
(2003) 06 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 15142 of 2003

POORNA

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Kerala Municipalities Act, 1994 — Section 326, 327, 329, 330, 331

Citation : (2003) 2 KLT 999

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : M. Sreekumar, for the Appellant; N. Nandakumara Menon and John Joseph Vettikad, Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

M. Ramachandran, J.—The petitioner has placed an interesting question, while challenging Ext.P11 notice issued by the Corporation of Trivandrum dated 24.2.2003. Reference is made to the decision of the Council dated 2.8.2001, as also the communication that had been exchanged between the parties. It was on the subject of collection of waste from the Corporation area.

2. It had been informed by Ext.P11 that proceedings against the petitioner will be taken if it was found that persons deputed by the petitioner were found collecting refuse and waste from the jurisdictional limits of the Corporation. It is also pointed out that it had come to the notice of the Corporation that the Society represented by the petitioner had through its employees had been collecting such waste from certain areas of the Corporation and were depositing such waste in the receptacles of the Corporation. Reference is made to an earlier notice issued to the petitioner during March, 2002 requiring abstinence from such steps. When the petitioner had requested for grant of such permission, they had been informed that since the Corporation had resolved to make such collections through units of "Kudumbashree" and the proposal was being implemented, their application cannot be considered. The allegation is that notwithstanding the

advice, the petitioner was resorting to such collection.

3. Petitioner claims to be a Society registered under the Societies Registration Act. The objectives of the Society include steps for undertaking research and extension activities in environment protection and waste management. In furtherance of such objects, Society had resolved to create an awareness among the residents of the Corporation about the timely collection and efficient disposal of waste. Ultimately a system was evolved whereunder persons deputed by the petitioner were to collect waste from the residential houses in specified areas and for disposing the same without health hazards. Though the petitioner has stated that waste collected were disposed by placing them in vacant lands, the learned counsel for the petitioner submits that in fact they are put in bins and receptacles that were placed by the Corporation in different areas for such purpose; According to them, this could not have been termed as objectionable, and they had no intention to interfere with the rights of the Corporation for the management of waste and rubbish. It is also submitted that this work was done predominantly as social work and they had dealings only with persons who expressed willingness to associate with them. In other words, there was no compulsion to accept their services. It was also pointed out by the learned counsel for the petitioner that the objections were arbitrary since such work could be carried out by them along with persons who had similar assignments, either at the behest of the Corporation or through their contractors or members from "Kudumbashree". The further submission was that there was mala fide motive so as to interdict the petitioner from such work with personal motives.

4. A statement has been filed by the Standing Counsel for the second respondent - Corporation. Reference is made to the provisions of the Kerala Municipality Act, especially Sections 326, 327, 329 and 330 thereof. The standing counsel submits that the Corporation has an exclusive right for collection of waste and full ownership over them. It is pointed out that final disposal of the solid waste is a statutory obligation of the Corporation u/s 331 of the Municipality Act. It is claimed that elaborate arrangements have been made for removal of rubbish and waste from the city area and a waste treatment plant by investing an amount of about Rs. 6 crores has been established and operated in a scientific manner. In this state of affairs, it was not permissible therefore for any agency to enter into a contract with the citizens and arrange for collection of waste and disposing them in their discretion.

5. The further allegation was that the employees of the petitioner were unnecessarily obstructing the discharge of statutory functions by the employees of the Corporation in spite of being advised of the consequences arising therefrom. The statement also further accused them that solid waste collected from the houses was deposited in the main road and public places. The suggestion of the petitioner was once examined, but it was not feasible to accept the suggestion though by Ext.P10 the Director of Municipalities had informed the Government that the advent of the petitioner- Society could be welcomed in

public interest.

6. The allegation that waste collected by the petitioner is deposited in public places, though referred to in the statement, does not find a place in Ext.P11. In fact, the allegation is that waste collected is deposited in the receptacles of the Corporation. The learned counsel for the petitioner also submits that filling of waste lands, originally practiced have been stopped as at present. Therefore, the question is whether it will be possible for the Corporation to direct that the activities of the petitioner could be termed as making inroads to their rights and whether they are prohibited under the statute and if so Ext.P11 could be sustained. Reference was made to the relevant sections dealing with the subject in the Kerala Municipality Act.

7. Of course the Corporation has a duty to collect waste and rubbish from the areas within its jurisdiction and they have to be appropriately disposed of. But, the Act does not refer to any such exclusive rights of at least as about collection of waste articles.

8. Thus the issue arises as to the ownership of the waste produced by a householder. Of course, so long as it is in his possession, a householder is the owner thereof. Such ownership or possession also could be legally transferred to any person he chooses. But they are not at liberty to dispose the waste, as they like. Here the sanction of the Corporation comes into play. The Corporation gets the ownership of the waste the moment it is deposited in the bins kept for the purpose. When the servants of the petitioner collects the waste from the house holder, and carries it to the bin, such work is executed by them on behalf of the house holder. This cannot be objectionable, nor has the Municipality Act thought of prohibiting this.

9. A comparison with Panchayat Raj Act at this juncture shows that more elaborate procedures have been prescribed there by way of Sections 219(f) to 219(s). A householder may even have the duty to entrust the rubbish to the person nominated/contracted for this purpose. Such provisions are not there in the Municipality Act.

10. Thus, when it will be permissible for a resident of the Corporation to carry the waste produced on a day himself and put them in the bins that are placed, adjacent to his house, it automatically leads also to a right to depute another person for doing the above said work. It can be either in pursuance of a contract on payment or for any other consideration. The persons deputed by the petitioner, therefore, can be only considered as agents of the residents for managing the rubbish for a short duration. This cannot be termed as irregular or illegal. When the definite allegation is that waste bins are used by the petitioner to put the collected rubbish and when the learned counsel for the petitioner submits that they have no intention of disposal of the waste by themselves, the arrangements, even if on payment, cannot be called as interfering with the rights of the Corporation or irregular. This is because the resident has a duty to carry

and deposit his rubbish to the point of the bin.

11. In the aforesaid circumstances, Ext.P11 appears to be issued without statutory authority or jurisdiction. The learned counsel for the petitioner undertakes that there will not be any obstruction or conflict between the parties deputed by them and persons authorised by the Corporation in the matter of collection of waste. This submission is recorded.

12. Ext. P11 is set aside. The Original Petition is allowed to the above extent.