that of the third respondent and it is respectfully submitted that the action of the first respondent in not renewing the licence of the third respondent is discriminatory.

It was further stated that the third respondent made another application for renewal of licence on 18.2.2015 before the respondent panchayat. Copy of the application is produced as Ext.R3(l). Copy of the receipt dated 18.2.2015 is produced as Ext.R3(m). Though Ext.R3(l) application for renewal of licence was filed, the first respondent did not take any action on the same. While so, the Tribunal was pleaded to pass Ext.R3(i) order allowing the appeal and setting aside the objections raised by the panchayat in an elaborate manner. On getting copy of the Tribunal's order, the

same was handed over to the first respondent and requested to take urgent decision on the application for renewal of licence submitted by the third respondent. In the light of Ext.R3(i) order of the Tribunal, the third respondent was expecting the licence renewed by the first respondent. However to the great dismay of respondents 2 and 3, an order was served by the first respondent stating the functioning of the flour mill is stopped pursuant to the direction issued by this Court on 9.6.2015 in W.P(C) No.17182 of 2015. Copy of the order dated 11.6.2015 issued by the first respondent is produced as Ext.R3(n). Ext.R3(n) is issued even without any notice or hearing respondents 2 and 3 and in complete violation of the principles of natural justice.

4. In W.P(C) No.18819 of 2015 filed by respondents 2 and 3 in W.P(C) No.17182 of 2015, it is alleged as follows:

The first respondent had been running a flour mill in building No.1/138A of Ward No.1 of the first respondent panchayat, which was taken on rent from the second petitioner. In fact, the flour mill was started in the year 2000 in a nearby building and shifted to the present premises in 2004. As can be seen from Exts.P1 to P2, the flour mill had been functioning on the basis of the licence issued by the first respondent

which was renewed periodically. The third respondent is an influential political leader of the locality who has close association with the president of the panchayat. The attempt of the third respondent was objected by the people of the locality and the husband of the second petitioner was leading the agitation. This has caused animosity among the husband of the second petitioner and the third respondent. On account of the same, the third respondent filed a false complaint, on the basis of which the panchayat issued a notice and thereafter even without considering the objection it was decided to close down the flour temporarily. The said action of the panchayat was challenged before the Tribunal and ended in Ext.P13 order of the Tribunal whereby the action of the panchayat was set aside. The third respondent approached the Pollution control Board and health Inspector. Both of them made local inspection and suggested some modifications/rectifications in the context of health aspects which the first petitioner complied with and the said aspect was also considered by the Tribunal while passing Ext.P13 order. In the above said facts situation, the panchayat had no alternative but to

renew the licence. Thereafter the third respondent instigated the fourth respondent who is close associate of third respondent to file a false complaint and even before the panchayat could consider the complaint approached this Court by filing W.P(C) No.14664 of 2015 and got a direction to consider the grievance highlighted by the fourth respondent in his representation. Thereafter, he again approached this Court stating that the panchayat did not take any action. This had prompted this Court to admit the writ petition and directed the second respondent to issue stop memo. Thus, the first petitioner has stopped the functioning of the floor mill which had been functioning for the last 15 years giving employment for more than 5 persons and catering the need of the local people. This writ petition is, therefore, filed challenging the stop memo issued by the second respondent.

5. In this writ petition, the fourth respondent, who is the petitioner in W.P(C) No.17182 of 2015, has filed a counter affidavit reiterating the allegations in the said writ petition.

6. W.P(C) No.22573 of 2015 is an off-shoot of the other two

writ petitions. This writ petition is filed by the petitioners in W.P(C) No.18819 of 2015. They allege that there is an attempt of disconnection of electricity supplied to their unit as directed by the respondent panchayat. They further allege that the first petitioner is running a flour mill in building No.1/138-A (Old No.125A) in Ward No.1 of third respondent panchayat. The building is owned by the second petitioner and the first petitioner is the tenant. The first petitioner is conducting a flour mill from 2000 onwards in a nearby building No.1/429-D and shifted the building in the year 2004 to building No.125-A presently 1/138-A of the third respondent panchayat. The licence was renewed periodically till 2013-14. However, a dispute was raised by one Paulachan Maniyamcot and contended that the unit is functioning without following the conditions in the licence. Thereafter the third respondent issued a notice as per Ext.P5 directing to close down the flour mill. In the Appeal filed before the Tribunal for Local Self Government

Institutions, Ext.P5 was set aside by Ext.P6 order. While the application for renewal of licence was pending consideration of the third respondent, the fourth respondent who is a binami of the earlier litigant alleged that the unit is functioning without licence. Thereafter the third respondent issued Ext.P8 order stating that the functioning of the flour mill is without licence. Ext.P8 was challenged by the petitioners by filing W.P(C) No.18819 of 2015. In that writ petition, this Court issued an interim order directing the panchayat to consider the renewal application in the light of the order passed by the Tribunal. Thereafter the third respondent issued an order on 29.6.2015 (Ext.P13) stating that the building to which the licence application is submitted in an unauthorised building and no licence can be issued to such building in the light of the bar under Section 235AA(5) of the Kerala Panchayat Raj Act. The present objection is totally baseless since there was no such contention for the panchayat before the Tribunal; it is alleged. In fact, the building

was constructed prior to 2004 and from 2004 onwards the flour mill was functioning in the said building and panchayat issued licenses from 2004 onwards as evidenced by Ext.P1 series. Ext.P13 is also challenged by amending W.P(C) No.18819 of 2015 which is pending consideration before this Court. While matter being so, the second respondent issued Ext.P14 calling for explanation as to why electricity connection should not be disconnected in the light of the direction issued by the third respondent. It is stated that there is no dues to be paid to the KSEB and the issue with regard to the granting of licence to the unit is under consideration of this Court. If in the meanwhile, electric supply is disconnected, it would cause irreparable injury and hardship to the petitioners.

