

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 14317 of 2012 (L)

PETITIONER:

K.P.PHILIP, AGED 59 YEARS
PUBLIC RELATION OFFICER
AMERICAN EDUCATIONAL INSTITUTE, DEEPIKA BUILDING
KATTAPPANA, IDUKKI-685 508
RESIDING AT KUTHUKALLUNGAL HOUSE, VELLAYANKUDI POST
KATTAPPANA, IDUKKI DISTRICT-685 515.

BY ADVS.SRI.P.K.IBRAHIM
SMT.A.A.SHIBI

RESPONDENTS:

1. SANTHANPARA GRAMA PANCHAYAT [SPECIAL GRADE]
SANTHANPARA.P.O., IDUKKI DISTRICT, PIN-685 619
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
SANTHANPARA GRAMA PANCHAYAT [SPECIAL GRADE]
SANTHANPARA.P.O., IDUKKI DISTRICT, PIN-685 619.
3. THE VILLAGE EXTENTION OFFICER
SANTHANPARA GRAMA PANCHAYAT [SPECIAL GRADE]
SANTHANPARA.P.O., IDUKKI DISTRICT, PIN-685 619.

R1 & 2, R3 BY ADV. SMT.AYSHA YOUSEFF
RR1 & 2 BY ADV. SMT.MOLLY JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-01-2015, ALONG WITH WP(C) 10871/2012, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXHIBIT P1: TRUE COPY OF THE QUOTATION NOTICE DATED 12.7.2010 ISSUED BY THE RESPONDENT PANCHAYAT.

EXHIBIT P2: TRUE COPY OF THE QUOTATION DATED 20.7.2010 SUBMITTED IN RESPONSE TO EXHIBIT P1 NOTIFICATION FOR PROJECTS 67/10.

EXHIBIT P3: TRUE COPY OF THE QUOTATION DATED 20.7.2010 SUBMITTED IN RESPONSE TO EXHIBIT P1 NOTIFICATION FOR PROJECT O.68/10.

EXHIBIT P4: TRUE COPY OF THE LISTS OF WOMEN (GENERAL) FOR PSC COACHING.

EXHIBIT P5: TRUE COPY OF THE LISTS OF WOMEN (SC) FOR PSC COACHING CONTAINING.

EXHIBIT P6: TRUE COPY OF THE NOTICE DATED 6.9.2010 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF THE FINAL LIST OF WOMEN (GENERAL) FOR PSC TRAINING CONTAINING 80 NAMES.

EXHIBIT P8: TRUE COPY OF THE FINAL LIST OF WOMEN (SC) CONTAINING 47 NAMES.

EXHIBIT P9: TRUE COPY OF THE LETTER DATED 12.11.2010 CLAIMING AMOUNTS UNDER PROJECT NO.67/10.

EXHIBIT P10: TRUE COPY OF THE LETTER DATED 12.11.2010 CLAIMING AMOUNTS UNDER PROJECT NO.68/10.

EXHIBIT P11: TRUE COPY OF THE LETTER DATED 6.12.2010 BY THE PETITIONER TO THE PRESIDENT.

EXHIBIT P12: TRUE COPY OF THE LETTER DATED 20.12.2010 BY THE PETITIONER TO THE PRESIDENT AND OTHER MEMBERS OF THE PANCHAYATH.

EXHIBIT P13: TRUE COPY OF THE LETTER DATED 6.1.2011 ALONG WITH THE RECEIPT.

EXHIBIT P14: TRUE COPY OF THE RECEIPT OF THE VILLAGE EXTENSION OFFICE ISSUED FOR THE RECEIPT OF COMPLAINT ON 6.1.2011 ON NONPAYMENT OF THE PROJECT FUND.

EXHIBIT P15: TRUE COPY OF THE LETTER DATED 31.3.2011.

EXHIBIT P16: TRUE COPY OF THE PETITION DATED 23.5.2011 BEFORE THE OMBUDSMAN FOR THE LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT P17: TRUE COPY OF THE ORDER DATED 23.3.2012 OF THE OMBUDSMAN FOR THE LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT P18(a): TRUE COPY OF THE REQUEST FOR PAYMENT OF AMOUNT DUE UNDER PROJECT NO.67/2010 VIDE PETITIONS DATED 24.3.2012.

EXHIBIT P18(b): TRUE COPY OF THE REQUEST FOR PAYMENT OF AMOUNT DUE UNDER PROJECT NO.68/2010 VIDE PETITIONS DATED 24.3.2012.

