
(2009) 03 KL CK 0100

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 24203, 25602 and 32992 of 2008

Manager, Presentation Convent Girls High School

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 30(1)

Explosives Act, 1884 — Section 4, 6E(3)

Explosives Rules, 1983 — Rule 156, 156(3), 156(4), 156(5), 156(6)

Citation : (2009) 03 KL CK 0100

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam and Tony George Kannanthanam, for the Appellant; Mathai M. Paikaday M.K. Chandra Mohandas, M.K. Aboobacker, M.R. Venugopal, Dhanya P. Ashokan and V. Krishna Menon, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The sum and substance of these three writ petitions running to hundreds of pages including counter-affidavits, additional counter-affidavits, various interlocutory applications etc. can be extracted as given below:

(a) Whether Exhibit P-9 "consent to operate" [in W.P. (C) No. 24302 of 2008 and W.P. (C) No. 25602 of 2008] is liable to be acted upon by the Panchayath for issuance of the requisite licence in compliance with the judgment dated 24-7-2008 in W.P. (C) No. 17782 of 2008 or not?

(b) Whether Exhibit P-9 consent issued by the competent authority under the Explosives Act, 1884 and the Explosives Rules, 1983 is liable to be treated as a "valid licence" for being considered by the Panchayath in connection with the licence to be issued for operating the unit under the relevant provisions of the Kerala Panchayath Raj Act, 1994 or not?

2. The case putforth by the Petitioners in W.P. (C) No. 24203 of 2008 and W.P. (C) No. 25602 of 2008 is more or less similar. The former one is filed by the Manager of the School; whereas the latter has been filed by the Parent-Teachers Association and two others. The learned Counsel for the Petitioner School submitted that the reliefs prayed for in the earlier O.P. are only confined to the challenge raised against Exhibit P-9 "consent to operate" given by the Pollution Control Board.

3. With regard to the sequence of events, it is seen that the fourth Respondent in W.P. (C) No. 24203 of 2008 and W.P. (C) No. 25602 of 2008 (hereinafter referred to as "applicant" for the convenience of reference in all the three cases) who is stated as the owner of the property in Sy. No. 1982 of Vellikulangara Village in Mukundapuram Taluk, with intend to start a "Crusher Unit" and a "Quarry", approached the statutory authorities for obtaining the requisite NOC/Licence, reportedly after availing/arranging necessary funds from different sources including Public Sector Banks by way of loans and submitted an application before the Pollution Control Board for "consent to establish" the Unit.

4. It is relevant to note at this juncture, that "three level monitoring system" is contemplated under the relevant provisions of the Environment (Protection) Act, 1986. Firstly, the concerned party will have to satisfy the authority as to the "infrastructure" before getting the "consent to establish" the Unit. After obtaining such "consent to establish", the applicant has to comply with the various conditions/requirements as stipulated by the Pollution Control Board, after which alone will they be issued the "consent to operate" the Unit. Even after obtaining the "consent to operate" and on getting the requisite sanction from the concerned local authority, the party has necessarily to satisfy the Pollution Control Board that their activities are strictly in conformity with the norms prescribed by the Pollution Control Board, failing which it is for the Pollution Control Board, invoking such powers as specified under statute, to bring them to the proper track and on failure, it is very much open to cancel or revoke the Licence already granted.

5. In the instant case, the applicant, on satisfying the requisite elements, was given the "consent to establish" the Unit as borne by Exhibit R-4(b) dated 16-11-2006 issued by the Pollution Control Board. Subsequently, taking note of the relevant facts and circumstances, the Panchayath passed a resolution to give "consent to establish" the Unit as evident from Exhibit R-4(c). When the applicant was proceeding with further steps to establish the Unit on the basis of Exhibits R-4(b) and R-4(c), the Pollution Control Board intercepted the activities on the basis of some complaints stated as obtained from different corners including the Petitioner's School and issued Exhibit R-4(f) proceedings dated 4-4-2007 directing to stop all the construction activities with immediate effect.

6. While so, the applicant was granted the necessary Licence by the authorities under the Explosive Rules, 1983 for possessing and using the explosives in connection with the operation of the Quarry, as borne by Exhibit R-4(d) dated

16-4-2007. Various discussions, meetings and negotiations followed and upon satisfying the Pollution Control Board as to the true state of affairs, they withdrew Exhibit R-4(f) "stop memo" and vide Exhibit R-4(g) proceedings dated 16-5-2007 permitted the applicant to proceed with the activities to "establish the Unit" based on Exhibit R-4(b) consent, subject to some additional conditions incorporated therein.

