



WP(C) Nos.22409 and
22980 of 2019

2024:KER:95637

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 18TH DAY OF DECEMBER 2024 / 27TH AGRAHAYANA, 1946

WP(C) NO.22409 OF 2019

PETITIONER:

KUNJUMON.K.A., AGED 60 YEARS,
S/O ABDUL KAREEM, PANACHICKAL HOUSE, OLIKUZH, VAZHAKKALA, KAKKANADU P.O., ERNAKULAM-682 021.

BY ADVS.
R.SANJITH
SMT.C.S.SINDHU KRISHNAH

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
STATIONERY DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-680 501.
- 2 THE CONTROLLER OF STATIONERY,
OFFICE OF THE CONTROLLER OF STATIONERY,
STATIONERY DEPARTMENT, PMG,
THIRUVANANTHAPURAM-695 033.
- 3 DEPUTY EXCISE COMMISSIONER,
EXCISE DIVISION OFFICE, ALAPPUZHA-688011.

BY SENIOR GOVERNMENT PLEADER, SRI.E.G.GORDEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11.12.2024,
ALONG WITH WP(C).22980/2019, THE COURT ON 18.12.2024 DELIVERED THE
FOLLOWING:



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22980 of 2019

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PRESENT

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WEDNESDAY, THE 18TH DAY OF DECEMBER 2024 / 27TH AGRAHAYANA, 1946

WP(C) NO.22980 OF 2019

PETITIONER:

KUNJUMON K.A., AGED 60 YEARS,
S/O. ABDUL KAREEM, PANCHICKAL HOUSE, OLIKUZH, VAZHAKKALA, KAKKANAD P.O., -682 021.

BY ADVS.
R.SANJITH
SMT.C.S.SINDHU KRISHNAH

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
STATIONARY DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-680 501.
- 2 THE CONTROLLER OF STATIONARY,
OFFICE OF THE CONTROLLER OF STATIONARY,
STATIONERY DEPARTMENT, PMG, THIRUVANANTHAPURAM-695 033.
- 3 DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION,
DISTRICT OFFICE, KOTTAYAM, KERALA-686 004.

BY SENIOR GOVERNMENT PLEADER, SRI.E.G.GORDEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.12.2024,
ALONG WITH WP(C).22409/2019, THE COURT ON 18.12.2024 DELIVERED THE
FOLLOWING:

**JUDGMENT****[WP(C) Nos.22409/2019 and 22980/2019]**

The petitioner in these writ petitions was the successful bidder for removal of waste paper from the Government Offices in Kottayam and Alappuzha Districts pursuant to the tenders floated by the 2nd respondent herein. He has filed the captioned writ petitions, seeking to challenge the steps initiated against him for realization of the alleged loss, caused on account of the subsequent public auction of the waste paper, alleging that the petitioner did not lift the waste paper when notices were issued to him.

2. W.P.(C) No.22980 of 2019 is filed by the petitioner, challenging the steps for realization of the alleged loss with respect to the auction sale of waste paper in Government Offices (the 3rd respondent herein) of the Kottayam District. The petitioner states that he was the successful bidder for both 2016-17 and 2017-18 pursuant to Ext.P1 and Ext.P2 sanction



circulars. Ext.P3 is the notice dated 28.12.2017 issued from the office of the 3rd respondent in that writ petition, requesting the petitioner to remove the accumulated waste paper within a period of 15 days, as laid down in Clause 4 of the circular. It is to be noticed that there is a difference with respect to the price fixed as per Exts.P1 and P2, to be paid by the petitioner for removing waste paper. As regards Ext.P1 with respect to the year 2016-17, the price to be paid was Rs. 21.70 per kg with the applicable tax and as regards Ext.P2, applicable for 2017-18, the price to be paid was Rs. 46.99 per kg with the applicable tax. But Ext.P3 notice issued by the 3rd respondent was with reference to Ext.P1 dated 28.10.2016 which was applicable only for the year 2016-17 whereas Ext.P3 request to remove the waste paper was with respect to the period 2017-18, during which period the applicable circular was the one at Ext.P2. Therefore, the petitioner states that he requested the 3rd respondent to make necessary amends in the request at Ext.P3. However, the petitioner submits that he was served with Ext.P4,



