

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 28514 of 2014 (L)

PETITIONER(S):

1. LILLY KUTTY,
MEMBER REPRESENTING WARD NO.2,
THANNITHODE GRAMA PANCHAYATH, MANJATHARAYIL HOUSE,
THANNITHODE P.O., PANCHAYATHUPADY-689 699.
2. SUMA SIVADASAN,
MEMBER REPRESENTING WARD NO.5,
THANNITHODE GRAMA PANCHAYATH, THEKKUMKATTIL HOUSE,
THEKKUTHODE P.O.
3. K.A.KUTTAPPAN,
MEMBER REPRESENTING WARD NO.6,
THANNITHODE GRAMA PANCHAYATH, KUZHITHUNDIL HOUSE,
THEKKUTHODE P.O.
4. LILLY BABU,
MEMBER REPRESENTING WARD NO.8,
THANNITHODE GRAMA PANCHAYATH, ALLUMKAL,
THANNITHODE P.O.
5. PHILOMINA PAPPACHAN,
MEMBER REPRESENTING WARD NO.11,
THANNITHODE GRAMA PANCHAYATH, PANGATTU VEEDU,
THANNITHODE P.O.

**BY ADVS.SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)**

RESPONDENT(S):

1. THANNITHODE GRAMA PANCHAYATH,
REP.BY ITS SECRETARY, THANNITHODE P.O. - 689 699.
2. PANCHAYATH COUNCIL OF THANNITHODE GRAMA PANCHAYATH,
REP.BY ITS PRESIDENT K.J.JAMES, PANCHAYATH OFFICE,
THANNITHODE P.O. - 689 699.

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3. DEPUTY DIRECTOR OF PANCHAYATH,
PATHANAMTHITTA - 689 648.

4. STATE OF KERALA
REP. BY ITS SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT [D.A] DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

* ADDITIONAL R5 IMPEADED

5. K.R.HARI, S/O.RAGHAVAN NAIR, AGED 58 YEARS,
KUTTUVELIL HOUSE, THEKKUTHODE P.O.,
KONNI, PATHANAMTHITTA.

* ADDL.R5 IMPEADED AS PER ORDER DATED 26.02.2015 IN IA 2765/15.

R1 & R2 BY ADVS. SRI.E.M.MURUGAN
SRI.PRAKESH (VAIKOM)
R3 & R4 BY GOVERNMENT PLEADER SRI.RAFEEK V.K.
R5 BY ADVS. SRI.SAJEEV KUMAR K.GOPAL
SRI.R.HARISHANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF THE RELEVANT EXTRACT OF THE MINUTE'S BOOK OF THE 1ST RESPONDENT PANCHAYATH IN ITS MEETING HELD ON 11.12.2013.

EXHIBIT-P2: A TRUE COPY OF THE RELEVANT EXTRACT OF THE MINUTE'S BOOK OF THE 1ST RESPONDENT PANCHAYATH IN ITS MEETING HELD ON 09.05.2014.

EXHIBIT-P3: A TRUE COPY OF THE DISSENTING NOTE SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DT.3.07.2014.

EXHIBIT-P4: A TRUE COPY OF THE DISSENTING NOTE SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT DT.3.07.2014.

EXHIBIT-P5: A TRUE COPY OF THE DISSENTING NOTE SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT DT.3.07.2014.

EXHIBIT-P6: A TRUE COPY OF THE DISSENTING NOTE SUBMITTED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT DT.3.07.2014.

EXHIBIT-P7: A TRUE COPY OF THE RELEVANT EXTRACT OF THE GUIDELINES ISSUED BY THE 4TH RESPONDENT FOR IMPLEMENTING PROJECTS UNDER 12TH FIVE YEAR PLAN [2012-17].

EXHIBIT-P8: A TRUE COPY OF THE PETITION UNDER SEC.191 OF THE KERALA PANCHAYATH RAJ ACT, 1994 FILED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT.

