

M.C.Varkey vs Secretary

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SooperKanoon Citation : sooperkanoon.com/1374094

Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/6698/2013

Appellant : M.C.Varkey

Respondent : Secretary

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA,
1944 WP(C) NO. 6698 OF 2013 PETITIONER: M.C.VARKEY
S/O.CHACKO, AGED 72 YEARS, MADATHIPARAMBIL HOUSE,
PIRAVOM.P.O, ERNAKULAM DISTRICT,PIN-686664. BY ADV
SRI.K.J.KURIACHAN RESPONDENTS: 1 THE SECRETARY
PAMPAKUDA GRAMA PANCHAYATH, ERNAKULAM DISTRICT, PIN
686667. 2 THE ACCREDITED ENGINEER MAHATMA GANDHI
NATIONAL RURAL EMPLOYMENT GUARANTEE
SCHEME(MGNREGS),PAMPAKUDA GRAMA PANCHAYATH,
ERNAKULAM DISTRICT, PIN 686667. 3 SMT.SYAMALA PRASAD
MEMBER,WARD NO.IX,PAMPAKUDA GRAMA PANCHAYATH,

ERNAKULAM DISTRICT, PIN 686667. 4 THE BLOCK PROGRAMME OFFICER PAMPAKUDA GRAMA PANCHAYATH, ERNAKULAM DISTRICT, PIN 686667. 5 THE DISTRICT PROGRAMME CO-ORDINATOR MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME(MGNREGS), ERNAKULAM, PIN 686667. 6 SRI.T.K.SADANAN THEKKE ARIYAPURATH, PERIYAPURAM.P.O, PAMPAKUDA GRAMAPANCHAYATH, ERNAKULAM DISTRICT, PIN 686667. 7 THE HON'BLE OMBUDSMAN MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME(MGNREGS), 1ST FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM DISTRICT, PIN 682021. WP(C)No.6698/2013 & 16502/2014 2 BY ADVS. SRI.GEORGE SEBASTIAN SRI.SUNIL N.SHENOI SRI.P.VISWANATHAN SRI.JIBU P. THOMAS, SC, PAMPAKUDA GRAMA PANCHAYAT SRI.JIMMY GEORGE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2023, ALONG WITH WP(C).16502/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C)No.6698/2013 & 16502/2014 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944 WP(C) NO. 16502 OF 2014 PETITIONER: M.C.VARKEY AGED 73 YEARS S/O.CHACKO, MADATHIPARAMBIL HOUSE, PIRAVOM P.O., ERNAKULAM DISTRICT, PIN - 686 664 BY ADV SRI.K.J.KURIACHAN RESPONDENTS: 1 PROGRAMME OFFICER PIRAVOM GRAMA PANCHAYATH, ERNAKULAM DISTRICT, PIN - 686 664 2 BLOCK PROGRAMME OFFICER PAMPAKUDA BLOCK, PANCHAYATH, ERNAKULAM DISTRICT -686 667 3 DISTRICT PROGRAMME CO-ORDINATOR ERNAKULAM, MAHATMA GANDHI NATINAL RURAL EMPLOYMENT GUARANTEE SCHEME (MGNREGS), ERNAKULAM - 682 030 4 THE HONBLE OMBUDSMAN MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME (MGNREGS), 1ST FLOOR, CIVIL

STATION, KAKKANAD, ERNAKULAM DISTRICT -682 030 SRI.JIMMY GEORGE, GOVERNMENT PLEADER SRI.JIBU P.THOMAS, SC, PANCHAYATH THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2023, ALONG WITH WP(C).6698/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C)No.6698/2013 & 16502/2014 4

JUDGMENT

[WP(C) Nos.6698/2013, 16502/2014] This order of mine shall dispose of two writ petitions directed against the award of the Ombudsman dated 04.02.2013 in WP(C) No.6698 of 2013 (hereinafter called 'first petition') and dated 13.3.2013 in WP(C) No.16502 of 2014 (hereinafter called 'second petition').

