

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Con.Case(C).No. 1364 of 2015 (S) IN WP(C).10811/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 10811/2015 of HIGH COURT OF
KERALA DATED 07-04-2015

PETITIONER/PETITIONER:

WEST FORT HOSPITAL,
THRISSUR, REPRESENTED BY ITS MANAGING PARTNER,
K.M.MOHANDAS.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS/RESPONDENTS:

DR.K.M.BASHEER,
(AGE & FATHER'S NAME NOT KNOWN TO THE PETITIONER),
SECRETARY, TRICHUR CORPORATION
O/O. TRICHUR CORPORATION, THRISSUR 680 001.

R1 BY ADV. SRI.V.N.HARIDAS
R1 BY SRI.K.P.VIJAYAN,SC,THRISSUR CORPORATION

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1 : CERTIFIED COPY OF THE JUDGMENT IN W.P.(C) NO. 10811 OF 2015.
- ANNEXURE A2 : TRUE COPY OF THE ONLINE APPLICATION WITH ALL NECESSARY DOCUMENTS.
- ANNEXURE A3 : TRUE COPY OF THE COVERING LETTER DATED 10.07.2015.
- ANNEXURE A4 : TRUE COPY OF THE HEARING NOTICE DATED 20.07.2015.
- ANNEXURE A5 : TRUE COPY OF THE REPRESENTATION.

RESPONDENTS' ANNEXURES:

- ANNEXURE R1 : TRUE COPY OF THE ORDER NO.DW5/BA/513/14-15 DATED 07.04.2015 ISSUED BY THE EXECUTIVE ENGINEER OF THE RESPONDENT CORPORATION.
- ANNEXURE R2 : ENGLISH TRANSLATION OF ANNEXURE R1.
- ANNEXURE R3 : TRUE COPY OF THE ORDER DATED 01.07.2015 ISSUED BY THE SECRETARY OF THE RESPONDENT CORPORATION.
- ANNEXURE R4 : ENGLISH TRANSLATION OF ANNEXURE R3.
- ANNEXURE R5 : TRUE COPY OF THE JUDGMENT DATED 28.11.2014 OF THIS HON'BLE COURT IN W.P.(C) NO. 27424/2014.
- ANNEXURE R6 : TRUE COPY OF THE ORDER DATED 13.01.2015.
- ANNEXURE R7 : ENGLISH TRANSLATION OF ANNEXURE R6 ORDER.
- ANNEXURE R8 : TRUE COPY OF THE ORDER DATED 28.09.2015 OF THE RESPONDENT CORPORATION.
- ANNEXURE R9 : ENGLISH TRANSLATION OF ANNEXURE R8.

//TRUE COPY//

P.A. TO JUDGE.

DAMA SESHADRI NAIDU, J.

Cont. Case (C) No. 1364 of 2015

in

W.P. (C) No. 10811 of 2015

Dated this the 13th day of November, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent, apart from perusing the record.

2. This Court on 07.04.2015 disposed of W.P.(C) No. 10811 of 2015 with the following directions:

“In the facts and circumstances, having regard to the respective submissions of the learned Counsel for the petitioner and the learned Standing Counsel for the respondent Corporation, this Court, without expressing any opinion on the merits of the matter, disposes of the writ petition with a direction to the respondent Corporation to consider petitioner's Ext.P11 application in accordance with law and pass appropriate orders thereon, as expeditiously as possible, at any rate, within six weeks from the date of receipt of a copy of this judgment.”

3. Incidentally, on the very same day, it seems that the respondent authorities passed an order concerning the request of the petitioner for permission to raise additional structures in the hospital run by it. At any rate, in the light of the judgment rendered by this Court, on 01.07.2015 the respondent, yet again, passed a cryptic order rejecting the petitioner's request.

4. Having felt that Annexure R4 rejection is not justified, the

petitioner filed a detailed representation on 10.07.2015, pursuant to which the respondent officials heard the petitioner's official in person on 27.07.2015.

5. It appears that, in the light of the personal hearing held on 27.07.2015 and the issues raised therein, the petitioner on 18.08.2015 once again submitted another explanation concerning the objections raised by the respondent. Nevertheless, when nothing further had happened, the petitioner filed the Contempt Case.

6. In the counter affidavit sworn to on 28.09.2015, the respondent stated that the petitioner's application was under consideration and it would be decided soon.

7. Now, the respondent filed an additional affidavit along with Annexure R9 order said to have been passed pursuant to the hearing that took place on 27.07.2015 and also the explanation offered by the petitioner through Annexures A3 and A5. It is interesting to note that Annexure R9 order and the initial counter affidavit were signed on the same date. In the first counter affidavit, the averment was to the effect that the application was being considered; in Annexure R9, it stood rejected — both were signed on the same day, though.

8. A perusal of Annexure R9 reveals that the rejection is on a solitary ground that Rule 100 of KMBR has no application to the petitioner's building. In Annexure R2 dated 07.04.2015, the first objection on the part of the respondent is that the petitioner's application is not in compliance with Rule 100 of KMBR. Prima facie, the first objection in Annexure R2 and the ground for rejection in Annexure R9 are contradictory in terms. Be that as it may, now it is brought to the notice of this Court that the petitioner has already filed a writ petition assailing Annexure R9.

In the facts and circumstances, this Court, having been of the opinion that the contempt jurisdiction involves a technical adjudication, closes the contempt case, leaving it open for the petitioner to take all relevant pleas in W.P.(C) No. 33202 of 2015. Any opinion expressed in this disposition shall not be to the prejudice of either of the parties.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