EXHIBIT P19: TRUE COPY OF THE COMMUNICATION DATED 9.4.2012 ADDRESSED TO THE PETITIONER BY THE SECRETARY.

WP(C) .No. 14317 of 2012 (L)

EXHIBIT P20: TRUE COPY OF THE COMMUNICATION OF THE VILLAGE EXTENSION OFFICER DATED 19.4.2012.

EXHIBIT P21: TRUE COPY OF THE REPLY DATED 1.6.2012 SUBMITTED BEFORE THE VILLAGE EXTENSION OFFICER.

EXHIBIT P22: TRUE COPY OF THE COMMUNICATION DATED 28.4.2011 OF THE SECRETARY OF THE 1ST RESPONDENT PANCHAYAT TO THE PETITIONER ALONG WITH THE MINUTES.

EXHIBIT P23: TRUE COPY OF THE CERTIFICATE ISSUED BY KARTIKAYA OFFSET.

EXHIBIT P24: TRUE COPY OF THE CERTIFICATE DATED 8.12.2012 OF THE CITY VISION.

RESPONDENTS' EXHIBITS:

EXT.R1: TRUE PHOTOCOPY OF PROJECT SUBMITTED IN THE PRESCRIBED FORM BY THE PANCHAYAT TO THE TECHNICAL GROUP IN THE BLOCK SIGNED BY THE PRESIDENT/SECRETARY AND THE STANDING COMMITTEE CHAIRMAN.

EXT.R1(A): TRUE PHOTOCOPY OF PROJECT SUBMITTED IN THE PRESCRIBED FORM BY THE PANCHAYAT TO THE TECHNICAL GROUP IN THE BLOCK SIGNED BY THE PRESIDENT/SECRETARY AND THE STANDING COMMITTEE CHAIRMAN.

EXT.R2: TRUE PHOTOCOPY OF THE APPROVAL GRANTED BY THE DISTRICT PLANNING OFFICER DATED 14.5.2010 FOR EXHIBIT R1 PROJECT.

EXT.R2(A): TRUE PHOTOCOPY OF THE APPROVAL GRANTED BY THE DISTRICT PLANNING OFFICER DATED 14.5.2010 FOR EXHIBIT R1(A) PROJECT.

EXT.R2(I): PHOTOCOPY OF THE RECEIPTS ISSUED FROM THE OFFICE OF THE 1ST PETITIONER (1ST RESPONDENT IN THE WRIT PETITION) FOR BOOKING THE COMMUNITY HALL ON 29.8.2010, 30.8.2010, 10.9.2010, 12.9.2010, 13.10.2010 & 17.10.2010.

EXT.R3: TRUE PHOTOCOPY OF THE NOTICE NO.1495/12 DATED 19.4.2012 ISSUED BY THE PANCHAYAT.

EXT.R4: TRUE PHOTOCOPY OF THE LIST ACKNOWLEDGING THE NOTICE.

EXT.R2(F): PHOTOCOPY OF THE ATTENDANCE REGISTER OF RAJIMOL P.S.

EXT.R2(G): PHOTOCOPY OF THE VOUCHER.

EXT.R2(H): PHOTOCOPY OF THE ATTENDANCE REGISTER OF M.K.SREEJA.

EXT.R3(A): TRUE COPY OF THE RESOLUTION NO.3(2) DATED 12.8.2010.

EXT.R3(B): TRUE COPY OF THE RESOLUTION NO.1(7) DATED 21.1.2011.

EXT.R3(C): TRUE COPY OF THE LETTER NO.AE1-1-1-125/2012 DATED 9.4.2012 SENT BY THE PETITIONER.

EXT.R3(D): TRUE COPY OF THE LETTER NO.AE1/2/125/2011 DATED 12.4.2012 SENT BY THE PETITIONER.

TRUE COPY

PA TO JUDGE

SCL.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos.10871 & 14317 of 2012

Dated this the 7th day of January, 2015

JUDGMENT

These two writ petitions relate to the payment of a sum for the alleged training imparted to the educated scheduled caste women and women below poverty line in the Santhanpara Grama Panchayat in order to equip them to appear for the competitive examinations held by the Public Service Commission.

2. The petitioner in W.P.(C) No.14317 of 2012 approached the learned Ombudsman for Local Self Government Institution, Thiruvananthapuram alleging that he had imparted training as aforesaid and the panchayat is refusing to pay a sum of Rs.3,66,000/- to him, though he has successfully completed the training. The learned Ombudsman as per order dated 23.3.2012 directed the panchayat to process the whole matter and

to pay whatever is due to the petitioner on or before 30.4.2012. It was further observed that, if any clarification was required by providing papers, the petitioner should do the same and the Secretary should properly monitor it, process it and present it before the panchayat committee and see that the entitled amount be paid to the petitioner in W.P.(C) No. 14317 of 2012 without any further delay. In W.P.(C) No. 10871 of 2012, the panchayat is challenging the said order. In W.P.(C) No. 14317 of 2012, the petitioner alleges that in spite of the specific direction given by the learned Ombudsman, the panchayat has not disbursed the amount to him.

3. For convenience of discussion, the parties can be referred to as they arrayed in W.P.(C) No. 14317 of 2012.

4. The petitioner submitted a quotation on 20.3.2010 for items 1 and 6 in Ext.P1 notification namely

S-0067/10 (it is for training women for PSC examination) and S0068/10 (it is for training women belonging to schedule case for PSC examination). The petitioner alleges that those quotations were accepted by the respondent panchayat and the panchayat prepared a list of the beneficiaries of the project and handed over to the petitioner for training. According to the petitioner, the coaching class started with a formal inauguration by the then president of the panchayat on 26.8.2010. It is further alleged that on completion of training on 7.11.2010, the petitioner claimed the amount due to the project Nos.67/10 and 68/10. According to the petitioner, the president of the panchayat directed him to come to the office of the panchayat for receiving a part payment on 31.3.2011 and promised to make the balance without delay. Accordingly, the petitioner reported at the office of the panchayat on 31.3.2011 and waited till 1.30 p.m. The

petitioner alleges that under the pretext that the Village Extension Officer who is said to be the person in charge of project implementation did not turn up, the payment was not made. He further alleges that he addressed a letter to the secretary of the panchayat marking a copy to the president stating that as per the understanding, the petitioner had waited at the office of the panchayat till 1.30 P.M. and that the payment was not made. Also, he requested for release of the entire amount. It could not evoke any positive response. Therefore, the petitioner approached the Ombudsman for Local Self Government Institution vide petition dated 23.5.2011. The respondents appeared in person before the Ombudsman and admitted the liability; the petitioner alleges. The learned ombudsman for the Local Self Government Institution by order dated 23.3.2012 directed the panchayat to make the payment whatever is due on or

before 30.4.2012. The secretary of the panchayat by communication dated 9.4.2012 instructed the Village Extension Officer for payment of bill amount in relation to the aforesaid projects. The petitioner further points out that the Village Extension Officer informed him by communication dated 19.4.2012 that the payment would be made subject to the order approving the spillover of the projects as the project duration had ended on 31.3.2012. On receipt of Ext.P20, the petitioner submitted a representation stating that his quotation for the projects were accepted by the panchayat without any rider and therefore the payment cannot be withheld any reason. The petitioner further points out that the records such as attendance register, list of candidates etc. had been submitted at the office of the panchayat. It is at this juncture, the respondent panchayat approached this Court in W.P.(C) Nos.10871 of 2012 against the order of the

learned Ombudsman for Local Self Government Institution. The petitioner alleges that the respondents are liable to pay the amount under the projects. The petitioner points out that even after suffering a judgment from the learned Ombudsman, the respondent panchayat is not making the payment. It is with this background, he has approached this Court.

5. In the counter affidavit filed by the respondent panchayat, they would contend that as per the records maintained in the office of the panchayat with regard to the aforesaid two projects, the panchayat had not given any letter to the petitioner accepting his tender. According to them, no letter is seen given from the panchayat with the approved list of beneficiaries to whom training had to be imparted to start training. On receipt of the letters from the petitioner consequent to the order of the learned Ombudsman, the secretary gave Ext.P20 reply to the

petitioner to produce the relevant documents to say that he had imparted training after executing the agreement with the panchayat. It is further contended that pursuant to the order of the learned ombudsman, the panchayat had conducted an enquiry among the beneficiaries to ascertain as to whether he has actually imparted the training. According to them, the enquiry revealed that the claim of the petitioner is not correct. Therefore, the stand taken by the respondent panchayat is that the respondent is unnecessarily dragged into the litigation.

6. The respondent has taken more or less the same contentions in the writ petition filed by them as W.P.(C) No.10871 of 2012.

7. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Panchayat.

8. Ext.P17 is the order passed by the learned

Ombudsman for Local Self Government Institution. Pursuant to Ext.P17 order, the petitioner requested for payment of the amount due under two projects vide petition dated 24.3.2012. The true copies of the two requests made separately for the aforesaid projects are produced as Exts. P18(a) and P18(b). These requests were forwarded by the Secretary of the respondent panchayat to the Village Extension Officer for follow up action as is evident from the endorsement made there. The secretary of the panchayat by communication dated 9.4.2012 instructed the petitioner to approach the Village Extension Officer for payment of the bill amount in relation to the projects. Ext. P19 is the copy of the said communication. On meeting of the petitioner with the Village Extension Officer, he was informed by communication dated 19.4.2012 (Ext.P20) that the payment will be made subject to the order approving the

spillover of the project as the project duration had ended on 31.3.2012 and that the first respondent was required to submit communication entrusting the project, copy of the agreement attendance register and addresses, photograph of the training class and copy of the certificate issued on completion of the project etc. On receipt of Ext.P20, the petitioner submitted his representation that his quotations for the project were accepted by the panchayat, not with any rider or subject to approval of the spillover of the project beyond 2012 and therefore, the payment cannot be withheld on any such reason. The petitioner submits that the records such as attendance register, list of candidates etc. had been submitted at the office of the panchayat as per Ext.P21 request dated 1.6.2012. It is at this juncture, the petitioner has filed W.P.(C) No.10871 of 2012 challenging the order of the learned Ombudsman. It was argued by the learned

counsel for the petitioner that the respondents, who are the officers of State, after availing the service of the petitioner cannot turn around and say that the amount due to the petitioner would not be paid unless the project in question is approved for spill over to the period 2012. The respondents cannot be allowed to take advantage of their own failures and make the petitioner to suffer the loss for no fault of him, so submitted the learned counsel for the petitioner.

9. It is crucial to note that the respondents did not have a case that the training was not conducted. The respondents also have no case that they did not take the service of the petitioner for the project. The respondents have not disputed the acceptance of tender and have no case that they have stipulated any condition that the payment would be subject to the approval of the spill over of the project beyond 2012. There was no case that any

condition of the tender application of the petitioner has been violated after the same has been accepted by the panchayat.

10. It appears from the argument advanced by the learned counsel for the respondent panchayat that the dispute is only on the number of the persons who had attended the project. As rightly pointed out by the learned counsel for the petitioner, the only duty of the petitioner was to impart training to those who attended the training. Even if there was only one trainee, the petitioner was bound to impart training as per the agreement. There was no complaint that the training was denied to any person by the petitioner. The petitioner points out that in fact there was no complaint till date against the petitioner alleging even deficiency of service. In these circumstances, the respondents are totally unjustified in denying the payment to the petitioner. I

have to accept the argument of the learned counsel for the petitioner that the respondents have acted arbitrarily and whimsically and have caused severe loss to the petitioner who had engaged trainers for coaching by paying from his fund in advance. Now even after suffering the judgment, the payment has not been made. The offer of the petitioner was to impart training to students selected by the panchayat irrespective of their number. The panchayat prepared a list of the beneficiaries of the project and handed over to the petitioner for training. The precondition now pointed out by the respondents had not been made by the respondents while the quotation of the petitioner was accepted.

10. When the petitioner approached the learned Ombudsman for Local Self Government, the respondents did not contest the claim much less questioned the very

jurisdiction of the Ombudsman in entertaining Ext.P16 complaint. Now the respondents have proceeded to challenge the order of the learned Ombudsman questioning the jurisdiction in passing Ext.P17 order. The respondent has failed in establishing in what manner the learned Ombudsman loses his jurisdiction in passing Ext.P17 order. Ext. P17 order was passed by the learned Ombudsman within his competency. On a consideration of the entire materials placed on record, this Court is of the definite view that the petitioner in W.P.(C) No.14317 of 2012 is entitled to succeed.

In the result, W.P.(C) No.14317 of 2012 is allowed. The respondent panchayat is directed to effect the payment to the petitioner due on project Nos. 67/2010 and 68/2010 mentioned as serial Nos.1 and 6 in Ext.P1 notice as per the quotation awarded for imparting training, within a period of two months from the date of

receipt of a copy of this judgment. If the respondents fail to make any payment as aforesaid, the respondents shall pay the interest @ 12% p.a. over the said amount from 7.11.2010.

W.P.(C) No.10871 of 2012 is dismissed.

A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.