

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 29171 of 2014 (V)

PETITIONER:

OMANA SAMUEL, AGED 60 YEARS,
W/O.T.A. SAMUEL, THOTTATHIL, VANCHITHRA MURI
KOZHENCHERY TALUK, PATHANAMTHITTA DISTRICT,
PRESENTLY RESIDING AT THOTTATHIL, MARAMON P.O.
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.V.PHILIP MATHEW
SRI.E.RADHAKRISHNAN

RESPONDENTS:

1. THOTTAPUZHASSERY GRAMA PANCHAYAT,
MARAMON P.O., PATHANAMTHITTA - 689 549
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
THOTTAPUZHSSERY GRAMA PANCHAYATH, MARAMON P.O.,
PATHANAMTHITTA - 689 549.
3. A.G. ABRAHAM,
ANJILIVELIL, CHIRAYIRAMBU, MARAMON P.O.,
PATHANAMTHITTA- 689 549.
4. GEORGE PUTHOOR,
S/O. LATE P.T. THOMAS, PUTHOOR HOUSE, NEDUMPRAYAR,
MARAMON P.O., PATHANAMTHITTA - 689 549.

R4 BY ADV. SRI.BECHU KURIAN THOMAS
R4 BY ADV. SRI.ENOCH DAVID SIMON JOEL
R1 & 2 BY ADV. SRI.C.B.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 29171 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE PHOTOGRAPH OF THE PETITIONER'S SHOP
SHOWING THE BUSINESS CONDUCTED BY THE 4TH RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE RECEIPT DATED 30/12/2010 ISSUED BY THE 1ST
RESPONDENT PANCHAYATH.

EXHIBIT-P3-TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE RECEIPT DATED 29/09/2014 ISSUED BY THE 1ST
RESPONDENT PANCHAYATH.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 29171 of 2014 (V)

Dated this the 25th day of February, 2015.

JUDGMENT

In this writ petition, the landlord has a grievance that the 3rd respondent, his tenant, illegally sublet the shop room to the 4th respondent, an unauthorised occupier, who in turn has been carrying on the business without any proper licence from the first respondent Grama Panchayath.

2. To narrow down the scope of the dispute, I may observe that the singular contention of the petitioner is that the 4th respondent without any licence from the first respondent Grama Panchayath has been carrying on business in Tupperware, Embroidery and Finance, illegally.

3. Briefly stated, the petitioner is the owner of shop room bearing No. 199 in ward No. 6 of the first respondent Grama Panchayath. He is said to have let out the said shop room in 1986 to the 3rd respondent for his business purposes;

later, in course of time, without the petitioner's knowledge, not to speak of his express permission, the 3rd respondent allegedly sub-let the shop room to the 4th respondent, who has since then allegedly been carrying on the business illegally without valid licence from the respondent Grama Panchayath. The nature of the business is said to be dealing in Tupperware , Embroidery and finance.

4. Apart from initiating steps for eviction before a competent Civil Court, the petitioner has also submitted Exts.P2 and P3 representations to the respondent Grama Panchayath urging them to take necessary action against the 4th respondent's carrying on business without a valid licence. Ventilating his grievance that so far the respondent Grama Panchayath has not initiated any appropriate steps against the 4th respondent in the face of the petitioners Exts.P2 and P3 representations, he has filed the present writ petition.

5. The learned counsel for the petitioner has drawn my attention to Ex.P1 photograph to contend that the very display

on the glass frame of the shop clearly establishes that the 4th respondent has been carrying on the business in Tupperware, Embroidery and Finance. He has submitted that the 4th respondent, or for that matter whoever has been carrying on the business in the shop room, is mandated to take necessary licence from the respondent Grama Panchayath under Sections 232 and 233 of the Kerala Panchayath Raj Act, 1994 ('the Act' for brevity). He has further submitted that item 147 of Schedule I annexed to the Kerala Panchayath Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules ('the Rules' for brevity), 1996 also mandates that the 4th respondent is required to get the necessary licence to run any shop. It is the additional contention of the learned counsel that the 4th respondent is also required to have the licence under the Kerala Shops and Commercial Establishments Act, as well as the Kerala Money Lenders Act, 1958.

6. The learned counsel has strenuously contended that the absence of no-objection certificate from the petitioner makes

the position of the 4th respondent totally untenable, and that the respondent Grama Panchayath ought to have initiated a suitable action to close down the business, especially in the face of the representations made by the petitioner.

