

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 2826 of 2015 (S)

PETITIONER(S):

**ANWAR SADATH, AGED 40 YEARS,
S/O.JAMALUDHEEN KUNJU, PALAPPALLIL HOUSE
THODIYOOR NOTH P.O., THODIYOOR VILLAGE
KARUNAGAPPALLY TALUK KOLLAM DISTRICT**

**BY ADVS.SRI.P.M.ZIRAJ
SRI.A.M.ABDULLA
SRI.K.S.DHANESH KUMAR
SRI.P.MOHAMED SABAH**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
AGRICULTURAL DEPARTMENT, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.**
- 2. THE ASSTISTANT EXECUTIVE ENGINEER (AGRICULTURAL),
DEPARTMENT OF AGRICULTURE
THIRUVANANTHAPURAM - 695001.**
- 3. THE SECRETARY, KARODE GRAMA PANCHAYATH,
NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM - 695001.**
- 4. KARODE GRAMA PANCHAYATH
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM - 695001,
REPRESENTED BY ITS SECRETARY.**
- 5. N.VIJAYARAJ,
FATHERS NAME NOT KNOWN TO THE PETITIONER
PARAMBUTHOTTOM HOUSE, AYIRA P.O.
THIRUVANANTHAPURAM - 695001.**

PJ

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WP(C).No. 2826 of 2015 (S)

**6. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY
THIRUVANANTHAPURAM - 695001.**

**7. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM - 695001.**

R1,2,6,7 BY SENIOR GOVERNMENT PLEADER SRI.DAVIS.P.P.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE RELEVANT PAGES OF THE ESTIMATE REPORT
PREPARED BY THE SECOND RESPONDENT WITHOUT DATE**
- P2- TRUE COPY OF THE TENDER NOTICE DATED 13.6.2014 ISSUED BY THE
FOURTH RESPONDENT ON BEHALF OF THIRD RESPONDENT**
- P2(A)- TRUE ENGLISH TRANSLATION OF EXBT P2**
- P3- TRUE COPY OF THE INTERIM ORDER DATED 16.12.2014 IN WPC NO.4783 OF
2014 OF THIS HONOURABLE COURT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

W.P.(C) No.2826 OF 2015

Dated this the 29th day of January, 2015

JUDGMENT

Shaffique, J.

The petitioner has approached this Court by filing the Public Interest Litigation, seeking the following reliefs:

"1. To issue a writ of certiorari or any other appropriate writ, direction or order by calling for the records leading to the tender proceedings in connection with exhibit P2 tender notice and set aside the tender in connection with removal of clayey soil from the Venkulam Pond at Karode Grama Panchayath, Thiruvananthapuram.

2. To declare that the third and fourth respondents can award the work of transportation of clay only after completion of stage 1 and stage 2 works in exhibit P1 estimate report and after removing the entire quantity of clay from the pond and after taking measurement of the same.

3. To direct the fourth respondent to invite the re-tender for the work of transportation of clay after excavating the same from the pond and dumping the same into an area in tipper lorries as provided in exhibit P1 estimate report.

4. To declare that the third and fourth respondent can remove clay only after obtaining no objection certificate from the district collector, permit from the geologist and clearance certificate from the Kerala State environmental impact assessment authority since the clay is notified as a minor mineral in Mines and mineral (Development and regulation) Act, 1957.

5. Issue such other writ or orders or directions, which this Honourable court may deem fit and proper in the interest of justice and circumstances of the case."

2. The petitioner claims that he is a public spirited citizen, fighting against corruption in public departments. His contention is relating to certain works being carried out in relation to the renovation of Venkulam Pond at Karode Grama Panchayat, having an area of about 10 Acres. It is stated that the 2nd Respondent has prepared an estimate and as per the estimate, the work had to be done in three stages. The first stage is cleaning and desilting of the pond to an average depth of 1 metre, side protection work etc. and the second stage includes construction of drainage canal on the western side and renovation of drainage canal on the eastern side. Third stage includes auction of clayey soil obtained from the pond during renovation, by the Grama Panchayat.

3. According to the petitioner, despite the fact that the work had to be done in three stages, tenders were invited by the local authority for removal and excavation of clayey soil after removing from the pond. The work had been awarded in favour of a contractor, the 5th Respondent. The petitioner alleges that there is no estimate prepared in respect of the quantity of the mud to be removed and there is every chance that the contractor will be substantially benefited by the removal of clayey soil. It is without taking note of the total quantity of soil to be removed, the work has been awarded.

4. Apparently, the work has been awarded after preparing necessary estimate by the competent authorities and it is awarded in favour of the 5th Respondent by inviting competitive public tender. We cannot expect that the local authority as well as the expert agencies has awarded the contract without specifying about the quantity of soil to be removed. In fact, Ext.P1 itself contains approximate measurements of each nature of work and soil to be removed. We cannot expect that the authorities may keep their eyes shut while taking into consideration the nature of work being carried out by the contractor. The work has to be performed

by the contractor in terms of that contract, which requires monitoring and verification by a competent authority. We do not think that the petitioner can interfere in the matter.

In the result, we see no merit in the above writ petition to be entertained as a Public Interest Litigation. This writ petition is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

//true copy//

P.S. To Judge

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