

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937**

**WP(C).NO. 28968 OF 2015 (U)**  
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**PETITIONER(S):**  
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- 1. USHA PRASANNAN, IDAPARAMBATHU VEEDU,  
VALANJAVATTOM.P.O, THIRUVALLA.**
- 2. PONNAMMA BALAN, VAYARAKUNNIL THAZHATHETHIL,  
CHIRAYIRAMBU P.O., MARAMAN.**
- 3. RAMANI JOSE, PLANKKUZHIYIL VEEDU,  
CHIRAYIRAMBU.P.O, MARAMAN.**
- 4. RAMANI SAJI, MOOLAKKONATHU VEEDU,  
CHIRAYIRAMBU.P.O, MARAMON.**
- 5. SINDHU SOMARAJAN, MULLELIL VEEDU,  
KURIYANNOOR.P.O, KURIYANNOOR,**
- 6. OMANA SATHYAN, VAYARAKKUNNIL,  
CHIRAYIRAMBU.P.O, MARAMON.**
- 7. SHANTHAMMA PANIKKAR, PUNNATHATTU VEEDU,  
CHIRAYIRAMBU.P.O, MARAMAN.**
- 8. RAJEENA.M.R., MUTTATHUCHIRAYIL VEEDU,  
VALANJAVATTOM.P.O, THIRUVALLA.**
- 9. LAJI.K., CHIRAYIMALIL, VALANJAVATTOM.P.O,  
THIRUVALLA.**
- 10. PONNAMMA BABY, PUTHENPURA KIZHAKKETHIL,  
VALANJAVATTOM.P.O, THIRUVALLA.**
- 11. SUBADRA, VARAMBINAKATHUMALIYIL,  
VALANJAVATTOM.P.O, THIRUVALLA**
- 12. ASHA RAJAN, PUTHENPURA KIZHAKKETHIL,  
VALANJAVATTOM.P.O, TIRUVALLA.**
- 13. KRISHNAKUMARI K., THATHANIL VEEDU,  
VALANJAVATTOM.P.O, THIRUVALLA.**

14. BHARATHI, ATHIKKAPARAMBIL VEEDU,  
VALANJAVATTOM.P.O, THIURVALLA.
15. PUSHPA, KAKKANATTU VEEDU,  
NIRANAM.P.O, THIRUVALLA.
16. GEETHA OMANAKKUTTAN, PONMAYIL,  
VALANJAVATTOM.P.O, THIURVALLA.
17. AMBIKA MOHAN, CHUNKATHUMALIYIL,  
VALANJAVATTOM.P.O, THIURVALLA.
18. AJITHA V.R, ANCHARIKKADU VEEDU,  
VALANJAVATTOM.P.O, THIURVALLA.
19. RAJI, VADAKKEVEETIL, PARUMALA.P.O.,  
MANNAR, THIRUVALLA.
20. LISSY JACOB, PALLIPARAMBIL,  
VALANJAVATTOM.P.O, THIURVALLA.
21. ANNAMMA JOSEPH, MANAPPARAMBIL VEEDU,  
CHATHANKERI P.O, THIRUVALLA
22. UMA DEVI, UZHATHIL,  
NIRANAM NORTH P.O, THIRUVALLA.
23. PRABHA BABU, PUTHENPARAMBIL,  
NIRANAM NORTH P.O, THIRUVALLA.
24. SALI MATHAI, THAYANARIL PADINJARETHIL,  
NIRANAM CENTRAL.P.O, THIRUVALLA.
25. SARAMMA CHACKO, MULAPPENCHERIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.
26. SUJATHA ANIYAN, CHERUPANAGOTTU,  
VALATHAVATTOM P.O, THIRUVALLA.
27. VINEETHA KUMARI, ARAYATHUPARAMBIL,  
VALANJAVATTOM.P.O, THIRUVALLA.
28. AJITHAKUMARI, VAROTTIL,  
NIRANAM.P.O., THIRUVALLA.
29. SMITHA S.NAIR, KOHINOOR,  
NIRANAM P.O, THIRUVALLA.

**WP(C).NO. 28968 OF 2015 (U)**

- 30. REETHA FERIYA.K.J., KOCHIPEEDIKAYIL,  
KADAPRA, MANNAR.P.O, THIRUVALLA.**
- 31. ROSAMMA CHACKO, PADINJAREPURAYKKAL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 32. MARIYAMMA SAJI, ARUPARAYIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 33. ELIYAMMA VARGHESE, MUTTOMBATTU,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 34. ANILA SUBHASH, MULAMOOTIL,  
NIRANAM.P.O, THIRUVALLA.**
- 35. SHANTHAMMA SOBHANAN, CHEMBIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 36. BINDHU THANKAPPAN, CHALANADIYIL,  
NIRANAM WEST P.O, THIRUVALLA.**
- 37. SUMATHI THANKAPPAN, KOTTARATHIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 38. RAJI MOL D, KAIPPALLIMALIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 39. SUSI KUNJAPPAN, CHALANADIYIL,  
NIRANAM WEST P.O, THIRUVALLA.**
- 40. LILLY VARGHESE, PUTHUKKERIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 41. MINI CHACKO, ANANTHANARIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 42. SALAMMA CHACKO, KUNNIL HOUSE,  
KAVIYOOR.P.O, THIRUVALLA.**
- 43. KUNJOONJAMMA , PARUTHIYEKKAL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 44. SINDHU ANIL, ALANJERIL,  
NIRANAM CENTRAL P.O, THIRUVALLA.**
- 45. ANNAMMA SHIJI, UZHATHIL,  
NIRANAM P.O, THIRUVALLA.**

**BY ADVS.SRI.P.HARIDAS,  
SRI.P.C.SHIJIN.**

**RESPONDENT(S):**

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1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF INDUSTRIES,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
2. THE TRAVANCORE SUGARS AND CHEMICALS LTD.,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
VALANJAVATTOM P.O, THIRUVALLA-689 101.
3. THE DISTRICT MISSION CO ORDINATOR,  
KUDUMBASHREE DISTRICT MISSION,  
PATHANAMTHITTA, COLLECTORATE,  
PATHANAMTHITTA-689 645.
4. THE EXECUTIVE DIRECTOR,  
KUDUMBASREE STATE MISSION,  
TRIDA REHABILITATION BUILDING,  
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM-695 001.

R1, R3 & R4 BY GOVT. PLEADER SRI.BIJU MEENATTOOR.  
R2 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR,  
SRI.P.GOPINATH,  
SRI.P.BENNY THOMAS,  
SRI.K.JOHN MATHAI,  
SRI.JOSON MANAVALAN,  
SRI.KURRYAN THOMAS.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1:- TRUE COPY OF THE NOTIFICATION LEADS TO INVITATION OF TENDERS DATED 20.11.2012 OF THE 2<sup>ND</sup> RESPONDENT.
- EXHIBIT-P2:- TRUE COPY OF THE CIRCULAR DATED 10.12.2012 ISSUED BY THE 3<sup>RD</sup> RESPONDENT.
- EXHIBIT-P3:- TRUE COPY OF THE JUDGMENT IN W.P (C) NO.2689/2013 DATED 13.06.2014 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT-P4:- TRUE COPY OF THE ORDER DATED 04.09.2014 ISSUED BY THE 2<sup>ND</sup> RESPONDENT.
- EXHIBIT-P5:- TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.25880/2014 DATED 06.08.2015 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT-P6:- TRUE COPY OF THE RECEIPT DATED 01.07.2015
- EXHIBIT-P7:- TRUE COPY OF TENDER NOTICE DATED 17.09.2015 PUBLISHED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

- EXT.R2A COPY OF THE TENDER CONDITIONS AND FORM DATED 17/09/2015, MADE AVAILABLE ON THE WEBSITE OF THE 2ND RESPONDENT.
- EXT.R2B COPY OF THE TENDER NOTICE DATED 02/04/2013 IN RESPECT BOTTLING LINC NO.1.

//TRUE COPLY//

P.S. TO JUDGE

rs.

**A.MUHAMED MUSTAQUE, J.**

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**W.P.(C).No. 28968 of 2015**  
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**Dated this the 5<sup>th</sup> day of October, 2015**

**J U D G M E N T**  
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The petitioners, who are members of various Kudumbashree units, have approached this Court with the following reliefs:

- i) Call for records leading to Ext.P7 and may quash the same by issuing a writ of certiorari;
- ii) Issue a writ in the nature of mandamus or any other writ, order of direction commanding the 2<sup>nd</sup> respondent to issue fresh tender notification regarding bottling and packing of foreign liquor in the factory of the 4<sup>th</sup> respondent also by permitting all Area Development Societies of Pathanamthitta District to participate in the fresh tender ad to consider tenders on relative merits; and"

2. Ext.P7 is the tender notification issued by the 2<sup>nd</sup> respondent inviting tenders for bottling and packing of foreign liquor in a factory owned by the 2<sup>nd</sup> respondent. This notification restricts invitation of tender from Kudumbasree Area Development Societies [ADS] in Pulikkeezhu Block Panchayat in Pathanamthitta District alone.

3. The petitioner submits that it should be extended to the entire Pathanamthitta District to enable all the ADS in Pathanamthitta district to apply for the tender. It is submitted that the classification based on the location within the Pulikkeezhu Block Panchayat is illegal and arbitrary.

4. A counter affidavit has been filed by the 2<sup>nd</sup> respondent. It is stated that majority of the petitioners are the residents of the Pulikkeezhu Block Panchayat and their rights have not been infringed. It is also submitted that there are significant advantages to the 2<sup>nd</sup> respondent company in selecting ADSs located close to the factory of the 2<sup>nd</sup> respondent to ensure the timely and prompt attendance of the ADSs to cater the requirements of the 2<sup>nd</sup> respondent. It is also pointed out that in the year 2013, a similar notification was issued.

5. The learned counsel for the second respondent further points out that the 2<sup>nd</sup> respondent company has no

objection in engaging any other members of the ADSs, who are the residents of any other Panchayat. However, Ext.P2( circular has been issued by the Kudumbasree District Mission restricting engagement of other members outside the ADS. The circular formulates that if sufficient members are not available, members from other ADSs under same CDS can be engaged. This circular is form part of the notification in order to avoid further disputes.

6. It is submitted by the learned counsel for 2<sup>nd</sup> respondent that the manner in which the members are to be engaged has to be decided by the Kudumbashree unit and not by the 2<sup>nd</sup> respondent. Therefore, the petitioners cannot indirectly challenge Ext.P2 circular enabling only ADS of Pulikkeezhu Panchayat alone to participate in the tender process.

7. The issue this Court is called upon to decide is whether restriction of a particular society from taking part in the tender process is legally valid or not.

8. The composition of the society cannot be a subject matter of the decision in the writ petition as the same is essentially a matter within the Kudumbasree to work out.

According to the 2<sup>nd</sup> respondent, the proximity to the factory is the criteria for the determination of such condition in the tender. The nature of the activity of the 2<sup>nd</sup> respondent requires prompt and immediate attention. It is stated in the counter affidavit filed by the second respondent that there are five Grama Panchayats within the Pulikkeezhu Block Panchayat. The Court require above condition to put against the test of arbitrariness in fixing such condition. The nature of the activity impels the 2<sup>nd</sup> respondent to fix such criteria to protect their interest. It is for the 2<sup>nd</sup> respondent to decide in what manner the business has to be operated. If they find that on account of the proximity to the factory, the invitation of the tender has to be restricted, this Court cannot substitute their wisdom by extending the limitation to all similarly situated persons

within the district or beyond. When the criteria is the location of the factory, this Court is of the view that this is a reasonable restriction and this Court cannot invoke power under Article 226 of the Constitution of India to unsettle process of selection. Accordingly the writ petition is dismissed. However if the petitioners have a case that the geographical location is very close to the factory, which other wise would not frustrate the object of fixing the criteria, the petitioners are free to bring this to the notice of the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent shall consider the same after adverting to the geographical proximity of the location of the petitioners who do not fall within Pulikkeezhu Block Panchayat.

sd/

**A.MUHAMED MUSTAQUE,  
JUDGE**

jm/