

Chettiyan Abdu Vs. the District Collector

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Court : Kerala

Decided On : Sep-24-2014

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : Chettiyan Abdu

Respondent : The District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2014 2ND ASWINA, 1936 WP(C).No.5478 of 2014 (H) ----- PETITIONER : ----- CHETTIYAN ABDU, CONVENER, M.P.LADS0607, KARUVARAKUNDU MODEL, PHC BUILDING, CONSTRUCTION COMMITTEE, CHETTIYAN HOUSE, KARUVARA KUNDU P.O., MALAPPURAM (DIST). BY ADVS.SRI.N.R.CHANDRASEKHARAN SRI.P.K.YUSUFF ISSUDDIN RESPONDENTS : ----- 1.MALAPPURAM COLLECTOR, THE DISTRICT DISTRICT, CIVIL LINE, MALAPPURAM- 676 505. 2.BLOCK DEVELOPMENT OFFICE, BLOCK DEVELOPMENT OFFICER, WANDOOR, MALAPPURAM DISTRICT - 676 505. 3.* THE ASSISTANT ENGINEER, DRDA, WANDOOR, MALAPPURAM DISTRICT 676505. * (THE ADDRESS OF THE 3RD RESPONDENT IS CORRECTED AS PER

ORDER

DATED0107/2014 IN IA85642014) THE ADDRESS OF THE3D RESPONDENT IS CORRECTED AS FOLLOWS:- THE ASSISTANT ENGINEER, BLOCK DEVELOPMENT OFFICE, WANDOOR, P.O.WANDOOR, MALAPPURAM (DIST). ** (THE WORD 'DRDA' OCCUR IN THE ADDRESS OF3D RESPONDENT IS DELETED AS PER

ORDER

DATED0107/2014 IN IA85642014) 4.POVERTY THE ASSISTANT EXECUTIVE ENGINEER, ALLEVIATION UNIT, DISTRICT PANCHAYATH, MALAPPURAM676505. R1 BY SR.GOVERNMENT PLEADER SRI.MOHAMMED SHAFI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2409-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.5478 of 2014 (H) ----- APPENDIX PETITIONER'S EXHIBITS :- ----- EXHIBIT P1 COPY OF THE

ORDER

NO.680/08 DPT/MPM/MPLADS DATED313/2006 FROM THE IST RESPONDENT TO THE2D RESPONDENT. EXHIBIT P2 COPY OF THE ESTIMATE REPORT OF THE PROJECT. EXHIBIT P3 COPY OF THE MEASUREMENT BOOK FROM87/2009 TO911/2009. EXHIBIT P4 COPY OF THE LETTER DATED162/2010 TO THE2D RESPONDENT. EXHIBIT P5 PHOTOGRAPHS OF THE VIEW OF THE BUILDING UP TO THE FINISHING STAGE. EXHIBIT P6 COPY OF THE REPRESENTATION DATED253/2010 OF THE PETITIONER BEFORE THE IST RESPONDENT. EXHIBIT P7 COPY OF THE LETTER DATED78/2013 OF THE SECOND RESPONDENT. EXHIBIT P8 COPY OF THE REPRESENTATION DATED109/2013 OF THE PETITIONER BEFORE THE IST RESPONDENT. RESPONDENTS' EXHIBITS: NIL. ----- True copy P.A to Judge ANIL K.NARENDRAN, J.

----- W.P.(C).No.5478 of 2014
----- Dated this the 24th day of September, 2014

JUDGMENT

The petitioner, who is the Convener of the committee elected for the construction of a building for the Model Primary Health Center (PHC) in Karuvarakundu

Panchayat, proposed under the Member of Parliament Local Area Development Scheme (MPLADS) 2006-2007, is before this Court in this Writ Petition, seeking a writ of certiorari to quash Ext.P7 order passed by the Block Development Officer, Wandoor, the 2nd respondent herein, a writ of mandamus commanding the District Collector, Malappuram, the 1st respondent herein to dispose of Exts.P6 and P8 representations submitted by the petitioner and for other consequential reliefs.

