

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 20613 of 2007 (D)  
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PETITIONER(S) :  
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VITHURA GRAMA PANCHAYAT  
VITHURA P.O., THIRUVANANTHAPURAM DISTRICT  
REP. BY ITS SECRETARY IN-CHARGE.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)  
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENT(S) :  
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1. P.K.PRAKASH  
MANKUNNIL HOUSE, VITHURA P.O., NEDUMANGAD  
THIRUVANANTHAPURAM.

2. SECRETARY,  
OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS  
BARTEN HILL BUNGLOW, KUNNUKUZHY P.O.  
THIRUVANANTHAPURAM.

R,R1 BY ADV. SRI.T.A.UNNIKRISHNAN  
R,R1 BY ADV. SRI.K.SATHEESH KUMAR  
R BY GOVERNMENT PLEADER SHRI.K.K.SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 20613/2007

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF ORIGINAL PETITION NO:826/06 SUBMITTED BY 1ST  
RESPONDENT BEFORE THE 2ND RESPONDENT ON 13.10.06

EXT.P2: -DO- OBJECTION FILED BY PETITIONER BEFORE THE 2ND RESPONDENT  
ON 1.3.07

EXT.P3: -DO- ORDER IN ORIGINAL PETITION NO:826/06 DT.2.6.07

JJ /TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

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W.P(C) NO. 20613 OF 2007  
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Dated this the 25<sup>th</sup> February, 2015.

### JUDGMENT

The petitioner, the Vithura Grama Panchayat has filed this writ petition challenging Ext.P3 order of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in O.P.826/2006. The matter relates to the maintenance work of the Vithura Sivan Koil – Mailakonam Mankunnu drain and its bund during the year 2001–02. The work was undertaken by the Panchayat under the SGRY scheme and was completed during the year 2002–03. The first respondent was the convenor of the Beneficiary Committee. After the successful completion of the work, since a portion of the amount due to the first respondent had not been paid, he preferred a complaint before the second respondent. It was stated that, the first bill for Rs.1,96,885/- was paid. However, the

balance bill for an amount of Rs.53,115/- was omitted to be paid.

2. The petitioner entered appearance and submitted Ext.P2 objections. As per Ext.P2, what is stated is only that, as per the instructions issued by the State Planning Board, the Technical Inspection Approval and measurement of the work had to be completed within a period of two weeks of completion of the work. Thereafter, the concerned Engineer was to prepare the bill and submit the same to the Panchayat. In the present case though the work was over in the year 2002-03, the bill was submitted only in the year 2006. Therefore, according to the Panchayat, it was not possible to pay the bill amount. After considering the objections Ext.P2, the second respondent directed payment of the entire amount. The petitioner has challenged the said order in this writ petition.

3. According the counsel for the petitioner since the bill was not submitted within the time stipulated by the State

Planning Board it was not possible to pay the amount. According to the learned counsel for the petitioner Shri.N.Rajesh, the second respondent lacked jurisdiction to entertain the complaint of the first respondent. The counsel places reliance on Section 271J of the Kerala Panchayat Raj Act, 1994 (the 'Act' for short) to contend that, none of the functions enumerated therein would take in the dispute in the present case which according to the counsel is essentially a monetary dispute. Therefore it is contended that Ext.P3 is liable to be set aside.

4. Adv.T.A.Unnikrishnan appears for the first respondent. According to the counsel, the petitioner has no dispute regarding the quality of the work or the amount that has been claimed for undertaking the work. Therefore, it is contended that there is no justification for not making the payment. It is pointed out that, the impugned order Ext.P3 does not call for any interference.

5. Heard. The dispute in the present case is regarding

the omission on the part of the petitioner to make payment of the bill amount claimed by the first respondent. The amount is claimed for the value of services rendered by successfully undertaking and completing a work for the Panchayat. The petitioner has no dispute regarding the quality of work or the quantum of the amount that has been claimed. The only dispute is a technical one, that the Assistant Engineer concerned had not submitted the bill for the work within the time stipulated by the State Planning Board. A perusal of Section 271J shows that the second respondent has been conferred the power to pass an order where there is an allegation that an irregularity was due to an omission or inaction on the part of a local authority. The present case is a clear example of omission or inaction on the part of the petitioner to make payment of the bill amount. Therefore, it is held that the second respondent had the jurisdiction to pass Ext.P3 order.

6. A perusal of Ext.P2 objections submitted by the

petitioner shows that the petitioner had no dispute regarding the amount that was claimed or the quality of work undertaken by the first respondent. The petitioner has been enjoying the benefit of the work that was undertaken and completed by the first respondent. According to Ext.P2, the measurement ought to have been taken, the bill ought to have been prepared and submitted by the Assistant Engineer. Therefore, the delay in submitting the bill cannot be attributed to any default on the part of the first respondent. In such circumstances, the direction issued by the second respondent in Ext.P3 is only just and reasonable.

For the above reasons I find no grounds to interfere with Ext.P3 or to grant any of the reliefs sought for. The writ petition fails and is accordingly dismissed.

Sd/-  
K. SURENDRA MOHAN  
Judge

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/True copy/

