

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WA.No. 1210 of 2008 (A) IN WP(C).7224/2007

JUDGMENT IN WP(C) 7224/2007 of HIGH COURT OF KERALA
DATED 09-04-2008

APPELLANT/PETITIONER:

KOTTAYAM DISTRICT PANCHAYAT, KOTTYAM
REPRESENTED BY ITS SECRETARY.

BY ADVS. SRI.K.BALACHANDRAN
SRI.RAJESH NAIR

RESPONDENTS:

1. M/S VISWASAMPATH HUMAN RESOURCES
DEVELOPMENT PRIVATE LIMITED, REPRESENTED BY ITS
MANAGING DIRECTOR, N.V.SADANANDAN
PRABHA SADANAM, 15/644/IB4, PALOTTUKONAM,
EDAPPAZHANJI
SASTHAMANGALAM P.O., THIRUVANANTHAPURAM-10.
2. THE HONOURABLE OMBUDSMAN FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, BARTON HILL
THIRUVANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION
KOTTAYAM.

R1 BY ADV. SRI.R.K.MURALEEDHARAN
SENIOR GOVERNMENT PLEADER SRI.P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015 ALONG WITH W.A.1138/2008, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. Nos.1210 & 1138 of 2008

Dated this the 1st day of June, 2015

JUDGMENT

Antony Dominic,J.

Both these appeals are filed by the Kottayam District Panchayat aggrieved by the common judgment of the learned Single Judge in Writ Petition No.7224 of 2007 and 6320 of 2007. By the judgment under appeal the learned Single Judge upheld part of the order of the Ombudsman for Local Self Government Institutions (Ext.P7 in Writ Petition No.7224 of 2007). But however, the case was remitted for a re-adjudication of the number of eligible students. It is this judgment which is under challenge before us.

2. We heard the learned counsel for the appellant, the learned counsel for the first respondent and the learned Government Pleader.

3. Ext.P1 is a revised guideline issued by the Government of Kerala which inter alia provided a scheme for improving the minimum levels of learning at the school level. Based on Ext.P1

a scheme was framed in 2005 and the scheme was approved by the appellant in its meeting held on 08.08.2005. Subsequently, the appellant issued Ext.P2 order and sanctioned Rs.35,00,000/- subject to the conditions mentioned therein. This was for the successful implementation of the scheme mentioned above. Finally Ext.P6 agreement was entered into between the 1st respondent and the 3rd respondent who are the project implementation agency and the nodal agency, respectively. On the ground that the first respondent did not comply with the terms of Ext.P6 and particularly the one relating to the submission of list of students, funds were not released to the first respondent. This ultimately led them to file an application before the 2nd respondent Ombudsman. Based on the interim order passed by the Ombudsman, 25% of the amount due has already been released. Subsequently the Ombudsman passed Ext.P7 final order allowing the application. The District Panchayat filed Writ Petition No.7224 of 2007 challenging Ext.P7 order and the first respondent filed Writ Petition No.6320 of 2007 seeking its implementation.

4. As already mentioned, the learned Single Judge held that

in view of the provisions contained in Ext.P6 agreement, the obligation to send the list of students who are the beneficiaries of the scheme is that of the Headmaster of the school and the first respondent's obligation is only to co-operate with the Headmaster. Proceeding further, the learned Single Judge found that the issue relating to the number of students who were the beneficiaries of the scheme need to be determined afresh and for that limited purpose, remitted the matter to the Ombudsman with liberty to both sides to adduce evidence substantiating their respective claims. It is this judgment which is under challenge.

5. The main contention raised by the counsel for the appellant Panchayat is regarding the finding of the learned Single Judge that the responsibility of furnishing list of beneficiaries is that of the Headmaster. According to the learned counsel, in view of the provisions contained in Ext.P2 proceedings of the Panchayat and Ext.P6 agreement, the responsibility is that of the first respondent, the implementation agency. Therefore, according to him, the finding to the contrary contained in the judgment under appeal is erroneous.

6. We have gone through Exts.P2 and P6. In Ext.P2 though

the liability to provide a list of beneficiaries is also mentioned, it does not say the liability is that of either the first respondent or anybody else. However in Ext.P6 agreement, Clause 2, as rightly held by the Ombudsman and the learned Single Judge, provides that the liability to furnish the list shall be that of the Headmaster and the responsibility of the first respondent is to co-operate with the Headmaster in that behalf. This, therefore, means that neither Ext.P2 nor Ext.P6 contains any provision providing any liability in this regard is that of the first respondent or the finding of the Ombudsman and the learned Single Judge on that issue is erroneous. In such circumstances, we cannot accept the contention of the learned counsel for the appellant.

7. As we have already stated, the learned Single Judge was doubtful about the number of beneficiaries and on the materials was unable to resolve the conflicting claims. It is, therefore, that the learned Single Judge remitted the matter to the Ombudsman for a fresh adjudication. In the adjudication that is to follow necessarily the Ombudsman will have to determine the number of the beneficiaries and in the process the Ombudsman will also

have to determine whether the students who claimed the benefit of the scheme were eligible to be the beneficiaries of the scheme.

In such circumstances, we do not find any illegality in the finding of the learned Single Judge and clarify that in the process of adjudication as directed by the learned Single Judge, the Ombudsman will also look into the eligibility of the persons who are claimed to be the beneficiaries of the scheme as well, these appeals are disposed of.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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P.A. to Judge

smv