2. Petitioner, on the basis of an offer of Pampakuda Grama

Panchayat to carry out the work of plucking and removal of dried pineapple plants from the property, submitted an application for the purpose of carrying out the work in the property under the Mahatma Gandhi National Rural Employment Guarantee Scheme (hereinafter called 'MGNREGS') to the Secretary, Pampakuda Grama Panchayat being the owner of 4.45 Acres of land comprised in Sy.No.998/1A of Onakkoor Village in which rubber trees were already planted. The said application was granted and the petitioner availed the services of the workmen. Respondent No.6 in the first petition approached the petitioner to demand some amount for the purpose of availing the benefit which the petitioner did not accede and thus, approached in 2013 the office of the Ombudsman MGNREGS, Ernakulam, by submitting a complaint that WP(C)No.6698/2013 & 16502/2014 5 the job card issued to the petitioner was actually in respect of possession of 5 Acres and 23 cents of land and therefore, certificate had been issued by misrepresentation. Ombudsman framed the

issues and on the basis of the evidence brought on record vide

award referred to above, ordered for refund of Rs.60,704/- in the first petition and Rs.31,070/- in the second petition.

3. Learned counsel appearing on behalf of the petitioner

submitted that the Government of India, Ministry of Rural Development vide order dated 7.09.2009, while exercising the power under Section 27(1) of National Rural Employment Guarantee Act, established the office of the Ombudsman for redressal of the grievances in time bound manner and the instructions to NREGS Ombudsman were formulated under Section 27 to achieve the object. As per the provisions of chapter III dealing with powers and duties, Ombudsman shall have the power to receive the complaints, consider such complaints, facilitate the disposal, require NREG authority complaint to provide information, directions for conducting spot investigation, lodging FIR against hearing officer, initiate proceedings suo motu in the event of circumstances arising within the jurisdiction, engage experts for facilitating the disposal of the complaint, direct redressal and WP(C)No.6698/2013 & 16502/2014 6 disciplinary and punitive actions, but not the award for refund of the amount in the manner and mode as noticed. In support of the contention, has relied upon judgment of this Court in Padmakshi v. Secretary, Arattupuzha Grama Panchayath and others [2021 (2) KHC 493].

4. On the other hand, learned Standing Counsel for the

Grama Panchayat submitted that as when the application of the petitioner was submitted, the same was examined and the benefit under the scheme was afforded to the petitioner. But, during the evidence before the Ombudsman, it was realised that the petitioner was an affluent farmer and therefore was not eligible for the same and therefore the award is legal.

5. I have heard the counsel for the parties and appraised the paper book.

6. It is expedient to extract the relevant portion of Chapter III dealing with powers and duties of the Ombudsman. Sections 8, 9, 10 as well as 13 read as under :
Chapter III

8. Powers and Duties

8.1 The Ombudsman shall have the powers to : 8.1.1 Receive the complaints from NREGA workers and others on any matters specified in clause 10. 8.1.2 Consider

such complaints and facilitate their disposal in accordance with law. 8.1.3 Require the NREGA Authority complained WP(C)No.6698/2013 & 16502/2014 7

against to provide any information or furnish certified copies of any document relating to the subject matter of the complaint which is or is alleged to be in his possession; provided that in the event of failure of such authority to comply with the requisition without any sufficient cause, the Ombudsman may, if he deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to concerned NREGA Authority. 8.1.4 Issue direction for conducting spot investigation. 8.1.5 Lodge FIRs against the erring parties. 8.1.6 Initiate proceedings suo motu in the event of any circumstance arising within his jurisdiction that may cause any grievance 8.1.7 Engage experts for facilitating the disposal of the complaint. 8.1.8 Direct redressal, disciplinary and punitive actions. 8.1.9 Report his findings to the Chief Secretary of the State and the Secretary, State Nodal Department for appropriate legal action against erring persons. 8.2 The Ombudsman shall have the following duties: 8.2.1 To be responsible for the conduct of business in his office. 8.2.2 To maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not disclose such information or document to any person except with the consent of the person furnishing such information or document; provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings. 8.2.3 To send a monthly report to the Chief Secretary and Secretary, State Node Department recommending appropriate action. The report shall specially highlight cases where action needs to be taken against erring NREGA functionaries for their failure to redress the grievance. The report will be accompanied with primary evidence needed to initiate action against the delinquent persons. 8.2.4 To furnish a report every year containing a

general review of activities of the office of the

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Ombudsman during the preceding financial year to the Chief Secretary and the Secretary, State Nodal Department along with such other information as may be considered necessary by him. In the annual report, the Ombudsman, on the basis of grievances handled by him, will review the quality of the working of the NREGA authorities and make recommendations to improve implementation of NREGA. The report shall be put on the NREGA website. 8.2.5 To compile a list of 'awards' passed by it between April and March of each financial year in respect of every NREGA Authority complained against and report it to the Chief Secretary of the State and the State Nodal Department. Text of award shall also be put on the NREGA website. Chapter IV Procedure for redressal of grievances

9. Grounds on which complaint shall be

filed: 9.1 A complaint pertaining to any one or more of the following subjects alleging deficiency in the implementation of the NREG Scheme may be filed with the Ombudsman: 9.1.1 Gram Sabha 9.1.2 Registration of households and issue of job cards 9.1.3 Custody of job cards. 9.1.4 Demand for work. 9.1.5 Issue of dated acknowledgment receipt against submission of application for work. 9.1.6 Payment of wages. 9.1.7 Payment of unemployment allowance. 9.1.8 Discrimination on the basis of gender. 9.1.9 Worksite facilities. 9.1.10 Measurement of work. 9.1.11 Quality of work. 9.1.12 Use of machines 9.1.13 Engagement of contractors 9.1.14 Operation of accounts in the bank or post offices. 9.1.15 Registration and disposal of complaints. 9.1.16 Verification of muster rolls 9.1.17 Inspection of documents 9.1.18 Use of funds 9.1.19 Release of funds 9.1.20 Social audit 9.1.21 Maintenance of record 9.2 State Nodal Department may include any other ground on which a

complaint may be filed with the Ombudsman.

10. Procedure for filing the complaint WP(C)No.6698/2013 & 16502/2014 9

10.1 Any person, who has a grievance against the NREGA Authority, may, himself or through his authorised representative, make a complaint against the NREGA Authority in writing to the Ombudsman or to any NREGA authority superior to the authority complained against. 10.2 The complaint shall be duly signed by the complainant and his authorised representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the Nodal Department

against whom the complaint is made, the facts

giving rise to the complaint supported by documents, if any, relied on by the complainant and the relief sought from the Ombudsman. 10.3 A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman. 10.4 A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal. 10.5 The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means. 10.6 No complaint to the Ombudsman shall lie if the complaint is in respect of the same subject matter which was disposed by the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter. 10.7 No complaint shall be made to the NREGS Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference of writ before any Tribunal or Court.

13. Award by the Ombudsman and Appeal

13.1 If the facts are not admitted by the parties in a case, Ombudsman may pass an award after affording the parties reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the reports of social audits, if any, the provisions of NREG Act and Scheme and WP(C)No.6698/2013 & 16502/2014 10 practice, directions, and instructions issued by the State Government or the Central Government from time to time and such other factors which in his opinion are necessary in the interest of justice. 13.2 The award passed under sub-clause

(13.1) above shall be a speaking order

consisting of the following components: 13.2.1 Details of the parties of the case. 13.2.2 Brief facts of the case. 13.2.3 Issues for consideration 13.2.4 Findings against issues along with reasons. 13.2.5 Direction to the concerned NREGA Authority such as performance of its obligations like expediting delayed matters, giving reasons for decisions and issuing apology to complainants, taking of disciplinary and punitive action against erring persons, etc. except imposition of penalties under the NREG Act. 13.2.6 Costs, if any. 13.3 If a complaint is found to be false, malicious or vexatious, the Ombudsman shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party cost as deemed appropriate by the Ombudsman. 13.4 A copy of the 'award shall be sent to the complainant and the NREGA Authority complained against. 13.5 There shall be no appeal against the 'award passed by the Ombudsman and the same shall be final and binding on the parties. 13.6 A representative of Programme Officer/District Programme Coordinator may appear in cases where the Programme Officer/District Programme Coordinator is a party. Programme Officer/District Programme Coordinator shall appear only when a proceeding is taken up before the Ombudsman, in which case he shall be provided the opportunity of hearing. 13.7 All cases not involving complicated questions of fact or law shall be disposed within 15 days.

Other cases may be disposed within 45 days. 13.8 Representation of parties by the advocates in any proceeding may be made with the prior permission of Ombudsman. 13.9 In any proceeding before the Ombudsman, if the facts reveal a case of illegal gratification, bribery or misappropriation and

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the Ombudsman is satisfied that the case is fit for further investigation by a criminal court, the same shall be referred by him to the authority competent to sanction criminal prosecution of the persons involved in the case. The competent authority on receipt of such a case shall forward the case to appropriate authority for further action in accordance with law.

7. On perusal of the same, there is no provision for passing an award. Similar question of law came to be pondered in the cited

judgment and a penalty was imposed on the worker and this Court

in paragraph 16 held as under :

16. Section 4(3) mandates that the Scheme made under Section 4(1) shall provide for minimum features specified in Schedule I. Clause 29 of Schedule I requires that there should be an effective grievance redressal mechanism and Clause 30 requires that there shall be an Ombudsperson for each District for receiving grievances, enquiring into and pass orders as per the guidelines issued. Paragraph 13.14.5 of the Operational Guidelines, 2013 for the Mahatma Gandhi NREGA reads as follows:- 13.14.5 Disposal of Complaints On receipt of complaint, Ombudsman will issue notice to Mahatma Gandhi NREGA Authority for appearance and making submissions. Where facts are admitted, case will be disposed by passing appropriate direction and if not admitted,

Ombudsman will pass an award. The award passed shall be a speaking order consisting of the following components: i) Details of the parties of the case. ii) Brief facts of the case. iii) Issues for consideration. iv) Findings against issues along with reasons V) Direction to the concerned MGNREGA Authority such as performance of its obligations * like expediting delayed matters, giving reasons for decisions and issuing apology to complainants, taking of disciplinary and punitive action against erring persons, etc. * except imposition of penalties under the MGNREG Act. a. Costs, if any. b. Costs may be imposed in case of false,

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malicious and vexatious complaints. c. In cases of corruption, Ombudsman will forward the matter to competent authority to sanction criminal prosecution of the persons involved in the case. Thus, the Ombudsman is competent to consider a complaint and pass award and give direction to the concerned MGNREGA Authority for performance of its obligations, but except imposition of penalties under the MGNREGA Act.

8. I am of the view that Ombudsman can only exercise the

powers, but cannot assume the role of the Court by awarding the compensation as noticed above. In this view of the matter, award of the Ombudsman is set aside. Writ petitions stand allowed. Sd/- AMIT RAWAL JUDGE csl WP(C)No.6698/2013 & 16502/2014 13 APPENDIX OF WP(C) 16502/2014 PETITIONER'S EXHIBITS EXT.P1 THE TRUE COPY OF THE AWARD DATED 13.03.2013 EXT.P2 THE TRUE COPY OF THE CERTIFICATE DATED 22.2.2013 ISSUED BY THECANARA BANK, PIRAVOM BRANCH EXT.P3 TRUE COPY OF THE CERTIFICATE DATED 22.2.2013 ISSUED BY FEDERAL BANK, PIRAVOM BRANCH EXT.P4 TRUE COPY OF THE CETIFICATE DATED 23.2.2013 ISSUED BY KSFE LIMITED, PIRAVOM BRANCH EXT.P5 THE RUE COPY OF THE CERTIFICATE DATED 25.02.2013 ISSUED BY THE KSFE LIMITED, PIRAVOM

BRANCH EXT.P6 THE TRUE COPY OF THE CETIFICATE DATED 27.2.2013
ISSUED BY SBT, PIRAVOM BRANCH RESPONDENTS' EXHIBITS: EXT.R3(a)
COPY OF THE NREG ACT EXT.R3(b) COPY OF GO(Rt)NO.45/2006/LSGD
DATED 31.1.2006 EXT.R3(c) LETTER DATED 7.9.2009 Ext.R3(d)
INSTRUCTIONS ON OMBUDSMAN PRESCRIBING THE POWERS, DUTIES &
FACILITIES EXT.R3(e) COPY OF GO (RT) NO.1266/12/LSGD DATED 3.5.2012
WP(C)No.6698/2013 & 16502/2014 14 APPENDIX OF WP(C) 6698/2013
PETITIONER'S EXHIBITS: EXT.P1 : COPY OF THE COMPLAINT DATED
17.12.2012 EXT.P2 : COPY OF THE AWARD DATED 4.2.2013 EXT.P3 : COPY
OF THE CERTIFICATE DATED 22.2.2013 ISSUED BY CANARA BANK,
PIRAVOM BRANCH EXT.P4 : COPY OF THE CERTIFICATE DATED 22.2.2013
ISSUED BY FEDERAL BANK, PIRAVOM BRANCH EXT.P5 : COPY OF THE
CERTIFICATE DATED 23.2.2013 ISSUED BY KSFE LIMITED, PIRAVOM
BRANCH EXT.P6 : COPY OF THE CERTIFICATE DATED 25.2.2013 ISSUED BY
KSFE LIMITED, PIRAVOM BRANCH EXT.P7 : COPY OF THE CERTIFICATE
DATED 27.2.2013 ISSUED BY SBT, PIRAVOM BRANCH

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