

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 26207 of 2009 (U)

PETITIONER(S):

**A.SIVADASAN, S/O.RAMAN,
AGED 55 YEARS, RESIDING AT THAYYIL HOUSE,
PAZHASSI AMSOM MATTANNUR DESOM, EDAVELIKKAL,
P.O.MATTANNUR, THALASSERY TALUK, KANNUR DISTRICT.**

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S):

- 1. MATTANNUR MUNICIPALITY,
MATTANNUR REPRESENTED BY THE SECRETARY,
MATTANNUR MUNICIPALITY, P.O. MATTANNUR,
THALASSERY TALUK, KANNUR DISTRICT.**
- 2. THE MUNICIPAL COUNCIL,
MATTANNUR MUNICIPALITY, MATTANNUR, REPRESENTED
BY THE CHAIR PERSON, MATTANNUR MUNICIPALITY,
P.O. MATTANNUR, THALASSERY TALUK, KANNUR DISTRICT.**
- 3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT, LOCAL SELF
GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**

**R1 & R2 BY ADVS. SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
R3 BY GOVERNMENT PLEADER SRI.SOJAN JAMES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE JUDGMENT DTD.30.9.2008 IN WP(C) NO.33681 OF 2004.

EXT.P2: TRUE COPY OF THE APPLICATION FOR LICENCE DTD.17.11.2008.

**EXT.P3: TRUE COPY OF THE NOTICE DTD.18.12.2008 ISSUED BY THE FIRST
RESPONDENT TO THE PETITIONER.**

**EXT.P4: TRUE COPY OF THE REPLY DTD.22.12.2008, FILED BY THE PETITIONER
BEFORE THE FIRST RESPONDENT.**

**EXT.P5: TRUE COPY OF THE NOTICE DTD.10.2.2009 ISSUED BY THE FIRST
RESPONDENT AND RECEIVED BY THE PETITIONER.**

**EXT.P6: TRUE COPY OF THE APPLICATION DTD.27.2.2009 FOR RENEWAL OF LICENCE
FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.**

**EXT.P7: TRUE COPY OF THE NOTICE/ORDER DTD.18.3.2009 ISSUED BY THE FIRST
RESPONDENT.**

**EXT.P8: TRUE COPY OF THE MEMORANDUM OF APPEAL DTD.28.3.2009 AND
RECEIVED BY THE SECOND RESPONDENT ON 31.3.2009.**

**EXT.P9: TRUE COPY OF THE STAY PETITION DTD.28.3.2009 AND RECEIVED BY THE
SECOND RESPONDENT ON 31.3.2009.**

**EXT.P10: TRUE COPY OF THE NOTICE DTD.6.5.2009 ISSUED BY THE FIRST
RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): A TRUE COPY OF THE APPEAL PREFERRED BY THE PETITIONER.

EXT.R1(b): A TRUE COPY OF THE NOTICE DTD.6.5.2009 BEARING NO.B1-8685/2002.

EXT.R1(c): A TRUE COPY OF THE CIRCULAR DTD.25.9.2002 BEARING NO.D-4821/2002.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J

WPC No.26207 of 2009

Dated this the 15th day of October, 2015

JUDGMENT

The petitioner is running a water servicing station for automobiles in Mattannur Municipality.

2. According to the petitioner, since no Rules were framed by the Government, no license is required for running the business. A criminal case filed by the Municipality alleging violation of Section 447 of the Municipalities Act was quashed as per Ext.P1 judgment. However, it was found that the petitioner has to obtain at least a common trade license till Rules are framed and he applied for common trade license as per Exts.P2 and P6. The first respondent issued Ext.P5 notice directing him to produce certificate from the Pollution Control Board. However, the petitioner filed Ext.P6 reply and contended that no such certificate is required in respect of common trade license. According to the petitioner, Exts.P2 and P6 applications were rejected as per Ext.P7 notice/order for

the reason that consent to operate certificate from the Pollution Control Board has not been produced. Challenging Exts.P5 and P7, the petitioner preferred Ext.P8 appeal and Ext.P9 stay petition. Without hearing the petitioner, the second respondent through the first respondent vide Ext.P10 directed the petitioner to produce a certificate from Pollution Control Board in one month. According to the petitioner, the second respondent has kept Exts.P8 and P9 in the cold storage without disposing the same on merits. Hence the petitioner prays for expeditious disposal of Exts.P8 and P9 and for stay of operation of Exts.P5, P7 and P10 pending disposal of Ext.P8 appeal.

3. This Court by judgment dated 17th September 2009 had directed the Municipal Council to consider the appeal filed by the petitioner and to dispose of the same, after affording the petitioner an opportunity of being heard.

4. However, subsequently, the said order was recalled on an application filed by the respondent

Municipality, for the reason that Ext.P8 appeal has been disposed of by the Municipal Council as per Ext.R1(b). It is crucial to note that Ext.R1(b) is nothing, but Ext.P10 produced by the petitioner. It is also relevant to note that it is nothing but a notice directing the petitioner to produce the consent to operate from the Kerala State Pollution Control Board for issuing license and in the event of failure, the petitioner's unit would be closed down.

As it appears from record that Ext.P10[Ext.R1(b)] was issued, without affording the petitioner an opportunity of being heard, this writ petition is disposed of quashing Ext.P10 and directing the Council of the Municipality to reconsider the issue, after affording the petitioner an opportunity of being heard, within a period of two months from the date of receipt of a copy of this judgment. Till that exercise is completed, the present state of affairs shall continue.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE