IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 27TH DAY OF JUNE 2024 / 6TH ASHADHA, 1946

WP(C) NO. 39559 OF 2022

PETITIONERS:

1 A. DWARAJ,
AGED 53 YEARS
S/O. SADASIVAN, AGED 53 YEARS, T/C.39/1739, ELANKOM VILAKOM VEEDU, MANACAUD P.O., TRIVANANANTHAPURAM, PIN - 695009

2 RAJESH R.,
AGED 51 YEARS
S/O. RAVI, T/C. 43/526, MOONWIND, KAMALESWARAM, MANACAUD P. O., THIRUVANATHAPURAM, PIN - 695009

BY ADVS.
SABU S.KALLARAMOOLA
LEEJOY MATHEW.V.
AJITHA V.K. NAIR

RESPONDENTS:

1 THE SECRETARY,
CORPORATION OF THIRUVANANTHAPURAM, THIRUVANANTHAPURAM, PIN - 695027

2 SUNILKUMAR M.,
AGED 35 YEARS
S/O. LATE AMBIKA, AGED ABOUT 35 YEARS, SUDHADHARA, SNDP LANE, THOTTAM, MANACAUD P.O., THIRUVANANTHAPURAM, PIN - 695009

3 OMBUDSMAN FOR LOCAL SELF GOVERNMENTS,
OFFICE OF THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT, BARTON HILL, THIRUVANANTHAPURAM, PIN - 695035

BY ADVS.SRI. SUMAN CHAKRAVARTHY, SC, THIRUVANANTHAPURAM CORPORATION
SRI. G.RAJAN POTAYIL
SMT. P.K.RESHMA (KALARICKAL), SC, OFFICE OF THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS
SRI. YAMUNA RANI V.G.
SRI. URMILA.M.G
SRI. GOPIKRISHNA S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.06.2024, ALONG WITH WP(C).15379/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 27TH DAY OF JUNE 2024 / 6TH ASHADHA, 1946

WP(C) NO. 15379 OF 2024

PETITIONERS:

1 **DWARAJ.S ,**
AGED 54 YEARS
S/O SADASIVAN, RESIDING AT ELAMKAMVILAKATHU VEEDU VEEDU, TC.39/1739, MANACAUD P.O, MUTTATHARA VILLAGE, THIRUVANANTHAPURAM, PIN - 605009

2 **RAJESH R,**
AGED 51 YEARS
S/O RAVI RESIDING AT MOON WIND , TC 43/526 KAMALESWARAM, MANACAUD P.O THIRUVANANTHAPURAM, PIN - 695009

BY ADV AJITHA V.K. NAIR

RESPONDENTS:

1 **THE SECRETARY,**
THE CORPORATION OF THIRUVANANTHAPURAM, CORPORATION BUILDING, THIRUVANANTHAPURAM, PIN - 695033

2 **SUDHEER KUMAR .M,**
S/O MRYTHUNJYA PANICKER, RESIDING AT PAVITHRAM, AMBALATHUVILA, KURUMNADAL, PARAVOOR.P.O, KOLLAM, PIN - 691301

3 **SUNIL KUMAR.M ,**
S/O MRYTHUNJAYA PANIKER, RESIDING AT SUDHODHANA TC.43/29, THOTTAM MANACAUD P.O, PIN - 695009

R1 BY ADV SUMAN CHAKRAVARTHY, SC, THIRUVANANTHAPURAM

CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.06.2024, ALONG WITH WP(C).39559/2022, 21828/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 27TH DAY OF JUNE 2024 / 6TH ASHADHA, 1946

WP(C) NO. 21828 OF 2024

PETITIONERS:

1 **RAJESH R,**
AGED 51 YEARS
S/O. RAVI,MOON WIND, TC 43/526, KAMALESWARAM, MANACADU P.O, THIRUVANANTHAPURAM, PIN - 695009

2 **DWARAJ S,**
AGED 54 YEARS
S/O. SADASIVAN,ELAMKAMVILAKATHU VEEDU,TC 39/1739, MANACADU P.O,THIRUVANANTHAPURAM, PIN - 695009

BY ADVS.
ENOCH DAVID SIMON JOEL
S.SREEDEV
RONY JOSE
LEO LUKOSE
KAROL MATHEWS SEBASTIAN ALENCHERRY
DERICK MATHAI SAJI
KARAN SCARIA ABRAHAM

RESPONDENTS:

1 **THIRUVANANTHAPURAM CORPORATION,**
VIKAS BHAVAN P.O, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, PIN - 695033

2 **SECRETARY,**
THIRUVANANTHAPURAM CORPORATION,VIKAS BHAVAN P.O,THIRUVANANTHAPURAM, PIN - 695033

3 **SUDHEER KUMAR M,**
S/O. MRTHYUNJAYA PANICKER,PAVITHRAM,

**AMBALATHVILA,KURUMANDAL, PARAVOOR P.O,
KOLLAM, PIN - 691301**

**4 SUNIL KUMAR M,
S/O. MRTHYUNJAYA PANICKER,SUDHODHANA,
TC 43/29,THOTTAM, MANACADU P.O,
THIRUVANANTHAPURAM, PIN - 695009**

R1 & R2 BY SRI. SUMAN CHAKRAVARTHY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.06.2024, ALONG WITH WP(C).15379/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MOHAMMED NIAS C.P., J.