EXHIBIT-P9: A TRUE COPY OF THE JUDGMENT DT.24.07.2014 IN W.P.(C) NO.19138/2014 OF THIS HON'BLE COURT.

EXHIBIT-P10: A TRUE COPY OF THE G.O.[MS] NO.2609/2014/LSGD DT.10.10.2014 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P11: A TRUE COPY OF THE G.O.[MS] NO.362/2013/LSGD DT.16.11.2013 MADE MENTIONED IN EXT.P10 ALONG WITH RELEVANT EXTRACT OF GUIDELINES.

EXHIBIT-P12: A TRUE COPY OF THE NOTICE DT.30.4.2014 REGARDING PROPOSED MEETING ON 09.05.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

EXT.R1 A: TRUE PHOTOCOPY OF RELEVANT PORTION OF G-O(MS) NO.362/2013/LSG, DATED 16.11.2013.

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EXT.R1 B: PHOTOCOPY OF THE MINUTES OF THE MEETING HELD ON 3.7.2014.

**EXT.R1 C: PHOTOCOPY OF THE PROJECT RECOMMENDATIONS FOR 2014-15 YEARLY
PLAN.**

EXT.E1 D: PHOTOCOPY OF THE MINUTES OF HE MEETING HELD ON 15.7.2014.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.28514 of 2014

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Dated this the 19th day of March, 2015

JUDGMENT

The petitioners have approached this Court for getting decision number II in Ext.P2 and Ext.P10 insofar as it cancels decision number VII of Ext.P1 quashed.

2. Petitioners are the members of the respondent panchayat. On 11.12.2013 an ordinary meeting of the first respondent was convened in the panchayat hall and has taken various decisions. One of the decisions was decision number VII regarding allotment of funds for all panchayat wards for infrastructural development. The petitioners allege that the second respondent council in its ordinary meeting held on 9.5.2014 reviewed the aforesaid decision and reduced the funds by half allotted to the petitioners' wards without assigning any reasons.

3. Petitioners further allege that they have dissented to the above decision as it is illegal. In spite of the said dissenting note by the petitioners, the decision was upheld as eight members supported the same; it is alleged. The same is seen recorded in Ext.P2. It is further alleged that decision number II as per Ext.P2 is taken in violation of Section 161 of the Kerala Panchayathi Raj Act, 1994 read with Rule 11 of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules, 1995, which mandates no resolution of a panchayat shall be modified or cancelled except through a resolution passed in a meeting specially convened for the purpose within three months of passing such resolution by a two-third majority of the total number of members of the panchayat.

4. The petitioners point out that a mere perusal of Ext.P10 notice reveals that meeting convened is not for modifying/cancelling decision number VII of Ext.P1 and hence decision taken as per decision number II of Ext.P2 is violative of the provisions of the

above Rules and, therefore, unsustainable in law. In the circumstances, the petitioners have moved an application before the Government as provided under Section 191 of the Kerala Panchayathi Raj Act. They also approached this Court with an writ petition which was disposed off directing the 4th respondent to consider and pass orders on Ext.P8. As directed in Ext.P9, the 4th respondent passed Ext.P10 order cancelling decision number VII of Ext.P1 and decision number II in Ext.P2 stating that they are not in accordance with Ext.P11 Government order. According to the petitioners, the reasons stated by the 4th respondent as per Ext.P10 for cancelling the decisions is illegal and untenable in law.

5. In the counter affidavit filed by respondents 1 and 2, they have contended as follows:

It was stated that as per the revised guidelines for the execution of 12th Five-Year Plan (2012-17) as given by the Government through G.O(MS) No.362/2013/LSG. dated 16.11.2013,

in clause 5 (4)(ii) during formulation of the plan of the panchayat for a year, the income resources of the panchayat has to be estimated to be 15% more than what was available during the previous year. Respondents have produced the true copy of the relevant portion of the said Government order dated 16.11.2013 as Ext.R1A. As per the above said direction, during the making of the draft plan various decisions were taken in the governing committee of the panchayat on 11.12.2013. On the basis of the expected income from the various income resources of the panchayat, the expected allocation for each expenditure and other areas was calculated and an amount of ₹2,10,52,735/- was decided as the expected draft plan allocation for the year 2014-15 in decision number II on 11.12.2013. Decision No.VII of the above meeting dated 11.12.2013 was regarding the allocation of the above said expected plan fund between the 13 wards of the panchayat. The said decision was relating to only a draft amount which could be allocated to the wards during the year 2014-

2015 on the basis of the expected income.