7. In the meanwhile, the Panchayath, taking note of Exhibit R-4(f) dated 4-4-2007 had issued a "stop memo" asking the applicant to keep all the construction activities in abeyance vide Exhibit R-4(h) proceedings dated 18-5-2007 based on the resolution taken in this regard on 15-5-2007. But since Exhibit R-4(f) "stop memo" issued by the Pollution Control Board was already withdrawn vide Exhibit R-4(g) dated 16-5-2007, the applicant approached this Court by filing W.P. (C) No. 20026 of 2007 praying for a direction to be issued to the Panchayath to act upon Exhibit R-4(g) and to permit them to complete the work. It was also pointed out before this Court that, according to the applicant, they had obtained all the requisite certificates such as NOC from the Pollution Control Board, Additional District Magistrate, Explosives Department, Geology Department etc. The Petitioner school also got impleaded in the above writ petition as additional fifth Respondent. After hearing all the parties, this Court vide Exhibit R-4(i) judgment directed the Panchayath to consider the matter and finalise the proceedings as specified.

8. Pursuant to the above verdict, in spite of the withdrawal of the stop-memo issued by the Pollution Control Board, the Panchayath declined the request of the applicant as per Exhibit R-4(j) dated 6-10-2007. But later, the Panchayath convened a meeting of the applicant and people of the locality and as suggested by the Panchayath, steps were taken to assess the damage caused, if any, to the buildings in the locality; for which two separate Engineers were deputed, one at the instance of the Panchayath and other at the instance of the applicant, who submitted their reports as Exhibit R-4(k) and R-4(l) respectively. It is the stand of the applicant that, even though the damage was not caused because of their activities, particularly when the Units were yet to be operated, they decided to "purchase peace" and accordingly, the amounts shown as payable by the Engineer/Loss assessor engaged at the instance of the Panchayath were disbursed to the parties concerned, against proper receipts like Exhibit R-4(m). However, it is pointed out by the learned Counsel for the Petitioner that the Petitioner school was never amenable to such course, particularly since their grievance was against establishment of the Crusher Unit/Quarry in the concerned property, which otherwise was to affect the lives of the Teachers, Staff and Students of the School; besides causing further damage to the buildings.

9. After completing the works in setting up the Unit, the applicant approached the Pollution Control Board for "consent to operate" the Unit. Since the matter was being delayed, the applicant approached this Court by filing W.P. (C) No. 10932 of 2008 for appropriate reliefs. After hearing both the sides (including the

Pollution Control Board and the Panchayath), this Court disposed of the writ petition vide Exhibit R-4(n) judgment dated 10-4-2008 directing the Pollution Control Board to inspect the premises and on satisfaction as to compliance with the conditions imposed, and if there was no impediment for issuing the "consent to establish" (presumably a mistake as "consent to operate" was the issue involved) to grant the "consent to operate" and directed the Panchayath to consider the application for the requisite licence to be given by the Panchayath on the basis of the above proceedings.

10. While so, the Additional District Magistrate (A.D.M.), Thrissur issued a notice to the applicant asking to show cause, why the NOC forwarded to the Controller of Explosives shall not be withdrawn, instructing the applicant to attend a meeting scheduled in this regard. The meeting convened by the A.D.M. appears to be on the basis of a complaint preferred by the Petitioner. After hearing, the A.D.M. passed Exhibit R-4(o) dated 23-5-2008 wherein it was observed that the request of the Petitioners was to avoid electric detonators and to reduce the capacity of the Crusher to 500 tonnes. Taking note of the fact that the Quarry was yet to be started, the parties were directed to approach the Panchayath for further steps in this regard, particularly in view of the proposed constitution of a Monitoring Committee. However, the applicant chose to challenge the said proceedings in W.P. (C) No. 17782 of 2008. It is seen that the Petitioner herein, though was not originally impleaded as a Respondent to the above proceedings, later got impleaded as the additional third Respondent. During the course of hearing W.P. (C) No. 17782 of 2008, it was brought to the notice of this Court that the Pollution Control Board, after filing the writ petition, had issued the necessary "Consent to Operate" the Unit and that the Panchayath was to finalise the matter, as already directed by Exhibit R-4(n). Accordingly, the said writ petition was disposed of vide Exhibit R-4(p) judgment, directing the Panchayath to consider the application preferred by the applicant and to pass final orders thereon with notice to the additional third Respondent (Petitioner herein) and others within the time limit of four months as specified therein.

