



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946

WP (C) NO. 23320 OF 2024

PETITIONERS:

- 1 THAJUDHEEN.A.
AGED 64 YEARS
S/O.ALIKANNU, THOPPIL HOUSE, ADAYAMON.P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN - 695614

- 2 SUDHEER.S.
AGED 45 YEARS
S/O.SURESH, SASI MANDIRAM, CHARUMKUZHI,
ADAYAMON.P.O., THIRUVANANTHAPURAM DISTRICT, PIN -
695614

BY ADV AJITH KRISHNAN

RESPONDENTS:

- 1 THE STATE POLICE CHIEF
OFFICE OF THE STATE POLICE CHIEF, POLICE
HEADQUARTERS, THIRUVANANTHAPURAM, PIN - 695033

- 2 SUPERINTENDENT OF POLICE (RURAL)
SASTRI NAGAR, POOJAPPURA, THIRUVANANTHAPURAM, PIN
- 695012

- 3 STATION HOUSE OFFICER, VENJARAMOOD POLICE STATION
VENJARAMOOD, THIRUVANANTHAPURAM, PIN - 695607

- 4 NELLANAD GRAMAPANCHAYATH
REPRESENTED BY ITS SECRETARY, PANCHAYATH OFFICE,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607



5 RAHUL.B.RAJ
S/O DHARMARAJAN, GREESHMA BHAVAN,
CHERUKOTTUKONAM, VENJARAMOOD.P.O,
THIRUVANANTHAPURAM, PIN - 695607

6 BIJU.T.S.
S/O THANKAPPAN, PANDIYANCHIRA, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

7 VAISAKH S.
S/O.SATHEESAN.K, S.S.BHAVAN, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

8 DEEPAK
S/O BHUVANENDRAN, DEEPAK BHAVAN, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

9 SAINU
S/O RAJAN, GEETHALAYAM, VENJARAMOOD.P.O,
THIRUVANANTHAPURAM, PIN - 695607

0 SHIBIN.U.S.
S/O SOIVANANDAN, MATHRUSMARANA, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

11 AJAYAKUMAR
S/O RAGHUNATHAN, KUMAR VILASAM, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

12 SATHEESAN
S/O KRISHNAN, S.S.BHAVAN, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

13 ARJUNAN.C.
S/O CHELLAPPAN, NELLIPPALLI VEEDU,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

14 SUDARSAN
S/O KESAVAN, S.S.BHAVAN, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607



15 LIJU.S.
S/O SATHEENA.S, UTHRADAM, VALIYAKKATTAKAL,
VENJARAMOOD.P.O, THIRUVANANTHAPURAM, PIN - 695607

16 ADDL.R16. STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF
INDUSTRIES, SECRETARIAT, THIRUVANANTHAPURAM -
695001

17 ADDL.R17. PRINCIPAL SECRETARY,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695001

18 ADDL.R18. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, NANDAVANAM,
THIRUVANANTHAPURAM-695033 (ADDL.RESPONDENTS R16,
R17 AND R18 ARE IMPLEADED. AS PER ORDER DATED 05-
07-2024 IN IA 1/2024)

BY ADVS.
HANIL KUMAR M H
KALEESWARAM RAJ
K.VINAYA (K/175/2006)

OTHER PRESENT:

SRI. RANJITH THAMPAN FOR THE PETITIONER.
SRI. M.H. HANILKUMR SC FOR R4.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15.07.2024, THE COURT ON 09.08.2024 DELIVERED THE
FOLLOWING:



V.G.ARUN, J

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W.P(C) No.23320 of 2024

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Dated this the 9th day of August, 2024

JUDGMENT

The writ petition is filed seeking a writ of Mandamus, commanding respondents 1 to 3 to afford adequate and effective police protection for the conduct of a Hotmix Plant by the petitioners, without interference from respondents 5 to 15.

