IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

WP(C).No. 28742 of 2015 (P)

PETITIONER:

M/S. KANJIRAPPILLY AMUSEMENT PARK &
HOTELS (P) LIMITED, REPRESENTED BY ITS JOINT MANAGING
DIRECTOR, SIMON K. FRANCIS, S/O K.C. FRANCIS,
AGED 51 YEARS, RESIDING AT KUTTIKKADAN HOUSE,
THOTTATHIL LANE, CHEMBUKAVU, THRISSUR DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENT:

PARIYARAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PARIYARAM P.O.,
THRISSUR-680 721.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28742 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE ADDRESSED TO THE CHIEF SECRETARY, STATE OF KERALA WITH COPIES MARKED TO THE PANCHAYATH MEMBERS, DTD. 4/6/2014.

EXT.P2: TRUE COPY OF THE REPLY IN EXT. P1 DT. 29/6/14

EXT.P3: TRUE COPY OF THE NOTICE ISSUED BY THE PANCHAYATH TO THE PETITIONER DT. 9/7/14.

EXT.P4: TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DT. 24/7/14.

EXT.P5: TRUE COPY OF THE DECISION NO. 23 TAKEN BY THE PANCHAYATH DT 7/8/14.

EXT.P6: TRUE COPY OF THE INFORMATION UNDER THE RIGHT TO INFORAMATION ACT DT. 11/7/14.

EXT.P7: TRUE COPY OF THE NOTICE ISSUED BY THE PANCHAYATH DT. 22/12/14.

EXT.P8: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXT. P7 DT. 26/12/14.

EXT.P9: TRUE COPY OF THE REPORT SENT BY THE LOCAL FUND AUDIT TO THE RESPONDENT PANCHAYATH DT. 19/5/15.

EXT.P10: TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE PANCHAYATH TO THE PETITIOENR DT. 10/9/15.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Writ Petition (Civil) No.28742 OF 2015

Dated this the 28th day of October, 2015.

J U D G M E N T

A call for a hartal consequently resulting in the children being deprived of amusement and entertainment and the petitioner incurring expenses in that regard has resulted in this writ petition. The facts are as follows:

2. The petitioner owns and operates an amusement park under the name and style 'Kanjirappilly Amusement Park'. On 30.01.2014, the park had got bookings for nearly 1400 visitors which in fact included group of students from three schools in the age group of 3 to 16. The package offered by the petitioner included food for children, and the supporting staff accompanying them.

3. To protest against the implementation of Kasturirangan report, various political parties called for a hartal on 30.01.2014.

The area where the hartal is to be observed included the petitioner's premises also. Buses carrying children to the amusement park were blocked by the political parties and the children were deprived of enjoyment and fun. In spite of persuasion by the petitioner and the staff accompanying the students, hartal followers did not yield to the request and the children had to remain in the vehicles till the evening of 30.01.2014.

4. The above incident resulted in Ext.P1 notice being issued by the petitioner to the Panchayath and the State of Kerala. That seems to have been infuriated the council members of the Panchayath including the President and those belonging to the Kerala Pradesh Congress Committee and the petitioner was threatened with dire consequences if he continued to pursue the action in pursuance to Ext.P1. The petitioner has received Ext.P2 reply to Ext.P1 threatening him with steep hike in taxes. That resulted in the petitioner filing W.P.(C) No.20685/2015, which has been admitted by this Court, seeking damages against State Government as well as the Panchayath committee members. As

threatened, the Panchayath enhanced the tax from Rs.3,46,500/- to Rs.6,00,000/- thereby the increase being 75% of the tax being levied. Notice issued in this regard is produced as Ext.P3.

5. The petitioner raised objections to the proposal and copy of the same is produced as Ext.P4. Pursuant to Ext.P4, Panchayath Committee resolved to reduce the tax by Rs.60,000/- and re-fixed the tax at Rs.5,40,000/- even though some of the committee members were of the opinion that the hike itself was illegal. A true copy of the decision taken in this regard is produced as Ext.P5.

6. The petitioner points out the Panchayath in question occupies equal status of a nearby Panchayath namely, Athirappilly Grama Panchayath which too has a water theme park by name 'Silver Storm'. The petitioner obtained a copy of the tax being levied in respect of the said amusement park which is produced as Ext.P6.

7. The petitioner avers in the petition that the petitioner continued to pay tax at the pre-revised rate i.e. Rs.28,875/- per month. The respondent-Panchayath received the said amount for

the months of July and August 2014. But, for the subsequent periods, Panchayath refused to accept any amount less than Rs.45,000/- based on the revised tax levied on the petitioner. Ext.P7 notice was also issued to the petitioner threatening with dire consequences if he refused to pay the tax re-fixed by the Panchayath at Rs.6,00,000/-. This resulted in the petitioner filing Ext.P8 before the Panchayath pointing out that the matter has been taken up by the Government and the tax levied by the Panchayath i.e. Rs.6,00,000/- per annum may be kept in abeyance till a decision is taken by the State Government in that regard.

