

D. Rajeevan vs Chairman, State Appellate Authority (Ombuds Person)

D. Rajeevan vs Chairman, State Appellate Authority (Ombuds Person)

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/18225/2023

Appellant : D. Rajeevan

Respondent : Chairman, State Appellate Authority (Ombuds Person)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
WP(C) NO. 18225 OF 2023 FULL NAME AND ADDRESS OF THE
PETITIONERS:

1 D. RAJEEVAN AGED 58 YEARS S/O DIVAKARAN, RAMS
ENGINEERS AND SERVICES PVT. LTD., PGP.V/102, KALATHIL,
PURAKKAD P.O., ALAPPUZHA, PIN - 688561 2 RAMESH P AGED 42
YEARS S/O SATHEESAN, POKKAPURAM HOUSE, PURAKKAD P.O.,
ALAPPUZHA, PIN - 688561 3 SHAJI V AGED 34 YEARS S/O V.O.
VARGHESE, VANIYAPURAKKAL HOUSE, PURAKKAD P.O.,

ALAPPUZHA,, PIN - 688561 4 RAJENDRAN C. AGED 54 YEARS S/O
CHELLAPPAN, KOCHIPARAMBIL, PURAKKAD P.O., ALAPPUZHA,,
PIN - 688561 5 MATHEW ABRAHAM AGED 31 YEARS S/O ABRAHAM,
KUNNEL HOUSE, PURAKKAD P.O., ALAPPUZHA, PIN - 688561 BY
ADVS. K.S.HARIHARAPUTHRAN PINKU MARIAM JOSE ANIL KUMAR
T.P.

FULL NAME AND ADDRESS OF THE RESPONDENTS: 1 CHAIRMAN,
STATE APPELLATE AUTHORITY (OMBUDS PERSON) MAHATMA
GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME,
OFFICE OF THE MAHATMA GANDHI NATIONAL RURAL
EMPLOYMENT GUARANTEE SCHEME, PUBLIC OFFICE, 1ST
FLOOR, MAIN BLOCK, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, PIN - 695003 2 OMBUDSMAN MAHATMA
GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME,
OFFICE OF THE OMBUDSMAN MAHATMA GANDHI NATIONAL
RURAL EMPLOYMENT GUARANTEE SCHEME, CIVIL STATION,
COLLECTORATE, GROUND FLOOR, ALAPPUZHA, PIN - 688001 THIS
WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- W.P.(C) No.18225 of 2023
----- Dated this the 31st day of July, 2023

JUDGMENT

The above writ petition is filed with the following prayers:

- i. Issue a writ in the nature of certiorari or any other appropriate writ, order or direction, calling for the records that culminated in the issuance of Exts P7 to P11 letters and quash the same. ii. Issue a writ in the

nature of mandamus or any other appropriate writ, order or direction, commanding the 1st respondent to readmit Exts P2 to P6 appeals and grant opportunity to the petitioners to submit the copies of the award passed by the 2nd respondent and hear and dispose of the appeals on merits, after affording them opportunity of being heard. iii. May dispense with filing translation of

vernacular documents. iv. Issue such other order or direction as this Honble Court deems fit and proper to grant.[SIC]

2. Petitioners are the vendors engaged in

the execution of the work of interlock road construction, C.C. Pavar Block in the local authorities, under MGNREGS. They were awarded with the said work and they executed the work as per the specifications contained in the tender notification to the satisfaction of the authorities on the quoted rates, is the submission. While so, the 2nd respondent initiated proceedings on the basis of the complaint raised by the Local Fund Audit Officer, Alappuzha, arraying the Joint Programme Co-ordinator, Alappuzha and officer under him as opposite parties, alleging that the local fund audit department reported that the MGNREGS SECURE Software is realising higher rate for interlocking C.C. Pavar Block paving than PWD rates, resulting in excess expenditure and that explanation in that regard was also from the Accredited Engineer of MGNREGS. According to the 2nd respondent, he has examined the various aspects involved in the matter and found that excess amount paid to the petitioners are to be realised from them and directed the director MGNREGS Mission to take steps to recover the excess amount, vide., Ext.P1 award, which was communicated to the petitioners by the secretaries of the concerned local bodies. It is the case of the petitioners that, though they are the persons who are really aggrieved by Ext. P1 award, they were not given an opportunity of being heard. Hence the petitioners preferred Exts.P2 to P6 appeals, against Ext.P1 award before the 1 st respondent. But the 1st respondent, as per Exts.P7 to P11 letters rejected the appeals on the ground that the same are not accompanied by the copies of the orders of the 2nd respondent. Aggrieved by the same, this writ petition is filed.