11. After the disposal of W.P. (C) No. 17782 of 2008, the Petitioner approached this Court, by filing a review petition in W.P. (C) No. 10932 of 2008 stating that much prejudice was caused to the Petitioner for having passed the said verdict without impleading her in the party array. After hearing, this Court as per order dated 22-10-2008 observed that the direction was only to consider the matter by the Panchayath and further that the grievance as to the loss of opportunity of hearing stood substantially redressed in view of the judgment dated 24-7-2008 in W.P. (C) No. 17782 of 2008, whereby the Panchayath was directed to finalise the proceedings only after hearing the Petitioner as well. Thereafter, the Petitioner approached this Court by filing W.P. (C) No. 24203 of 2008 challenging the validity of Exhibit P-9 "Consent to Operate" the Unit issued by the Pollution Control Board and obtained an interim order of stay, pursuant to which the proceedings directed to be finalised by the Panchayath are stated as kept in abeyance.

12. With regard to the challenge against Exhibit P-9, the main grievance of the Petitioner is that her School is situated very close to the applicant's Unit and that operation of the Unit will cause much adverse consequences by way of damage to the building and also in terms of pollution, making the life of the teachers, students and local public miserable. The Petitioner also submits that the Unit of the applicant is situated with much proximity to the Forest area and that the sanction to operate the Unit will definitely spoil the "flora and fauna", adversely affecting the wild life; particularly the forest being a "Conservation of Tiger Reserve Forest". The learned Counsel for the Petitioner points out that the operation of the Unit will lead to scarcity of drinking water in the locality and further that it will be against the terms of the National Minor Mineral Policy 1993; thus affecting the public at large as well.

13. With regard to the magnitude of challenge the subject-matter in the present writ petitions is rather to be confined to the relative rights and liabilities between the Petitioner and that of the applicant. In other words, the larger questions involving public interest are not supposed to be dealt with by this Court, not being a "Public Interest Litigation". Whether the applicant is entitled to obtain Exhibit P-9 "consent to operate" issued by the Pollution Control Board; whether infringement of any statutory prescription is brought to light or whether the conditions prescribed by the statutory authorities are simply thrown to wind by the applicant/beneficiary etc. are the questions to be considered while examining the scope of Exhibit P-9. But then, there is an effective alternative remedy for the Petitioner to have it challenged by way of Appeal as provided under the Statute-as pointed out by the Pollution Control Board in their counter-affidavit. Such "fact adjudication" can only be on the basis of the evidence to be adduced; which is not possible in a writ petition filed before this Court invoking the discretionary jurisdiction under Article 226 of the Constitution of India.

14. Another reason for declining interference in W.P. (C) No. 24203 of 2008 and W.P. (C) No. 32992 of 2008 is that the prohibited distance is only 50 to 100 metres (as the case may be) as discernible from Exhibits R-3(a) and R-3(b) Circulars issued by the Pollution Control Board. It is stated that Exhibit R-3(c) is the Report submitted by the Chief Environmental Engineer, where the distance between the Petitioner's school and the Unit is shown as 629 metres. It has been stated by the Chief Environmental Engineer in Exhibit R-3(c) that, it cannot be said that damages have occurred to the building of the Petitioner's school because of the operation of the Unit of the applicant, in view of the distance noted above; simultaneously adding that, for the very same reason, no damage could be caused to the "Kozhimuttapara" as alleged by the Petitioner. The Petitioner has not chosen to challenge Exhibits R-3(a) and (b) Circulars issued by the Pollution Control Board or the observations made by the Chief Environmental Engineer as reported in Exhibit R-3(c).

15. Yet another aspect pointed out by the senior Counsel for the applicant is that, according to the applicant, W.P. (C) No. 24203 of 2008 can only be regarded as

"suit in disguise" for damages, in so far as the actual intent and desire of the Petitioner would be explicitly clear from paragraph 4 of the reply affidavit dated 13-9-2008 filed by the Petitioner and also from prayer "g" of the amended writ petition, which are extracted below for convenience of reference:

Paragraph 4.-If so, fourth Respondent can't start operation of even the Crusher before an approved authority finds out the actual damage incurred to Petitioner due to fourth Respondent, and till fourth Respondent pays it to Petitioner.

g. To prohibit 4th Respondent from operating their quarry/crusher till an expert authority appointed by Government decides the loss suffered by Petitioner due to the blasting done by 4th Respondent and till that amount is paid by the 4th Respondent.

