

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

WP(C) NO. 31461 OF 2022

PETITIONER:

D. BABU
AGED 56 YEARS
S/O. DASAYYAN, ABHILASH BHAVAN, VELLAMODI,
THIRUPURAM P.O, THIRUVANANTHAPURAM DISTRICT-PIN
695133 NOW RESIDING AT 'GRACE VILLA', PAZHAYAKADA,
NEAR CHATHANAR DURGA DEVI TEMPLE, TIRUPURAM P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN - 695133
BY ADVS.
GIRISH KUMAR M S
ADITHYA RAJEEV

RESPONDENTS:

- 1 C. SHAJI
AGED 56 YEARS
S/O. CHELLAPPAN NADAR, S P BHAVAN, VELLAMODI,
THIRUPURAM P.O, NEYYATTINKARA, THIRUVANANTHAPURAM
DISTRICT, PIN - 695133
- 2 THE SECRETARY, THIRUPURAM GRAMA PANCHAYAT
PAZHAYAKADA, THIRUPURAM P.O., THIRUVANANTHAPURAM
DISTRICT, PIN - 695133
BY ADVS.
Latheesh Sebastian Sebastian
R.T.PRADEEP
GP - SRI. SYAMANTHAK B.S.

**THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 24.05.2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

“C.R.”

VIJU ABRAHAM, J.

W.P.(C). No.31461 of 2022

Dated this the 24th day of May, 2023

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P7 order of the Tribunal for Local Self Government Institutions.

2. The petitioner is the 2nd respondent in Appeal No. 260/2021 on the files of the Tribunal for Local Self Government Institutions, Thiruvananthapuram, which was preferred by the 1st respondent herein alleging inaction on the complaint filed by him before the 2nd respondent Secretary of the Panchayat. The allegation against the petitioner is that he is illegally and unauthorisedly conducting a cattle business in his property, without obtaining any license from the 2nd respondent and the said activity of the petitioner has obstructed the free ingress and egress of the 1st respondent from his residential building and has also caused severe health issues in the locality. The 1st respondent has approached this Court earlier by filing WP(C) No.6607/2020 against the alleged illegalities committed by the petitioner and this Court as per judgment dated 10.06.2020 disposed of the writ petition directing the Revenue

Divisional Officer, Neyyattinkara to consider the complaint preferred by the 1st respondent. Pursuant to the same, the Revenue Divisional Officer directed the Village Officer to conduct an enquiry in this regard and the Village Officer has submitted a report before the Revenue Divisional Officer. It is also alleged that the Health Inspector has also submitted a report regarding the illegal cattle business conducted by the petitioner and thereupon the 2nd respondent issued a notice dated 17.03.2021, directing the petitioner to close down the illegal cattle business. The Vigilance wing of the Kerala State Electricity Board has also initiated an enquiry against the illegal business conducted by the petitioner. In spite of all these, it is alleged that, the petitioner is continuing with the illegal cattle business and thereupon Ext.P1 appeal was filed by the 1st respondent before the Tribunal for Local Self Government Institutions. During the pendency of the Appeal before the Tribunal, the petitioner was laid up due to Covid-19 pandemic and other health related issues and therefore, he could not contact his counsel and to file an objection to the appeal in time. Thereupon, the petitioner was set *ex parte* by the Tribunal. The 2nd respondent Panchayat was also set *ex parte*. Thereafter the Tribunal proceeded to allow the appeal as per Ext.P2 order, directing the 2nd

respondent to initiate steps forthwith to close down the illegal cattle business after complying with the procedure established by law.

3. The petitioner submits that the allegations in Ext.P1 is completely baseless and the allegation that he is conducting cattle business in the property is false. It is further submitted that the petitioner's wife is rearing cattle and supplying milk to the nearby milk marketing society and since the petitioner's wife is rearing less than five cows, no license is required as per law. Subsequent to Ext.P2 order, the 1st respondent has preferred Ext.P4 petition to initiate prosecution proceedings against the 2nd respondent for disobedience of the directions in Ext P2 order. It is only when the 2nd respondent intimated the petitioner about Exts. P2 and P4, that the petitioner came to know about the order passed by the Tribunal. It is in such circumstances, the petitioner has preferred Ext.P5 petition to set aside the *ex parte* order in Appeal No. 260/2021 and also Ext.P6 petition seeking to condone the delay in filing the petition to set aside the *ex parte* order. The Tribunal as per Ext.P7 common order disposed both the aforesaid applications, taking the stand that the prayer to condone the delay in filing a petition for setting aside the *ex parte* order cannot be allowed as

the proviso to Rule 8(3) of the Tribunal for the Local Self Government Institution Rules, 1999 (herein after referred to as "Rules 1999") precludes the Tribunal from condoning the delay beyond 60 days. The said decision of the Tribunal is challenged in this writ petition.