2. According to the petitioner, in the meeting of the beneficiaries of Model PHC Karuvarakundu, a committee was elected to undertake the construction work of the building for W.P.(C).No.5478 of 2014 2 the said PHC. The petitioner was elected as the Chairman and one Fazel was elected as the Convener of the said committee and the committee authorised them to undertake the work. By Ext.P1 order, the 1st respondent accorded administrative sanction to the 2nd respondent for implementation of the work at a total estimated cost of Rs.5 lakhs. Ext.P2 is the estimate report prepared by the 3rd and 4th respondents, the Engineers concerned. It is alleged in the Writ Petition that, on completion of the work up to lintel level, the measurement of the work was recorded in Ext.P3 measurement book and that the construction from the very beginning was under the supervision of the Overseer concerned. Further, the 3rd and 4th respondents had visited the site for inspection at every stage of the construction. Later, at the request of the petitioner, the 1st respondent by order dated 26/3/2009 extended the period for completion of the work up to 30/9/2009. Ext.P4 is a letter of the Engineer concerned addressed to the 2nd respondent pointing out the necessity of recording the measurement of the W.P.(C).No.5478 of 2014 3 work already undertaken. Ext.P5 is the photographs of the construction already undertaken by the petitioner.

3. According to the petitioner, the construction work could not be completed within the extended period due to non- co-operation on the part of the Engineer concerned and in such circumstances he has submitted Ext.P6 representation before the 1st respondent seeking his intervention in the matter. While so, the petitioner was issued with Ext.P7 communication of the 2nd respondent stating that, due to non-completion of the work, the 1st respondent had cancelled the administrative sanction for the work, based on a report submitted by the Executive

Engineer, LSGD Division, Malappuram, and in the result the agreement executed by the petitioner for undertaking the work was also cancelled. Aggrieved by the cancellation of the work, the petitioner has submitted Ext.P8 representation before the 1st respondent and thereafter approached this Court in this Writ Petition seeking various reliefs. W.P.(C).No.5478 of 2014 4 4. By order dated 24/7/2014, this Court passed an interim order to the effect that the building constructed by the petitioner in the Primary Health Centre shall not be demolished for a period of two months.

5. A counter affidavit has been filed on behalf of the 1st respondent contending, inter alia, that on 29/11/2011 the 2nd respondent has reported that only 80% of the work was completed and the implementation of the work was also stopped by the petitioner. On enquiry, the 2nd respondent reported that the work done so far was not satisfactory and up to the technical specifications laid down in the estimate and the implementation of the work was stopped due to public protest. The 2nd respondent reported further that the structure collapsed on 14/6/2011 due to heavy rain and that the work was carried out by the petitioner without the supervision of the Engineer concerned. Based on the representation submitted by the petitioner, the 1st respondent directed the Executive Engineer, LSGD Division, Malappuram, to conduct enquiry. W.P.(C).No.5478 of 2014 5 The said Engineer, after conducting an enquiry at the site, reported that most of the pillars are tilted and damaged and the walls are cracked and damaged. Only the basement is safe for reconstruction. Since the Government has stipulated that all pending works of the 14th Lok Sabha period should be completed on or before 31.12.2012, a direction was sought from the Government and the Principal Secretary, Planning and Economic Affairs (CPMU) Department, to explore the possibilities of settling the account without any financial liability on the part of the Government for the incomplete work, as per the norms under the guidelines on implementation of MPLADS. In such circumstances, it was decided to cancel the administrative sanction for the work and also the agreement executed with the petitioner. Placing reliance on the guidelines on implementation of MPLADS, it is contended further in the counter affidavit that, the time limit for completion of the work shall not exceed one year from the date of sanction in general and that cancellation of work W.P.(C).No.5478 of 2014 6 unsatisfactorily done shall not lead to any contractual

financial liability or cost on the Government. Therefore, according to the 1st respondent the Writ Petition is devoid of merits and the same is liable to be dismissed.