As submitted by the applicant, since the operation/production is yet to be started, for want of necessary licence to be issued by the Panchayat, the apprehension of the Petitioner as to the damage likely to be caused, if permission to operate is given is rather pre-mature; which is more so when the Petitioner is very much entitled to pursue the remedy before the statutory authorities, if any violation of the prescribed conditions, norms, orders or circulars is noticed. On such an event, it is for the Petitioner to substantiate the damage as well, if any caused because of the activities conducted by the applicant and as to the extent of damages payable by pursuing appropriate remedies before the appropriate Forum/Civil Court.

16. With regard to the challenge raised in W.P. (C) No. 32992 of 2008 against Ext. P-9 Quarry licence given to the applicant by the authority under the Explosives Act and Rules, the Petitioner has raised serious attack for noncompliance of the relevant rules including Rule 156(4). The main contention of the Petitioner is that the licence was sought for and proceedings were pursued in respect of a different property (having Sy. No. " 1892") whereas the No Objection Certificate issued by the Additional District Magistrate and Ext. P-9 licence issued by the statutory authority were in respect of the property comprised in Sy. No. "1982". The learned Counsel for the Petitioner submits that the application submitted by the applicant in Form 5, the subsequent proceedings in Form 17/Form 18, the site plan and paper publication of the notice contemplated under Rule 156(4) etc. are pertaining to the property comprised in Sy. No. 1892 and not with regard to the property in Sy. No. 1982-as shown in Ext. P-9 licence. The learned Counsel submits that since the application, site plan and other relevant proceedings are defective, there is no valid application; no valid site plan and hence, there cannot be any valid licence as well.

17. As against the contentions raised by the Petitioner, it is submitted by the applicant [6th Respondent in W.P. (C) No. 32992 of 2008] that the case put forth by the Petitioner, trying to capitalize the mistake in Survey Number, does not hold any water at all. So also is the position with regard to the wild allegations of

malpractices in the office of the departmental authorities and as to the collusion with the applicant in this regard. With regard to the notice in respect of the Survey Number as 1892 and subsequently in giving NOC leading to Ext. P-9 licence showing the actual Sy. No. as 1982, learned Senior Counsel appearing for the applicant submits that there was no dispute with the identity of the property concerned till filing of the present Writ Petition; that absolutely no prejudice has been caused to the Petitioner in this regard; that the allegations and apprehension as to the damage caused or likely to be caused on operating the Unit of the applicant are thoroughly wrong and misconceived; that the Petitioner had in fact participated in the meeting convened by the Additional District Magistrate, as evident from Ext. R-4Q [Ext. R-4(o) in W.P. (C) No. 24203 of 2008] and above all that Ext. P-9 licence having been granted only in respect of a "small quantity" of 75 Kgs of explosives, compliance with Rule 157 alone is sufficient, since Rule 156 is not at all attracted.

18. Referring to Exts. P-18(a) and (b) proceedings (the request and application in Form No. 5 submitted by the applicant) wherein the survey number has been wrongly shown as "1892" it is pointed by the learned Counsel for the Petitioner that the wrong citation of the survey number has got serious impact with regard to the notice contemplated under Rule 156(4) and as to the rights of the interested parties to prefer objections. Since the proceedings were finalised by the Addl. District Magistrate leading to issuance of the No Objection Certificate without giving proper notice (as the paper publication did not advert to the correct survey number as "1982" but for wrongly describing the survey number as 1892), the Petitioner contends that all consequential proceedings including Ext. P-9 licence granted by the licensing authority are liable to be set aside.

19. The description of the property mentioning it as under Survey No. "1892" and the scope of notice as contemplated under Rule 156(4) have to be considered in a wider perspective. The first question to be considered is whether the mistake in the survey number will make the notice issued under Rule 156(4) null and void. Secondly, whether the said mistake in the survey number as contained in the notice published has adversely affected the rights and interests of the Petitioner and thirdly, whether the licensing authority, before granting Ext. P-9 licence, had clear idea as to the scope and ambit of the licence which was about to be issued pursuant to the application and NOC forwarded to him along with the relevant records.

