

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).NO. 30269 OF 2014 (G)

PETITIONER(S):

**ABDUL AZEEZ N.C.,
S/O.N.C. KOYAKUTTY HAJI,
N.C. HOUSE, THIRUVANNUR P.O.,
KOZHIKODE.**

**BY ADVS.SRI.K.M.JAMALUDHEEN,
SMT.LATHA PRABHAKARAN.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF LOCAL SELF GOVERNMENT INSTITUTIONS,
SECRETARIAT, TRIVANDRUM-695 039.**
- 2. CALICUT CORPORATION,
MUNICIPAL CORPORATION OFFICE,
P.B.NO.1115, BEACH ROAD, CALICUT-673 032,
REPRESENTED BY ITS SECRETARY.**
- 3. THE SECRETARY,
CALICUT CORPORATION, MUNICIPAL CORPORATION OFFICE,
P.B.NO.1115, BEACH ROAD, CALICUT-673 032.**
- 4. THE ENVIRONMENTAL ENGINEER,
KERALA POLLUTION CONTROL BOARD,
DISTRICT OFFICE, 3RD FLOOR, ZAMORINS SQUARE,
LINK ROAD, KOZHIKODE-673 002.**
- 5. DINESHAN,
ACHARYA WOOD CRAFT INDUSTRIES, WEST MANKAVE,
THIRUVANNUR P.O., KOZHIKODE-673 029.**
- 6. THE COMMISSIONER OF POLICE, KOZHIKODE,
OFFICE OF THE COMMISSIONER OF POLICE,
MANANCHIRA, KOZHIKODE-673 001.**

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**7. THE STATION HOUSE OFFICER,
PANNIYANKARA POLICE STATION,
PANNIYANKARA, KOZHIKODE-673 002.**

**R1, R6 & R7 BY GOVT. PLEADER SRI.JOSEPH GEORGE.
R2 & R3 BY ADV. SRI.K.D.BABU, SC.
R4 BY ADV. SRI. M.AJAY, SC.
R5 BY ADV. SRI.S.NIRMAL.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, ALONG WITH WP(C). NO.33438 OF 2014 AND
WP(C). NO. 6385 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 26.06.2014.
- EXHIBIT-P2: PHOTOGRAPHS SHOWING THAT THE LOCALITY IS THICKLY POPULATED.
- EXHIBIT-P3: TRUE COPY OF THE COMPLAINT ALONG WITH DEATH SUMMARY FILED BY ONE SHEIK MUHAMMED BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P4: TRUE COPY OF THE STOP MEMO DATED 15.07.2014 ISSUED BY THE 2ND RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT-P5: TRUE COPY OF THE LETTER OF THE PETITIONER DATED 15.08.2014 TO THE 4TH RESPONDENT.
- EXHIBIT-P6: TRUE COPY OF THE COMPLAINT SUBMITTED BY SHEIK MUHAMMED TO THE 4TH RESPONDENT DATED 23.07.2014.
- EXHIBIT-P7: TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT DATED 20.09.2014.
- EXHIBIT-P8: TRUE COPY OF THE SHOW CAUSE LETTER ISSUED BY THE 4TH RESPONDENT DATED 29.09.2014.
- EXHIBIT-P9: TRUE COPY OF THE REPRESENTATION DATED 24.10.2014 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT-P10: TRUE COPY OF THE REPRESENTATION SUBMITTED BY SHEIK MUHAMMED BEFORE THE 4TH RESPONDENT DATED 01.11.2014.

RESPONDENT'S EXHIBITS:-

- EXT.R5A COPY OF THE D & O LICENSE DATED 03/11/1995 ISSUED BY THE 2ND RESPONDENT.
- EXT.R5B COPY OF THE RECEIPT TOWARDS PAYMENT OF LICENSE FEE FOR THE YEAR 2014-15.

EXT.R5C	COPY OF THE LICENSE FOR RUNNING SAW MILL UNIT DATED 18/12/2012 FROM FOREST & WILDLIFE DEPARTMENT.
EXT.R5D	COPY OF THE LICENSE DATED 16/06/2014.
EXT.R5E	COPY OF THE ACKNOWLEDGMENT RECEIPT OF MEMORANDUM DATED 29/07/2010 ISSUED BY THE MANAGER DISTRICT INDUSTRIES CENTRE, KOZHIKODE.
EXT.R5F	COPY OF THE RECEIPT OF APPLICATION ALONG WITH CONSENT FEE DATED 18/07/2014.
EXT.R5G	COPY OF THE DRAWING AND LIST OF FURNITURE DETAILS ACCORDING TO WHICH THE WOOD WORK AS DONE BY THIS RESPONDENT FOR FURNISHING THE PETITIONER'S HOUSE AND THE BILL FOR PURCHASE OF MATERIALS.
EXT.R5H	COPY OF THE AFFIDAVIT FILED BY HUSNA DATED 01/12/2014.
EXT.R5I	COPY OF THE REPLY NOTICE DATED 25/10/2014.
EXT.R5J	COPY OF THE ORDER DATED 29/10/2014.
EXT.R5K	COPY OF THE REPORT PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 30/10/2014 CRITICIZING THE POLICE ACTION.
EXT.R5L	COPY OF THE BILL DATED 15/11/2014 EVIDENCING PURCHASE OF THE ABOVE MACHINERY.
EXT.R5M	COPY OF THE REPLY DATED 11/11/2014 EXPLAINING THE WORK DONE AS PER THE DIRECTIONS IN EXT.R5(J).
EXT.R5N	COPY OF THE APPLICATION UNDER THE RTI ACT DATED 26/11/2014.
EXT.R5O	COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 28/11/2014.
EXT.R5P	COPY OF THE LETTER DATED 29/11/2014 ALONG WITH THE ACKNOWLEDGMENT RECEIPT.
EXT.R5Q	COPY OF THE AFFIDAVITS SWORN BY THE IMMEDIATE NEIGHBOURS OF THE PETITIONER AND THIS RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

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W.P.(C)No.30269 & 33438 OF 2014
&
6385 OF 2015
.....