6. The petitioner has also filed a reply affidavit refuting the allegations made in the counter affidavit and also reiterating the contentions raised in the Writ Petition. According to the petitioner, the public protest was never against the petitioner or the committee and the public always supported them. The complaint against the quality of the work already undertaken, raised for the first time in the counter affidavit, is frivolous and baseless. The concrete work could not be completed on account of non-co-operation on the part of the respondents and they have to compensate the committee for the expense incurred and the damage caused. The petitioner is not aware of the guidelines of MPLADS and the committee worked according to the instructions of respondents 1 to 3 and the committee has every right to get the amount, W.P.(C).No.5478 of 2014 7 which has been spent for the construction work.

7. Heard the learned counsel for the petitioner and also the learned Sr. Government Pleader appearing for respondents 1 to 4.

8. It is not in dispute that the construction of a building for the Model PHC in Karuvarakundu Panchayat, proposed under MPLADS20062007, was entrusted to a committee in which the petitioner is the Convenor. It is also not in dispute that the construction of the said building could not be completed either during the period stipulated in Ext.P1 order granting administrative sanction or within the extended period granted up to 30/9/2009. Moreover, as evident from Ext.P5 photographs produced by the petitioner himself, a portion of the structure has already collapsed. The petitioner would contend that, the construction work from the very beginning was under the supervision of the Overseer concerned and also the 3rd and 4th respondents and that on completion of the work up to lintel level, the measurement of the work was recorded in W.P.(C).No.5478 of 2014 8 Ext.P3 measurement book. But, the respondents would contend that, the enquiry revealed that the work done so far was not satisfactory and up to the technical specifications laid down in the estimate and further the structure has also

collapsed on 14/6/2011. According to them, the decision to cancel the administrative sanction for the work and also the agreement executed with the petitioner, as reflected in Ext.P7 order passed by the 2nd respondent is perfectly legal. Further, the cancellation of work unsatisfactorily done shall not lead to any contractual financial liability or cost on the Government in terms of the relevant guidelines. Therefore, a decision on the question of legality or otherwise of Ext.P7 order passed by the 2nd respondent would involve adjudication of disputed questions of fact, which this Court would loath to address in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

9. Admittedly, the construction of the building is under MPLADS, a scheme introduced by the Government of India to W.P.(C).No.5478 of 2014 9 enable the Members of Parliament to identify and get implemented small development works of capital nature based on locally felt needs, so that durable community assets will be created in their constituencies. The implementation of the scheme is governed by comprehensive guidelines formulated by the Government of India and the scheme is being implemented in the State through various State Government departments like, Local Self Government Department, Public Works Department, etc. The petitioner, who is the convener of the committee elected for the construction of the Model PHC building proposed under MPLADS cannot plead ignorance of the guidelines of MPLADS and contend that the committee had worked according to the instructions of respondents 1 to 3 and as such it has every right to get the amount already spent for the construction of the building.

10. The learned Sr. Government Pleader pointed out that Ext.P8 representation submitted by the petitioner against Ext.P7 order passed by the 2nd respondent is pending W.P.(C).No.5478 of 2014 10 consideration before the 1st respondent. In the facts and circumstances of the case, I am of the view that, the 1st respondent can be directed to consider the said representation submitted by the petitioner and take a decision on the legality or otherwise of the cancellation of the agreement executed by the petitioner in relation to the construction work covered by Ext.P1 and matters incidental thereto, with notice to the petitioner and respondents 2 to 4, after affording them a reasonable opportunity of being heard, strictly in accordance with law, after taking note of the guidelines of MPLADS, the terms of the

agreement executed by the petitioner and any other relevant materials.

11. In the result, this Writ Petition is disposed of directing the 1st respondent to consider and pass appropriate orders on Ext.P8 representation submitted by the petitioner and take a decision on the legality or otherwise of the cancellation of the contract work as evidenced by Ext.P7, as directed above, as expeditiously as possible, at any rate within W.P.(C).No.5478 of 2014 11 a period of two months from the date of receipt of a certified copy of this judgment, along with a photocopy of this Writ Petition.

12. It is made clear that, the interim order passed by this Court on 24/7/2014, against the demolition of the building constructed by the petitioner for the Primary Health Centre in Karuvarakundu Panchayat, shall continue to be in force till a decision is taken by the 1st respondent, as directed above, on Ext.P8 representation. No order as to costs. ANIL K.NARENDRAN, JUDGE skj

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