
(2011) 06 KL CK 0062

In the High Court Of Kerala

Case No : OP. No. 15194 of 2002 (H)

Ramachandran Pillai K., "Ayodhya" and M. Ayoob, Narikkallil
Veedu

APPELLANT

Vs

Nazeer, Rahmath Buildings and Others

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Kerala Panchayat Raj Act, 1994 — Section 271K
Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999 — Rule 28

Citation : (2011) 3 KLJ 573 : (2011) 8 RCR(Civil) 1541

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : D. Kishore, for the Appellant; G.S. Reghunath, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—This writ petition is filed by the petitioners challenging the orders passed by the learned Ombudsman for Local Self Government Institutions which are produced as Exts.P4 and P6.

2. The complaint before the learned Ombudsman was filed by respondent Nos.1 to 5 alleging deficiencies in the work executed by a beneficiary committee of which the first petitioner is the Chairman, and the second petitioner is the Convenor. The construction was in respect of the Thalakulam (big pond) and leading thodu as part of the plan for 1998-99. The project cost was estimated at a total cost of Rs.4,40,914/- by the seventh respondent-Assistant Engineer herein and an amount of Rs.3,50,000/- was sanctioned by the D.L.E.C. The Block Panchayat, even though initially decided to entrust the work with the Padasekhara Samithy, but finally, a Beneficiary Committee was formed and agreements were executed by the said Committee with the Block Panchayat. It is not necessary to go into the details of the same. The dispute herein lies in a narrow compass.

3. Ext.P4 is one passed then by the multi member Ombudsman, by a majority decision, on 19/07/2001 as an interim order. On finding that there is a failure to produce the M-Book, orders were passed to the effect that a sum of Rupees one lakh shall be recovered from the Chairman and Convenor. Further directions were issued for evaluation of the works done, by the Chief Technical Examiner; conduct a vigilance investigation and; to see that both the Secretary and the Engineer be transferred to non executive and non sensitive posts at once during the said enquiry. The majority view is reflected from the latter portion of Ext.P4 wherein they also agreed with the directions 1 to 3. Seeking for a review of the same, the petitioners filed Ext.P5 before the learned Ombudsman and by Ext.P6, the said petition has been rejected stating that there is no power of review for the Ombudsman.

4. The reasoning adopted by Ext.P6 is attacked by the learned counsel for the petitioners by contending that under Rule 28 of the Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999 [in short, "the Rules"] specific power is conferred for review of orders and, therefore, the view taken cannot be supported. Rule 28 under the Rules provides as follows:

R.28. Review: The Ombudsman may, suo moto or on application submitted within sixty days from the date of order, review any of its decision.

Evidently, the same confers an express power for review of any decision either suo moto or on an application submitted within 60 days from the date of the order.

5. Section 271 K of the Kerala Panchayat Raj Act [for short, "the Act"] is relied upon by the learned Ombudsman to conclude that Rule 1 of Order XLVII of the CPC is excluded therein, and therefore, the power conferred under Rule 28 of the Rules can only be considered as a power to correct errors, mistakes etc. Evidently, Section 271 K of the Act confers certain powers. A reading of the same shows that certain powers of the Civil Court are specifically conferred so that those could be invoked for investigation of the complaints or for conducting enquiry. Even though Rule 1 of Order XLVII C.P.C is not specifically mentioned therein, the Rules have taken care of the same by providing an express power of review under Rule 28. Therefore, mere omission of Rule 1 Order XLVII C.P.C in Section 271 K of the Act will not deny the power of review on the learned Ombudsman which is expressly provided in Rule 28 quoted above. Evidently, the Kerala Panchayat Raj Act, 1994 is a Special Statute and the Rules are framed to carry out the purposes of the Act. The Special Statute will exclude the general one. Hence absence of Order XLVII Rule 1 in Section 271 K is immaterial. The conferment of power of review under Rule 28 is explicit and it is not hedged in by any limitations also. In that view of the matter Ext.P6 order cannot be supported and, therefore, the same is quashed.

6. Evidently, the complaint itself has not attained a finality. Ext.P4 is only an

interim order. The same was stayed by this Court and the interim order was continuing through out. It is only proper that the main petition itself is considered afresh. The learned counsel for the petitioners submitted that no hearing was conducted as far as the petitioners are concerned. Evidently, the order is passed only for the failure on the part of the Assistant Engineer to produce the M-Book also. In that view of the matter also, Ext.P4 cannot survive and the same is quashed. Recovery ordered as per Ext.P7 also cannot therefore survive and the same is also quashed.

7. Evidently, therefore the complaint namely Ext.P1 will have to be proceeded with afresh and, the learned Ombudsman will proceed with the complaint in accordance with the provisions contained in the Act and pass appropriate orders. Learned counsel for the parties submitted that a time limit may be fixed for its disposal. It is open for the parties concerned to move the learned Ombudsman in the matter. The writ petition is allowed as above. No costs.