20. If Rule 157 is to be applied, which deals with the procedure to be followed for grant of Form 22 licence to possess "small quantity" of explosives for "own use", the procedure is entirely different and the various stipulations or preconditions imposed under Rule 156 are given a go-bye, by virtue of the "nonobstante clause" contained in the said rule. For the purpose of convenience of reference, both the above rules are extracted below:

Rule 156(4).-"Upon receipt of the said application the district authority shall forthwith cause notice to be published of such application and of the time and

place at which he will be prepared to hear it, and calling upon any person objecting to the establishment of the factory or magazine or store house on the proposed site to give notice of such objection to him and to the applicant of not less than seven clear days before the day fixed for hearing the application together with his name, address and calling and a short statement of the grounds of his objections. The day of hearing the application shall be a day following as soon as practicable, after the expiration of the period of one month referred to in Sub-rule (6).

Rule 157.- Procedure to be followed for grant of a licence in Form 22 to possess small quantity of explosives for own use.-Notwithstanding anything contained in Sub-rule (3) to (7) of Rule 156, where the licensing authority is the Chief Controller or a Controller and where the quantity of explosives proposed to be possessed for own use under a licence in Form 22 does not exceed 100 Kgs., the applicant may apply to the district authority together with an application in Form 5, statement in Form 17 and the necessary plans for the grant of a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and the district authority shall, if he sees no objection after conducting enquiries as required under these rules, grant, such certificate to the applicant who may forward it to the licensing authority together with his application.

21. Rule 157 can be applied only if the quantity of explosives proposed to be possessed for own use does not exceed 100 Kgs. In the instance case, Ext. P-18 (a) and (b) applications show the details of explosives as given under:

1. Gelatin 100 Kgs. 2. E. Detonator 10,000 Nos. 3. O. Detonator 10,000 Nos. 4. Safety Fuse 2,000 Mtrs. 5. Anfo 500 Kg.

If all the above materials are liable to be treated as explosives, it would take the proceedings outside the purview of Rule 157. The contention of the applicant (as supported by the statutory/departmental authorities) is that the licence having been issued only for a much lesser quantity, bringing it within the purview of Rule 157, the mistake in survey number and the defect in the publication of notice are not of much significance. The learned Senior Counsel for the applicant also points out that the provision only says that the total quantity of explosives shall not be in excess of 100 Kgs. and that detonators are not explosives in view of the definition of the term "detonator" given under Rule 2(7) of the Rules.

22. Rule 2(7) of the Rules defines the term "detonator" as follows:

Rule 2(7).-"detonator" means a small tube of aluminium or copper or other materials approved by the Chief Controller-

(a) one end of which is closed and the other-

(i) left open for the insertion of safety fuse for the purpose of initiating explosion within the tube; or

(ii) fitted with wires or other device for that purpose and sealed;

(b) which is loaded with a charge of initiating explosives, the charge being so designed as to produce an explosion that would communicate to other tube similarly constructed and charged;

It is true that the term "explosive" is not defined in the Rules. Going by the definition of the term "detonator", it is difficult to ascertain whether it is an explosive or not. Referring to the purport intent and usage of detonator, the learned Senior Counsel for the applicant submits that, it will become an explosive, only when it is "loaded". This Court finds it difficult to agree with the said proposition since the term "explosive" has been clearly defined u/s 4(d) of the Act, which includes "detonator" (without any distinction whether loaded or otherwise). Section 4(d) of the Act is extracted below:

Section 4(d).-"Explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphnate, fulminate of mercury or any other metal, diazo-di-nitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;

23. While considering the applicability of the mandatory requirements under Rule 156(4) and as to the legally reckonable infringement of the vested rights or interests of the parties, it is very much necessary to look into the contents of Ext. P-9 licence as well. Undisputedly, the licence granted is only for a total extent of 75 Kgs. of explosives. The material shown as "Anfo" (500 Kgs.) in Ext. P-18(a) and (b) applications has been left out by the licensing authority. So also, the two different types of "detonators" (10000 Nos. each) as claimed in the applications has been considered together and only a total number of 10,000 "detonators" has been licenced to be stored/possessed; granting permission to have 2000 mtrs. of "Safety fuse". That apart, the 2nd and 3rd Respondents who are the concerned authorities under the Act and Rules have also filed a counter-affidavit before this Court, stating in paragraph Nos. 3 and 4 that the licence granted to the applicant is only in respect of 75 Kgs. of "high explosives and accessories" which will not come within the purview of the Rule 156 of the Rules and that compliance with Rule 157 alone is enough. From the above, it is clear that the concerned authorities had taken a conscious decision while granting the licence and that the same was not granted just on the basis of the entries as given in the application/recommendation/NOC. This Court does not find any reason to doubt the intellectual expertise of the competent authorities in this regard, merely for the mistake in the survey number pointed out by the

Petitioner.