notice dated 16.03.2018, directing the petitioner to remove the waste paper within 7 days' time, relying upon Ext.P3 notice. It is further pointed out that though the petitioner attempted to remove the waste paper from the office of the 3rd respondent, the said attempt was resisted by the officials of the 3rd respondent for one reason or the other. Ultimately by Ext.P5 letter dated 22.03.2018, the petitioner was informed that since he has failed to remove the waste paper from the office of the 3rd respondent, the 3rd respondent is conducting a public auction on 05.04.2018 at 2:00 pm for the disposal of the waste paper. Here, the petitioner points out that as per Clause 12 of Ext.P2, the respondents were having the power to carry out auction sale of the waste paper, if the said paper was not being removed by the petitioner. However, the power under Clause 12 was subject to what was laid down under Clause 13, which provided that a notice is to be issued to the petitioner informing him about the steps for carrying out the public auction and there should be a 15 days gap between the notice for public auction and the



auction date, within which period, the petitioner was entitled to remove the waste paper as provided under Clause 14 in which event, the petitioner's liability is only to satisfy the expenses for the auction notice. The petitioner further points out that Ext.P5 notice, though dated 22.03.2018, proposing the auction sale on 05.04.2018, was served on the petitioner only on 07.04.2018 and, in fact, despatched from the office of the 3rd respondent on 05.04.2018 alone, as seen from the postal cover produced along with the writ petition. Therefore, he points out that insofar as there is violation of Clauses 12/13/14 of Ext.P2, no recovery can be initiated against him. However, the petitioner contends that Ext.P6 communication was issued directing the petitioner to satisfy Rs.3,52,956/- allegedly representing the loss caused to the Government. Though the petitioner objected to the above, Ext.P8 is issued by adjusting the security furnished by the petitioner amounting to Rs.50,000/- towards the loss quantified as above and directing payment of Rs.3,02,956/-.



3. In W.P.(C) No.22409 of 2019, the petitioner challenges similar steps taken by the respondents with reference to the auction sale carried out for removing the waste paper from the office of the 3rd respondent in Alappuzha District. Ext.P1 is stated to be the circular issued with respect to the year 2016-17 and the petitioner was the successful bidder. Ext.P2 is the communication dated 20.07.2017, issued by the 3rd respondent directing removal of waste paper from its office. The petitioner contends that though he approached the office of the 3rd respondent, the attempt to remove the waste paper was resisted and the above aspect was also reported to the 2nd respondent. He further points out that Ext.P3 circular dated 08.08.2017 was issued by the 2nd respondent as per which a third party was appointed as the successful bidder for removing waste paper from Government offices in Alappuzha District for the year 2017-18. Later, the petitioner laments that he was issued with Ext.P4 communication dated 07.07.2018 directing him to satisfy Rs.1,18,484/- representing the alleged loss to the



Government on account of auction sale of waste paper for 2016-17. The petitioner says that he submitted Ext.P5 reply pointing out that in view of Ext.P3 by which a third party is already entrusted for removing waste paper, the petitioner cannot be mulcted with any liability since, the auction sale has taken place only on 29.11.2017 by which time the new circular at Ext.P3 has already come into existence. However, Exts.P7 and P8 communications are again issued to the petitioner, informing that the security deposit furnished of Rs.50,000/- is being adjusted and the balance of Rs.68,484/- is to be paid by the petitioner. It is challenging the afore steps at Exts.P4, P7 and P8 that the petitioner has filed W.P(C) No.22409 of 2019.

4. I have heard Sri.R.Sanjith, the learned counsel for the petitioner, Sri.Ashraf, the learned counsel for the 3rd respondent in W.P.(C) No.22980 of 2019 and Sri.E.G.Gorden, the learned Government Pleader for respondents 1 and 2 in W.P.(C) No.22980 of 2019 and the respondents in W.P.(C) No.22409 of 2019.