7. The learned counsel has also drawn my attention to the counter affidavit filed by the respondent Grama Panchayath to contend that most of the times, as per the Grama Panchayath authorities, the shop room has been found closed, whenever the authorities visited. In elaboration thereof, he has also submitted that respondents 3 and 4, in a vindictive manner, have been holding over the property either without carrying on any business or by carrying on the business which is entirely illegal in the absence of requisite licences.

8. Meeting the specific contention of the Grama Panchayath that the 4th respondent is not required to obtain any licence from the respondent Grama Panchayath, the learned counsel has contended that Section 233 of the Act specifies that concerning all work places using power of whatever nature, licence is

mandatory. According to him, a learned Division Bench of this Court in *Essar Telecom Infrastructure (P) Ltd. v. State of Kerala* (2011(2) KLT 516) has held that 'work place' is expansive in its scope and content. Even assuming that the 4th respondent has been carrying on the business only in finance, if not Tupperware, still the 4th respondent, contends the learned counsel, is required to obtain the necessary licence. Accordingly, he has urged this Court to issue a mandamus to the respondent Grama Panchayath to ensure that the 4th respondent does not carry on the business in the petitioner's shop room without any proper and valid licence.

9. The learned counsel for the first respondent Grama Panchayath, in tune with the averments made by the Grama Panchayath in the counter affidavit, has contended that the petitioner on one hand and the respondents 3 and 4 on the other, have private disputes which are being agitated before a Civil Court. Only as a matter of spillover of the dispute, the petitioner intends to involve the Grama Panchayath in a civil

dispute.

10. He has further submitted that on verification, the Grama Panchayath has found that the business being carried on by the 4th respondent in the shop room does not require any licence.

11. The learned counsel for the 4th respondent has adopted the submissions of the learned counsel for the Grama Panchayath. He has also submitted that the 4th respondent has been carrying on the business only in Finance, which, according to him, does not require any licence from the respondent Grama Panchayath.

12. Heard the learned counsel for the petitioner, the learned counsel for the respondent Grama Panchayath as well as the learned counsel for the 4th respondent, apart from perusing the record.

13. At the outset, it is to be observed that, to examine the issue whether the 4th respondent is required to obtain the necessary licence either under the Kerala Money Lenders Act,

1958 or under Kerala Shops and Commercial Establishments Act, none of the authorities under those statutes has been made a party. That apart, the Grama Panchayath is not the authority vested with the power to interfere with the business of the 4th respondent on account of his having not obtained the necessary licences under those enactments. As such, I do not propose to have any discussion on the alleged absence of licence under those enactments.

14. Now the issue remains to be examined is whether the 4th respondent, even assuming to be a sub-lessee without express consent of the landlord, the petitioner, is required to obtain any licences in terms of Sections 232 and 233 of the Panchayath Raj Act r/w item 147 of Schedule I annexed to the Rules to carry on his business, as per Grama Panchayath, in Finance.

15. It is profitable to examine, to the extent relevant, Section 233 of the Act, which is as follows:

"233. Permission for the construction of factories and the installation of machinery.-- (1) No person, shall, without

the permission of the Village Panchayath and except in accordance with the conditions specified in such permission,--

(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or of other mechanical power or electrical power;

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX"

16. Under Section 232 of the Act, the purposes for which the places may not be used without a licence have been enumerated in the following manner:

232. Purpose for which places may not be used without a licence.-- (1) The Village Panchayat may notify that no place in the Panchayat area shall be used for any of the purposes specified in the rules made in this behalf being purposes which in the opinion of Government, are likely to be offensive or dangerous to human life or health or property, without a licence issued by the Secretary and except in accordance with the conditions specified in such licence.

Provided that no such notification shall take effect until the expiry of thirty days from the date of its publication.

(2) Notwithstanding anything contained in the Abkari Act, 1077 (1 of 1077) or in any other law for the time being in force, no person, shall, without previous permission in writing of a Village Panchayat and otherwise than in accordance with the conditions specified in the permission, establish an Abkari shop within a Village Panchayat area;

(3) While granting permission to establish an Abkari shop near an educational institution or place of worship, the distance limit prescribed in the Abkari Act for the time being in force or the rules framed thereunder shall be complied with and the Village Panchayat shall not grant permission to

establish an Abkari Shop within the said distance limit.

(4) A Village Panchayat shall be competent, in the interest of public peace or morality or on the grounds of convenience or nuisance, to order the shifting of an Abkari Shop from the place where it is situated to another or its closing within a period not exceeding fifteen days, as may be directed in this behalf.

