
(2010) 01 KL CK 0054

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37096 of 2009

Sugunan

APPELLANT

Vs

Kunnamkulam Municipality

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Kerala Municipalities Act, 1994 — Section 216, 216(1), 216(2), 310, 311

Citation : (2010) 1 ILR (Ker) 559 : (2010) 1 KLT 430

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; Grashious Kuriakose and K.R. Deepa, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—In this Writ Petition, the challenge is against Ext.P 11, an order passed by the Tribunal for Local Self Government Institutions.

2. Petitioner states that he is a resident of the 1st respondent Municipality. Ext.P8 is a notice issued by the respondent Municipality inviting bids for private sector participation in the implementation, construction, operation and maintenance of E.K. Nayanar Memorial Bus Terminal Complex at Kunnamkulam, Thrissur. It is stated in Ext.P8 that the project will be implemented on a Build, Operate and Transfer (BOT) basis by the party selected from amongst those bidding on the basis of Ext.P8. Although several persons purchased tender documents and participated in the pre-bid meetings, finally bid was received only from the 3rd respondent herein, M/s. Ganga Constructions. The bid was considered and by Ext.P9 resolution, the Municipality resolved to accept the offer made by the 3rd respondent with a concession period of 17 years and 11 months.

3. Against Ext.P9 resolution, the petitioner filed Ext.P-10 appeal before the 4th respondent, the Tribunal for Local Self Government Institutions invoking its power u/s 509(7) of the Kerala Municipality Act, 1994. The appeal was numbered

as Appeal No. 4191/09. By Ext.P11 order dated 4/12/09, the Tribunal returned the appeal on the reasoning that Ext.P9 is not a decision appealable u/s 509(7) of the Act. According to the Tribunal, Ext.P9 is a decision traceable to 216 of the Act and therefore the remedy available to the petitioner is u/s 57 of the Act, provided there are valid grounds for doing so. It is thereupon that the Writ Petition is filed seeking to challenge Ext. P11 order of the Tribunal.

4. Learned Counsel for the petitioner contends that Section 509(7) provides that an appeal may be preferred to the Tribunal, against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision, on any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made thereunder. According to the learned Counsel, Ext.P9 is a decision taken by the Municipality u/s 472 of the Act and hence Ext.P10 appeal is maintainable. It is also his contention that Section 216 mentioned in Ext.P11 order passed by the Tribunal relates only to decisions taken by the Municipality in respect of matters which are the duties of the Municipality: It is contended that a decision as reflected in Ext.P9 is outside Section 216 and that therefore Ext.P11 order is illegal.

5. On the other hand, standing counsel appearing for respondents 1 and 2 and the learned Counsel appearing for the 3rd respondent sought to sustain Ext.P11 order of the Tribunal. According to them, the decision is traceable only to Section 216 and therefore the Tribunal has rightly passed Ext.P11 order.

6. As already seen, Section 509 of the Municipalities Act provides for appeal and revision to the Tribunal. Section 509(7) provides that an appeal may be preferred to the Tribunal, against any decision of the Council or any notice issued based on any such decision on any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the rules, bye laws or regulations made thereunder. Therefore, if as contended by the learned Counsel for the petitioner, Ext.P9 is a decision traceable to Section 472, obviously the appeal was maintainable and on the other hand, if the decision is one coming u/s 216 as held by the Tribunal and contended by the learned Counsel for the respondents, the appeal was not maintainable.

7. Ext.P9 resolution is what is challenged in the appeal. This decision taken by the Municipality is not one deciding to establish the Municipal Bus Terminal Complex or to operate the same on BOT basis. By this decision, the Municipal Council has only ratified and approved the minutes of the pre-bid meeting held on 13.10.2009 and accepted and recommended the bid submitted by the 3rd respondent with a concession period of 17 years and 11 months and resolved to submit the same for the approval of the Government.

8. Section 472 of the Kerala Municipality Act provides as follows:

472. Provision of public cart stands etc.:

(1) A Municipality may, subject to such guidelines as the Government may issue in this behalf, construct or provide public landing places, halting places and cart stands and may levy fees for the use of the same.

(2) The Municipality may:

(a) place the collection of any such fees under the management of such person as may appear to it to be proper; or

(b) farm out the collection of any such fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

(3) A statement in English and the language of the locality, showing the fees fixed by the Municipality for the use of such place, shall be put up in a conspicuous part thereof.

Explanation:- A cart stand shall, for the purposes of this Act, include a [bus stand, taxi stand, autorickshaw stand, lorry stand and stand for other vehicles and for animals).

9. In view of the wording of Section 472, only if the decision of the Municipality is to establish public cart stand etc, then and then alone can Ext.P9 be said to be a decision coming u/s 472. As already held, I cannot accept that Ext.P9 resolution is one taken u/s 472. That apart Section 472 talks about the Municipality establishing a bus stand by itself and collecting the fee either by itself or by farming out collection to strangers. This section does not contemplate a third party establishing a bus stand either of its own or on a BOT basis. Therefore, in my view, Ext.P9 decision does not come within scope of Section 472.

10. Section 216 of the Municipalities Act provides the power of Municipality to execute works on contract or otherwise. Similarly, Section 218 provides general provisions regarding contracts. Section 216(1) provides that the Municipal Council may determine, either generally in the case of any class of works or specially in the case of any specific work, as to whether the works shall be executed through a Contractor or directly or through any beneficiary committee. Sub-section (2) provides that every Municipality, may, if it is found necessary in the interests of administration, enter into contracts with any person or agency for the performance of any work which the Council is under a duty to discharge under the Act. Therefore, while Section 216(1) authorises the Municipality to take a general decision or a decision in regard to a specific work, Section 216(2) enables the Municipality to enter into contract even in respect of works which it is duty bound to discharge. Sub-section (2) only enlarges the scope of the section and do not restrict the scope of the Section only to matters, which a Municipality is duty bound to discharge. Therefore, the argument of the petitioner that Tribunal was wrong in concluding that Section 216 was the relevant provision also cannot be accepted.

11. Therefore, in my view, the reasoning of the Tribunal that Ext.P9 decision is not traceable to Section 472 of the Act is not erroneous. Therefore this Writ

Petition is only to be rejected and do so.

Writ Petition is dismissed.