Dated this the 19th March, 2015

J U D G M E N T

The issue involved in all these cases is mainly with regard to the Small Scale Industrial Unit, being run by the petitioner in W.P.(C) 33438 of 2014, which in fact is a Saw Mill. The pleadings and proceedings are referred to as given in W.P.(C) 6385 of 2015.

2. It is stated that the 6th respondent/Dineshan herein, who happens to be the petitioner in W.P.(C) 33438 of 2014, was running an Industrial Unit as aforesaid, absolutely without any valid consent /licence issued by the Pollution Control Board and such other authorities, that too, in a small extent of 3.5 cents of land. The shed itself was erected without any regard to the building rules. Because of the complaint raised from different corners including by the petitioner, the matter was looked into by the Corporation, who issued Ext.P2 **stop memo**. Pursuant to Exts.P3 and P4 complaints, an enquiry was conducted and the 5th respondent/Environmental Engineer, Pollution Control Board gave the remarks to reject the application for issuing licence. Since

the 6th respondent continued operation, the petitioner approached this Court by filing **W.P.(C) 30269 of 2014** and after assessing the merits involved, this Court passed Ext.P14 interim order, directing the unit to be closed down. Exts.P12 and P13 orders were issued by the respondents 2 and 5 (Calicut Corporation and Pollution control Board) so as to give effect to the same. The 6th respondent herein approached this Court by filing W.P.(C) 33438 of 2014, whereupon, an interim order was passed by this Court on **19.12.2014** directing the 5th respondent/Pollution Control Board to consider the application for granting consent. The petitioner preferred **Ext.P15 complaint**/statement of objection projecting the grievances and to hold an independent enquiry. This was followed by **Ext.P16** representation also seeking for an opportunity of hearing. But it was without considering the above facts and figures that the proceedings were finalised by the 7th respondent/Environmental Engineer, Pollution Control Board, who issued **Ext.P17 consent** , which according to the petitioner is per se wrong and illegal in all respects and is a measure of extraneous consideration. It is in the said circumstance that the

petitioner has moved the 4th respondent/Chairman, Kerala State Pollution Control Board by filing Ext.P18 representation. The prayer is to cause the same to be considered and finalised within a reasonable time.

3. Heard the learned Counsel for the 6th respondent/ (petitioner in W.P.(C) 33438 of 2014) as well, who happens to be the petitioner in W.P.(C)33438 of 2014. With reference to the counter affidavit filed in W.P.(C)6385 OF 2015 and also the documents produced, the learned Counsel points out that the earlier order passed by this Court on 24.11.2014, directing to close down the Unit was subsequently varied. A copy of the said order, varying Ext.R6(p) order dated 24.11.2014, ordering closure of the unit, has been produced as Ext.R6(r) dated 03.12.2014. Reliance is also sought to be placed on the proceedings of the Pollution Control Board, a copy of which has been produced as **Ext.R6(s)**, wherein the outcome of the local inspection conducted is also given. The interim order passed by this Court directing to consider the consent application has been produced as **Ext.R6(t)**. The learned Counsel adds that no specific opportunity of hearing was ordered to be given to the

petitioner in **W.P.(C)30269/2014** before considering the said application; and as such there is no violation of any of the directions given by this Court, nor is there any infringement of the principles of natural justice. It was accordingly that the matter was considered by the Pollution Control Board, who passed Ext.P17 order granting consent and the petitioner is continuing his operation. The learned Counsel further submits that the unit is in existence right from the year 1995 and is not causing any nuisance or pollution in any manner to anybody and that the averments to the contrary are far from the track or truth.

4. The learned Counsel for the petitioner in W.P.(C)No. 30269 of 2104/6385 of 2015 seeks to rebut the said version.

5. The learned Standing Counsel for the Pollution Control Board submits that if the petitioner (in W.P.(C)Nos. 30269 of 2104/6385 of 2015) is aggrieved of Ext.P17 order, he is having an effective alternate remedy as provided under the Statute by filing an appeal before the concerned Tribunal, who is the appellate authority, by virtue of the mandate of relevant provisions of law. It is also pointed out that Ext.P18 appeal is

not maintainable as the Chairman/4th respondent does not have any jurisdiction to deal with such appeal.

6. After hearing both the sides, this Court finds that an opportunity has necessarily to be given to the petitioner (in W.P.(C)No.6385 of 2015) to challenge the correctness of Ex.P17 order passed by the Pollution Control Board. In the said circumstance, the said petitioner is set at liberty to prefer an appeal before the competent authority. If any such appeal is filed within 'two weeks' from the date of receipt of a copy of this judgment, the same shall be considered and appropriate orders shall be passed, after hearing the petitioner, the 6th respondent/Dineshan and other interested parties if any, which shall be done at the earliest, at any rate, within 'two months' from the date of receipt of such appeal.

The writ petitions are disposed of.

**P.R.RAMACHANDRA MENON
JUDGE**

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