(5) Notwithstanding anything contained in this section, the provisions of sub-sections (2) to (4) shall not be applicable to any Abkari shop existing on 25th November, 2012, the date of commencement of the Kerala Panchayath Raj (Fourth Amendment) Ordinance, 2012 (63 of 2012) or, subject to all existing legal provisions, for re-establishing the toddy shops existing on the said date, in the area within the boundaries allotted for establishing them."

17. Indeed, in terms of Section 232, the Rules 1996 came to be promulgated with Schedule I annexed to them. It is not in dispute that item 147 specifies that the licence is required to be taken for running stationery or fancy shop. The learned counsel for the petitioner has tried to impress upon the Court that 'stationery' and 'fancy' have been only indicated illustratively and what is material in item 147 is 'running shops'. In that regard, it is profitable to extract the said entry 147, which is as follows:

"147. Stationery, Fancy -- Running shops"

18. I may begin my discussion first referring to Section 233(a), according to which no person shall, without the permission of the Village Panchayath and except in accordance with the conditions specified in such permission, construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or of other mechanical power or electrical power. In this provision, two principal expressions employed are 'workplace' and 'the use of power'. Since the petitioner's shop room cannot be termed as either a factory or a workshop, the only category that is required to be considered is whether it is a workplace. Once it were to be treated as a workplace, whether any power — steam, water, mechanical or electrical — is being employed for the purpose of carrying on the business.

19. Evidently, the expression 'workplace' has not been defined under the Act. Under those circumstances, a learned Division Bench of this Court in *Essar Telecom Infrastructure (P) Ltd. v. State of Kerala* (2011(2) KLT 516) has relied on the

definition of workplace under the Travancore–Cochin Public Health Act, 1955, which reads as follows:

“workplace” means any premises including the precincts thereof (not being a factory or workshop), wherein is carried on any industrial, manufacturing or trade process, at which not less than five persons are employed for wages or any other remuneration.”

20. It is not clear from the record, even from the submissions of the respective counsel, whether the 4th respondent has been engaging five or more employees in his establishment. At any rate, in the 'work place' what is being carried on ought to be industrial or manufacturing or trade process. Leaving aside the industrial and manufacturing processes, which are not evidently applicable here, if one is to see whether any trade process is involved, semantically 'trade' stands on a different footing from 'business', because 'business' compendiously may cover 'trade' as well, but the converse may not be possible.

21. Oxford Learner's Thesaurus (Oxford University Press, 2008) distinguishes these two expressions thus:

"Trade is used slightly more to talk about buying and selling goods rather than services. *Business* is often used when people are emphasizing the more personal aspects of these activities, such as making contacts, discussing and agreeing things and working together to provide goods or services."

22. The word 'business' must be interpreted in the context of the statute in which it occurs and not in the context of other statutes or in a manner alien to the context of the statute concerned.(vide *S. Mohan Lal v. R. Kondiah*, (1979) 2 SCC 616).

23. 'Trade' in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture. The question whether trade is carried on by a person at a given place must be determined on a consideration of all the circumstances. No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular place. The question, though one of mixed law and fact, must in each case be

determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts. (vide *State of Punjab v. Bajaj Electricals Ltd.*, (1968) 2 SCR 536.)

24. In *Safdarjung Hospital v. Kuldip Singh Sethi*, (1970) 1 SCC 735, the Hon'ble Supreme Court has quoted with approval the observations of the House of Lords in *National Association of Local Government Officers v. Bolton Corporation* (1943) AC 166, to the following effect:

“17. It may be added here that in *National Association of Local Government Officers v. Bolton Corporation* at p. 183 et seq Lord Wright observes that “trade” is a term of the widest scope. This is true. We speak of the occupation of men in buying and selling, barter or commerce as trade. *We even speak of work, especially of skilled work as a trade e.g. the trade of goldsmiths.* But the word as used in the statute must be distinguished from professions although even professions have “trade unions”. The word “trade” includes persons in a line of business in which persons are employed as workmen. Business too is a word of wide import. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods or wealth and material services.”