3. Heard the learned counsel appearing for

the petitioners. Even though notice is issued to the 1st and 2nd respondents, there is no appearance for them. The learned Government Pleader submitted that, she is not instructed to appear for the respondents.

4. Counsel appearing for the petitioners

takes me through Exts.P7 to P11 letters. A perusal of the same would show that, a copy of the order is not produced and that is why the appeal is not considered. Counsel for the petitioners submitted that, he is having a copy of the order passed by the Ombudsman and not a certified copy of the order. According to the counsel, the petitioners have not received the same. If that be the case, I think the petitioners can be allowed to produce a self attested copy of Ext.P1 award before the 1 st respondent and there can be a direction to the 1 st respondent to consider Exts.P2 to P6 appeals afresh. For facilitating the 1st respondent to pass fresh orders, Exts.P7 to P11 can be set aside. Therefore, this writ petition is disposed of with the following directions: i. Exts.P7 to P11 are set aside. ii. The petitioners are free to produce a self attested copy of Ext.P1 award in Exts.P2 to P6 appeals within a period of three weeks from the date of receipt of a certified copy of this

judgment.

iii. Once the copy of Ext.P1 award is received, the 1st respondent will consider Exts.P2 to P6 appeals afresh on merit, after giving an opportunity of hearing to the petitioners, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of Ext.P1 award. iv. Till final orders are passed in Exts.P2 to P6 appeals, coercive steps against the petitioners based on Ext.P1 award shall be deferred. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE
APPENDIX OF WP(C) 18225/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE AWARD DATED 13- 03-2023,NO.OMB/ALP/AW/38/2023 ISSUED BY THE 2ND RESPONDENT Exhibit P2 TRUE COPIES OF APPEALS PREFERRED BY THE 1ST PETITIONER DATED 25-03- 2023, BEFORE THE 1ST RESPONDENT, CHALLENGING EXT. P1 AWARD Exhibit P3 TRUE COPIES OF APPEALS PREFERRED BY THE 2ND PETITIONER DATED 25-03-

2023, BEFORE THE 1ST RESPONDENT, CHALLENGING EXT. P1 AWARD
Exhibit P4 TRUE COPIES OF APPEALS PREFERRED BY THE 3RD
PETITIONER DATED 25-03- 2023, BEFORE THE 1ST RESPONDENT,
CHALLENGING EXT. P1 AWARD Exhibit P5 TRUE COPIES OF APPEALS
PREFERRED BY THE 4TH PETITIONER DATED 25-03- 2023, BEFORE THE
1ST RESPONDENT, CHALLENGING EXT. P1 AWARD Exhibit P6 TRUE
COPIES OF APPEALS PREFERRED BY THE 5TH PETITIONER DATED 25-03-
2023, BEFORE THE 1ST RESPONDENT, CHALLENGING EXT. P1 AWARD
Exhibit P7 TRUE COPIES OF LETTER NO.93/AAC/MGNREGS/2023 DATED 08-
05-2023, ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER
Exhibit P8 TRUE COPIES OF LETTER NO.92/AAC/MGNREGS/2023 DATED 08-
05-2023, ISSUED BY THE 1ST RESPONDENT TO THE 2ND PETITIONER
Exhibit P9 TRUE COPIES OF LETTER NO.94/AAC/MGNREGS/2023 DATED 08-
05-2023, ISSUED BY THE 1ST RESPONDENT TO THE 3RD PETITIONER
Exhibit P10 TRUE COPIES OF LETTER NO.91/AAC/MGNREGS/2023 DATED
08- 05-2023, ISSUED BY THE 1ST RESPONDENT TO THE 4TH PETITIONER
Exhibit P11 TRUE COPIES OF LETTER NO.90/AAC/MGNREGS/2023 DATED
08- 05-2023, ISSUED BY THE 1ST RESPONDENT TO THE 5TH PETITIONER
RESPONDENTS EXHIBITS :NIL //TRUE COPY// PA TO JUDGE

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