24. With regard to the alleged rights of the Petitioner and other interested parties as to the loss of opportunity for hearing in view of the mistake in the survey number, the crucial question to be considered is whether any prejudice has been caused to them in this regard. As pointed out by the learned senior Counsel for the applicant, the identity of the property was never in dispute. It is not a case where the proceedings were finalised behind the back of everybody; on the other hand, the "consent to establish" the Unit was granted by the Pollution Control Board way back in 2006. Subsequently, at the instance of the Petitioner, the Pollution Control Board had given a "stop memo" directing to stop all construction works, followed by a similar "stop memo" issued by the Panchayath. Thereafter, the Pollution Control Board, as per the proceedings dated 16-5-2007 had withdrawn the stop memo, permitting the applicant to effect the construction, finally leading to the "Consent to Operate", as borne by Ext. P-9 licence in W.P. (C) No. 24203 of 2008. Various complaints, inspections, reports etc., were subjected to analysis before the different authorities at different points of time in respect of the establishment and operation of the Quarry and Crusher Unit in the particular property of the applicant situated in Sy. No. 1982 of Vellikulangara Village of Mukundapuram Taluk, though it was wrongly mentioned as 1892 somewhere. That apart, pursuant to the complaint filed by the Petitioner herself before the Addl. District Magistrate, the NOC given by the said authority earlier was sought to be reconsidered and accordingly, a notice was issued to the applicant [which was the subject-matter of challenge in W.P. (C) 17782 of 2008]. The outcome of the said meeting is evident from Ext. R-4(j) in W.P. (C) 32992 of 2008 [Ext. R-4(o) in W.P. (C) 24203 of 2008], It is revealed from the said proceedings that the Petitioner had also participated in the above meeting with regard to the issuance of NOC for obtaining the explosives licence under the Act/Rules. The submission of the Petitioner before the Addl. District Magistrate on the date of hearing scheduled on 21-5-2008, was more confined to avoid electric detonators and to reduce the capacity of the Crusher to 500 tonnes. The Petitioner having admittedly participated in the above proceedings pertaining to issuance of NOC, is not justified to take a "u-turn" and say that the mistake in the survey number (as given in the paper publication) has resulted in loss of opportunity for hearing and in raising proper objections before the concerned authorities.

25. Learned Counsel for the Petitioner, referring to Ext. P-41 counter-affidavit filed by the Addl. District Magistrate in W.P. (C) No. 17782 of 2008, submits that the very same authority who had issued the NOC for securing the Explosive licence by the applicant had conceded before this Court that the NOC required to be cancelled in view of the complaints received from different corners. The circumstances, which led to issuance of the NOC have been explained by the Addl. District Magistrate in the counter-affidavit filed in W.P. (C) 32992 of 2008, (which has been clarified in Exhibit 41 counter-affidavit as well), thus showing that there is no contradiction at all, submits the learned Senior Government

Pleader.

26. The learned Counsel for the Petitioner submits, with reference to the information obtained from the Office of the Deputy Superintendent of Police, the Office of the Fire and Rescue Department and RDO, that the said authorities have not issued any NOC in connection with the issuance of licence to the applicant. The learned Senior Government Pleader made available the relevant files containing the entire proceedings for perusal of this Court. The file discloses that NOC was issued from the Office of the Superintendent of Police, Thrissur by way of Proceedings No. D-2(B) 45431/06 R, stated as received in the collectorate on 7-11-2006. Similarly NOC bearing No. A. 28-4919/06 dated 10-10-2006 has been issued from the Office of the Asst. Divisional Officer, Fire and Rescue Service, Thrissur to the District Collector, Thrissur. In the former certificate, the survey number of the property belonging to the applicant whose particulars have been given thereunder has not been mentioned, whereas in the latter certificate, the survey number has been mentioned as "1892" as given in the site plan.

