

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 33542 of 2008 (S)

PETITIONER :

**PURUSHAN ELOOR,S/O. VELAYUDHAN,
SANKHYAPURI, ELOOR NORTH,
UDYOGAMANDAL P.O., ERNAKULAM DISTRICT.**

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS :

- 1. ELOOR GRAMA PANCHAYAT REPRESENTED
BY ITS SECRETARY (SPECIAL GRADE), ELOOR
UDYOGAMANDAL P.O., ERNAKULAM DISTRICT.**
- 2. KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS MEMBER SECRETARY,
PATTOM, THIRUVANANTHAPURAM.**
- 3. THE ENVIRONMENTAL ENGINEER,
SURVEILLANCE CENTRE, KERALA STATE,
POLLUTION CONTROL BOARD, FACT TOWNSHIP,
UNDYOGAMANDAL P.O., ERNAKULAM DISTRICT.**
- 4. M/S. MERCHEM LTD., 2ND FLOOR,
MALANKARA CENTRE, M.G.ROAD, ERNAKULAM,
KOCHI 682035 - REPRESENTED BY ITS, MANAGING DIRECTOR.**

**R1 BY ADVS. SRI.V.SANKARA RAJA
SMT.T.T.JOSEPHINE**

**R2 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
BY SRI.M.K.CHANDRA MOHANDAS,SC,**

**R4 BY ADVS. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR
SRI.V.J.ANAND**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF ORDER DT 14/1/1998 OF THE R1.
- P2: COPY OF RELEVANT PAGES OF THE REPORT OF THE LAEC ON R4
- P3(a): COPY OF ORDER DT 26/9/2006 OF THE R2.
- P3(b): COPY OF ORDER DT 11/10/2006, OF THE R2.
- P3(c): COPY OF ORDER DT 5.12.2006 OF THE R2.
- P3(d): COPY OF ORDE DT 16/12/2006 OF THE R2.
- P3(e): COPY OF ORDER DT 23/12/2006 OF THE R2.
- P3(f): COPY OF ORDER DT 23/2/2007 OF THE R2.
- P3(g): COPY OF ORDER DT 28/11/2007 OF THE R2.
- P3(h): COPY OF ORDER DT 13/12/2007 OF THE R2.
- P3(i): COPY OF ORDER DT 18/12/2007.
- P3(j): COPY OF ORDER DT 1/1/2008 OF THE R2.
- P3(k): COPY OF ORDER DT 11.1.2008 OF THE R2.
- P3(l): COPY OF ORDER DT 4/2//2008 OF THE R2.
- P3(m): COPY OF ORDER DT 18/2/2008 OF THE R2.
- P4: COPY OF ISSUED ORDER DT 6/11/2008 OF THE R2 TO THE R4.
- P5: COPY OF CONSENT TO OPERATE GRANTED BY THE R2 TO THE FACTORTY OF THE R4.
- P6: COPY OF THE ANALYSIS REPORT OF THE R3 FOR THE PERIOD FROM 01/04/2007 TO 31/12/2007.
- P7(a): COPY OF THE ANALYSIS REPORT DT 17/1/2008 OF THE R2.
- P7(b): COPY OF THE ANALYSIS REPORT DT 24/1/2008 OF THE R2.
- P7(c): COPY OF THE ANALYSIS REPORT DT 30/1/2008 OF THE R2.
- P7(d): COPY OF THE ANALYSIS REPORT DT 4/2/2008 OF THE R2.
- P7(e): COPY OF THE ANALYSIS REPORT DT 13/2/2008 OF THE R2.

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P7(f): COPY OF THE ANALYSIS REPORT DT 3/3/2008 OF THE R2.

P7(g): COPY OF THE ANALYSIS REPORT DT 7/3/2008 OF THE R2.

P8: COPIES OF ANALYSIS REPORT DT 5/7/2007 OF THE CENTRAL INSTITUTE OF FISHERIE TECHNOLOGY, KOCHI.

P9: COPY OF THE APPLICATION OF THE R4 TO THE R1 FOR RENEWAL OF THE LICENSE GRANTED IN 1997.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

Ashok Bhushan, C.J. & P.R.Ramachandra Menon, J.

W.P.(C) No. 33542 OF 2008

Dated this the 27th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

This petition, styled as 'Public Interest Litigation', has been filed praying for the following reliefs:

"i. Issue a writ of mandamus or any other writ order or direction directing the 1st respondent to cancel the license granted to the 4th respondent immediately;

ii. Issue a writ of mandamus or any other writ order or direction directing the respondents 1 to 3 to take immediate steps to close down the 4th respondent's factory at Eloor forthwith;

iii. Issue a writ of mandamus or any other writ order or direction directing the respondents to ensure that the 4th respondent's factory at Eloor is not functioning without valid consent under Section 233 of the Kerala Panchayat Raj Act and in violation of the directions of the respondents 2 and 3 and direct closing down of the factory of the 4th respondent immediately;

iv. And pass such further orders as this Honourable Court may be pleased to grant on the facts and circumstances of the case."

