

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

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

WP(C).No. 7528 of 2014 (M)

PETITIONER :

**KERALA MUNICIPAL SECRETARY'S ASSOCIATION
REPRESENTED BY ITS GENERAL SECRETARY SRI. HARIKUMAR K.,
'POOJA', JANATHA ROAD, CHEMPAZHANTHI
THIRUVANANTHAPURAM**

**BY ADVS.SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
SMT.ROSY GEORGE**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE
LOCAL SELF GOVERNMENT DEPT.,
THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR OF URBAN AFFAIRS,
DIRECTORATE OF URBAN AFFAIRS
THIRUVANANTHAPURAM-695 001.**
- 3. CHIEF ENGINEER
LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM-695 001.**
- 4. DIRECTOR LOCAL FUND AUDIT,
OFFICE OF THE DIRECTOR LOCAL FUND AUDIT
THIRUVANANTHAPURAM-695 001.**
- 5. ACCOUNTANT GENERAL KERALA
ACCOUNTANT GENERAL'S OFFICE
THIRUVANANTHAPURAM.**
- 6. EXECUTIVE DIRECTOR KUDUMBASREE
THIRUVANANTHAPURAM-695 001.**
- 7. SECRETARY
OMBUDSMAN FOR LOCAL SELF GOVERNMENT BODIES
THIRUVANANTHAPURAM-695 001.**

8. REGISTRAR
TRIBUNAL FOR LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM-695 001.
9. DIRECTOR
VIGILANCE AND ANTI CORRUPTION BUREAU
THIRUVANANTHAPURAM-695 001.
10. STATE PERFORMANCE AUDIT OFFICER
THIRUVANANTHAPURAM-695 001.
11. SECRETARY TO THE MINISTRY OF URBAN AFFAIRS,
MINISTRY OF URBAN AFFAIRS, NEW DELHI-110001.

R1 TO R10 BY GOVT. PLEADER SMT. K.A. SANJEETHA
R11 BY ADV. SRI.N. NAGARESH, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C).No. 7528 of 2014 (M)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1: COPY OF THE ORDER DATED 30.4.2011 BEARING NO.G.O(P)NO.202/2011/FIN.**
- EXHIBIT P2: COPY OF THE CIRCULAR DATED 16.10.2012 BEARING NO.53526/EW.3/10/LSGD.**
- EXHIBIT P3: COPY OF THE REPRESENTATION DATED 30.12.12 BY THE PETITIONER ASSOCIATION.**
- EXHIBIT P4: COPY OF THE CIRCULAR DATED 15.12.2013 BEARING NO.57898/EW2/12/LSGD.**
- EXHIBIT P5: COPY OF THE CIRCULAR DATED 27.6.2010 BEARING NO.36587/RI.1/2009/LSGD.**
- EXHIBIT P6: COPY OF THE CIRCULAR DATED 15.11.2008 BEARING NO.72671/RI1/08/LSGD.**
- EXHIBIT P7: COPY OF THE CIRCULAR DATED 16.12.2013 BEARING NO.73576/RA1/2013/LSGD.**
- EXHIBIT P8: COPY OF THE CIRCULAR DATED 22.2.2013 BEARING NO.G2/31732/07.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.7528 of 2014

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Dated this the 1st day of June, 2015

JUDGMENT

Alleging that Ext.P3 has not been acted upon by the first respondent, the petitioner has come up before this Court.

2. The petitioner challenges Ext.P2 circular issued by the Government to the extent it derogates from the legal norms laid down under the Kerala Municipality Act, 1994 (for short, the Act). The petitioner alleges that Ext.P2 circular effectively negates the performance of the statutory duties to be performed by the Secretary by taking away all supervisory and monitoring powers that the Secretary has over the engineering wing. On the other hand, the Secretary becomes/continues to be personally answerable if the functions and duties stipulated under the Act, Rules or as laid out in circulars issued from time to time are not duly complied with.

3. The petitioner association points out that Section 48 of the Act specifically provides that the Secretary of the respondent municipality shall be the "Executive Officer of the Municipality and

the other officers and employees of the municipality shall be subordinate to him". Similarly, Section 228 of the Act provides for control of the secretary over the establishment and states that "the Secretary shall specify the duties of the officers and employees of the Municipal establishment and Secretary shall exercise supervision and control over them".

4. The petitioner further points out that Section 48(2) of the Act *inter alia* provides that all litigations against the municipality shall be conducted against the Secretary. Thus, the Secretary is answerable to Courts of law, Tribunals and statutory bodies with respect to the discharge of duties stipulated under the Act. The petitioner alleges that insofar as the engineering wing of the municipality/corporation is no longer under the purview, supervision and control of the municipal department and the concerned municipality or the Secretary, implementation of the duties envisaged under the Act which has direct nexus to the functioning of the engineering wing of the municipality like performance of duties under Chapter XVIII of the Act and discharge of other municipal functions under the Kerala Municipal Building

Rules, 1999 are no longer within the control of the Secretary to monitor, supervise and control. On the other hand, since Section 48(2) mandates that the litigations are to be initiated against the Secretary, they become answerable for acts which they are not able to control or supervise. The petitioner further alleges that Ext.P2 to the extent it takes away the powers of the Secretary to effectively perform his duties as Executive Officer and also negates the statutory stipulation that all other officers and employees of the municipality shall be subordinate to him is contract to law and unsustainable.

5. The petitioner association has preferred Ext.P3 representation dated 30.12.2012 before the first respondent detailing the concerns and practical difficulties faced due to the implementation of Ext.p2 circular. However, it could not evoke any positive response. It is with this background, the petitioner has approached this Court.

6. In the counter affidavit filed by the State it has been specifically averred that Ext.P3 representation filed by the petitioner has already been forwarded to the 3rd respondent and the same is

pending consideration.

7. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

8. When the matter came up for hearing, the learned counsel for the petitioner confined his argument to the limited prayer for a disposal of Ext.P3 representation within one month after affording the petitioner an opportunity of being heard.

Therefore, the writ petition is disposed of directing the respondents to consider and pass orders on Ext.P3 representation after affording the petitioner an opportunity of being heard, within a period of one month from the date of receipt of a copy of this judgment. To facilitate early action, it shall be open to the petitioner to produce a copy of the writ petition as well as a copy of this judgment before the respondent concerned at the earliest.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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