It was further stated that plan fund available to the panchayat for the year 2014-15 was allocated in the State budget for the year 2014-2015. As per Annexure IV of the budget, which was presented in the legislative assembly in February 2014, the amounts allocated to the Thannithodu panchayat was far below the expected income estimated as per decision number II in the meeting dated 11.12.2013. The expected World Bank aid of a sum of ₹53,81,000/- was totally denied to the Thannithode panchayat. Moreover, the panchayat was also shouldered with the liability of purchasing electronic voting machines as per the direction given by the Government. Therefore, since the income from the expected resources was reduced and unexpected additional expenditures were to be met by the panchayat, on 9.5.2014 the panchayat committee as per decision number II had decided the allocation of fund in the various projects in the wards of the panchayat. As per the said decision, the plan allocation for the

various wards, including those of the petitioners were re-fixed on the basis of the allocated fund.

It was further stated that it is the basis of decentralised plan that the funds for development should not be allocated during planning on the basis of the wards in a panchayat. This is more so in view of para 11(10)(C1) of the guidelines issued by the Government as per G.O (MS) No.362/2013/LSGD. TVM dated 16.11.2013 which specifically states that yearly plan has to be formulated by considering the local self-governing body as a single unit and not on the basis of each ward. This has been specifically discussed in the meeting dated 3.7.2014. A discussion on the recommendations of the gramasabha, seminars on development and other government, directions were considered and a draft yearly plan of the panchayat was discussed in the committee. The decisions taken in the above meeting with slight modifications were finalised and the yearly plan for the year 2014-15 was approved as decision number 1 in the

committee held on 15.7.2014. On the above decision, neither did the petitioners have expressed their dissent nor did they make any agitations thereof. On the basis of the said decision for framing of the yearly plan, all records have been submitted before the District Planning Committee (DPC) for approval and on the basis of the report of the experts appointed by the DPC that the guidelines issued by the Government has been rightly adhered to, the yearly plan of the panchayat was approved by the DPC. Even though the yearly plan of Thannithodu Grama Panchayat has been approved by the DPC, Pathanamthitta on 30.7.2014, the execution of the yearly plan was stalled on account of the pendency of the complaint as per the direction of this Court in W.P(C) No.19138 of 2014

6. The third respondent has filed counter affidavit contending as follows.

It was stated that the functioning of the standing committees of the respondent panchayat is generally to give the

recommendations on various subjects for the consideration of the panchayat governing committee. According to the 3rd respondent as per Section 162A of the Kerala Panchayat Raj Act, 1994, the Panchayat Committee is having the power to make necessary changes, if found necessary to the decisions taken by the panchayat standing committee.

The petitioners had earlier approached this Court with W.P(C) No.19138 of 2014 which was disposed of by this Court by judgment dated 24.7.2014 directing the Secretary to Government to consider and pass orders on the complaint filed by the petitioners under Section 191 of the Kerala Panchayat Raj Act within two months and that the execution of the annual plan of the panchayat has been stayed. As per the direction of this Court, the Joint Secretary to the Local Self Government department had heard the petitioners and after elaborately considering the guidelines issued by the Government, and examining the records of the panchayat regarding

the yearly plan and its mode of execution and also after seeking the opinion of the office of the 3rd respondent, the Director of Panchayaths, the Government had directed panchayat to proceed with the execution 2014-15 yearly plan and had complied with the directions of this Court.