2. The essential facts are under:-

The petitioners are conducting a Hotmix Plant (tar mixing unit) in the name and style "N & T Hotmix". The unit is set up in a leased property having an extent of 8.5 acres comprised in Survey No.991/1,2,3 of Nellad village. According to the petitioners, the unit was functioning with all requisite licences/permissions, including deemed licence under the Kerala Panchayat Raj (Issue of licence to Factories, Trades, Entrepreneurship Activities and other services) Rules, 1996. In spite of the licences and permissions obtained, the 4th



respondent Panchayat issued stop memos at the instance of respondents 5 to 15 and a Samara Samithi formed under their leadership. The stop memos were stayed by the Tribunal for Local Self Institutions. Now the petitioners have obtained Ext.P10 acknowledgment certificate under the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 ('MSME Facilitation Act' for short) and therefore, licence from the Panchayat is not necessary. The petitioners allege that the vehicles carrying the products from the petitioners' unit are being physically obstructed by respondents 5 to 15, thereby preventing the functioning of their unit. Even though the issue was brought to the notice of the jurisdictional Police, no action was taken to prevent the illegal obstruction. Hence, the writ petition.

3. Heard Senior Advocate Sri. Ranjith Thampan, assisted by Adv.Ajith Krishnan for the petitioners, Advocate M.H.Hanil Kumar for the 4th respondent Panchayat, Adv.Kaleeswaram Raj for respondents 5 to 11, 13 and 14 and the learned Government Pleader for respondents 1 to 3.



4. Learned Senior Counsel submitted that the Hotmix Plant was functioning on the strength of Exts.P4 to P6 consent/permission issued by the Pollution Control Board, the Fire and Rescue Department, as also the Factories and Boilers Department. As the 4th respondent Panchayat had failed to take a decision on the application for licence submitted in accordance with the relevant rules, the unit started functioning on the strength of a deemed licence under Section 236(3) of the Kerala Panchayat Raj Act, 1994. The memo issued by the Panchayat, requiring the petitioners to stop the functioning of the unit is stayed by the Tribunal for Local Self Government Institutions. More importantly, the unit has now been issued with Ext.P10 acknowledgment certificate under Section 5 of the MSME Facilitation Act, which is equivalent to licences, permissions, approvals, consents and the like, required under any State law. To buttress the argument, reference is made to the definition of the term 'approval' in Section 2(c) of the MSME Facilitation Act and effect of the acknowledgment certificate postulated in Section 6 of the Act. Reliance is also placed on the decision in **Mohammed Sageer v. Kannampara**



Gramा Panchayat [2023 KHC 2904], wherein this Court has held the provisions of the MSME Facilitation Act to be having an overriding effect, notwithstanding anything contained in any other law for the time being in force. It is hence contended that the functioning of the petitioner's unit having all requisite licences and the conduct of which is essential for completing the urgent works of the PWD in Thiruvananthapuram District, cannot be forcibly stopped. The issue having been brought to the notice of respondents 1 to 3, the said officers were bound to provide adequate protection for functioning the unit, without obstruction from respondents 5 to 15.

5.Responding to the contentions of the Senior Counsel, Adv.Kaleeswaram Raj submitted that the petitioners had earlier approached this Court by filing W.P.(C).No.15965 of 2024 and therein, an interim order was passed on 16.04.2024 directing the Station House Officer to ensure law and order situation in the place in question. Thereafter, the court was apprised by the Counsel for the party respondents that even the term of the deemed licence asserted by the petitioners is over. Thereupon, a modified order was passed on 19.06.2024, clarifying that the



earlier interim order will continue to be in force only if there is a valid licence issued by the Panchayat and not otherwise. Faced with such a situation, the petitioners clandestinely withdrew that writ petition on 27.06.2024 and filed the instant writ petition on 28.06.2024, without mentioning about the modified interim order dated 19.06.2024. Thus the petitioners have committed fraud on the Court and the writ petition is liable to be dismissed on that ground alone.