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W.P.(C.) Nos. 39559 of 2022, 15379 & 21828 of 2024

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Dated this the 27th day of June, 2024

J U D G M E N T

W.P.(C.) No. 39559/2022 is filed challenging Ext.P4 order passed by the Ombudsman dated 14.06.2022, directing the Corporation of Thiruvananthapuram not to issue a licence unless the complainant therein or his brother makes an application. There is a further prayer in the said writ petition to consider the application for renewal of licence without reference to the order passed by the Ombudsman.

2. The same petitioners thereafter filed W.P.(C.) No.15379/2024 to direct the Corporation to consider the application for license renewal and not to take any adverse steps against the business they run. In the affidavit filed along with W.P.(C.) No. 15379/2024, there is no reference to the filing of W.P.(C.) No. 39559/2022, though it is filed by the same petitioners.

3. W.P.(C) No. 21828/2024 is filed by the petitioners in WP(C)No.15379/2024 and who are also the petitioners in WP(C)No.39559/2022. The affidavit filed along with this writ petition also does not disclose the filing of either W.P.(C.) Nos.

39559/2022 or 15379/2024. It is to be noted that all three writ petitions are filed through different lawyers. When this was noticed, withdrawal memos have been filed in W.P.(C.) Nos. 39559/2022 and 15379/2024 on 10.06.2024.

4. The 3rd writ petition, W.P.(C.) No.21828/2024 is filed for quashing Ext.P10 order passed by the Corporation dated 30.04.2024, pursuant to Ext.P9 judgment dated 15.01.2024 in W.P.(C.) No. 22314/2022. There is a further prayer sought against the second respondent to renew the trade licence in favour of the petitioners without insisting on the consent of respondents 3 and 4, who are co-owners. A review petition was also filed against Ext.P9 judgment dated 15.01.2024 as R.P. No. 442/2024, which was also dismissed. In the affidavit filed along with the said writ petition also there is no disclosure as regards the filing and pendency of the W.P.(C.) Nos. 39559/2022 and 15379/2024.

5. As per the proviso to Rule 146 of the Rules of the High Court of Kerala, 1971, no petition shall be entertained by the Registry unless it contains the statement as to whether the petitioner had filed any petition seeking similar reliefs in respect of the same subject matter earlier and being so, the result thereof. In W.P.(C.) Nos. 39559/2022 and 15379/2024, there is no compliance with the above provision, as the affidavit is completely silent about the pendency of the above two writ petitions.

6. This Court had considered the same issue in the judgment reported in

District Collector, Palakkad v. Devayani [2001 KHC 783] and held that the proviso added to Rule 146 of the Rules of the High Court of Kerala, 1971 is mandatory and the filing of the writ petitions without disclosing the same, is nothing but an abuse of process of Court. The non-disclosure while seeking an extraordinary remedy under Article 226 of the Constitution cannot be permitted. Strict compliance to the proviso to Rule 146 of the Rules of the High Court of Kerala, 1971 has to be ensured to see that the administration of justice is not polluted in any manner. Again in the judgment reported in **Babu C.G. v. South Indian Bank Ltd. and Others [2019 KHC 672]**, this Court held that a litigant who invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution must come with clean hands and clean objects and no person should be allowed to abuse the judicial process particularly, in a public law remedy.

7. Far from stating the pendency of the writ petitions, the affidavit contains a factually incorrect statement that reads as follows:-

> "I have not filed earlier petitions seeking similar and identical reliefs in respect of the same subject matter."

8. Even as I allow the withdrawal memos filed in W.P.(C.) Nos. 39559/2022 and 15379/2024, for the conduct mentioned above, the petitioners must be mulcted with costs. The writ petitions are dismissed as withdrawn in view of the memos filed, with a direction to the petitioners, to pay a sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) as costs to the Kerala State Mediation and

Conciliation Centre, Ram Mohan palace, High Court of Kerala **within ten days from today**. A report shall be obtained from the said Centre as regards the compliance of the above direction.

