

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDHAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WA.No. 237 of 2009 () IN WP(C).10311/2006

AGAINST THE JUDGMENT IN WP(C) 10311/2006 of HIGH COURT OF KERALA
DATED 07-11-2008

APPELLANT/4TH RESPONDENT:

PURAKKAD GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENT(S)/PETITIONER & RESPONDENTS 1-3:

1. S.RAMESAN, S/O SREEDHARAN,
BEEFICIARY COMMITTEE CONVENER OF GANDHI SMRITHIVANAM
WEEDS REMOVING COMMITTEE, PURAKKAD GRAMA PANCHAYATH,
RESIDING AT KRISHNA PRIYA, PURAKKAD,
AMBALAPPUZHA.
2. STATE OF KERALA, REPRESENTED BY THE SECRETARY,
LOCAL ADMINISTRATION DEPARTMENT,
GOVT.SECRETARIAT, TRIVANDRUM.
3. THE DISTRICT COLLECTOR,
COLLECTORATE, ALAPPUZHA.
4. PROJECT OFFICER, DISTRICT RURAL DEVELOPMENT,
AGENCY, ALAPPUZHA.

R1 BY ADV. SRI.S.SREEKUMAR (SR.)
R1 BY ADV. SRI.MANOJ RAMASWAMY
SMT.PERLY JOSE
R2 TO R4 BY SR. GOVERNMENT PLEADER SRI VIJU THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21.10.2014, THE
COURT ON 14.1.2015 DELIVERED THE FOLLOWING:

APPENDIX IN WA.237/09

APPELLANT'S ANNEXURES:

- ANNEXURE A1: COPY OF COMPLAINT DT.23.5.03.
- ANNEXURE A2: COPY OF COMPLAINT OF ADVOCATE JYOTHIKUMAR
- ANNEXURE A3: COPY OF REPORT SUBMITTED BY THE APPELLANT BEFORE THE OMBUDSMAN IN OP.806/04
- ANNEXURE A4: COPY OF ORDER OF THE OMBUDSMAN DT.5.9.08.
- ANNEXURE A5: COPY OF REPORT SUBMITTED BY THE FINANCE WING OF THE GOVT. OF KERALA TO THE OMBUDSMAN.
- ANNEXURE A6: COPY OF MEMORANDUM OF REVIEW PETITION IN RP.NO.1393/08 IN WPC.10311/06.
- ANNEXURE A7: COPY OF PROJECT REPORT SUBMITTED BY THE PANCHAYATH.
- ANNEXURE A8: COPY OF RECEIPT ISSUED BY THE FIRST RESPONDENT/WRIT PETITIONER.
- ANNEXURE A9: COPY OF REPORT PREPARED BY THE ASSISTANT EXECUTIVE LSGD(WR), AMBALAPUZHA BLOCK PANCHAYAT.

RESPONDENTS' ANNEXURES:

- ANNEXURE R1(A): COPY OF AFFIDAVIT DT.16.3.12
- ANNEXURE R1(B): COPY OF ORDER DT.23.5.13 IN OP.NO.806 OF 2004 BY THE OMBUDSMAN FOR LOCAL SELF GOVT.INSTITUTIONS, THIRUVANANTHAPURAM.
- ANNEXURE R(A): COPY OF STATEMENT OF THE ASSISTANT EXECUTIVE ENGINEER, AMALAPUZHA BLOCK PANCHAYATH.
- ANNEXURE R(B): COPY OF REPORT OF THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE & ANTI CORRUPTION BUREAU, ALAPPUZHA.
- ANNEXURE R1(C): TRUE COPY OF FINAL BILL.
- ANNEXURE R1(D): COPY OF ORDER NO.C.2745/02 DT.29.1.03.

