

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 34866 of 2014 (G)

PETITIONER :

**V.M.ROY,
VELLORKKOT, ENANALLOOR P.O., KALAMPUR,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY SRI.K.JAJU BABU,SENIOR ADVOCATE
ADVS. SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENT(S):

- 1. AYAVANA GRAMA PANCHAYAT,
AYAVANNA P.O., ERNAKULAM DISTRICT, PIN-686 676,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
AYAVANA GRAMA PANCHAYAT, AYAVANA P.O.,
ERNAKULAM DISTRICT, PIN-686 676**
- 3. THE GEOLOGIST,
DEPARTMENT OF MINING & GEOLOGY, DISTRICT OFFICE,
ERNAKULAM, CIVIL STATION, KAKKANAD,
KOCHI-682 030.**
- 4. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA-686 661.**

**R1 & R2 BY ADV. SRI.PEEYUS A.KOTTAM
R3 & R4 BY GOVERNMENT PLEADER SMT. C.K.SHERIN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE QUARRYING PERMIT NO.38/12-13/MM/GS/CRPS/DOE/2184/E2/12 DATED 4.6.2012 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- P2: COPY OF THE LICENCE NO.A5-59/11 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER FOR THE YEAR 2011-12.
- P3: COPY OF THE CONSENT FILE NO.PCB/DO/EKM/IQR-08/2011 DATED 18.5.2011 AND THE ORDER OF RENEWAL NO. POLLUTION CONTROL BOARD/DO-EKM/IQR-08/2011 DATED 7.1.2013 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER.
- P4: COPY OF THE ORDER NO.A5-1187/12 DATED 16.7.2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- P5: COPY OF APPLICATION SEEKING LICENSE FOR THE YEAR 2013-14 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P6: COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS 1 AND 2 IN WPC.NO.13539/2013 BEFORE THIS HON'BLE COURT.
- P7: COPY OF THE ORDER DATED 27.08.2013 IN WPC.NO.13539/2013 OF THIS HON'BLE COURT.
- P8: COPY OF THE QUARRYING PERMIT NO.108/14-15/MM/GS/CRPS/DOE/2975/E2/13 DATED 8.10.2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- P9: COPY OF THE JUDGMENT DATED 4.11.2014 IN WPC NO.13539/2013 OF THIS HON'BLE COURT.
- P10: COPY OF THE RECEIPT NO.3611 DATED 17.11.2014 SHOWING THE ACCEPTANCE OF APPLICATION OF THE PETITIONER BY THE 2ND RESPONDENT.
- P11: COPY OF THE NOTICE NO.A2-3604/14 DATED 1.12.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- P12: COPY OF THE ARGUMENT NOTE DATED 9.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P13: COPY OF THE ORDER NO.A2-3604/14 DATED 15.12.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- P14: COPY OF THE REPORT OF THE SUB COMMITTEE OF THE 1ST RESPONDENT OBTAINED THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 34866 of 2014

Dated this the 19th day of February, 2015

JUDGMENT

Briefly stated, the petitioner is said to have run a stone quarry for the past 23 years, the last valid period of licence being till 2011-2012. In course of time, the second respondent, the Secretary of the first respondent Grama Panchayat, issued Exhibit P4 notice to the petitioner to close down the quarry on the ground that there had been erosion of soil. It appears that, apart from the petitioner's quarry, the neighbouring quarry was also closed under a similar direction.

2. Aggrieved by Exhibit P4 direction issued by the second respondent, though the petitioner filed a statutory Appeal No. 630/2012 before the Tribunal for Local Self Government Institutions, Thiruvananthapuram, the appeal eventually was dismissed on 07.05.2013. Further aggrieved,

when the petitioner filed W.P. (C) No. 13539/2013, this Court disposed of the writ petition through Exhibit P9 judgment directing the second respondent to consider the petitioner's application untrammelled by any of the observations made in the previous proceedings between the parties.

3. Pursuant to the direction of this Court in Exhibit P9 judgment, the petitioner is said to have submitted Exhibit P10 application before the second respondent. After issuing notice under Exhibit P11 for hearing and also after receiving Exhibit P12 argument note submitted by the petitioner, the second respondent eventually passed Exhibit P13 order rejecting the petitioner's for renewal of licence. Assailing Exhibit P13, the petitioner filed the present writ petition.

4. Sri. K. Jaju Babu, the learned Senior Counsel for the petitioner, has two fold submissions to make: that though there are totally five quarries in the vicinity, only the petitioner's quarry has been subjected to discriminatory treatment, and that even the other quarry which was subjected to similar restraint was allowed to be operational soon. Despite all the quarries being similarly situated, the

action of the respondents in refusing to renew the petitioner's licence alone, contends the learned Senior Counsel, is totally unconscionable and arbitrary.

5. The learned Senior Counsel has also further submitted that when this Court gave an express direction to the second respondent to consider petitioner's Exhibit P10 application in terms of Section 232 of the Kerala Panchayat Raj Act, instead of deciding the issue independently after application of mind, the second respondent was simply swayed by the dictates of the Sub-Committee of the Grama Panchayat, which comprises the President, Vice President and other authorities as its members.

6. Countering the objection of the respondent Grama Panchayat that the petitioner has an efficacious alternative remedy under Section 276 of the Act, the learned Senior Counsel would contend that the order passed by the second respondent suffers from the vice of *ultra vires* or abdication. According to the learned Senior Counsel, the second respondent has abdicated her statutory power and subordinated herself to the dictates of the Sub-Committee, which has no manner of role in the decision making. He,

therefore, contends that the question of alternative remedy does not arise.