2. The 4th respondent Company has filed a counter affidavit explaining the facts and circumstances. The version of

the said respondent as contained in paragraphs 10 to 14 are relevant which are extracted below :

"10. The 4th respondent thereafter was shut down by the PCB on the basis of LAEC's recommendation. Thereafter the company had approached the Hon'ble High Court of Kerala and filed the writ petition, WP 37453 of 2004. In the above writ petition the company had sought the assistance of CPCB (Central Pollution Control Board).

11. In the year 2005 Joint Committee of Central and State Pollution Control boards, headed by Dr.D.C. Sharma (Zonal Officer CPCB, Bangalore) was formed as per the direction of Hon'ble High Court of Kerala, who along with the co inspection agencies like LAEC (Local Area Environmental Committee), representatives from Elorr Grama Panchayat and local residents had studied the companies system keeping in mind the latest Environmental stipulations and recommended a complete zero discharge system as an ultimate solution.

12. The 4th respondent based on the above recommendation implemented the following systems in compliance of the directions of the CPCB.

a) **Reverse Osmosis (RO)** from M/s.Rochem separation systems, a German company pioneer in this field recommended by Dr.D.C.Sharma (CPCB) and **Triple Effect Evaporation (TEE)** systems to treat the water effluent arising out of production processes, and the recovered permeate/condensate is completely recycled in the manufacturing processes, thus water consumption is reduced by 60% as on date. **The pioneering effort of the Company made it the first company in the State of Kerala to attain "zero discharge"**. The Company had also made huge

investments in the activated sludge process which also forms part of the Effluent Treatment System and the total investment constitutes about 25% of the companies capital investment.

b) **Secured land fill (SLF)** as per the guidelines of Central Pollution Control Board (CPCB) to store the solid waste generated from the plant and as well as from the TEE system.

c) **Scrubber with Ferric chloride** as the scrubbing media, in addition to the existing twin stage caustic scrubbing system, before the flaring of H₂S tail gas.

d) **H₂S monitor at the flare stack with continuous data logger**, to ensure the complete combustion of scrubber tail gas and our systems are very proven in containing and monitoring pollution levels.

e) **Recycle systems** to avoid fresh water usage in the gland colling, vacuum pumps and CS₂ unloading, thus reduction in the effluent generation at source.

13. It is pertinent to note that as per the direction of Hon'ble Industries Minister - Government of Kerala, Panchayat Officials along with PCB, officials and local representatives had inspected the facilities of the 4th respondent to achieve zero discharge system on 30.09.2006 and expressed their satisfaction over the implementation and working of the measures referred as above. The total implementation cost of the ETP systems of the company is around Rs.3.0 crores a proportion much above to any industrial standards for such small size of the company.

In view of the implementation of zero discharge system the allegations of the petitioner has no relevance.

14. Moreover the 4th respondent had complied to the consent condition laid by the Kerala State Pollution Control Board (KSPCB) and decommissioned the high pressure autoclaves in the

year 2012 and discontinued many of the related products such as MBT, CBS, MBS, ZMBT etc., being produced since its inception. Currently the company is restricted to the production of more eco friendly and less effluents generating products. Due to these changes, company has discontinued handling of many of the hazardous chemicals and is being delisted from the MAH (Major Accident Hazard) industries category by the relevant authority."

3. It is stated that the Company by virtue of the subsequent development was not functioning due to various adverse circumstances and thereafter by January, 2015 it has started operation again, based on all statutory and such other clearances issued by the public authorities.

4. During the course of hearing it is brought to the notice of this Court by learned counsel appearing for the 4th respondent that a similar writ petition was filed before this Court by way of W.P.(C) No. 33430 of 2011 which came to be transferred to the National Green Tribunal as per order dated 30.10.2013. Pursuant to the transfer as above, the matter was dealt with by the National Green Tribunal and an organisation by name National Environmental Engineering Research Institute (for short 'NEERI') has been directed to conduct a study and to submit a report as to the environmental and such other hazards,

if any. The learned counsel further submits that the matter now stands listed for further hearing on 17.12.2015.

5. In the above circumstances this Court finds that the cause of action projected before this Court way back in 2008 is almost the same as the one which is involved in the other case, which is now being dealt with by the National Green Tribunal.

This Court does not find it necessary to proceed this matter for the time being and the Writ Petition stands closed, however, without prejudice to the rights and liberty of the petitioner to pursue appropriate steps, if necessitated, before appropriate forum, including by getting impleaded in the proceedings pending before the National Green Tribunal as aforesaid, if not a party therein. The rival contentions are left open.

**Ashok Bhushan,
Chief Justice.**

**P.R.Ramachandra Menon,
Judge.**