W.P.(C.) Nos. 39559/2022 and 15379/2024 are dismissed as withdrawn.

W.P.(C.) No. 21828/2024

In view of the judgment passed in W.P.(C.) Nos. 39559/2022 and 15379/2024, finding that there is a plain violation of the proviso to Rule 146 of the Rules of the High Court of Kerala, 1971 the same applies on all fours to this writ petition as well. Accordingly, the interim order granted by this Court on 19.06.2024 will stand vacated. It is submitted by the learned Standing Counsel that no licence has been granted pursuant to the order above referred. Since the affidavit in this writ petition also did not mention the filing or pendency of the earlier writ petitions, I am not going into the merits of the writ petition and the same will also stand dismissed.

SD/-

MOHAMMED NIAS C.P.,

JUDGE

DCS

APPENDIX OF WP(C) 39559/2022

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF AGREEMENT DATED 09-10-2017 EXECUTED IN BETWEEN PETITIONERS AND 2ND RESPONDENT AND HIS BROTHER**
Exhibit P2	**TRUE COPY OF THE CONSENT LETTER DATED 01.12.2017 EXECUTED BY FIRST PETITIONER, 2ND RESPONDENT AND HIS BROTHER SUDHEERKUMAR**
Exhibit P3	**TRUE COPY OF RECEIPT ISSUED IN THE MONTH OF MARCH, 2022 BY THE 1ST RESPONDENT**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 14.06.2022 IN COMPLAINT NO. 222/2022 OF OMBUDSMAN FOR LOCAL SELF GOVT. INSTITUTIONS**

APPENDIX OF WP(C) 15379/2024

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE LICENSE ISSUED BY THE CORPORATION OF THIRUVANANTHAPURAM WHICH WAS VALID TILL 31/03/2024**
EXHIBIT P2	**TRUE COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONERS AND THE RESPONDENTS 2 AND 3**
EXHIBIT P3	**TRUE COPY OF THE ORDER IN WP(C) 22314/2022 DATED 15.01.2024**
EXHIBIT P4	**TRUE COPY OF THE REPRESENTATION DATED 5/4/2024**

RESPONDENT ANNEXURES

ANNEXURE R1(A)	**A TRUE COPY OF THE JUDGMENT DATED 12.04.2024 IN R.P NO.442/2024**
ANNEXURE R1(B)	**A TRUE COPY OF THE ORDER NO.H11/23355/22 DATED 30.04.24 OF THE SECRETARY, CORPORATION OF THIRUVANANTHAPURAM**

APPENDIX OF WP(C) 21828/2024

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE AGREEMENT DATED 09.10.2017 EXECUTED BETWEEN THE PETITIONERS AND RESPONDENTS 3 AND 4.**
EXHIBIT P2	**TRUE COPY OF THE AGREEMENT FOR SALE DATED 27.03.2018 EXECUTED BY RESPONDENTS 3 AND 4 IN FAVOUR OF THE PETITIONERS.**
EXHIBIT P3	**TRUE COPY OF THE CONSENT LETTER DATED 01.12.2017 EXECUTED BY RESPONDENTS 3 AND 4 AND THE 2ND PETITIONER.**
EXHIBIT P4	**TRUE COPY OF THE LICENSE DATED 12.04.2023 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF THE PLAINT IN O.S. 30/2019 BEFORE THE SUB COURT, THIRUVANANTHAPURAM.**
EXHIBIT P6	**TRUE COPY OF THE PLAINT IN O.S. NO. 101/2022 BEFORE THE SUB COURT, THIRUVANANTHAPURAM.**
EXHIBIT P7	**TRUE COPY OF THE FIR IN CRIME NO. 350/2022 OF THE MEDICAL COLLEGE POLICE STATION.**
EXHIBIT P7(A)	**TRUE COPY OF LETTER DATED 28.05.2024 BEARING NO.86/RI ACT/2024/MCPS ISSUED BY THE PUBLIC INFORMATION OFFICER, MEDICAL COLLEGE POLICE STATION STATING THE REFERRAL.**
EXHIBIT P8	**TRUE COPY OF THE ORDER DATED 14.06.2022 IN COMPLAINT NO. 222/2022 ON THE FILES OF THE OMBUDSMAN FOR LOCAL SELF-GOVERNMENT INSTITUTIONS.**
EXHIBIT P9	**TRUE COPY OF THE JUDGMENT DATED 15.01.2024 IN WP(C) NO. 22314/2022 ON THE FILES OF THIS HON'BLE COURT.**
EXHIBIT P10	**TRUE COPY OF THE ORDER DATED 30.04.2024 BEARING NO. H11/23355/22 ISSUED BY THE 2ND RESPONDENT.**