7. In further elaboration of his submissions, the learned Senior Counsel has contended that even if the petitioner were to file an appeal before the Committee of the Grama Panchayat, the said appellate authority again substantially comprises the self-same authorities, who constituted the Sub-Committee that decided against the renewal of licence. In the words of the learned Senior Counsel, no useful purpose will be served if the petitioner files an appeal, for the decision is a foregone conclusion.

8. Eventually, the learned Senior Counsel, placing reliance on **Onset Developers (M/s), Palakkad v. Secretary, Akathethara Grama Panchayat, Palakkad and Another** [2015 (1) KHC 497], has urged this Court to set aside Exhibit P13 and remand the matter to the second respondent to be decided independently by the said authority uninfluenced by any of the observations or recommendations by any other authority of the respondent Grama Panchayat.

9. The learned counsel for the respondent Grama

Panchayat, in tune with the averments in the counter affidavit filed by the first and second respondents, has strenuously contended that the second respondent has not been swayed by the alleged dictates of the Sub-Committee of the Grama Panchayat. According to him, it is the usual practice of Grama Panchayat to constitute Sub-Committees to aid the authorities in decision making. He has further drawn my attention to Exhibit P13 and has contended that the second respondent has inspected the property and also held a hearing before issuing Exhibit P13 proceedings.

10. According to the learned counsel, it is only incidental that the second respondent has referred to the recommendations of the Sub-Committee, which in any event have not formed the basis for the second respondent's arriving at the decision as reflected in Exhibit P13.

11. The learned counsel has also strenuously opposed the maintainability of the writ petition contending that Section 276 is not only an alternative, but also efficacious remedy under which the petitioner ought to have proceeded, before approaching this Court.

12. Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

13. Before proceeding further to adjudicate the merits of the matter, I may initially address the issue of alternative remedy, as has been canvassed by the learned counsel for the respondent Grama Panchayat. There is no gainsaying the fact that in Exhibit P13 the second respondent did record that she had inspected the site of the quarry and also held a hearing before taking a decision. At the same time, she has also referred to the directive of the Sub-Committee.

14. Exhibit P14, the report of the Sub Committee, clearly reveals the composition of the Sub-Committee. It comprises the President, Vice-President, a member and also Chairperson of Health, Education Standing Committee of the Ayavana Grama Panchayat. The directive issued to the second respondent in Exhibit P14 is as follows:

“Therefore, considering the above mentioned reasons, the Sub Committee has hereby decided to direct the Panchayat Committee and Secretary not to consider the application for new licence.”

15. There is no cavil about the composition of the Sub-committee, which is said to be an extra legal outfit of the Grama Panchayat insofar as the discharge of duties under Section 232 of the Act by the second respondent is concerned. Further, there is no denying that the Sub-Committee comprises officials superior to the second respondent in the Grama Panchayat. At the same time, heed has to be paid to the submission of the learned counsel for the respondents that, apart from referring to Sub-Committee report, the second respondent has also expressed what is said to be her independent opinion regarding the renewal of licence based on her personal inspection and also the enquiry she is said to have conducted pursuant to the direction of this Court in Exhibit P9 judgment.

16. In *Rex v. Sussex Justices, Ex parte McCarthy*, [1924] 1 K.B. 256, Lord Heward C.J., has applied the 'suspicion' test by observing thus:

"But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that *justice should not only*

be done, but should manifestly and undoubtedly be seen to be done..."

(emphasis added)

17. In *Frome United Breweries Co. v. Bath Justices*, [1926] A.C. 586, Lord Cave L.C. has said:

"My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and it has been held over and over again that, *if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of Justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called courts, have to act as judges of the rights of others.*"

(emphasis added)

18. In the present instance, the petitioner has in my view a well-founded apprehension that the second respondent has been swayed by the dictates of the Sub-Committee comprising the officials mentioned above. Even

if the petitioner is to file a statutory appeal, it is bound to be decided by those who are part of the Sub-Committee, which decided against granting the renewal of licence in favour of the petitioner. Incidentally, in Exhibit P14, there is a direction to the appellate committee also.

19. In his treatise 'Administrative Law' (9th edition, Oxford), the noted jurist Sir Willaim Wade, under a Chapter entitled 'Surrender, Abdication and Dictation' has commended thus:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. *The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.* In this class might be included the case of the cinema licensing authority which, by requiring

films to be approved by the British Board of Film Censors, was held to have surrendered its power to control and also the case of the Police Complaints Board, which acted as if it were bound by a decision of the Director of Public Prosecutions when only required to 'have regard' to it. This doctrine has even been applied to voting by local councillors."

(emphasis added)

20. In fact, the Hon'ble Supreme Court in ***Amirudhsinhji v. State of Gujarat*** [AIR 1995 SC 2390] has quoted the said paragraph with approval. In ***State of U.P. v. Dharmender Prasad Singh*** [AIR 1989 SC 997] a Division Bench of the Hon'ble Supreme Court has held that any interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

21. Under these circumstances, it only meets the ends of justice if Exhibit P13 is set aside and a direction is given to the second respondent to consider the issue afresh without reference to Exhibit P14 or any further instructions or directions from any other official of the Grama Panchayat. Needless to observe that the second

respondent may as well provide an opportunity of hearing to the petitioner and other stake holders before taking a decision on Exhibit P10 application.

22. Given the chequered history of the matter, the second respondent may take steps to dispose of the petitioner's application as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-