5. The first issue to be decided in this writ petition is as to whether the petitioner is justified in approaching this Court under Article 226 of the Constitution of India for redressal of his grievances. Sri.Ashraf, the learned counsel for the 3rd respondent in W.P(C) No.22980 of 2019, relied on the judgment of the Apex Court in **State of Bihar v. Jain Plastics and Chemicals Limited [(2002) 1 SCC 216]** to contend that the challenge raised in these writ petitions essentially pertain to the alleged breach of contract, which cannot be decided in a writ jurisdiction.

6. Sri.Sanjith, the learned counsel for the petitioner, on the other hand, relies on the judgment of this Court in **ISRO v. Roopam Engineers and Contractors Private Limited [(2024) SCC OnLine Ker 4428]** and the judgment of the Apex Court in **M.P Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited [(2023) 2 SCC 703]** in support of his contention that a writ petition is maintainable in the circumstances pointed out



in the writ petition. I have considered the rival contentions. A Division Bench of this Court in **ISRO'** s case (*supra*), considering the question as to whether a writ petition can be entertained in the afore circumstances has laid down the following:

"10. Firstly, we find ourselves unable to accept, as a general proposition, the argument of the learned counsel for the appellants that in every case where an entity that answers to the description of "State" under Article 12 of the Constitution of India enters into a non-statutory contractual relationship with a private person, the writ court would be denuded of its jurisdiction to interfere with a contractual dispute that arises between the parties. In M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited and Others – [(2023) 2 SCC 703], the Supreme Court, after a survey of all the precedents on the issue, found that the principle that in the case of a nonstatutory contract, the rights are governed only by the terms of the contract may not continue to hold good. It was observed that the mere fact that relief is sought under a contract which is not statutory, will not by itself, entitle the respondent State in a case to ward-off scrutiny of its action or inaction under the contract if the complaining party is able to establish that the action/inaction is, per se, arbitrary. If the actions of a State betray caprice or the mere exhibition of the whim of the authority, it would sufficiently bear the insignia of arbitrariness. Accordingly, if there is an absence of good faith and the State action is actuated with an oblique motive, it could be characterised as being arbitrary. Similarly, a total non-application of mind, without due regard to the rights of the parties and public



interest, would be a clear indicator of arbitrary action. There would be a myriad circumstances where there may not be any necessity to drive a party to a litigation before the civil court especially when the contention by the State, that there are disputed questions of fact necessitating a recourse to the civil court, is found to be merely illusory. As reiterated by the Court, the need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when the actual resolution of a disputed question of fact is unnecessary to grant the relief to a writ applicant."

In the light of the afore principles, I am of the opinion that the contention raised by Sri. Ashraf is only to be rejected. Therefore, I proceed to consider the challenge raised against the impugned proceedings by the petitioners in these writ petitions.

7. As regards W.P(C) No.22980 of 2019, with reference to the alleged loss caused with respect to the lifting of paper from Kottayam District, the impugned steps are taken pursuant to Ext.P5 auction notice dated 22.03.2018. The afore auction notice was issued with reference to Clauses 12/13/14 of Ext.P2. A reading of the afore Clauses shows that there should be a gap of 15 days at least between the auction notice and the auction date and also that the petitioner is to be granted an opportunity



to remove the waste paper from the premises before the auction date, in which event the petitioner is only expected to make good the expenses for the auction notice. Here, the petitioner specifically contends that Ext.P5, though dated 22.03.2018, was despatched from the office of the 3rd respondent only on 05.04.2018 and served on 07.04.2018 as evidenced by the postal cover produced along with Ext.P5. The afore contention has not been controverted by the 3rd respondent in the counter affidavit filed. The fact that the notice was despatched only on 05.04.2018 is clear from a perusal of the postal cover produced along with the writ petition. When that be so, I am of the opinion that there is a clear violation of Clause 14 of Ext.P2 as regards Ext.P5 auction notice. In view of the above, I hold that the proceedings initiated as per Exts.P5, P6, P8 and P9 in W.P.(C) No.22980 of 2019 cannot be sustained.

