



2023/KER/70423

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945

WP(C) NO. 8180 OF 2015

PETITIONER:

SECRETARY, POOVACHAL GRAMA PANCHAYAT
AGED 50 YEARS
POOVACHAL, THIRUVANANTHAPURAM.
BY ADV SRI.R.T.PRADEEP

RESPONDENTS:

- 1 SECRETARY, OMBUDSMAN FOR LOCAL SELF GOVERNMENT
SAFALYA COMPLEX, TRIDA BUILDING, UNIVERSITY P.O.,
PALAYAM, THIRUVANANTHAPURAM - 34.
- 2 ASHRAFA

BY ADVS.
SRI.AYYAPPAN SANKAR

OTHER PRESENT:

SMT. VINITHA B (SR.GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



:-2:-

SHOBA ANNAMMA EAPEN, J.-----
WP.(C) No. 8180 of 2015
-----**C.R.**Dated this the 1st day of November, 2023**JUDGMENT**

The writ petition is filed with the following prayer:-

- i. To issue a writ of certiorari or any other appropriate writ, order or direction calling upon the records pertaining to Ext.P5 and to quash Ext.P5;

2. The brief facts of the case are as follows:-

Petitioner – Grama Panchayat conducted auction for collection of gate fee. The second respondent, the successful bidder filed a complaint No.904/2014 before the first respondent-Ombudsman seeking for refund of Rs.1,00,000/- deposited with the Panchayat as per the terms and conditions of public auction. It was contended before the first respondent that, due to serious objections raised from the general public and the merchants, Panchayat, the second respondent could not collect the gate fee and sought to cancel the auction concluded in his favour on 15.3.2014. The Panchayat



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conducted reauction on 28.3.2014 and the auction was bid in favour of another person for an amount of Rs.38 lakh. Thereafter, the second respondent requested the Panchayat to release the earnest money deposit made by him before the Panchayat. Since the Panchayat was not inclined to release the amount, the second respondent approached the first respondent-Ombudsman seeking a direction to the Secretary of Panchayat to return the earnest money deposit of Rs.1 lakh. The first respondent, after detailed consideration of the issue, passed Ext.P5 order directing the Panchayat to return the earnest money deposit of Rs.1 lakh within six months from the date of receipt of a copy of the order. Aggrieved by Ext.P5 order, the petitioner has approached this Court with the above writ petition stating that Ext.P5 order was passed without jurisdiction and the Ombudsman has exceeded the power.

3. Heard the learned counsel for the petitioner as well as the learned Senior Government Pleader.

4. The learned counsel for the petitioner submits that the first respondent-Ombudsman has no power or jurisdiction to decide the issue for return of earnest money deposit.



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Learned counsel for the petitioner referred to the definitions of 'allegation' as well as the 'complaint' as per Sections 271F(1)(b) and 271F(1)(c) of the Kerala Panchayat Raj Act, 1994.

5. On 22.3.2023, learned counsel for the second respondent sought time for filing counter affidavit before this Court. But, no counter affidavit is seen filed in this writ petition.

6. It is seen that the issue involved in this writ petition, regarding the refund of earnest money deposit of Rs.1 lakh made by the second respondent at the time of participating in the auction conducted by the Panchayat for collection of gate fee, is purely based on terms and conditions of contract entered into between the Panchayat and the second respondent. After participating in the auction, the second respondent did not comply with the terms and conditions enumerated in the agreement for public auction and it was stated that he had participated in the auction without knowing the rules and conditions.

7. Section 271F(1)(b) and (c) reads as follows:-

*271 F. Definitions. - (1)(b)allegation. --
(a) in relation to a public servant means, any affirmation that*



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such public servant, -

- (i) has abused his position as such for any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;*
 - (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;*
 - (iii) is guilty of corruption, favouritism, nepotism or lack of integrity;*
 - (iv) is guilty of any action as public servant which facilitates or causes to make any loss, waste or misapplication of money or other property of the Local Self Government Institution.*
- (b) In relation to a Local Self Government Institution means any affirmation that such Local Self Government Institution has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the lawful orders and directions of the Government;*
- (c) 'Complaint' means a statement of allegation that a public servant or a Local Self Government Institution is guilty of corruption or maladministration and includes any reference to an allegation in respect of which suo motu enquiry has been proposed or recommendation for enquiry has been made by Government;"*

8. On a reading of the above provisions, it is clear that complaint can be filed before the Ombudsman against a public servant or a Local Self Government Institution on allegation that such person or institution is guilty of corruption or maladministration. In this case, there is no such allegation by the second respondent before the Ombudsman against the Panchayat. He has approached the Ombudsman only for return of earnest money deposit made by the second respondent, at the time of participating in the public auction.



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9. Learned counsel for the petitioner referred to a decision of this Court in **John.A., Ansons Group Architects v. Chanagacherry Municipality and another** [2011 KHC 800] wherein this Court had negated the claim for payment of money, with respect to work done for the Municipality, as one not maintainable before the Ombudsman. It was observed that the terms “allegation” and “complaint” as defined under the Act do not include a particular claim for money made by a citizen against a local authority, whatever be the ground for raising such a claim. In **Kulukkalloor Grama Panchayath v. Ombudsman for Local Self-Govt. Institution and others** [2013(2) KHC 133], this Court held that a disputed claim for money is not a matter coming within the purview of allegation or complaint or mal-administration as defined under Section 271 F of the Act.

10. Hence, it is clear that a complaint seeking refund of the amount deposited by way of earnest money deposit for participating in the public auction will not come under the definition of “allegation” or “complaint” as enumerated in Section 271F of the Kerala Panchayat Raj Act, 1994.



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In the result, the writ petition is allowed. Ext.P5 order dated 5.11.2014 in complaint No.904/2014 passed by the Ombudsman is set aside.

Sd/-

**SHOBA ANNAMMA EAPEN,
JUDGE**

MBS/



APPENDIX OF WP(C) 8180/2015

PETITIONER'S EXHIBITS :-

P1: TRUE COPY OF THE COMPLAINT
NO.904/2014 NIL DATED BEFORE OMBUDSMAN
(WITH ENGLISH TRANSLATION)

P2: TRUE COPY OF THE WRITTEN STATEMENT OF
FACTS ATED 1/11/2014 BY THE PANCHAYAT
BEFORE OMBUDSMAN (WITH ENGLISH
TRANSLATION)

P3: TRUE COPY OF THE WRITTEN REQUEST OF
2ND RESPONDENT DATED 24/3/2014 BEFORE
PANCHAYAT (WITH ENGLISH TRANSLATION)

P4: TRUE COPY OF THE RESOLUTION VIDE
DECISION NO.IV(7) DATED 20/6/2014 OF
GRAMA PANCHAYAT (WITH ENGLISH
TRANSLATION)

P5: TRUE COPY OF THE ORDER DATED
5/11/2014 IN COMPLAINT NO.904/2014 BY
OMBUDSMAN (WITH ENGLISH TRANSLATION)