TRUE COPY

P.S.TO JUDGE

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

W.A.No.237 of 2009

Dated this the 14th day of January, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellant is the 4th respondent in W.P.(C) No.10311/2006. The said Writ Petition was filed by the 1st respondent herein, seeking a writ of mandamus commanding the District Collector, Alappuzha and the Project Officer, District Rural Development Agency, Alappuzha, the 3rd and 4th respondents herein, to discharge the obligations arising out of Ext.P3 agreement dated 21/4/2003 executed with the 4th respondent and seeking a writ of mandamus commanding the appellant-Panchayat to release the cash component of the work to the tune of ₹7,68,683/- as reported in Ext.P4 assessment report submitted by the Assistant Executive Engineer LSGD (WR), Ambalappuzha Block Panchayat. The learned Single Judge by judgment dated 7/11/2008 disposed of the said Writ Petition, directing the appellant-Panchayat to

release to the 1st respondent-writ petitioner the cash component for the work done, as admitted under Ext.P4 assessment report of the Assistant Executive Engineer concerned, within a period of one month from the date of receipt of a copy of the judgment. The 3rd respondent herein was further directed to consider and take action on Ext.P6 representation dated 9/7/2005, within two months from the date of receipt of a copy of the judgment. It is aggrieved by the said judgment of the learned Single Judge, the appellant-Panchayat is before us in this Writ Appeal.

2. We heard the arguments of learned Standing Counsel for the appellant-Panchayat, the learned Senior Counsel for the 1st respondent-writ petitioner and also the learned Senior Government Pleader appearing for the official respondents.

3. The 1st respondent was the convenor of a beneficiary committee constituted under the Sampoorna Gramin Rozgar Yojana (SGRY) for removal of water weeds from Gandhi Smrithivan and Kochuthodu to Kundalathode. By Ext.P1 proceedings of the 3rd respondent, administrative sanction for

the said project was accorded for implementation through a beneficiary committee. Going by Ext.P1, the Panchayat will meet the material component and cash portion of the labour component in the total cost of the work. Food grains to the work @10kg per man-day of the labour component was also sanctioned by the said proceedings. The Secretary of the Panchayat was directed to take immediate steps for lifting the food grains allotted and to report the matter to the 4th respondent. The Secretary was further directed to submit utilisation certificate of the food grains within a period of one month.

4. The Secretary of the Panchayat by Ext.P2 letter dated 12/5/2003 addressed to the District Manager, Food Corporation of India, Alappuzha, authorised the 1st respondent to lift the food grains allotted, from the Food Corporation of India (FCI) godown. Ext.P2 letter was issued based on an authorisation dated 5/5/2003 issued by the 4th respondent, authorising the Panchayat to lift 300 quintal of rice under SGRY-II Special Component Scheme. The 1st respondent has

also executed Exts.P3 and P3(a) agreements dated 21/4/2003 for removal of water weeds from Kochuthodu to Kundalathode and from Gandhi Smrithivan, respectively. Going by Ext.P3 agreement, the total project cost comes to ₹12,74,000/-, which includes 140 tons rice and a beneficiary contribution of ₹4,06,000/-. Similarly, in the case of Ext.P3(a) agreement, the total project cost comes to ₹14,56,000/-, which includes 160 tons rice and a beneficiary contribution of ₹4,64,000/-.

5. In the writ petition, the 1st respondent would contend that, in terms of Exts.P3 and P3(a) agreements the work of the respective projects were completed and the rice component released from the FCI godown was also utilised. But, going by the averments in the Writ Petition, the labourers after receipt of rice component of their labour charges, sold the rice to traders, which resulted in complaints from various corners and consequently the 4th respondent stopped the work before its completion, on the direction of the Panchayat. Therefore, according to the 1st respondent, the non-completion of the entire work is not for any reasons attributable to him.