27. In the report/NOC bearing No. C. 36464/06/K. Dis. dated 31-10-2006 issued by the Tahsildar of Mukundapuram Taluk, the survey number has been correctly mentioned as "1982". So also, in the permit issued by the concerned Geologist and in the Mahazar dated 16-10-2006 attached to the location sketch prepared by the Village Officer, the survey number has been correctly mentioned as "1982". The files including those produced by the Pollution Control Board contain copies of the relevant records produced by the applicant such as title deeds, possession certificate, basic tax receipts etc., all of which show that the property was comprised in Sy. No. "1982". It is pointed out by the learned Standing Counsel for the Pollution Control Board and also by the Senior Government Pleader that the concerned application has to be accompanied with copies of all the relevant documents as prescribed and all such documents including title deed, possession certificate and basic tax receipt etc. revealed the particulars of the actual property owned, possessed and enjoyed by the applicant and that there was absolutely no reason to doubt the identity of the property involved herein. Viewed in the above circumstances, the point with regard to the prejudice, if any caused to the Petitioner, stands answered in the negative.

28. The learned Counsel for the Petitioner further referred to the violation of Rule 156(5) of the Explosives Rules stating that no notice whatsoever was issued by the concerned authority before finalising the proceedings, to the Town Planning/Municipal Authority, which otherwise would have enabled the Panchayath to bring the correct position to the notice of the said authority so as to have had the licence denied. Rule 156(5) of the Explosives Rules is extracted below:

Rule 156(5).-Where the site of the proposed factory of magazine lies within 1.5 km. of the limits of the jurisdiction of any town planning municipal authority or port authority, the applicant shall prepare, for service on such authority a notice of the application and of the said day of hearing.

The above sub-rule "5" says, where the site of the proposed factory or magazine lies within 1.5 km. of the limits of the jurisdiction of the "town planning municipal authority or port authority", the applicant shall prepare, for service on such authority a notice of the application and of the said day of hearing. This Rule obviously does not say that notice has to be issued by the licencing authority under the Explosives Rules to all Local Authorities in whose jurisdiction the Unit is sought to be established. On the other hand, it specifically denotes service of notice to the "town planning municipal authority or port authority" situated within a radius of 1.5 kms. Since existence of any Town Planning Municipal Authority or Port Authority within a radius of 1.5 kms. is not established, the above sub-rule is not at all attracted to the present case.

29. The learned Counsel for the Petitioner, referring to the term "own use" as it appears under Rule 157 of the Rules submits that the benefit of Rule 157 will be available only if the "small quantity" of the explosives not exceeding 100 kgs. is subjected to "own use" and further when the end product obtained by using the said explosives is also put to "own use/domestic purpose" of the applicant. In the instant case, the learned Counsel for the Petitioner submits that applicant has conceded in the counter-affidavit that they have already entered into a contract with another person for the supply of granite rubbles for the construction of N.H. 47. The learned Counsel for the Petitioner submits that the end product is subjected to a "commercial use" i.e. for sale and not for the domestic/personal use and hence there is violation of the Rule. Even on a plain reading of the said Rule, it is absolutely not possible to arrive at any such inference insofar as the Rule only envisages a simplified procedure, if the "small quantity" of explosives is required for the "own use" of the applicant. The term "own use" qualifies the term "explosives" and not the "end product". The explosives procured adopting a simplified procedure invoking Rule 157 are not liable to be diverted to any other channel than as envisaged therein. In the instant case, the Petitioner does not have a case that the explosive is for a different use than for being used in the Quarry/Crusher Unit of the applicant. In so far as the limited quantity of the explosives procured under the licence stated as issued under Rule 157 is put to "own use" by the applicant, the challenge raised by the Petitioner referring to the sale of the "end product" is devoid of any merit.

30. Referring to the different interlocutory applications, also seeking to implead the Centre for Earth Science Studies (additional sixth Respondent) the learned Counsel for the Petitioner submits that no licence could have been granted without conducting an "Environmental Impact Study" by the Centre for Earth Science Studies the additional sixth Respondent. This Court as per interim order dated 3-11-2008 had directed the Pollution Control Board to file a statement as to whether, in terms of the notification issued by the Government of India in exercise of the powers under the Environment (Protection) Act, 1986 an "Environmental Impact Assessment" was necessary before consent is granted for the establishment of the Quarry/Crusher Unit in the nature of the one, which is proposed to be set up by the applicant. Accordingly, the Pollution Control Board

filed a statement/report dated 12-11-2008 stating that as per the existing Rules, "Environmental Impact Assessment Study" was not required for setting up the project and that the details of Project or Activities requiring prior environmental clearance are indicated in the schedule of the Notification of the Ministry of Environment and Forests dated 14-9-2006. It is made clear therein that such study is generally carried out before setting up of the project and that too, for the projects and activities mentioned under the schedule. A copy of the relevant notification and schedule have also been produced by the Pollution Control Board as Exhibits R-3(a) and R-3(b) along with the said report, which shows that the contention of the Petitioner is wrong and misconceived.

