

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 24764 of 2014 (U)

PETITIONER(S):

**K.M.NISSAR,
S/O.HAMZA, 'NISINILA', THIRUVANNOOR P.O.,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S):

- 1. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL CORPORATION OFFICE, KOZHIKODE - 673 001.**
- 2. THE DEPUTY SECRETARY,
KOZHIKODE CORPORATION, MUNICIPAL CORPORATION OFFICE,
KOZHIKODE-673 001.**
- 3. THE REVENUE OFFICER,
KOZHIKODE CORPORATION, MUNICIPAL CORPORATION OFFICE,
KOZHIKODE-673 001.**

**BY ADVS. SRI.P.V.SURENDRANATH
SRI.K.D.BABU,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF THE NOTICE DATED 31.01.2014 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P2: A TRUE COPY OF THE NOTICE DATED 19.03.2014 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P3: A TRUE COPY OF THE NOTICE DATED 26.03.2014 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P4: A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE AMOUNT
TOWARDS AUCTION DEPOSIT DATED 25.02.2014.

EXHIBIT-P4(A): A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS LICENCE FEE DATED 25.02.2014.

EXHIBIT-P4(B): A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS LICENCE FEE AND SERVICE TAX
DATED 24.03.2014.

EXHIBIT-P4(C) A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS LICENCE FEE AND SERVICE TAX
DATED 28.05.2014.

EXHIBIT-P4(D):A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS INCOME TAX DATED 28.05.2014.

EXHIBIT-P4(E):A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS LICENCE FEE AND SERVICE TAX 30.06.2014.

EXHIBIT-P4(F):A TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE
AMOUNT TOWARDS LICENCE FEE AND SERVICE TAX
DATED 04.08.2014.

EXHIBIT-P5: A TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MATHRUBHOOMI
DAILY DATED 03.04.2014.

EXHIBIT-P6: A TRUE COPY OF THE NOTICE DATED 03.04.2014 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P7: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 07.04.2014.

EXHIBIT-P8: A TRUE COPY OF THE NOTICE DATED 13.05.2014 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P9: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 16.05.2014.

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EXHIBIT-P10: A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 27.08.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P11: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 28.08.2014.

EXHIBIT-P12: A TRUE COPY OF THE NOTICE OF HEARING DATED 10.09.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P13: A TRUE COPY OF THE ORDER NO.A34/34425/14 DATED 20.09.2014 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.M.SHAFFIQUE, J

*** * * * ***

W.P.C.No.24764 of 2014

Dated this the 15th day of January 2015

J U D G M E N T

Petitioner challenges Ext.P13, an order dated 20/09/2014 issued by the Deputy Secretary of the Calicut Corporation cancelling the licence in favour of the petitioner with effect from 21/09/2014.

2. Petitioner was awarded the work of collecting parking fee for the year 2014-2015 in certain area coming within the Corporation of Calicut. Show cause notice had been issued on 03/04/2014 calling upon the petitioner to show cause why the licence should not be cancelled. In the show cause notice, it is inter alia alleged that there had been reports from the media that excess amount was being collected other than what was permissible under the terms of licence. The matter was enquired into which ultimately resulted in Ext.P13. In Ext.P13, it is observed that based on enquiries, it was found that the petitioner was collecting

excess amount as parking fee. The board fixed for showing parking fee was not displayed. That apart, the Revenue Inspector who had conducted an enquiry has substantiated the complaint regarding collection of excess fee. Reference was also made to another report made by a News Channel on 19/09/2014 stating that excess amount has been collected by the petitioner.

3. Having regard to the overall facts and circumstances of the case, it is found that since the petitioner was collecting excess parking fee, the licence issued to him came to be cancelled. Petitioner had raised several contentions. One of the contentions is that the Deputy Secretary who had passed the order of cancellation was not competent to issue the order as the matter was heard by the Revenue Inspector. The 2nd contention is that even on facts, there is no basis to come to a conclusion that the petitioner was collecting excess fee. Show cause notice Ext.P6 dated 03/04/2014 was issued three days after the

award of work. According to the petitioner, this is at the instance of the previous Contractor who wanted the petitioner to assign the work in their favour which the petitioner did not agree. Further, the materials relied upon in passing Ext.P13 are not enough to cancel the licence. Petitioner also submits that an amount of Rs.20 lakhs had been invested by him for getting the licence to carry on the collection of parking fee in the area and the petitioner could collect the fee only for a period of five months. Even if the licence is cancelled, petitioner is entitled to get refund of the amount. Petitioner points out that as far as the previous licensee is concerned, favourable order had been passed by the Corporation directing refund of certain amount for the loss suffered by him.

4. Counter affidavit has been filed by respondents 1 to 3 denying the allegations raised by the petitioner in which it is inter alia contended that the order Ext.P13 had been passed based on sufficient materials and therefore the

petitioner is not entitled to challenge the same.

5. Heard Learned counsel for the petitioner and the learned counsel appearing for respondents 1 to 3.

6. Having regard to the nature of contentions urged, it is not in dispute that the licence was issued by the Deputy Secretary by way of Ext.P1. The said authority has the right to cancel the licence as well. The licence was issued to the petitioner based on certain terms and conditions. Petitioner cannot aspire to contend that the licence should be continued till the expiry of the period when the respondents are of the view that there is violation of the conditions of licence. If there is violation of the conditions of licence, it is definitely open for the licensor to take appropriate action in accordance with the terms of contract or in accordance with law. The main reason for cancellation of the above licence is that the petitioner was collecting excess parking fee. Though a show cause notice had been issued three days after the date on which the contract commenced, the

enquiry took some time and during the course of enquiry, a report was obtained from the Revenue Inspector who had substantiated the fact of collection of excess fee. Such a report by itself will suffice to hold that the petitioner was collecting excess fee. Under such circumstances, I do not think that there is any justification on the part of the petitioner to challenge the cancellation of licence on facts. In regard to seeking of refund of any amount invested by the petitioner, if the petitioner has a case that he is not responsible for collection of excess fee irrespective of the findings of the Revenue Inspector, it is always open for him to take up the matter before the appropriate authority or by filing a civil suit.

7. Having regard to the fact that orders had been issued after giving an opportunity to the petitioner to substantiate his contentions, there is no violation of principles of natural justice. Hence I do not think that this Court should interfere with the cancellation of licence by

Ext.P13 which was done after following the procedure prescribed.

In the result, this writ petition is dismissed. Needless to state that the petitioner is at liberty to take appropriate steps seeking refund of any amount which he has paid to the Corporation, by approaching the appropriate forum.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