6. Ext.P4 produced along with the Writ Petition is an assessment of the work already completed by the 1st respondent, made by the Assistant Executive Engineer, LSGD (WR), Ambalappuzha Block Panchayat. Relying on the said report submitted to the 4th respondent, the 1st respondent would contend that, the payment due to him is 54.634 metric tons of rice to be made available by the 3rd respondent being the food component and ₹7,68,683/- which is the cash component equivalent of 23506 man-days. The grievance highlighted in the Writ Petition, by the 1st respondent was that, though Ext.P4 report was submitted as early as on 22/3/2004, no effective steps have been taken to discharge obligations arising out of Exts.P3 and P3(a) agreements. This is in spite of this fact that, the FCI was ready and willing to release the rice component for the work, provided clearance is given by the 3rd respondent. Due to the inaction on the part of the 3rd and 4th respondents, the 1st respondent submitted Exts.P5 and P6 representations dated 8/6/2005 and 9/7/2005, respectively and thereafter, approached this Court in W.P.(C)No.10311/2006

seeking various reliefs.

7. In the Writ Petition, the Panchayat filed a statement dated 5/3/2007 contending that, the implementation of the 2nd and 3rd phases of the project started on 21/4/2003 after executing Exts.P3 and P3(a) agreements. But there were several complaints from various corners regarding the implementation of the project, as a result of which allotment of 200 tons of rice component was cancelled on 29/5/2003 and the 1st respondent being the convenor of the beneficiary committee was issued with a notice on 30/5/2003 to stop the work and the Assistant Engineer concerned was asked to measure out the work completed till then. Accordingly, the Assistant Executive Engineer submitted Ext.P4 report based on which 5.46 metric tons of rice component is to be disbursed to the 1st respondent. But in view of the pendency of O.P.No.806 of 2004 before the Ombudsman for Local Self Government, the Panchayat is not in a position to take further action in this regard. It was taking note of the above stand taken by the Panchayat, the learned Single Judge came to the conclusion that there is no

justification for non-disbursal of the cash component of the work that has already been completed and admitted in Ext.P4 assessment report submitted by the Assistant Executive Engineer concerned. Therefore, the learned Single Judge directed the Panchayat to release to the 1st respondent the cash component for the work done, as admitted under the approval granted by the Assistant Executive Engineer concerned in Ext.P4.

8. Along with the Writ Appeal, the Panchayat produced various documents as Annexures A1 to A5 to contend that, on the direction of the Ombudsman for Local Self Government, the Finance Wing of the Government of Kerala conducted an investigation and found that there are serious irregularities in the measurement done by the Assistant Executive Engineer concerned in Ext.P4 assessment report and therefore the learned Single Judge ought not to have proceeded with the matter as if the measurement made in Ext.P4 is not disputed. According to the learned Standing Counsel for the Panchayat, in view of the disputed questions of fact, the learned Single

Judge ought not to have invoked the discretionary jurisdiction under Article 226 of the Constitution of India.

9. Per contra, the learned Senior Counsel for the 1st respondent would contend that, in the facts and circumstances of the case, especially in view of the stand taken by the Panchayat in its statement dated 5/3/2007 filed in the Writ Petition, the learned Single Judge was perfectly justified in invoking the discretionary jurisdiction under Article 226 of the Constitution of India.

10. From the additional documents produced along with the Writ Appeal, it is seen that there were allegations regarding the implementation of the projects covered by Exts.P3 and P3 (a). Annexure A1 is one such complaint filed by one K.Ashokan before the 3rd respondent making allegations regarding the execution of the project. Annexure A2 is another complaint filed by one S.Jyothi Kumar before the Dy. Superintendent of Police (Vigilance), Alappuzha, pointing out irregularities in the execution of the project. It was based on these complaints, allotment of 200 metric tons of rice component of the work was

cancelled. Based on Annexure A2 complaint, the Government referred the case to the Ombudsman for Local Self Government Institutions, which was numbered as O.P.No.806/2004. By Annexure A4 order dated 5/9/2008 the Ombudsman directed the Finance Inspection Wing of the Government of Kerala to enquire into the matter and file a report on 13/11/2008. Pursuant to the said direction, the Finance Wing of the Government of Kerala has submitted Annexure A5 report, along with a covering letter dated 12/11/2008, in which it was found that, the measurements done by the Assistant Executive Engineer concerned in Ext.P4 assessment report contains various irregularities which requires further probe into the matter.

11. Relying on Annexure R1(a) affidavit dated 16/3/2012 filed by Sri.Jyothikumar, the complainant in O.P.No.806/2004, the learned Senior Counsel for the 1st respondent would contend that, on a thorough study of the work carried out in connection with the projects covered by Exts.P3 and P3(a) agreements, the said complainant was convinced that, the

allegations made in his complaint dated 16/6/2003 is of no relevance and further that the 1st respondent who had executed the work on a non-profit basis is unable to get his payment for the work actually done because of the pendency of the complaint before the Ombudsman, and in such circumstances, the said complainant filed Annexure R1(a) affidavit before the Ombudsman seeking an order to withdraw the above complaint and treat the case as not pressed. The learned Sr. Counsel would also rely on Annexure R1(b) order passed by the Ombudsman returning the Reference File to the Government in view of Annexure R1(a) affidavit filed by the complainant. A perusal of Annexures R1(a) and R1(b) produced along with the counter affidavit filed by the 1st respondent in W.A.No.237/2009 would show that, though the Ombudsman ordered detailed enquiry by the Finance Inspection Wing of the Government to enquire into the specific allegation made by the complainant, it could not proceed further with the said complaint in view of Annexure R1(a) affidavit filed by the complainant, which ultimately resulted in Annexure R1(b) order passed by the

Ombudsman.

12. The stand taken by the Panchayat in its affidavit dated 1/2/2014 filed in this Writ Appeal is that, under SGRY scheme 60% of the project cost would be met by food grains and 40% will be the contribution by the beneficiaries. In normal case, the beneficiaries' contribution was being met by the respective Panchayats, if they have sufficient plan funds. Since the appellant-Panchayat did not have its own plan funds or maintenance fund for meeting 40% of the project cost, it was resolved by the beneficiary committee to contribute the 40% of the project cost by way of voluntary service of the beneficiaries. It was resolved further that, each beneficiary who contributes his labour would be given 10kg. of food grains per day and cost of the food grains was fixed at ₹6.40 per kg. The remaining portion of the labour component would be by way of voluntary service of the beneficiaries. In support of the said stand, the learned Standing Counsel for the Panchayat would rely on Annexure A7 project report dated nil, signed by the President of the Panchayat, produced along with the said affidavit dated

1/2/2014.

13. The document produced as Annexure R1(c) along with I.A.No.105/2014 in W.A.No.237/2009 is the final bill for the 1st phase of the work prepared by the Assistant Engineer, Ambalapuzha and check mesaured by the Assistant Executive Engineer concerned. Annexure R1(c) final bill is for an amount of ₹9,17,867/-, which includes ₹6,25,533/- as cost of food grain and ₹2,92,494/- as contribution by beneficiaries. After the completion of 1st phase, the 1st respondent received 110 tons of food grains, as evident from Annexure A8 receipt. The learned Standing Counsel for the Panchayat would contend that, the beneficiaries contribution shown in Ext.R1(c) bill is not payable by the Panchayat to the 1st respondent for the reason that the said portion of the project cost was conceived as voluntary service by the beneficiaries. When the final bill was prepared, the contribution by the beneficiaries by way of voluntary service was translated to cash equivalent of ₹2,92,494/-.

14. The document produced as Annexure A9 is a copy of the assessment report of the Assistant Executive Engineer

concerned, a copy of which has also been produced along with the writ petition as Ext.P4. A perusal of Ext.P4 would show that, in the assessment report a sum of ₹7,68,683/- is shown as the amount due to the 1st respondent towards labour element, whereas, the said figure is absent in Annexure A9 assessment report. Therefore, relying on Annexure A9 the the learned Standing Counsel for the Panchayat would contend that, the assessment report filed by the Assistant Executive Engineer concerned only contains the quantity of food grains to be given to the 1st respondent for the partially completed portions of the 2nd and 3rd phase of the project and that the Panchayat is not liable to make available the said quantity of food grains since the food grains allotted to the 1st respondent was cancelled in view of the controversy and dispute, by order dated 21/5/2003 of the Assistant Project Officer.