8. As regards W.P(C) No.22409 of 2019, I notice that by the time the auction was conducted on 29.11.2017, the validity of Ext.P1 pursuant to which the petitioner was supposed to



remove the waste paper has come to an end on account of the issuance of Ext.P3 dated 08.08.2017 by which a third party was entrusted with the right to remove the waste paper for the year 2017-18. The period of validity of Ext.P1 seems to overlap with respect to the period fixed under Ext.P3. The period under Ext.P1 was originally only up to 31.03.2017. The respondents contend that since the subsequent circular was not finalized, the validity of Ext.P1 has been extended till such time the new circular is being issued. The new circular is the one at Ext.P3, whereunder the validity is shown as 01.08.2017 to 31.03.2018 under Clause 1 of Ext.P3. When that be so, the period for removing the waste paper under Ext.P2 dated 20.07.2017, which is 14 days under Clause 9 of Ext.P1, would definitely overlap with respect to the period fixed under Ext.P3. Therefore, the respondents cannot contend that they were prejudiced on account of the alleged failure on the part of the petitioner to remove the waste paper pursuant to the communication at Ext.P2. Therefore, the subsequent proceedings initiated against



the petitioner, as seen from Exts.P4, P7 and P8, cannot be sustained.

In the result, these writ petitions would stand disposed of as under:

- i. The impugned proceedings in both these writ petitions are set aside.
- ii. The respondents are directed to refund the amounts adjusted/confiscated from out of the security deposit furnished by the petitioner, within a period of 6 weeks from today.

Sd/-

HARISANKAR V.MENON, JUDGE

In

APPENDIX OF WP(C) 22980/2019

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE SANCTION CIRCULAR DATED
28/10/2016 BEARING NO.5010/D1/2016 STA.
- EXHIBIT P2 TRUE COPY OF THE SANCTION CIRCULAR DATED
07/08/2017 BEARING NO.5047/D1/2017 STA.ARE
PRODUCED HEREWITH AND MARKED AS
- EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 28/12/2017
BEARING NO.K.1(4) 2751/05 ISSUED BY THE 3RD
RESPONDENT IS PRODUCED HEREWITH AND MARKED AS
- EXHIBIT P4 TRUE COPY OF THE NOTICE DATED 16/03/2018
BEARING NO.K.1(4) 2751/05 ISSUED BY THE 3RD
RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE LETTER BEARING NO.K.1(4)
2751/05 DATED 22/03/2018 AND ITS POSTAL COVER
- EXHIBIT P6 TRUE COPY OF THE NOTICE BEARING NO
5047/D1/201/STA.DATED 03/08/23018 ISSUED BY
THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED
14/08/2018.
- EXHIBIT P8 TRUE COPY OF THE NOTICE BEARING
NO.5009/D1/2017/STA DATED 17/07/2019.
- EXHIBIT P9 RUE COPY OF THE NOTICE ORDER DATED 19/07/2019
NO.5047/D1/2017/STA ISSUED BY THE 2ND
RESPONDENT.

APPENDIX OF WP(C) 22409/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE CIRCULAR DATED 10.1.2017 BEARING NO 5009/D1/2016/STA.
EXHIBIT P2	TRUE COPY OF THE LETTER DATED 20.7.2017 ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P3	TRUE COPY OF THE CIRCULAR DATED 8.8.2017 BEARING NO 5046/D1/2017/STA.
EXHIBIT P4	TRUE COPY OF THE NOTICE BEARING NO 5009/D1/2016/STA DATED 7.7.2018 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE REPLY OF PETITIONER DATED 18.7.2018.
EXHIBIT P6	TRUE COPY OF THE REPRESENTATION DATED 28.1.2019 ALONG WITH THE POSTAL RECEIPTS.
EXHIBIT P7	TRUE COPY OF THE NOTICE DATED 10.7.2019 BEARING NO 5009/D1/2016/STA.
EXHIBIT P8	TRUE COPY OF THE PROCEEDINGS DATED 10.7.2019.
EXHIBIT P9	TRUE COPY OF THE E-TENDER ADVERTISEMENT BEARING NO.1308/D1/19/STA DATED 20.10.2019.