

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 29020 of 2010 (B)

PETITIONER:

K.S.RATHEESH,
ASSISTANT EXECUTIVE ENGINEER, L.S.G.D. SUB DIVISION
VANDOOOR, MALAPPURAM DISTRICT.

BY ADVS.DR.K.P.SATHEESAN

SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.MATHEW SUNNY
SRI.ANOOP.V.NAIR

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-1.
2. KALAMASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KALAMASSERY.P.O.
ERNAKULAM DISTRICT, PIN-683 104.
3. THE SECRETARY,
KALAMASSERY MUNICIPALITY, KALAMASSERY.P.O.
ERNAKULAM DISTRICT, PIN-683 104.
4. N.M.BEERAN,
NJAKKADA HOUSE, H.M.T.COLONY.P.O., MATTAKKADU
ERNAKULAM DISTRICT, PIN-683 503.

* ADDL. R5 IMPEADED

BIJU K.K.
S/O. KURIACHAN, AGED 44 YEARS, RESIDING
AT PATTATTUPADATH HOUSE, VADACODE P.O,
KANGARAPADY, ERNAKULAM- 682021.

(ADDL.R5 IS IMPEADED AS PER ORDER DATED 2.7.2013 IN
I.A.NO.8721/2013)

RADDL.R-R5 BY ADV. SRI.K.C.ELDHO
R BY SRI.M.K.ABOOBACKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 29020 of 2010 (B)

APPENDIX

PETITIONER(S) 'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE PHOTOGRAPH.

EXHIBIT P1 (A): TRUE COPY OF THE PHOTOGRAPH.

EXHIBIT P1 (B): TRUE COPY OF THE PHOTOGRAPH.

EXHIBIT P1 (C): TRUE COPY OF THE PHOTOGRAPH.

EXHIBIT P2: TRUE COPY OF THE INFORMATION COLLECTED BY THE PETITIONER FROM KALAMASSERY MUNICIPALITY UNDER RIGHT TO INFORMATION ACT DATED 3.12.2009.

EXHIBIT P3: TRUE COPY OF THE ORDER PASSED BY THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 2.9.2010 IN ORIGINAL PETITION NO.483/2008.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 29020 of 2010

Dated this the 31st day of August, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P3 order passed by the learned Ombudsman for Local Self Government Institutions.

2. The petitioner is presently working as Assistant Executive Engineer in LSGD Sub Division, Vandoor in Malappuram District. Prior to that, the petitioner was working as Assistant Engineer at Kalamassery Municipality. When the petitioner was working as Assistant Engineer, the work of removal of earth from the Chittiyalithazham Pathway was given to a contractor. The petitioner took the initial measurement of the earth and on completion, the final measurement also. When the petitioner came to know that the contractor has taken excess earth, the petitioner directed to stop payment to the contractor; and so far, no amount is paid to the

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contractor; according to the petitioner. In the meanwhile, the 4th respondent filed a complaint before the Ombudsman for Local Self Government Institutions alleging that the Secretary and Chairperson of the municipality conspired with the contractor and, that is how, the contractor removed excess earth. The Ombudsman called a report of the Regional Joint Director and also the State Performance Audit Officer. According to the petitioner, these officers never made any complaint against the petitioner. However, the Ombudsman passed an order directing the Secretary to initiate action against the petitioner for supervisory lapse, which, according to the petitioner, is without even hearing the petitioner. Hence, this writ petition.

3. Heard the learned counsel for the senior counsel for the petitioner, the learned Standing Counsel for the municipality, the learned senior Government Pleader and the learned counsel for other respondents.

4. It is submitted by the learned senior counsel for

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the petitioner that the petitioner was constrained to approach this Court as the petitioner was not a party to the proceedings before the Ombudsman and certain allegations were made against him by the respondents.

5. However, the respondent municipality passed a resolution on 17.01.2014 on Agenda No.18, as per which, it was found that though there were irregularities in the matter of removing the earth, the laches on the part of the petitioner was not willful and, therefore, it was decided to close the file after an admonition.

In the light of the said decision, it is hereby made clear that no further proceedings pursuant to Ext.P3 shall be initiated against the petitioner.

The writ petition is disposed of as above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-