

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 9012 of 2010 (B)

PETITIONER:

**DR.P.A. LALITHA,
MALABAR HOSPITAL,
ERANJIPALAM, KOZHIKODE.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

- 1. KOZHIKODE CORPORATION,
REP. BY ITS SECRETARY, KOZHIKODE.**
- 2. SPECIAL DEPUTY TAHSILDAR,
REVENUE RECOVERY, KOZHIKODE.**
- 3. STATE OF KERALA,
REP. BY ITS SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.**

**R1 BY ADV. SRI.P.V.SURENDRANATH, SC, KOZHIKODE CORP.
R2 & R3 BY GOVERNMENT PLEADER SRI. P.V.ELIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONERS' EXHIBITS

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| EXT- P1- | TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 2ND RESPONDENT DATED 13-02-2010. |
| EXT- P2- | TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITINOER AND THE 1ST RESPONDENT. |
| EXT- P3- | TRUE COPY OF THE RELEVANT PAGES OF THE CURRENT ACCOUNT PASS BOOK. |
| EXT- P4- | TRUE COPY OF THE PROJECT INCLUDED IN THE FINANCIAL YEAR 2000-01 PEOPLES PLANNING PROGRAMME. |
| EXT- P5- | TRUE COPY OF THE LETTER SENT BY THE WORSHIFUL MAYOR TO THE THEN HEALTH MINISTER DATED 12-11-2002. |
| EXT- P6- | TRUE COPY OF THE LETTER DATED 21-03-2002 OF THE 1ST RESPONDENT TO THE PETITIONER. |
| EXT- P7- | TRUE COPY OF THE RELEVANT PAGE OF DECISION DATED 16-12-1998 OF THE CORPORATION WHICH WAS RECEIVED BY THE PETITIONER FROM THE OFFICE OF THE CORPORATION UNDER THE RIGHT TO INFORMATION ACT. |
| EXT- P8- | TRUE COPY OF THE RELEVANT PORTION OF THE AUDIT REPORT AS PER FILE No.GB-44437/98 DATED NIL. |
| EXT- P9- | TRUE COPY OF THE LETTER NO.G13-44437/98 DATED 11-10-2007 OF THE SECRETARY OF THE CORPORATION. |
| EXT- P10- | TRUE COPY OF THE RECEIPT DATED 26-10-2007. |
| EXT- P11- | TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT. |
| EXT- P12- | TRUE COPY OF THE LETTER DATED 09-11-2007 OF THE 1ST RESPONDENT TO THE PETITIONER. |
| EXT- P13- | TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 28-06-2008. |
| EXT- P14- | TRUE COPY OF THE ACKNOWLEDGMENT SHOWING RECEIPT OF EXT.P13. |
| EXT- P15- | TRUE COPY OF THE LETTER DATED 03-06-2009 OF THE 1ST RESPONDENT. |
| EXT- P16- | TRUE COPY OF THE REPLY DATED 17-06-2009 SUBMITTED BY THE PETITIONER. |

EXT- P17- TRUE COPY OF THE ACKNOWLEDGMENT SHOWING RECEIPT OF
EXT.P16.

RESPONDENTS' EXHIBITS

EXT- R1 (a) - TRUE COPY OF THE AUDIT OBJECTION DATED 31-10-2007.

C.K. ABDUL REHIM, J.

W.P.(c) No. 9012 OF 2010-B

DATED THIS THE 6th DAY OF JANUARY, 2015.

J U D G M E N T

The petitioner is challenging the revenue recovery steps initiated against her, pursuant to Ext.P1 notice issued for realising an amount of Rs.1,29,167/-, being the interest due on the amount of Rs.1,15,500/- disbursed to the petitioner as early as in the year 1998, towards mobilisation advance for execution of a work under the "Peoples Planning Programme". It is revealed that, during the year 1997-98 a project was envisaged by the 1st respondent corporation for establishment of a public incinerator for the purpose of disposal of biomedical waste generated from various private hospitals within the limits of the corporation. The petitioner and others who were running small private hospitals have constituted a society namely, 'Private Hospital and Laboratories Waste Disposal Society' and the petitioner was elected as the convenor of the society. When the 1st respondent corporation envisaged the project for establishment of a public incinerator, the above

said society was selected as the convenor of the beneficiary committee. An amount of Rs.1,15,500/- was disbursed from the 1st respondent corporation towards mobilization advance for installation of the incinerator, on 30-06-1998. The said amount was disbursed on executing Ext.P2 agreement, wherein the petitioner, as convenor of the beneficiary committee, had undertaken to execute the work of establishing the public incinerator. It is evident that, despite release of the mobilization advance and execution of Ext.P2 agreement, the work was not implemented. Hence the project was again considered in the planning programme for the year 2000-01, as a spill over project. Exhibit P4 is the project report prepared by the committee concerned, with respect to the implementation for the year 2000-01 as spill over project. It is evident from Ext.P4 that the decision taken during 1997-98 was to implement the project by co-operation of the society with the 1st respondent. It is evident that the decision was to provide the required land and vehicles by the 1st respondent corporation and the incinerator unit by the society. It is

further stated in Ext.P4 that a vehicle was purchased under the project during 1997-98 and an amount of Rs.1,15,500/- was paid to the society towards mobilization advance for construction of the building. It is also mentioned that the society had given advance of an amount of Rs.5,00,000/- for purchase of the incinerator plant. It is averred in the writ petition that, despite consideration of the project even during the year 2000, it could not be implemented because the site for establishment of the incinerator plant was not finalised and located. It is alleged that the 1st respondent corporation had identified various places one after another. But the plant could not be erected because of various reasons, in any of such sites. Meanwhile, during the year 2002 the petitioner was issued with Ext.P6 notice requiring to start the work immediately, within 7 days, otherwise it is threatened that all the loss which will be sustained to the corporation will be realised from the petitioner. It is pointed out by the petitioner that, the machinery pertaining to the incinerator was supplied by the company concerned and that the corporation had taken a decision during December,