8. The petitioner came to understand that the local fund audit had conducted an enquiry in the matter and filed a report which is produced as Ext.P9. It is observed by the local fund audit that the hike in tax made by the Panchayath is unscientific and therefore the tax be levied at the reasonable rate. The petitioner points out that instead of complying with the direction as per Ext.P9, the Panchayath went on to demand tax at Rs.6,00,000/- per annum and informed the petitioner to pay

Rs.7,09,838/- which included 15% penal interest also. Ext.P10 is the demand notice issued by the Panchayath.

9. The petitioner seeks the following reliefs in this writ petition:

(i) Call for the records leading to the passing of Ext.P10 by the respondent Panchayath and quash the same by the issue of writ of certiorari or other appropriate writ, order or direction.

(ii) Issue a writ in the nature of mandamus directing the respondent Panchayath to take into consideration Ext.P9 report submitted by the local fund audit and take appropriate steps to revise the entertainment tax accordingly.

(iii) Issue a writ in the nature of mandamus directing the respondent Panchayath to re-fix the entertainment tax levied on the petitioner taking into account the tax fixed by the adjacent Panchayath on another park functioning within its limits, since both these parks belonged to the same category of “A” grade.

10. The grievance of the petitioner is that as a retaliatory measure to the proceedings initiated by the petitioner, the

Panchayath has resorted to a steep revision of tax. In spite of report of local fund audit which is produced as Ext.P9 indicating that the hike effected by the Panchayath is unscientific and in fact illegal, the Panchayath continues to pursue its demand for increased tax which, according to the petitioner, is illegal and improper. The petitioner also points out that he has brought to the notice of the Panchayath that the matter was pending before the State Government and till a decision is taken by the State Government, he may be allowed to pay tax at the then existing rate. The petitioner points out that he has been properly paying tax at the rate of Rs.28,875/- per month. Since the matter was pending before the State Government for consideration, the petitioner continued to pay the then existing rate. For the months of July and August 2014, Panchayath received Rs.28,875/- as tax even though by then they had hiked the tax to Rs.6,00,000/-. Subsequently, Panchayath refused to accept the tax and insisted that payment may be made at Rs.45,000/- per month on the basis that the tax which the Panchayath is entitled to levy is Rs.6,00,000/-.

11. In the light of Ext.P8 reply furnished by the petitioner to Ext.P7 demand notice issued by the Panchayath and also in the light of Ext.P9 report of local fund audit, it is extremely difficult to accept the stand of the Panchayath that the petitioner should pay tax at the increased rate i.e. at the rate of Rs.45,000/- per month.

12. It is brought to the notice of this Court that the petitioner had approached this Court earlier by way of W.P.(C) No.38966/2003 which was disposed of by judgment dated 21.03.2007 where tax was fixed at Rs.3,00,000/- per annum with an annual increase of 5%. On that basis, rate of tax which the petitioner had to pay was Rs.3,46,500/- and proportionate monthly instalment was being paid by the petitioner.

13. As already stated, in the light of the fact that the petitioner has already approached the Government for redressal of his grievances and pointing out the illegality and impropriety in the action of the Panchayath levying tax at an exorbitant rate and also in the light of Ext.P9 enquiry report furnished by the

local fund audit, it was quite improper and in fact illegal on the part of the Panchayath to insist for payment of Rs.45,000/- per month by the petitioner. In all fairness, Panchayath should have awaited the decision of the State Government and should have given a reply to Ext.P9 and acted in accordance with the direction contained therein. In spite of receiving notice in this writ petition, the Panchayath has not cared to enter appearance and reply to the averments in the petition. All the averments in the petition therefore remain uncontroverted. If that be so, the petitioner is entitled to relief in this petition.

In the result, this writ petition is allowed as follows:

Ext.P10 notice issued by the Panchayath stands quashed and the petitioner shall continue to pay tax at the rate of Rs.28,875/- per month for the period from 01.09.2014 onwards till the Government disposes of the representation said to have been filed by the petitioner and a decision is taken in accordance with Ext.P9 direction issued by the local fund audit. An amount of Rs.4,00,000/- said to have been paid by the petitioner as per the interim order of this Court shall be adjusted towards the tax due from the petitioner at the rate of Rs.28,875/- per month as is being paid by the petitioner till final decision is taken by the State Government.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A to Judge.