6. On merits, the learned Counsel contented that the conduct of the hotmix plant in a densely populated area is creating health problems and environmental issues, affecting the peaceful living of the residents in the locality. Realising this the Health Inspector had requested the Secretary of the Panchayat to immediately stop the unit. As the unit was also found to be operating illegally, the Panchayat Secretary had issued Exts.R9(e) and R9(f) stop memos. The petitioners challenged those stop memos and obtained Ext.P8 interim order. The petitioners claim of holding a licence in favour of their unit is unsustainable, since Ext.R9(h) application for licence dated 24.06.2024 was rejected on the day of submission



itself and communicated under Ext.R9(i) letter. The contention of the petitioners that in view of Ext.P10 acknowledgment certificate, licence from the Panchayat is no longer necessary cannot also be countenanced, since the unit is functioning in a residential building and the petitioners have constructed additional structures without permission. The acknowledgment certificate under the MSME Facilitation Act does not exempt the petitioners from obtaining permit under the Panchayat Building Rules. Finally it is contended that the party respondents are holding peaceful agitation, since their right to live with dignity in a proper environment, free from the risks of diseases and infection, is violated. Such an agitation cannot be quelled with police force, particularly when the petitioners have no legal right to seek a writ of mandamus.

7. Adv.M.H.Hanil Kumar appearing for the 4th respondent Panchayat submitted that, complaints were received from the local residents against the illegal operation of the hotmix plant and the Panchayat had issued stop memos to the petitioners. The petitioners filed appeal against the stop memos and obtained Ext.P8 interim order. The Panchayat thereafter found



that a portion of the unit was functioning in building No.10/517, issued with only a residential building permit. Such a building cannot be used for any commercial or industrial purpose. The Panchayat also found that the petitioners had constructed several structures without obtaining building permits. Taking the above factors into consideration, the Panchayat rejected the application for licence to conduct the unit submitted by the petitioners. As such, the unit is presently functioning without licence and hence the petitioners are not entitled for any relief.

8. The contention of the petitioners that, in the light of Ext.P10, no licence/permission from the Panchayat is required, is sought to be answered by pointing out that the MSME Facilitation Act is applicable only to new units. As the petitioners' unit has been functioning for the past few years acknowledgment certificate under the MSME Facilitation Act could not have been issued.

9. In reply the Senior Counsel submitted that, no material fact is suppressed in the writ petition. This Court had granted an order of police protection in W.P.(C).No.15965 of 2024 and that order was only clarified subsequently. Being so, the



statement in the instant writ petition that an order of police protection was granted, cannot be termed as wilful suppression. With respect to the contention that the petitioners' unit could not have been issued with an acknowledgment certificate, it is argued that, inasmuch as Ext.P10 is issued, the remedy available to persons aggrieved by issuance of the certificate is to file an appeal under Section 12 of the MSME Facilitation Act and a collateral challenge through the counter affidavit filed in this writ petition cannot be entertained. It is also submitted that, as per the Kerala Panchayat Raj (Issue of licence to Factories, Trades, Entrepreneurship Activities and other services) Rules, 1996, the period of licence in respect of factories, industrial establishments etc. is five years and therefore, there was no requirement for the petitioners to submit application for renewal, as the deemed licence would expire only on 20.03.2028.

10. In my opinion, having submitted Ext.P9 application on 21.03.2023, seeking issuance of licence for one year, it is not open for the petitioners to contend that submission of the application was a mistake and the deemed licence would be in



force till 20.03.2028. In this regard it is pertinent to note that the subsequent application [Ext.R9(h)] seeking licence for five years from 21.06.2024 to 31.03.2029 had been rejected by the Panchayat on the date of its submission itself [Ext.R9(i)]. As such, no deemed licence is in force from 21.06.2024 onwards.