4. The petitioner relying on Rule 8 of the Rules, 1999 submits that the proviso to Rule 8(3) is applicable only in relation to filing of appeals and revisions before the Tribunal and that it is settled law that every Tribunal is vested with inherent/deemed powers to render substantial justice. Petitioner relying on the decision of this Court in ***Cheru Ouseph v. Kunjipathaumma (1981 KLT 495)*** contended that in respect of procedural matters, all powers which are not specifically denied by the statute or the statutory rules, should be given to the Tribunal so that it may effectively exercise its judicial function. The petitioner also relies on the judgment of this Court in ***Kerala State Co-operative Consumer Federation Limited v. K. Vasu & Others [2015 (3) KLT 636]***, which held that an arbitrator under the Kerala Co-operative Societies Act has powers to set aside an *ex parte* award, as such power is inherent in the exercise of jurisdiction by such a quasi judicial adjudicatory body. The petitioner also relied on Rule 25 of the Rules, 1999

which empowers the Tribunal to regulate the procedure in connection with the disposal of petitions before it in respect of matters not provided in the Panchayat Act or the Municipality Act. The petitioner also submits that in ***Eloor Municipality v. Krishnadhara [2014 (4) KLT 294]*** this Court has held that the Tribunal for Self Government Institutions has power to set aside an *ex parte* order passed by it.

5. The learned counsel appearing for the respondent Panchayat submits that the wording in Rule 16 and 19 of the Rules, 1999 only speaks about the disposal of a petition *ex parte* and further that since Exts.P5 & P6 petitions have been filed beyond the time limit fixed as per the Rules, the Tribunal was right in passing Ext.P7 common order.

6. The learned counsel appearing for the 1st respondent submitted that the Tribunal has no power to set aside an *ex parte* order and to condone the delay in filing the same, beyond the time limit prescribed by the Act and the Rules. He has also raised an alternative contention that even in the writ petition, the petitioner has no case that he is functioning the unit after obtaining necessary licences in this regard and therefore, no purpose will be served in setting aside the *ex parte* order, as the petitioner has not

obtained any licence for running his cattle business.

7. I have considered the rival contentions of the parties and examined the judgments relied on. The Tribunal as per Ext.P7 impugned order, dismissed Ext.P5 application to set aside the *ex parte* order and Ext.P6 application to condone the delay in filing the said petition, solely relying of Rule 8(3) of the Rules, 1999. The question to be considered is as to whether Rule 8(3) of the Rules will apply in the facts and circumstances of this case. Rule 8 of the Rules, 1999 reads as follows:

“8. Petitions to the Tribunal.—(1) A petition submitted to the Tribunal shall be an appeal or revision against a notice, order or proceedings of the Village Panchayat; or Municipality or its Standing Committee for Finance or the Secretary in respect of any matter specified in the schedule appended to these rules or added to the said schedule by the Government from time to time by notification.

(2) If the concerned Village Panchayat or the Municipality or the Standing Committee for Finance or the Secretary has not taken decision within the prescribed time limit in cases where time limit has been prescribed in the Panchayat Act or the Municipality Act or in the Rules, the affected party may., in this respect, file appeal before the Tribunal.

(3) Petitions under sub-rules (1) and (2) shall be in form 'C' and the same shall be submitted before the Tribunal within thirty days

from the date of the notice or order or proceedings against which the petition is filed or within ninety days in cases where decision has not been taken within sixty days of filing appeal before the Local Self Government Institutions:

Provided that the Tribunal may admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time limit. ”

Rule 8 speaks about the filing of petitions before the Tribunal. As per Rule 8(1) a petition submitted to the Tribunal shall be an appeal or revision against a notice, order or proceedings of the Village Panchayat; or Municipality or its Standing Committee for Finance or the Secretary in respect of any matter specified in the schedule appended to the Rules, 1999 or added to the said schedule by the Government from time to time by notification. Rule 8(2) further mandates that the if Village Panchayat or the Municipality or the Standing Committee for Finance or the Secretary has not taken decision within the prescribed time limit in cases where time limit has been prescribed in the Panchayat Act or the Municipality Act or in the Rules, the affected party can file appeal before the Tribunal. Rule 8(3) provides that the petitions under sub-rules (1) and (2) shall be in form C and the same shall be submitted before the Tribunal within thirty days from the date of