It was further stated that it was on the basis of the decentralised plan that the funds for development should not be allocated during planning on the basis of the wards in a panchayat. This is more so in view of para 11(10)(C1) of the guidelines issued by the Government as per G.O(MS) No.362/2013 LSGD. TVM. dated 16.11.2013 which specifically states that yearly plan has to be formulated by considering the local self government body as a single unit and not on the basis of each ward. This has been specifically discussed in the meeting dated 3.7.2014, a discussion on the recommendations of the Grama Sabha, development seminars and other government directions were considered and a draft year plan of

the panchayat was discussed in the committee. The decisions taken in the above meeting with slight modifications were finalised and the yearly plan for the year 2014-15 was approved as decision number (1) in the committee held on 15.7.2014. On the above decision, neither did the petitioners have expressed their dissent nor did they make any agitations thereof. On the basis of the said decision for framing of the yearly plan, the panchayat had submitted all records before the District Planning Committee for approval and on the basis of the report of the experts appointed by them, the guidelines issued by the Government had been rightly adhered to while preparing the yearly plan of the panchayat was by the District Planning Committee.

7. Arguments have been heard.

8. According to the learned counsel for the petitioners, decision number II of Ext.P2 passed by the second respondent modifying decision number VII of Ext.P1 is in violation of Rule 11 of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules,

1995 (for short, the Act) as the 5th respondent should have cancelled the same. However, without considering the above contention, the Government issued Ext.P10 cancelling decision number VII of Ext.P1 and decision number II of Ext.P2. It was argued that there is absolutely no challenge against decision number VII of Ext.P1. The petitioners point out that have only challenged decision number II in Ext.P2 as it was in violation of Rule 11 of the Rules.

9. Inviting my attention to Rule 11 of the Rules, it was argued that the first respondent should not have taken a decision as decision number II in Ext.P2 as there was a time gap of more than five months between the two decisions. It was argued that the reduction of the funds were made only to those wards which represent the opposition members. According to the learned counsel for the petitioners, there cannot be such discrimination on party lines in the matter of development. It was also argued that there was no meeting as provided for the purpose of cancelling earlier resolution. In this

context, it has to be noted that G.O(MS) No.362/2013/LSGD. TVM. dated 16.11.2013 mandates that yearly plan has to be formulated by considering the local self-governing body as a single unit and not on the basis of each ward. Copy of the minutes of the said meeting is marked as Ext.R1 B. The decision taken in the above meeting with slight modifications were finalised and the yearly plan for the year 2014-15 was approved as decision number I in the committee held on 15.7.2014. A true copy of the project recommendation is produced as Ext.R1 C and the true copy of the minutes of the meeting held on 15.7.2014 is produced as Ext.R1 D.

10. It is crucial to note that on the said decision, the petitioners have not expressed their dissent. It was pointed out by the learned counsel for the respondents 1 and 2 that on the basis of the said decision for framing of the yearly plan, all records have been submitted before the DPC for approval and on the basis of the report of the experts appointed by the DPC, the guidelines issued by the

Government has been rightly adhered to, and the yearly plan of the panchayat was approved by the DPC.

11. The documents now placed on board would tend to indicate that the decision of the panchayat has been accepted by the petitioners. In Ext.P10, the decision number II in Ext.P2 also was cancelled taking note of the decision taken on 15.7.2014. It was finally approved by the DPC on 30.7.2014.

12. It was strenuously argued by the learned counsel for the petitioners that the Government before passing the impugned order has not followed the procedure laid down by Section 191(2) of the Panchayat Raj Act, 1994. The learned counsel for the petitioners also relied on the decision of this Court in **Anikad Grama Panchayat** v. **Baiju** [2005 (2) KLT 153]. On a perusal of Section 191(2), it can be seen that the provision for reference to the Tribunal or the Ombudsman is not mandatory as the words used is “..may refer”.

13. On a consideration of the entire materials now placed on record, this Court is of the view that there is absolutely no reason to interfere with Ext.P10.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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