11. The next contention put forth by the petitioners is based on Ext.P10 acknowledgment certificate issued under the MSME Facilitation Act. Here, the argument is that, by virtue of Section 6 of the Act, the acknowledgment certificate has the effect of approval, as defined in Clause (c) of Section 2 and during the period of three years for which the certificate is valid, no competent authority can undertake any inspection for the purpose of, or in connection with any such approval. In this context, the definition of the term 'approval' in Section 2(c) assumed relevance. Going by the definition 'approval' means licences, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State. It is, therefore, clear that the acknowledgment certificate is



considered to be in lieu of the licences, permissions etc. required under any State law. On further scrutiny of the provision it becomes evident that such requirements should be in connection with the establishment or operation of micro, small and medium enterprises in the State. It is doubtful whether a building permit under the Kerala Panchayat Building Rules can be treated as one issued in connection with the establishment or operation of a unit, so as to bring the permit within the ambit of Section 2(c) of the MSME Facilitation Act.

12. There is also merit in the contention of the 4th respondent that the provision of the MSME Facilitation Act would apply only to new units. This is evident from a reading of the preamble of the Act extracted hereunder:-

"WHEREAS, it is expedient to give effect to exemption from certain approvals and inspections required for establishment and operation of micro small and medium enterprises in the State and matters connected therewith and incidental thereto."

The position is further clear from Section 4 dealing with the powers and functions of the nodal agency. The first among the functions is **to assist and facilitate the establishment of enterprises** in the State. Section 5, providing for self



certification, also mentions about persons intending to **start an enterprise.**

13. Although learned Senior Counsel contended that the petitioners' unit is also a new enterprise, that argument cannot hold good in the light of the averments in the writ petition, which are to the effect that the unit has been functioning with a deemed licence. For further clarification on the point, the Judge's papers in W.P.(C).No.15965 of 2024 were also looked into. Therein, the petitioners have categorically stated that, on 26.06.2022, the petitioners had submitted application before the Panchayat and since the application was not considered within 30 days under Section 236(3) of the Kerala Panchayat Raj Act, they started the plant with a deemed licence. Of course, the remedy of a person aggrieved by the issuance of an acknowledgment certificate is to file an appeal under Section 12 of the MSME Facilitation Act. Be that as it may, the fact that a functioning unit, issued with an acknowledgment certificate, for which new enterprises alone are entitled, casts a shadow on the statutory right claimed by the petitioners. The shadow gets darker by the fact that the unit is functioning



in unauthorised building, some of which were constructed without obtaining permit from the Panchayat. Further, going by Exts.P10 and P11, the acknowledgment certificate under the MSME Facilitation Act is seen issued on very date of submission, indicting that the certificate was issued on the date of submission itself. Of course, Section 5 of the Act provides for issuance of certificate forthwith. Even if so, can the elaborate procedure under the Panchayat Raj Act and the corresponding rules, which prescribe elaborate procedure, be overlooked in such a casual manner, Part IX of the Constitution by which the Panchayat are made institution of self governances, is also to be kept in mind.

14. Another factor of relevance is the issuance of communication by the Health Inspector to the Secretary of the Panchayat pointing out that the functioning of the unit is causing health and environmental issues in the area. Irrespective of the question whether the Health Inspector's permission is required for conducting the unit, the fact remains that the competent authority has issued such a communication. This really indicates that there is substance in the grievance of



respondents 5 to 15 and the local residents of the area, which has forced them to agitate against the conduct of the unit.

15. The above discussion leads to me to the conclusion that the petitioners are not entitled to police protection, as sought. The rejection of the request for police protection shall not be understood to be interdicting the police from intervening in the event of any law and order issues arising by reason of the dispute between the petitioners and respondents 5 to 15.

The writ petition is dismissed with the above observation.

Sd/-

V.G.ARUN, JUDGE

sj



APPENDIX OF WP (C) 23320/2024

PETITIONER EXHIBITS

Exhibit - P1 TRUE COPY OF THE BASIC TAX RECEIPT DATED 21.06.2024 ISSUED TO MURALEEDHARAN NAIR

Exhibit - P2 TRUE PHOTOGRAPHS SHOWING THE HALF COMPLETED ROAD WORK

Exhibit - P3 TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED ON 15.06.2024 IN JANMABHOOMI DAILY

Exhibit - P4 TRUE COPY OF THE CONSENT TO OPERATE, FILE NO.KSPCB/TV/ICO/10020123/2023 DATED 13.03.2023 ISSUED BY THE POLLUTION CONTROL BOARD VALID UP TO 31.12.2027.

