

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

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

WP(C).No. 24175 of 2006 (C)

PETITIONER(S):

**HARIKUMAR, S/O. GOPALA PILLAI,
AGED 56, RESIDING AT REJITHA VILASOM, PETTA,
PAZHAKUTTI, KARIPUR MURI, NEDUMANGADU.**

BY ADV. SRI.R.S.KALKURA.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.**
- 2. THE NEDUMANGADU MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
O/O.NEDUMANGADU MUNICIPALITY,
NEDUMANGADU, TRIVANDRUM DISTRICT.**
- 3. SOMAN NAIR, PAZHAKUTTI-KALINGAL ROAD
DEVELOPMENT BENEFICIARY COMMITTEE,
RESIDING AT SARIKA, MELAMCODE,
PAZHAKUTTI P.O., NEDUMANGADU.**
- 4. DEPUTY TAHSILDAR (R.R.),
NEDUMANGADU.**
- 5. LOKAYUKTA, TRIVANDRUM.**

**R1, R4 & R5 BY GOVT. PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY ADV. SRI.P.RAMAKRISHNAN.**

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

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE AGREEMENT IN FAVOUR OF THE 2ND RESPONDENT ON 18/03/1999.
- EXT.P2 COPY OF THE AGREEMENT NO.23/98-99 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF THE 2ND RESPONDENT.
- EXT.P3 COPY OF THE AGREEMENT NO.23A/98-99 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF THE 2ND RESPONDENT.
- EXT.P4 COPY OF THE PASS BOOK PERTAINING TO THE ACCOUNT NO.C1342.
- EXT.P5 COPY OF THE COMPLAINT DATED 20/09/2000.
- EXT.P6 COPY OF THE COMPLAINT DATED 01/10/2000.
- EXT.P7 COPY OF THE RESOLUTION OF THE MEETING HELD IN AUSPICIOUS OF THE BENEFICIARY COMMITTEE.
- EXT.P8 COPY OF THE REPORT DATED 28/06/2001 SUBMITTED BY THE SUB COMMITTEE TO THE 2ND RESPONDENT MUNICIPALITY.
- EXT.P9 COPY OF THE NOTICE DATED 17/08/2001 ISSUED BY THE SECRETARY OF THE 2ND RESPONDENT.
- EXT.P10 COPY OF THE REPLY DATED 07/09/2001 ISSUED BY THE PETITIONER.
- EXT.P11 COPY OF THE JUDGMENT DATED 30/01/2001 IN O.S.229/1999.
- EXT.P12 COPY OF THE JUDGMENT IN OS.231/1999 DATED 17/12/2002.
- EXT.P13 COPY OF THE NOTICE DATED 30/09/2002.
- EXT.P14 COPY OF THE REPLY DATED 30/10/2002 SUBMITTED BY THE PETITIONER AND OTHERS.
- EXT.P15 COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT UNDER THE REVENUE RECOVERY ACT.
- EXT.P16 COPY OF THE COMPLAINT NO.556/03 SUBMITTED BY THE PETITIONER BEFORE THE LOKAYUKTA.

- EXT.P17 COPY OF THE COUNTER FILED BY THE 2ND RESPONDENT IN COMPLAINT NO.556/2003.**
- EXT.P18 COPY OF THE ENQUIRY REPORT IN COMPLAINT NO.556/2003.**
- EXT.P19 COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 19/05/2004 BEFORE THE 5TH RESPONDENT.**
- EXT.P20 COPY OF THE BANK ACCOUNT PRODUCED BEFORE THE 5TH RESPONDENT IN RESPECT OF THE BENEFICIARY COMMITTEE FND.**
- EXT.P21 COPY OF THE AFFIDAVIT SUBMITTED BY THE 2ND RESPONDENT DATED 26/10/2005.**
- EXT.P22 COPY OF THE OBJECTIONS DATED 17/11/2005.**
- EXT.P23 COPY OF THE JUDGMENT DATED 07/08/2006 IN COMPLAINT NO.556/2003.**
- EXT.P24 COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER IN COMPLAINT NO.556/2003.**
- EXT.P25 COPY OF THE GOVERNMENT ORDER DATED 12/06/1998 ISSUED BY THE 1ST RESPONDENT.**
- EXT.P26 COPY OF THE GOVERNMENT ORDER BEARING NO.1452 DATED 22/10/1997.**
- EXT.P27 COPY OF THE BILLS PASSED BY THE 2ND RESPONDENT.**
- EXT.P28 COPY OF THE STATEMENT FILED BY THE PETITIONER IN COMPLAINT NO.556/2003.**
- EXT.P29 COPY OF THE LETTER DATED 10/11/2003 ISSUED BY THE 3RD RESPONDENT.**
- EXT.P30 COPY OF THE ACCOUNT SUBMITTED BY THE 3RD RESPONDENT BEFORE THE BENEFICIARY COMMITTEE.**
- EXT.P31 COPY OF THE ACCOUNT SUBMITTED BY THE 3RD RESPONDENT BEFORE THE BENEFICIARY COMMITTEE.**
- EXT.P32 COPY OF THE ACCOUNT SUBMITTED BEFORE THE NEDUMANGADU MUNICIPALITY.**

