

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

Friday, the 1st day of December 2023 / 10th Agrahayana, 1945
WP(C) NO. 39668 OF 2023

PETITIONER:

BEENA P R @ BEENA SASIDHARAN, AGED 52 YEARS,

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
2. THE PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
3. THE ADDITIONAL CHIEF SECRETARY (SHARADA MURALIDHARAN), LOCAL SELF GOVERNMENT DEPARTMENT GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
4. THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
5. NIDHIN T.V., S/O VISHWANATHAN, AGED 49 YEARS,

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to keep in abeyance all further proceedings pursuant to Exhibit P1 and Exhibit P2 and direct not to proceed further, pending disposal of the writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S. E.ADITHYAN & P.B.KRISHNAN, Advocates for the petitioner, SHRI.N.MANOJ KUMAR, STATE ATTORNEY, along with PUBLIC PROSECUTOR for R1 to R4 and of M/S.NIRMAL V NAIR, ARATHI PRABHAKARAN, ENCIL K. SABU & NESILI NAZEER, Advocates for R5, the court passed the following:

BECHU KURIAN THOMAS, J.

W.P.(C) No.39668 of 2023

Dated this the 1st day of December, 2023

ORDER

Petitioner is the Chairperson of the Paravur Municipality. She challenges Ext.P1 and Ext.P2 orders issued by the Government. The Government is conducting a programme called “Nava Kerala Sadas”. By virtue of Ext.P2 dated 27-10-2023, the Government issued an order containing instructions regarding the conduct of the said programme. In the instructions in Ext.P2, under the head referred as ‘expenditure’, it is specified that the Local Self Government Department shall issue permissive sanction to the local authorities to incur expenditure for the programme. The order also specified that under no circumstances shall any money be collected under the name of the “Nava Kerala Sadas,” nor shall any coupons for collecting money be printed. The District Administration was however permitted to identify sponsors and collect amounts for advertisements.

2. Thereafter, on 01-11-2023, Ext.P1 order was issued by the Additional Chief Secretary, purportedly on behalf of the Governor, specifying that for the organization and promotion of the “Nava Kerala Sadas,” permission is granted to the Municipal Council/Secretaries to expend amounts to the extent of the limits specified in Ext.P1.

W.P.(C) No.39668/23

-:2:-

3. Petitioner alleges that the directions issued in Ext.P1 is *ultra vires* the statute, since it directs the Municipal Council and the Secretaries of the Local Authorities, to contribute towards the "Nava Kerala Sadas."

4. Sri.P.B.Krishnan, the learned counsel for the petitioner submitted that the direction in Ext.P1 interferes with the autonomy of the Local Self Government Institutions and is in the nature of a compulsion, mandating every local authority to contribute to the "Nava Kerala Sadas" to the limits specified therein. According to the learned Counsel, the statute does not vest the Government with such a power to direct contribution to be made for a programme of the Government's choice.

5. A statement has been filed on behalf of the 3rd respondent, wherein it is stated that there is no compulsion upon the Local Self Government Institutions to provide any financial assistance for organizing "Nava Kerala Sadas." It is further reiterated in the statement that, by Ext. P1, the Government has not forced any compulsory action against the Local Self Government Institutions or its Secretaries, whereas by issuing Ext. P1, it has only given permission to the Local Self Government Institutions/Secretaries to expend the amount required for conducting "Nava Kerala Sadas' from its own funds.

6. Sri. K. Gopalakrishna Kurup, the learned Advocate General, instructed by Sri,N.Manoj Kumar, the learned State Attorney, contended that the powers of the Government to issue an order in the form of Ext.P1 arise out of section 283(6) of the Kerala Municipality Act, 1994 and therefore they are justified in issuing the said order. He also relied upon the judgment in W.P.(C)No.16299 of 2022 of this Court, wherein, in a similar situation, this Court refused to interfere with the direction of the Government to expend money for a hospital from the funds of the local authority. It was also submitted

W.P.(C) No.39668/23

-:3:-

that the writ petition was not filed in good taste as material facts had not been revealed, especially the fact that the Paravur Municipality had resolved to contribute to the programme.

