

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

RP.No. 166 of 2015 (A) IN WP(C).29206/2014

AGAINST THE JUDGMENT IN WP(C) 29206/2014

REVIEW PETITIONER(S)/RESPONDENTS 1 TO 4:

1. KALLAR GRAMA PANCHAYATH
REPRESENTED BY THE SECRETARY, P.O.KALLAR.

2. THE PRESIDENT
KALLAR GRAMA PANCHAYATH, P.O.KALLAR.

3. THE SECRETARY
KALLAR GRAMA PANCHAYATH, P.O.KALLAR.

4. THE VILLAGE EXTENTION OFFICER
KALLAR GRAMA PANCHAYATH, P.O.KALLAR
KASARAGODE - 671 532.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.P.P.RAMACHANDRAN

RESPONDENT(S)/PETITIONER AND RESPONDENTS 5 TO 9:

1. HANEEFA K.M.
S/O.MOOSANKUTTY K.M., ARIMBIYA, KOTTODY P.O.
HOSDURG TALUK, KASARAGOD - 671 532.

2. RAMACHANDRAN A
S/O.ATE SIVASANKARAN NAIR, AREKKAL, NAMAMKODAL
P.O.KOTTODI, KASARAGOD - 671 532.

3. K.R.KRISHNAN
S/O.RAMAN MANIYANI, PERUMBALLI, P.O.MALLAKKAL
KASARAGOD - 671 121.

4. NARAYANI K
W/O.LATE KRISHNA MANIYANI, KOTTODI P.O., KASARAGOD.

5. KAMALAKSHI K
PANNITHOLAM, KOTTODI P.O., KASARAGOD - 671 532.

6. NARAYANAN K.P
S/O.KAMMADAN, CHERIYAKADAVU, KOTTODI P.O.
KASARAGOD - 671 532.

R1 BY ADV. SRI.T.K.VIPINDAS
R2-R6 BY ADV. SRI.M.KRISHNAKUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
06-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. SURENDRA MOHAN, J.

R.P.NO: 166 OF 2015 IN
W.P(C) NO: 29206 OF 2014

Dated this the 6th March, 2015.

O R D E R

The petitioners, respondents 1 to 4 in WPC 29206/2014 seek review of the judgment dated 20.11.2014 finally disposing of the writ petition. The first respondent had filed the said writ petition seeking a direction to quash Exts.P3 and P4 proceedings issued in implementation of the Indira Awas Yojana Scheme ('the Scheme' for short). According to the first respondent, he was a homeless person entitled to be provided with a house under the Scheme. He had submitted the necessary application but the same was not considered. Therefore, he had approached the Ombudsman for Local Self Government Institutions, Thiruvananthapuram. By Ext.P1 in the writ petition, he was directed to prefer an application to the first petitioner and the said authority was directed to

consider the same. However, when Ext.P4 list was drawn up the first respondent's name was brought down to Sl. No:74.

2. It was argued by the learned counsel for the first respondent that, even persons who were having houses of their own have been ranked above the first respondent. At the same time, the first respondent, a person who does not have a house of his own was ranked lower down in the list. Therefore, it was contended that the anomalies had to be rectified and the list had to be re-worked on the basis of the eligibility of the respective applicants.

3. I had considered the contentions of the counsel for the first respondent in the absence of the petitioners, who had not responded to a notice served through special messenger and found that, as per Ext.P4 many persons who own houses of their own had been ranked by the petitioners. Therefore, it was directed by the judgment sought to be reviewed that a fresh list be drawn up giving priority to persons who do not own houses of their own. The

petitioners seek a review of the said judgment. According to the Senior Counsel Shri. V.V.Asokan who appears for the petitioners Ext.P4 is not a true copy of the list drawn up by the petitioners. A true copy of the list drawn up by them is produced as Annexure G along with the additional affidavit filed on behalf of the review petitioners. The learned Senior Counsel has also handed over to me for perusal across the Bar, the register containing the final list, which is at page 217 of the said register. Strong objection is taken by the learned Senior Counsel to the remarks column that has been added to Ext.P4. It is also pointed out that Ext.P4 has not been authenticated by any authority of the Panchayat. According to the learned Senior Counsel Ext.P4 contains remarks that are erroneous. Therefore, it is contended that it is necessary to review and set aside the judgment rendered on the basis of the remarks in Ext.P4. According to the learned Senior Counsel the final list of eligible persons entitled to be provided with houses under the scheme has been drawn up by

the grama sabhas. Each applicant has been granted marks on the basis of the eligibility criteria stipulated. The first respondent has been ranked as serial No:74 for the reason that, he has obtained only 25 marks. It is also pointed out that the petitioner's family had been provided with a house in the year 2010.

4. According to Adv.T.K.Vipindas who appears for the first respondent, Ext.P4 is a list handed over to the first respondent by the ward member concerned. The list has also been authenticated by the said person. Therefore, the writ petition was filed believing that Ext.P4 was an authenticated document. The counsel also submits that, a comparison of the original list Annexure G with Ext.P4 would show that, there is no change in the list of persons included. The only change is that a remarks column has been added stating that it showed the actual state of affairs. The counsel also points out that, the statements made in the said column are not disputed by the petitioners in the review petition.

5. Adv. Krishna Kumar appears for respondents 2 to 6 in the review petition. The counsel also supports the contentions of the petitioners. It is pointed out that, unless the list is implemented before 31.3.2015, the funds available would lapse.

6. Heard. A perusal of the judgment sought to be reviewed shows that the direction therein has been issued on the assumption that the statements in Ext.P4 relating to the actual state of affairs at the remarks column were true. I have also proceeded on the assumption that Ext.P4 was a true copy of the final list that was drawn up by the Panchayat. However, a perusal of Ext.P4 shows that it is not authenticated by any authority of the Panchayat. The same only bears a signature stated to be that of the ward member, at the bottom. It is also not stated in Ext.P4 it was a true copy of the final list. However, the petitioner has marked the same in his writ petition as a true copy of the list of eligible and ineligible persons, prepared by respondents 1 and 2 therein who are

petitioners 1 and 2 in the review petition. Since the original list is before me as well as the actual register containing the names of the persons included in the final list, it is clear that Ext.P4 is not a true copy of the final list prepared by the petitioner. Inasmuch as the writ petition has been disposed of relying on the statements made in the remarks column relating to the actual state of affairs, it has to be held that, there is an error apparent on the face of the record necessitating a review of the judgment in the present case. The reliance placed on Ext.P4 was on the assumption that it was a true copy of the final list, which assumption has been demonstrated to be incorrect. It is true that the situation has been created by the petitioners who did not respond to the notice issued by this Court though it was served through special messenger. However, since it has been found that there is an error in the judgment, it is only in the fitness of things, the same is corrected by this Court.

7. The conduct of the petitioners in not responding to the notice issued by this Court despite the fact that it was served through special messenger cannot be accepted. I also do not accept the statements made that, the petitioners did not understand the implication of the notice served and that they were misled by the statement in the notice that they had a period of one month's time to file their counter affidavit. Any person with minimum education could understand from the notice served from this Court, that a date of appearance had been fixed and that the time was available only for filing a counter affidavit. Persons like the petitioners holding responsible positions in a local administrative body are expected to be more alert to notices issued by this Court, especially when the same is served through special messenger. However, in view of the error that has been found in the judgment, this review petition is allowed.

The judgment dated 20.11.2014 is accordingly reviewed and set aside. Post the writ petition before the appropriate Court.

Sd/-
K. SURENDRA MOHAN
Judge

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/True copy/