(emphasis added)

25. In Webster's New Dictionary of Synonyms (1984), the cognate terms 'Business, commerce, trade, industry, and traffic' are described to be comparable chiefly when they denote one of the forms of branches of human endeavour which have for their objective the supplying of commodities:

"Business specifically applies to the combined activities of all those who are engaged in the barter, purchase, or sale of commodities of any sort either as wholesale or retail transactions or in financial transactions connected with such activities; in this sense business is thought of as the combined activities of all kinds of dealers (as merchants) and financiers (as bankers) as opposed to those of all kinds of producers (as manufacturers and farmers). The term is also used more broadly to include the activities of producers and transporters of goods as well as of merchants and bankers, since all these have for their ultimate aims the supplying of commodities and the increase of private wealth...Commerce and trade, on the other hand, apply to the activities of those who are engaged in the exchange of commodities, especially such exchanged in the exchange of commodities, especially such exchange as involves transactions on a large scale and the transportation of goods from place to place. The words are often used interchangeably; thus, in the United States the Interstate Commerce Commission regulates common carriers of all kinds (rail, water, motor) engaged in interstate transportation of passengers of goods; the Federal Trade Commission was created to prevent use of unfair methods of competition in interstate commerce and to investigate trade conditions in and with foreign countries. But in general commerce is preferred when different countries or states are involved, when transportation is across seas or by sea, and when the dealings are not only in merchandise but also in media of exchange (as money, bills of exchange, and notes) and trade, when different business organizations in the same country are involved or when the dealings are in merchandise..."

26. Keeping in view the above interpretative instances, if we examine the expression employed in the present statute, it is 'trade process'. The 'trade' in conjunction with 'process' always invokes an element of physical exertion. In that manner, industrial manufacturing and trade process can be said to be analogous in nature, bordering on the principle of ejusdem generis. On that count, I do not have any hesitation to hold that the petitioner's business, that of carrying on in Finance, cannot be called any trade process.

27. Now the second limb of the definition concerns itself with 'the use of power'. According to the learned counsel for the petitioner, the 4th respondent has been using electrical power for the purpose of carrying on business. In these days, no establishment or business of whatever nature can carry on its activities without the help of either the light bulbs or fans. Going by that, it cannot be stated that the said business has been carried on with the help of electrical power. In my considered view, the scope of Section 233 in employing the

sources of power such as steam, water, mechanical or electrical is to indicate that the factory, workshop, or workplace must have been using these sources of power as the principal means of the business rather than an incidental one in aid of the business. Variably expressed, the use of power of nature described in the provision should be so pivotal that in its absence no business or trade should be possible.

28. Compendiously viewed, it cannot be said that there is any power of whatever nature having been used, in the absence of which the petitioner's finance business could be rendered impossible to be carried on.

29. By logical extension of the above discussion, it can be held that if the 4th respondent has sufficient ventilation and lighting, he could as well carry on his finance business even in the absence of electric power. In that sense alone I intend to use the expression of power as the principal source rather than a collateral one in the business.

30. In the end, I am constrained to hold that the petitioner

is not required to have any licence from the respondent Grama Panchayath under Section 233(1)(a) of the Act thereof.

31. Now, we may examine item 147 of Schedule I appended to the Rules. Instead of examining the said item in isolation, if we compendiously consider all other items as well, the pattern is very clear. Illustratively, item 54 speaks of ghee in the following manner:

“54. Ghee -- Storing, Packing, refining, preparing, manufacturing or selling by means of any process.”

32. If we move down a little further, the very next item, item No.55, speaks of gold as follows:

Gold -- Refining, making ornaments, sale.

33. The very previous item to item 147, i.e., 146, is as follows:

146. Foot-wear, bag-- Sale, manufacture.

34. The item next to 147, i.e, 148, runs thus:

148. Handicrafts — Manufacture, sale.

35. Now going by this pattern, if we examine item 147, it

says 'Stationery, Fancy — Running shops'. In my considered view, running shops is only a supplementary information concerning the business of either stationery or fancy. If an expansive meaning is to be given to 'running shops', any of the activities stated in all 159 items could also be taken as under 'running shops' and it could have obviated any need of having a list of the business activities. I am afraid, such interpretation cannot be given.

36. In these facts and circumstances, I express my inability to be persuaded by the contention of the learned counsel for the petitioner that the 4th respondent requires any licence from the respondent Grama Panchayath either under Section 233 of the Act or under item 147 appended to the Rules, 1996. Accordingly, the writ petition stands dismissed. No order as to costs.

It is made clear that the dismissal of the present writ petition shall not be to the prejudice of the petitioner's rights and contentions concerning the civil proceedings said to have

been pending before the Civil Court for the purpose of eviction and also for the purpose of moving any other statutory authority concerning any other violations, which do not fall within the jurisdiction of the first respondent Grama Panchayath.

DAMA SESHADRI NAIDU, JUDGE.