7. I have considered the contentions for the purpose of the interim relief.

8. The Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994 created establishments pursuant to the Constitution (74th) Amendment Act. Decentralization of powers was one of the main objectives of the Constitutional amendment. The Constitutional provisions as well as the statutory provisions confer autonomy upon every local authority. Interference by the Government in the functioning of the local authority including in the manner of its expenditure is not contemplated by the statute. No provision could be pointed out by the State government conferring power upon them to direct the local authority to expend its own funds for the Government. The only provision pointed out was section 283(6) of the Municipality Act.

9. A reading of Section 283(6) of the Municipalities Act cannot, *prima facie* be understood as conferring any power upon the Government to direct the funds of the Municipality to be used for a particular purpose. The said provision only confers a power upon the Government to fix an annual limit for the expenses, financial assistance or grant for a purpose that are not directly concerned with the function of the Municipality. It was admitted that the programme Nava Kerala Sadas is not a function of the Municipality. Thus, Section 283(6) of the Act cannot confer any power upon the Government to direct the expenditure of the Municipality from its own fund to be utilised for a particular programme or purpose which is not a municipal function. By no

W.P.(C) No.39668/23

-:4:-

stretch of imagination, such a power can be read into Section 283 (6) of the Municipalities Act, 1994.

10. In fact. the power under the aforesaid provision was exercised in the year 2000 by issuing an order dtd. 30-08-2000, a copy of which was handed over by the learned Advocate General. As per the said Government Order the Government fixed the annual limits of expenditure, for purposes that are not the functions of the local authorities as “one percent of the ‘own revenue’ of the Panchayat or Municipality received in the preceding year or Rs. 75,000, whichever is higher”.

11. However, from the statement filed by the respondent, it is noticed that the Government did not intend Ext.P1 to create any compulsion upon the Local Self Government Institutions to provide financial assistance for the conduct of “Nava Kerala Sadas”. This statement was reiterated by the learned Advocate General as well, during his arguments as well and according to him it is only in the nature of a permissive sanction. Therefore, to the extent that it is observed in Ext.P1, that the amount specified therein can be spent from the own fund of the Municipality, it is clarified that the Ext.P1 shall not be treated as a direction or a command by the Government to the local authorities to contribute to the Nava Kerala Sadas, but only a permissive sanction enabling the Municipal Council to expend the amounts if it decides to do so, in exercising of its own powers.

12. The issue does not end there. Ext.P1 indicates that the Secretaries of the local authorities are also given permission to spend amounts specified therein for the “Nava Kerala Sadas”. I am *prima facie* satisfied that the Municipality Act does not confer power upon the Secretaries to incur any expenditure *dehors* a decision by the Municipal

W.P.(C) No.39668/23

-:5:-

Council or the Chairperson. Section 15(3)(d), Section 49(1)(f) and Section 50(4) of the Municipality Act indicate that the Secretary does not possess any powers to expend money other than what the Municipal Council or the Chairperson has decided/directed. Therefore, Ext.P1, to the extent it confers power upon the Secretaries of local authorities to expend money from the Municipality's own funds, is *prima facie ultra vires* the Act.

13. The conferment of power upon the Secretaries of the Municipalities by Ext.P1, to spend money without any decision of the Municipal Council or the Chairperson's directive is therefore stayed until disposal of this writ petition. It is clarified that the contribution to the "Nava Kerala Sadas" can be expended from the Municipal fund only if the Municipal Council takes a decision in that regard, in accordance with law.



BECHU KURIAN THOMAS
JUDGE

AJM/01/12/23

APPENDIX OF WP(C) 39668/2023

Exhibit P1

TRUE COPY OF THE G.O. DATED 01.11.2023 BEARING NO. G.O (P) 2144/2023/LSGD, ISSUED BY THE 3RD RESPONDENT TO THE LOCAL SELF GOVERNMENT INSTITUTIONS

Exhibit P2

TRUE COPY OF THE G.O.(MS)NO 4887/2023/GAD DT: 27.10.2023, ISSUED BY THE 4TH RESPONDENT.