WP(C).No. 24175 of 2006 (C)

**EXT.P33 COPY OF THE ACCOUNT FOR CONSTRUCTION OF A CULVERT
SUBMITTED BY THE 3RD RESPONDENT.**

**EXT.P34 COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER IN
COMPLAINT NO.556/2003 DATED 07/02/2006.**

**EXT.P35 COPY OF THE PETITION SUBMITTED BY THE PETITIONER IN
COMPLAINT NO.556/2003 DATED 18/08/2005.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K. Vinod Chandran, J

W.P.(C).No.24175 of 2006-C

Dated this the 01st day of June, 2015

JUDGMENT

The petitioner is aggrieved with the order passed by the Lok Ayukta in Complaint No.556 of 2003, produced at Exhibit P23.

2. The facts leading to the complaint are that, the petitioner along with 11 others were constituted as a “Beneficiary Committee” under the 2nd respondent-Municipality for carrying out the construction and development of the Pazhakutti - Kallingal Road. The 3rd respondent was the Convenor and one Trivikraman Nair, who subsequently expired, was the Chairman. There was an allegation raised by certain committee members after the Beneficiary Committee was appointed for carrying out the work, that the Chairman and Convenor of the committee withdrew the amounts credited by the Municipality without any notice to the committee members and certain amounts deposited by the Municipality for the execution of the work was misappropriated by the Chairman and Convenor.

3. In any event, taking into consideration the allegations levelled against the Chairman and Convenor of the Beneficiary

Committee, the Municipality itself appointed a sub-committee of four members from the 11 member committee originally appointed. The petitioner was also one of the members of the sub-committee. The expenditure was directed to be made only through the sub-committee. The sub-committee carried out the work and filed a report on 28.06.2001. However, subsequently a notice dated 30.09.2002 was served upon the committee members, directing to return to the Municipality an amount of ₹.1,60,000/- with 12% interest from annum, amounting to ₹.1,92,000/-; being excess amount collected from the Municipality. The eleven Beneficiary Committee members were held jointly and severally liable for the said amount.

4. It was at this juncture that the petitioner approached the Lok Ayukta by Exhibit P16, which was dismissed as per Exhibit P23, since the entire amounts due to the Municipality was said to have been deposited by one Arjunan, who is also said to be a committee member. The learned counsel appearing for the petitioner would contend that the Lok Ayukta ought to have proceeded with the compliant, since the allegations were of very serious nature and in relation to misappropriation of public funds.

5. Primarily it is to be noticed that the allegation is against the 3rd respondent, who is said to have been the Convenor of the

Beneficiary Committee. The allegations made in the complaint would not commend this Court to hold that the Convenor of a Beneficiary Committee appointed by a Local Self Government Institution would come within the ambit of “public servant” as defined in the Kerala Lok Ayukta Act, 1999. Further, the Lok Ayukta has found that the allegation of corruption was raised on account of the revenue recovery proceedings initiated. It was also categorically found that there was no evidence adduced by the petitioner to substantiate such allegations. The amount withdrawn by the Beneficiary Committee exceeded that required for carrying out the work as per the measurements conducted by the Municipality. The liability though was mulcted on all the committee members, one of the committee members had paid up the same. On a consideration of all the above circumstances, this Court finds no justifiable ground to interfere with Exhibit P23.

Writ petition dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]