

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 25699 of 2012 (J)

PETITIONER(S) :-

A.A.ANTONY,
(FORMER ASSISTANT RETURNING OFFICER &
BLOCK DEVELOPMENT OFFICER
THYKKATTUSSERI BLOCK PANCHAYATH), ARAKKAL VEEDU
POLLETHAI P.O., KALAVOOR (VIA), ALAPPUZHA DISTRICT.

BY ADVS.SRI.T.K.AJITH KUMAR
SRI.P.VINODKUMAR
SRI.K.S.ARUNDAS

RESPONDENT(S) :-

1. STATE ELECTION COMMISSION
KERALA, REPRESENTED BY ITS SECRETARY
CORPORATION OFFICE COMPLEX, L.S.M.JUNCTION
THIRUVANANTHAPURAM, PIN-695 033.
2. THE DISTRICT COLLECTOR, ALAPPUZHA, PIN-688 001.
3. THE COMMISSIONER,
RURAL DEVELOPMENT COMMISSIONERATE, L.S.M.COMPOUND
THIRUVANANTHAPURAM, PIN-695 033.
4. RAJU K.FRANCIS,
(FORMER RETURNING OFFICER,
THYKATTUSSERI BLOCK PANCHAYATH)
ASSISTANT CONSERVATOR OF FOREST
SOCIAL FORESTRY DEPARTMENT, ALAPPUZHA P.O.
ALAPPUZHA DISTRICT, PIN-688V001.

R4 BY ADV. SRI.THOMAS ANTONY
SRI.M.P.PRAKASH

R1 BY SRI.MURALI PURUSHOTHAMAN, SC

R2 & R3 BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF THE APPEAL DATED 15.12.2011
SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P2 :- TRUE COPY OF THE LETTER OF THE 3RD RESPONDENT
DATED 11.1.2012.

EXT.P3 :- TRUE COPY OF THE REPLY DATED 18.1.2012 SUBMITTED
BEFORE THE 3RD RESPONDENT.

EXT.P4 :- TRUE COPY OF THE LETTER OF THE 3RD RESPONDENT
DATED 9.2.2012.

EXT.P5 :- TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT
DATED 10.9.2012.

EXT.P6 :- TRUE COPY OF THE NOTICE ISSUED BY THE 2ND
RESPONDENT DATED 18.9.2012.

EXT.P7 :- TRUE COPY OF THE NOTICE DATED 19.10.2012 ISSUED
BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS :-

EXT.R4(a) :- TRUE COPY OF THE LETTER 18.9.2010 OF THE 1ST
RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

A.M.SHAFIQUE, J

W.P(C). No. 25699 of 2012

Dated this the 13th day of November, 2015

J U D G M E N T

Petitioner challenges Exts.P5, P6 and P7 by which the State election Commission has called upon him to pay an amount of Rs.29,894/-.

2. The short facts involved in the writ petition would disclose that the petitioner while working as the Block Development Officer was the Assistant Returning Officer in the election conducted by the Local Self Government Institutions in the year 2010. The fourth respondent was the Returning Officer. According to the petitioner, he had withdrawn an amount of Rs.90,000/- towards the advance amount for the election process and he has submitted vouchers. The fourth respondent being the Returning Officer, has withdrawn an amount of Rs.10,99,000/- for meeting the expenses. In respect of the amounts drawn from the fund, he submitted proper vouchers. Though vouchers were submitted, the District Election Officer did not allow some of the amounts claimed. The second respondent sanctioned only an amount of

Rs.10,50,481/- and he was asked to return an amount of Rs.48519/-. Against the order of the second respondent, the petitioner submitted appeal before the first respondent. In the meantime, the third respondent, the Commissioner, Rural Development Commission called upon the petitioner to remit an amount of Rs.48519/-. The petitioner retired from the service on 31.3.2011. Petitioner submitted a legal reply and thereafter the matter was considered by the State Election Commission which has fixed the liability at Rs.29,894/- The petitioner impugned the above order as he was not the disbursing officer who have drawn an amount of Rs.10,99,000/- as advance towards the expenses for the election process. In so far as the amount was taken as advance by the fourth respondent, the petitioner was only asked to give certain vouchers. He has given all the vouchers and cannot be asked to refund the amount.

3. Counter affidavit has been filed by the second respondent as well as the 4th respondent. They supported the stand taken by the Election Commission. The fourth respondent has also stated that the petitioner was entrusted to expend the amount involved, which he had already admitted

before the Election Commission and on that basis the impugned order has been passed.

4. Heard learned counsel appearing for the parties.

5. A perusal of Ext.P5 would clearly indicate that the Election Commission had evaluated the entire factual aspects involved in the matter and audit has been conducted and all vouchers relating to expenditure incurred has been taken into consideration and it was found that the vouchers deficit and the expenditure is not forthcoming with reference to an amount of Rs.29,894/-. It is clearly observed that the petitioner had admitted that he had received Rs.10,99,000/- in cash from the Returning Officer and expended the same as directed by the Returning Officer. The Commission observed that when the Assistant Returning Officer has admitted receipt of the said amount and also admitted that he had incurred all the expenditures, the responsibility for settling the bills vested with him. As far as it is an admitted fact that he was given custody of the aforesaid amount, he was under the obligation to explain the expenditure of the said amount and in the absence, he was asked to refund Rs.29,894/-. Under such circumstances, I do not think that the Election Commission has committed any error in fixing the liability of Rs.29,894/- on the petitioner.

6. It cannot be disputed that to exercise the power of judicial review, the petitioner will have to show whether the order passed is either illegal or arbitrary. The Commission has decided the issue relating to expenditure incurred by the petitioner on relevant facts, which cannot be ignored by this Court. The main contention urged by the petitioner is that he is not the drawing officer. But when it is admitted that the fourth respondent has handed over the entire amount of Rs.10,99,000/- to the petitioner and he also admitted the said fact, he was bound to provide necessary vouchers and explain the expenditure. Hence, there is nothing wrong in the Election Commission to have come to the conclusion that the petitioner is liable for the same.

Hence, I do not find any merit in the contention urged on behalf of the petitioner. Accordingly the writ petition is dismissed.

Sd/-
A.M.SHAFIQUE,
JUDGE

// TRUE COPY //

sou.19/11/15