Exhibit - P5 TRUE COPY OF THE LETTER INSPECTION REPORT) ISSUED BY THE ASSISTANT STATION OFFICER, FIRE AND RESCUE STATION, VENJARAMOOD TO THE 1ST PETITIONER.

Exhibit - P6 TRUE COPY OF THE LICENSE ISSUED BY THE FACTORIES AND BOILERS DEPARTMENT VALID UP TO 31.12.2024.

Exhibit - P7 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT DATED 21.06.2022 ISSUED BY THE 4TH RESPONDENT PANCHAYATH.

Exhibit - P8 TRUE COPY OF THE ORDER DATED 18.03.2023 IN IA.NO.436/2023 IN APPEAL NO.157/2023 OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS; THIRUVANANTHAPURAM.

Exhibit - P9 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT DATED 21.03.2023.



Exhibit - P10	TRUE COPY OF THE ACKNOWLEDGMENT CERTIFICATE ISSUED BY THE GOVERNMENT OF KERALA, DEPARTMENT OF INDUSTRIES & COMMERCE TO N AND T HOT MIX DATED 25.06.2024.
Exhibit - P11	TRUE COPY OF THE DECISION REPORTED IN 2023 KHC 2904 (MOHAMMED SAGEER V. KANNAMBRA GRAMAPANCHAYATH)
Exhibit - P12	TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONERS BEFORE THE CIRCLE INSPECTOR OF POLICE, VENJARAMOOD POLICE STATION DATED 30.03.2024.
Exhibit - P13	TRUE COPY OF THE COMPLAINT DATED 06.04.2024 FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.

RESPONDENT EXHIBITS

Exhibit R9(i)	True copy of the rejection order issued by the Panchayat dated 22.06.2024.
Exhibit R9(a)	True copy of the interim order dated 16.04.2024 in W.P.(C) No. 15965/2024 passed by this Hon'ble Court.
Exhibit R9(b)	True copy of the interim order dated 19.06.2024 in W.P.(C) No. 15965/2024 passed by this Hon'ble Court.
Exhibit R9(c)	True copy of the Order No. C2-1448/2024- GME issued by the District Medical Officer dated 24.05.2024.



Exhibit R9 (d) True copy of the Letter issued by the Health Inspector Family Health Centre, Vamanapuram to the 4th respondent dated 27.06.2024.

Exhibit R9 (h) True copy of the new application submitted by the petitioner dated 22.06.2024.

Exhibit R9 (j) True copy of the letter dated 28.03.2024 submitted by the Janakeeya Samithi to the District Collector of the Thiruvananthapuram District.

Exhibit R9 (k) True copy of the letter dated 31.03.2024 submitted by the Janakeeya Samithi to the Deputy Superintendent of Police of Attingal Municipality.

Exhibit R4 (m) True copy of the notice No. A3-6440/17 dated 20.01.2024 issued by the Nellanad Gram Panchayat.

Exhibit R9 (e) True copy of the stop memo No. A10/1906/22 dated 16.06.2022 issued by the Secretary of the Nellanad Gram Panchayat.

Exhibit R9 (f) True copy of the stop memo No. A10/243/23 dated 24.01.2023 issued by the Secretary of the Nellanad Gram Panchayat.

Exhibit R9 (g) True copy of the written statement filed before the Hon'ble Tribunal for Local Self Government Institution, Thiruvananthapuram dated 12.03.2024.

Exhibit R9 (l) True copy of the letter dated 01.04.2024 submitted by the Janakeeya Samithi to the RDO of Nedumangad Municipality



Exhibit R4(a) **True copy of the letter issued by the
Secretary of Nellanadgrama Panchayat to
the petitioner dated 22.06.2024**

True copy

Ps to Judge