31. The learned senior Counsel for the applicant submits that no specific plea of mala fides has been raised or established in the above proceedings. The files produced by the learned Senior Government Pleader and also by the Standing Counsel for the Pollution Control Board do not reveal any adverse entry or proceedings whereby it could be gathered that there was any attempt from the part of the applicant to mislead the authorities concerned by describing the Survey number wrongly as "1892" (in the place of 1982); especially when copies of all the supporting documents including the Title Deed, the Tax Receipt, NOC issued by the Tahsildar, Permit issued by the Geology Department, etc. produced along with the application revealed the correct Survey number as "1982". The learned Counsel also referred to the power of the licencing authority to sustain, cancel or revoke the licence, if the same has been obtained by suppression of any material fact or in dubious manner. The learned Counsel for the Petitioner also relies on such power conferred on the licencing authority u/s 6E(3)(c) of the Act and submits that the Petitioner has already preferred Exhibit P-26 dated 22-8-2008 before the Deputy Controller of Explosives, Kakkanad and Exhibit P-27 dated 31-8-2008, before the Joint Chief Controller of Explosives, Egmore, Chennai in this regard. It is for the Petitioner to pursue the matter before the said authorities, if found fit and proper for redressal of the grievance, if any.

32. The learned Counsel for the Petitioner submits that the impugned consent granted to operate the Quarry/Crusher Unit interferes with the right of the Petitioner to establish and run educational institutions guaranteed under Articles 19(1)(g) and 30(1) of the Constitution of India; besides infringement of Article 21. But enjoyment of such rights can only be with due regard to similar/constitutional rights and liberties available to other citizen as well. In so far as the acts and deeds of the "Applicant" is in conformity with the relevant provisions of law and in tune with the terms and conditions of the Licence, it is not assailable under any circumstance. The learned Counsel further submits that the Petitioner has got some other contentions as well, brought out through different interlocutory applications filed in these writ petitions. The averments and allegations in the interlocutory applications do not form part of the pleadings raised in the writ petitions. Reliefs sought for in the writ petitions are based on the specific grounds raised in the writ petitions and not on the contents of the affidavits filed in support of the interlocutory applications. Such aspects, if any,

are not liable to be looked into, in so far as they are not chosen to be incorporated in the writ petition, by amending the same.

33. While contending that the Petitioner did not know about the proceedings for issuance of the NOC by the Additional District Magistrate in view of the mistake in Survey number, shown in the public notice/paper publication as "1892" in the place of "1982". The Petitioner has also a strange contention that the publication was effected by the concerned authority in the "Mathrubhoomi" while the authorities very well knew that Nuns subscribe to "Malayala Manorama" and not "Mathrubhoomi". This Court does not intend to make any comment or opinion with regard to the "above submission as it does not deserve to be dealt with for effective adjudication of this case. Specific reference is made to paragraph 32 of the W.P. (C) No. 32992 of 2008 in this regard, which is extracted below:

Copy of Form 22 Licence issued and Form 17 Statement filed by fifth Respondent are produced herewith and marked as Exhibits P-9 and P-10 respectively. Copy of notice issued under Rule 156(4) is produced herewith and marked as Exhibit P-11. Exhibit P-11 was received on 1-11-2008 and it was entrusted with Petitioner's Counsel for appropriate action. Since Exhibit P-11 was misplaced by Petitioner's Counsel only now when he went through it he noticed the difference in the survey number and informed Petitioner and this is the reason for filing this case now.

In view of the above categorical admission made by the Petitioner, it is difficult to hold that the matter has been pursued on the basis of any genuine grievance as to violation of the rights or opportunities of the Petitioner, but as a matter of exploratory/experimental litigation.

In the above facts and circumstances, no interference is called for in all these three writ petitions and they are dismissed accordingly.