1998 to keep the incinerator stored at the 'Mayor Bhavan'. Exhibit P7 is the copy of the minutes relating to such a decision taken. However no action was taken by the corporation to identify a suitable location and to start the construction, is the allegation. It is stated that the company had taken back the machinery since the payment was not effected. During the year 2007 the petitioner was issued with a further notice as per Ext.P9 intimating that the local fund audit team had raised objection with respect to implementation of the project and therefore the amount of Rs.1,15,000/- has to be refunded to the Treasury along with 12% interest. Immediately on receipt of Ext.P9 the petitioner had deposited an amount of Rs.1,15,500/- before the 1st respondent corporation as evidenced from Ext.P10 receipt. She had further submitted Ext.P11 intimating that the amount of Rs.1,15,500/- was deposited in a current account at the Nedungadi Bank, Eranjipalam branch and therefore no amount of interest was derived out of the deposit. Thereafter the 1st respondent corporation issued Ext.P12 notice to the petitioner demanding payment of a

sum of Rs.1,29,167/- towards 12% interest due on the amount of advance received (Rs.1,15,500/-), for the period from 1998-2007. The petitioner submitted a detailed reply as evidenced from Ext.P13. But without considering any of the objections raised in Ext.P13, the 1st respondent issued further notice as per Ext.P15, threatening recovery steps for realisation of the amount of interest. Eventhough the petitioner submitted a further reply as per Ext.P16, the revenue recovery steps were initiated as evidenced from Ext.P1 notice. Hence the petitioner is approaching this court being highly aggrieved by the recovery steps initiated.

2. Contention of the petitioner is that, the project could not be implemented only because the corporation had failed to identify any location for establishment of the incinerator plant. It is stated that no construction of the building could be commenced because the site was not finalised and located. Further it is contended that the petitioner is not liable to pay any interest on the amount of mobilization advance refunded, because no interest was derived out of the deposit of the said amount in the current

account. Since there was no default on the part of the petitioner as the convenor of the beneficiary committee in implementing the project, the demand cannot be sustained, is the contention.

3. In the counter affidavit filed on behalf of the 1st respondent it is stated that the action for recovery was initiated on the basis of an audit objection. A copy of the Audit Report is produced as Ext.R1 (a). It is alleged in the counter affidavit there was dereliction of duty and mismanagement of the fund on the part of petitioner and hence the corporation cannot be made liable. It is alleged that, till the issuance of Ext.P6, the petitioner has not approached the Corporation in any written statement and with respect to utilization of fund.

4. On a perusal of Ext.R1 (a), which is the copy of the Audit Report, it is evident that the Audit Team had specifically found faults on the part of the authorities of the corporation in implementation of the project. It is specifically mentioned in the Audit Report that even at the time of issue demand notice to the petitioner for refund

advance along with interest, the corporation was not in a position to identify the location for establishment of the incinerator. It was further observed that the project was to be implemented under the Kerala Development Projects and the implementation could not have entrusted with the beneficiary committee. It is noticed that, after identification of the site for establishment of the incinerator the construction of the building should have been completed on a contract basis and the incinerator could not have been established on the basis of an agreement executed with the society in question. Therefore it is found that the disbursement of mobilization advance was made in a total irregular manner even without finding out a suitable site for establishment of the project. It is accused that the corporation had permitted the amount of Rs.1,15,500/- to be kept in the custody of the beneficiary committee for a period of 5 years without there being any justification. Hence it was directed through the Audit Report that the amount has to be realized from the Secretary of the beneficiary committee along with interest if any accrued on

the said amount. Further it was directed that the difference amount of interest calculated at 12% shall be realized as surcharge from the officer who is responsible and shall be deposited in the local fund.

5. In view of the specific directions contained in the Audit Report, the contention of the 1st respondent that the demand and recovery steps were initiated on the basis of Audit Report cannot be accepted. Further, it is evident from all the records available that, execution of the work was not possible only because the site for establishment of the incinerator was not fixed or finalised and that no site was handed over to the beneficiary committee. It is also evident that the mobilization advance was not utilized and it was kept in a bank account opened by the beneficiary committee, which is the society to which the petitioner was the convenor. There is no evidence at all to show that there occurred any failure on the part of the petitioner in implementing the project. Nor there is no evidence to the effect of cancellation of the contract or steps taken to re-tender the work. Under such circumstances it cannot be

held that there was any action on the part of the petitioner in causing loss to the 1st respondent corporation or to the Government exchequer. Further the directions contained in Ext.R1 (a) Audit Report does not support recovery of any amount from the petitioner towards the liability of interest.

6. Under the above mentioned circumstances, the impugned recovery steps now initiated at the instance of the 1st respondent corporation against the petitioner for realization of the amount of interest cannot be sustained. Therefore the writ petition is allowed and Exts.P1, 12 and 15 are hereby quashed.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge