

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 12841 of 2014 (E)

PETITIONER(S):

MATHACHAN KURIAN, AGED 44 YEARS,
S/O KURIAN,
RESIDING AT MANGALAMKUNNEL (H), RAMAPURAM BAZAR P.O.,
KOTTAYAM - 686 576

BY ADVS. SRI. MANUEL KACHIRAMATTAM
SMT. MERRY GEORGE
SRI. MATHEW JOHN (JMA)

RESPONDENT(S):

1. RAMAPURAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, RAMAPURAM BAZAR P.O.,
KOTTAYAM - 686 576.
2. THE SECRETARY,
RAMAPURAM GRAMA PANCHAYAT, RAMAPURAM BAZAR P.O.,
KOTTAYAM - 686 576.
3. THE STATE OF KERALA,
REPRESENTED BY THE UNDER SECRETARY TO GOVERNMENT,
DEPARTMENT OF DISASTER MANAGEMENT (REVENUE-K)
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
4. THE DISTRICT COLLECTOR,
KOTTAYAM, COLLECTORATE, KOTTAYAM - 686 001.

R1 & R2 BY ADV. SRI. P. C. HARIDAS
R3 & R4 BY GOVERNMENT PLEADER, SMT. LILLY K. T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE
COURT ON 13.08.2015 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE AGREEMENT DATED 25-02-2013.
- EXHIBIT P2 TRUE PHOTOCOPY OF THE FORM T.S.Cs RELATING TO THE VEHICLE BEARING NO KL .35- A 8006.
- EXHIBIT P3 THE TRUE PHOTOCOPY OF THE REPRESENTATION DATED 29-06-2013 SUBMITTED BY THE PETITIONER.
- EXHIBIT P3(A) TRUE PHOTOCOPY OF THE RECEIPT DATED 29-06-2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P4 TRUE PHOTOCOPY OF THE APPLICATION DATED 04-09-2013 SUBMITTED BY THE PETITIONER.
- EXHIBIT P4(A) TRUE PHOTOCOPY OF THE RECEIPT DATED 04-09-2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5 TRUE PHOTOCOPY OF THE LETTER DATED 05-09-2013 OF THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE PROCEEDING BEING NO. H7 -36918/2013 DATED NIL/ 12/2013 OF THE 4TH RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE ORDER DATED 17-02-2014 OF THE 3RD RESPONDENT
- EXHIBIT P8 TRUE COPY OF THE PROCEEDING BEING NO H7- 36918/2013 DATED NIL OF THE 4TH RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE STATEMENT FOR LOAN ACCOUNT ISSUED BY THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R4(A): A COPY OF THE DEMI-OFFICIAL LETTER NO.51106/K3/2012/DMD DATED 17.04.2013 OF THE CHIEF SECRETARY, KERALA.

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.12841 of 2014

Dated this the 13th day of August, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking direction to Respondents 1 and 2 to settle the accounts of the petitioner remaining due towards the distribution of drinking water during the severe drought period in the year 2013 and to disburse the balance amount of Rs.1,80,500/- to the petitioner with normal rate of interest.

2. Brief facts required for the disposal of the writ petition are as follows:

3. Petitioner had entered into Ext.P1 agreement with the 1st Respondent Panchayat on 25.02.2013 by which the petitioner had agreed to distribute drinking water at the rate of Rs.1,000/- per 5000 litres of water. It was stipulated under the agreement that the same shall not exceed Rs.4,000/- per day and the same will have to be supplied at the place and time directed by the Panchayat without any complaint and with effect from 26.02.2013. But the distributed quantity of

drinking water as per Ext.P1 agreement was insufficient to meet the requirements of the people in the Panchayat and considering the said aspect, the Vice-President and Welfare Standing Committee Chairman of the 1st Respondent Panchayat requested the petitioner to distribute sufficient drinking water to the residents of the Panchayat exceeding the limit prescribed under Ext.P1 agreement. That the 2nd Respondent, Secretary of the Panchayat had directed the petitioner while supplying in excess of the stipulated limit, petitioner should secure counter signature of the customers as well as the concerned Ward Member and the driver of the vehicle. On the basis of such oral arrangement, petitioner had supplied drinking water as stipulated under Ext.P1 also exceeding the limit of Rs.4,000/- per day to meet the drinking water requirements of the people residing in the Panchayat as per the oral requests made by the aforesaid persons to the petitioner.

4. It was also stated that as orally directed by the 2nd Respondent, petitioner has secured Form T.S.C. and obtained counter signature as stipulated and after the period prescribed under Ext.P1 that is between 26.02.2013 and 22.04.2013,

petitioner has submitted the bill to the 1st and 2nd Respondents showing the amount as per Ext.P1 and also the amounts for the excess drinking water supplied. It was also contended that in order to establish the excess supply of drinking water, he has produced the entire Form T.S.C. relating to the vehicle bearing Reg. No.KL.35 A-8006. It was further contended that on receipt of the bill so submitted by the petitioner as per Ext.P3, certain discrepancies were found out so far as the amount regarding the supply of excess drinking water and accordingly the correction was carried out by the petitioner and submitted Ext.P4 which was received by the Secretary as per Ext.P4(a) acknowledgement. Thus, the 2nd Respondent has released the amount as per Ext.P1 agreement amounting to Rs.2,16,000/-, leaving a balance of Rs.1,80,500/- as per Ext.P4 submitted by the petitioner. It was the case of the petitioner that even though the Secretary of the Panchayat has promised the petitioner to release the amount by saying one reason or other, the same was being protracted. Anyhow, after continued request, on 05.09.2013, the 2nd Respondent forwarded a letter along with decision No.IX of the 1st Respondent Panchayat dated 20.08.2013 to the 4th Respondent

District Collector with a request to sanction the amount towards payment of excess quantity of drinking water distributed by the petitioner, which was evidenced by Ext.P5.

5. Petitioner has also stated that pursuant to Ext.P5, the 4th Respondent i.e. the District Collector, Kottayam issued a direction to the 2nd Respondent as per Ext.P6, directing the 2nd Respondent to release the payment of the excess quantity of drinking water distributed by the petitioner. Petitioner contended that in spite of Ext.P6, there was no action from the side of the 1st and 2nd Respondents to release the amounts to the petitioner. In the meanwhile, 3rd Respondent has issued Ext.P7 order dated 17.2.2014 with the object of streamlining the supply of excess quantity of drinking water by the Local Self Government Institutions, by which the Government have condoned the action taken by the Local Self Government Institutions for the supply of excess quantity of drinking water without prior approval from the District Collectors. Further, it was stated in the said order that each Panchayat was entitled to get Rs.5 lakhs from the fund of the Local Self Government Department and the balance amount if any required, 50% shall be sponsored by the State Disaster Response Fund and 50%

again from the Local Self Government Department. In spite of the enabling circumstances provided by the 3rd Respondent, Respondents 1 and 2 have not taken any action to release the excess amount to the petitioner.

6. Again under the aforesaid confronted situation, the petitioner approached the 4th Respondent and the 4th Respondent has accordingly issued a direction as per Ext.P8 dated 18.03.2014 to the 2nd Respondent to release the amount due to the petitioner. It was the contention of the petitioner that in spite of the said direction also 1st and 2nd Respondents have not cared to release the amount to the petitioner and consequent to which he was put to several financial difficulties including repayment of loan to the Bank, evidenced by Ext.P9 statement of Kottayam District Co-operative Bank Ltd., Kottayam.

7. Respondents 1 and 2 have filed a counter affidavit refuting the claims and demands made by the petitioner in the writ petition and contended that the petitioner has not secured prior approval in order to supply the drinking water and that as stated by the petitioner neither the Panchayat nor the Secretary have issued any oral direction to the petitioner to

supply the drinking water. Moreover, it was submitted that, if the ward member and the Chairman of the Welfare Standing Committee had given any oral assurance, it was their personal assurance and the Panchayat had no duty to oblige such personal assurances undertaken by the said persons. Anyhow, from the counter affidavit, I found that Respondents 1 and 2 have not disputed the directions issued by the District Collector to make the payments for the excess quantity of drinking water supplied by the petitioner. Moreover, prior to the counter affidavit filed by Respondents 1 and 2 in the writ petition, no manner of objection was raised by Respondents 1 and 2 regarding the claim made by the petitioner for the amount for excess quantity of drinking water supplied.

8. Moreover, Ext.R2(c) produced along with the counter affidavit was the minutes of the meeting dated 20.01.2014 containing decision No.III, by which Respondents 1 and 2 categorically admitted that petitioner has supplied excess quantity of drinking water even though it was stated that there was no direction issued by Respondents 1 and 2 for such supply. From Ext.R2(c), I also found that by making such a decision, the Panchayat was trying to get rid of its

responsibilities and put the blame on the 4th Respondent District Collector. There was a clear finding in Ext.R2(c) that the petitioner has supplied excess quantity of drinking water as per the direction of the Panchayat but if admitted so, it would remain as a liability of the Panchayat and in that circumstances only it was decided to approach the District Collector for securing the amount claimed by the petitioner. Petitioner has filed a reply to the counter affidavit filed by the Respondents 1 and 2, refuting the allegations so made and reiterating the stand of the petitioner raised in the writ petition.

9. The 3rd Respondent Government has also filed a counter affidavit basically contending that the 4th Respondent was not aware as to whether the vehicle was belonging to the petitioner or not and whether there was any oral direction given by the Panchayat authorities for supply of excess quantity of drinking water etc. etc.

10. Heard the learned counsel for the petitioner, learned counsel for Respondents 1 and 2 and the learned Government Pleader appearing for Respondents 3 and 4.

11. I have perused the pleadings contained in the writ petition, counter affidavits filed by the Respondents and also

the reply affidavit of the petitioner, heard the rival contentions advanced by the learned counsel.

12. It is a fact that supply of excess quantity of drinking water by the petitioner was not disputed by any of the Respondents at any point of time till the filing of the respective counter affidavits. Even Ext.R2(c) minutes of the meeting produced by the Panchayat goes to the root of the matter and it was clear from the said minutes of the Panchayat meeting that the petitioner has supplied excess quantity of drinking water. Further, as per Exts.P6 and P8 orders, the 4th Respondent has issued peremptory direction to the 2nd Respondent to release the amount for the excess quantity of drinking water supplied by the petitioner. Therefore, it was categoric and clear that the attitude taken by the Respondents in the counter affidavit filed by them disowning their liability cannot be sustained in any manner. Respondents should realize that if such illogical, inconsistent and illegal stand are adopted, none of the vehicle owners will come forward for this kind of activities launched by the Local Self Government Institutions or the Government during the emergency situations. Moreover, if at all there was any illegality or

anomaly in the matter of distribution of excess quantity of drinking water without prior approval, the same was condoned by the Government as per Ext.P7 and therefore the Respondents were duty bound to pay the amount to the petitioner.

13. Taking into account the entire facts and circumstances of the case, I am of the considered opinion that the inconsistent stand adopted by the Respondents against their own decisions and orders was itself a sufficient ground to show that the attempt of the Respondents was only to make an attempt to see that the responsibility of payment is shouldered one against another and nothing short of the same. The petitioner is running behind the said issue for the past nearly two years without achieving any result other than securing certain orders from the District Collector for release of the amount. According to me, the Panchayat or the State cannot disown their liability to pay the amount to the petitioner.

14. Therefore, there will be a direction to the 1st and 2nd Respondents to pay the amount as calculated in Ext.P4 and also in accordance with the terms contained in Ext.P1

agreement, within a period of 45 days from the date of receipt of a copy of this judgment, failing which, petitioner will be entitled to get interest at the rate of 6% for the amount remaining due from the date of Ext.P4. Respondents 1 and 2 will be entitled to get reimbursement of the same as provided under Ext.P7 Government Order and the 3rd Respondent should ensure that such reimbursement is made to the 1st Respondent at the earliest and at any rate, within a maximum period of four months from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-