7. Arguments have been heard.

8. For convenience of discussion, the petitioner in W.P(C) No.17182 of 2015 can be referred to as the local resident and the petitioners in other writ petitions can be referred to as the applicants.

9. Mr. K.R.Vinod, the learned counsel for the local resident would submit that W.P(C) No.17182 of 2015 was necessitated on account of the inaction on the part of the respondent panchayat in taking appropriate action to stop illegal functioning of the flour mill of the applicants, despite the receipt of the representation submitted by the local resident. It was pointed out that the D&O licence granted to the applicants expired and a fresh application submitted by them for D&O is pending consideration before the Panchayat. It was argued that the applicants have no authority to function the flour mill as well as no D&O licence has been issued to them. However, the applicants continue to run the flour mill in an unauthorisedly constructed building and the respondent panchayat had turned blind eye to the illegal activities.

10. Mr. Raju Joseph, the learned Senior Counsel for the applicants, *per contra*, would submit that the local resident is residing about 400 metres away from the flour mill and, therefore, it

would not cause any nuisance to him. It was further pointed out that the mill has been functioning in a nearby plot from 2000 and it was never objected to by the local resident. In the present plot, the mill was started in 2004 and there was no objection. It was pointed out that the objection came only after the Tribunal allowed the appeal filed by the applicants against a temporary order (Ext.P5 in W.P(C) No.18819/ 2015) issued by the Secretary of the respondent panchayat, that too, at the instance of the local resident. It was also pointed out that the appeal was dismissed by the Tribunal as per Ext.P8 order produced in that writ petition. It was further pointed out that the local resident is an influential political leader, who was a close associate of the president of the respondent panchayat.

11. It was pointed out that the respondent panchayat which issued the licence in the year 2000 (Ext.P1 in W.P(C) No.18819/2015) had been renewing the licence since then until 2013-2014 and there was no objection from any quarters regarding the

functioning of the flour mill. However, the local resident exerted influence on the panchayat and caused to issue show cause notice stating that the flour mill was not in accordance with the conditions of the licence. Though detailed explanation was given by the applicant without referring to the explanation, final order was passed cancelling the licence.

12. The above action of the respondent panchayat was challenged by the applicants before the Tribunal for Local Self Government Institutions and by Ext.P8 order in W.P(C) No.18819 of 2015, the Tribunal set aside the order. It is crucial to note that the said order has not been challenged, either by the panchayat or by the local resident and the same has become final and binding on the respondents. Therefore, this Court is of the definite view that the panchayat is bound to renew the licence for which, an application was submitted by the applicants.

13. The learned Senior Counsel for the applicants further point

out that though the local resident has approached the Pollution Control Board and the Health Inspector stating that the flour mill was functioning in unsanitary conditions, both the authorities inspected the plot. As per their direction, the rectification works were completed and they have reported that at present there is no such problem. This aspect was also considered by the Tribunal while passing Ext.P2 order produced in W.P(C) No.18819 of 2015. Therefore, as of now, there is no ground for not renewing the licence.

14. It could be seen from Ext.P1 series licenses produced in W.P(C) No.18819 of 2015 that building number was given to the building where the mill is functioning. The respondent panchayat has no case that the building was a temporary building. However, a new case was introduced while issuing Ext.P13 notice referred to in W.P(C) No.18819 of 2015 stating the the building number is temporary. Since the issue has been considered by the Tribunal for Local self Government Institutions and final orders were passed, the

respondent panchayat is duty bound to renew the licence.

15. In W.P(C) No.18819 of 2015 which is subsequently amended, the petitioners are challenging Ext.P20 order of the respondent panchayat dated 29.6.2015 rejecting their application for renewal. The stand taken by the respondents in Ext.P20 in that writ petition is unsustainable. The building was constructed by the applicants years back and the flour mill was functioning in the said building. The respondent panchayat had no case that the building constructed was authorised while issuing Ext.P1(a) in that writ petition. Later, even in the year 2014, the predecessor in the post of the second respondent was not having a case that the building wherein the flour mill is functioning was unauthorisedly constructed. Section 235AA of the Kerala Panchayat Raj Act, 1994 came into operation only w.e.f 7.10.2009. Even assuming that the building was constructed unauthorisedly, the amendment of Section 235AA has no retrospective operation and, therefore, the said provision is

inapplicable to the factual position of the case. Hence the stand taken by the respondent panchayat is only to be rejected.

16. Therefore, this Court is of the view that the respondent panchayat has to be directed to permit the applicants to run the flour mill on the basis of the renewal application.

In the result:

- W.P(C) No.17182 of 2015 is dismissed.
- W.P(C) No.18819 of 2015 is allowed. Ext.P20 in that writ petition is quashed. The second respondent is directed to forthwith consider Ext.P12 application for renewal of licence in the light of Ext.P8 order issued by the Tribunal and to grant licence within two weeks from the date of receipt of a copy of this judgment.
- In the light of the direction in W.P(C) No.18819 of 2015, W.P (C) No.22753 of 2015 is allowed. Ext.P14 issued by the second respondent electricity board is quashed.

Sd/-

**A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

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