15. As directed by this Court in order dated 5/2/2014, the Panchayat, along with a memo dated 26/2/2014, has produced a copy of agreement dated 1/2/2003 executed by the 1st respondent for implementation of 1st phase of the work. A

perusal of the said agreement would show that, the said project involves a total project of ₹10,01,000/-, which includes rice component of 110 tons and own fund of ₹3,19,000/-. Thereafter, the 1st respondent has produced, along with I.A.No.310/2014 in W.A.No.237/2009, Annexure R1(d) order of the 3rd respondent dated 21/10/2003 according administrative sanction for the project. Going by Annexure-R1(d) order, administrative sanction for the project was accorded on condition that, the material component and the cash portion of the labour component in the total cost of the work will be met by the Panchayat. In Ext.P1 proceedings as well it was made clear that, the Panchayat will have to meet the material component and cash portion of the labour component in the total cost of the work. On 17/7/2014, this Court has recorded the submission made by the learned Standing Counsel for the Panchayat that, subsequent to Ext.P1 several meetings were held between the Panchayat and the Beneficiary Committee in which there was a clear agreement that, as the work undertaken by the Panchayat is for the benefit of the

beneficiaries they will not receive any cash component from Panchayat, through the convenor or contractor, and that their work contribution would be the work component. But, the Panchayat has not chosen produce any documents in support of this submission. Annexure A7 project report produced along with the affidavit filed on behalf of the Panchayat dated 1/2/2014, would not indicate that, the Beneficiary Committee has agreed give up the cash component payable by the Panchayat. Further, the Panchayat has no such case in the statement dated 5/3/2007 filed in W.P.(C)No.10311/2006. The only objection raised by the Panchayat in the said statement was the pendency of O.P.No.806/2004 before the Ombudsman, which has already been closed in view of Annexure R1(b) order passed by the Ombudsman dated 23/5/2013.

16. We also notice that, in the Writ Appeal, the learned Senior Government Pleader has filed a statement dated 19/7/2014, on behalf of the Project Director, Poverty Alleviation Unit, Alappuzha. Going by the said statement, the project in question was implemented under the Special Sampoorana

Gramin Rozgar Yojana and the disputed works were proposed with with 31.87% cash portion by the Panchayat and 68.13% food portion granted by the Project Director, District Rural Development Agency (DRDA). The said statement also contains the details of the work, cash and food portion, together with the value of the work done, as measured by the Assistant Executive Engineer concerned and also computation statement of cash and food portion. The total estimate cost of the three works comes to ₹36,40,000/- and the total cash portion and food portion at the rate of 31.8% and 68.13% respectively, come to ₹11,60,000/- and ₹24,80,000/- respectively. As against the total estimate cost of ₹36,40,000/-, the total value of the work done, as admitted by the Assistant Executive Engineer concerned comes to ₹24,12,076/-. Going by the computation statement of food and cash portion contained in the aforesaid statement filed on behalf of the Project Director, the outstanding food portion to be granted to the 1st respondent comes to ₹3,38,706/- and the balance cash portion outstanding comes to ₹7,68,729/-. In such circumstances, we find absolutely no grounds to interfere with

the judgment of the learned Single Judge in directing the Panchayat to release to the 1st respondent the cash component for the work done, as admitted under Ext.P4 assessment report of the Assistant Executive Engineer concerned, and further directing the 3rd respondent to consider and take action on Ext.P6 representation.

In the result, this Writ Appeal is dismissed. No order as to costs.

SD/-

ANTONY DOMINIC, JUDGE

SD/-

ANIL K.NARENDRA, JUDGE

skj