the notice or order or proceedings against which the petition is filed or within ninety days in cases where decision has not been taken within sixty days of filing appeal before the Local Self Government Institutions. The proviso to the said Rules mandates that the Tribunal may admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time limit. A reading of Rule 8 of the Rules, 1999 makes it explicitly clear that the time limit which has been fixed as per the Rules is in respect of petitions to be filed as provided in Rules 8(1) and 8(2) of the Rules, 1999 and not in respect of a petition filed in the said proceedings before the Tribunal, like the one which was filed in the present case, for setting aside the *ex parte* order and the petition to condone the delay in filing the said petition. This Court in ***Eloor Municipality***'s case (Supra) relying on Rule 25 of the Rules, 1999 held that though there is no express provision in the Act or the Rules giving the Tribunal the jurisdiction to set aside an *ex parte* order, it is well known rule of statutory construction that a Tribunal or a body vested with adjudicatory function should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its function effectively for the

purpose of doing justice between the parties and held that the petitioner in that case is free to move the Tribunal for Local Self Government Institutions with appropriate petition for setting aside the *ex parte* order. The said decision in ***Eloor Municipality's*** case (Supra) was following the judgment of the Apex Court in ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others [1980(Supp) Supreme Court Cases 420]***. Similar view was taken by this Court in ***Rema Devi v. Joint Registrar (General) of Co-operative Societies [2016(3) KLT 50]*** and ***Vasakumar Pillai v. M.A.C.T. [2008 (4) KLT 899]***. I have already found that Rule 8 only contemplates the time limit in filing appeal or petition, as provided in Rule 8(1) and 8(2) and does not speak about a petition to set aside *ex parte* order or a petition to condone the delay in filing the same, in an appeal filed before the Tribunal. This Court in ***Eloor Municipality's*** case (Supra) relied on Rule 25 of the Tribunal for the Local Self Government Institution Rules, 1999, which specifically mandates that in matters which are not provided in the Panchayat Act, the Municipality Act and the rules, the Tribunal shall have power to regulate the procedure in connection with the disposal of a petition in the manner it thinks proper, to hold that the Tribunal has power to

entertain a petition to set aside an *ex parte* order.

8. Considering all these aspects into consideration and the judgments cited Supra, I am of the opinion that the reliance placed by the Tribunal on Rule 8(3) of the Tribunal for the Local Self Government Institution Rules, 1999, to dismiss the application for setting aside the *ex parte* order and the application to condone the delay in filing the same, is not correct and the impugned order is liable to be interfered with. Therefore, Ext.P7 order is set aside. There will be a direction to the Tribunal for Local Self Government Institutions, Thiruvananthapuram, to re-hear Exts. P5 & P6, I. A. Nos.1230/22 & 1231/2022 in appeal No.260/2021, after affording an opportunity of being heard to the petitioner as well as the 1st respondent and take a decision on the same within a period of one month from the date of receipt of a copy of this judgment.

9. This Court while admitting the present writ petition has passed an interim order on 11.10.2022 staying the operation of Ext.P2 order passed by the Tribunal, on condition that the 2nd respondent Panchayat shall ensure that the petitioner is not engaging in cattle business and is only rearing five cows. The learned counsel for the petitioner submits that only 5 cows have been reared by his wife and the petitioner undertakes that not more than 5 cows will be reared at a point of time and that the

petitioner will not engage in the cattle business without obtaining necessary licence. The said undertaking is recorded. Till a decision is taken by the Tribunal as directed above, the interim order granted by this Court on 11.10.2022 will remain in force on condition that the petitioner complies with the undertaking recorded and the 2nd respondent shall see that the said undertaking is strictly complied with.

With the above said directions and observations, the writ petition is disposed of.

Sd/-
VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 31461/2022

PETITIONER EXHIBITS

- Exhibit1 A TRUE COPY OF THE APPEAL MEMORANDUM IN APPEAL NO. 260/2021 ON THE FILES OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- Exhibit-P2 A TRUE COPY OF THE ORDER DATED 26-10-2021 IN APPEAL NO. 260/2021 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- Exhibit-P3 A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 10-06-2020 IN WP(C) NO. 6607/2020
- Exhibit4 A TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 138/2022 IN APPEAL NO. 260/2021
- Exhibit-P5 A TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 1231/2022 IN APPEAL NO. 260/2021 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- Exhibit-P6 A TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 1230/2022 IN APPEAL NO. 260/2021 BEFORE THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- Exhibit-P7 A TRUE COPY OF THE COMMON ORDER DATED 30/08/2022 IN I.A. NO. 1230/2022 AND I.A. NO. 1231/2022 IN APPEAL NO. 260/2021 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM