

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 03RD DAY OF JUNE 2020 / 13TH JYAISHTA, 1942

WP(C).No.10537 OF 2020(S)

PETITIONER/S:

K.V.GOPI,
AGED 60 YEARS
S/O.VALLON, KODUMBIL HOUSE, SOUTH CHITTOOR,
COCHIN-682 027.

BY ADV. SRI.R.DIVAKARAN

RESPONDENT/S:

- 1 DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, CIVIL STATION, KAKKANADU, ERNAKULAM-
682 030.
- 2 EXECUTIVE ENGINEER,
ROAD DIVISION, PUBLIC WORKS DEPARTMENT (PWD), KAKANAD,
ERNAKULAM-682 030.
- 3 CHERANELLOOR GRAMA PANCHAYATH,
CEHRANELLOOR, COCHIN-682 027, REPRESENTED BY ITS
SECRETARY.
- 4 CITY POLICE COMMISSIONER,
KOCHI CITY, ERNAKULAM-682 035.
- 5 DEPUTY POLICE SUPERINTENDENT OF VIGILANCE AND ANTI-
CORRUPTION BUREAU,
KATHRIKADAVU, ERNAKULAM-682 017.
- 6 LISSA JOLLY,
7TH WARD MEMBER OF CHERANELLOOR GRAMA PANCHAYATH,
CHERANELLOOR, COCHIN-682 017.
- 7 RAJALAKSHMI,
11TH WARD, MEMBER OF CHERANELLOOR GRAMA PANCHAYATH,
CHERANELLOOR, COCHIN-682 027.

SR GP SRI SURIN GEORGE IPE, FOR R1,R2,R4,R5

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

SHAJI P. CHALY, J

This is a Public Interest Litigation filed by a resident of south Chittoor, who claims to be a social worker and a person fighting for social justice. The grievance highlighted by the petitioner is that there is a public road namely 'Chittoor Road' maintained by the Public Works Department, which is used by petitioner and other public in order to reach Cheranelloor, kadamakudy and other areas. It is also pointed out that the said road is used by the public to have access to certain Super Speciality Hospitals situated within the limits of Cheranelloor Grama Panchayat.

2. Matters being so, on 09.05.2020, the Public Works Department, without any tender or notification, on the basis of the directions of the respondent Nos. 6 and 7, who are Councillors of Ward Nos. 7 and 11 of Cheranelloor Grama Panchayat, has completely blocked the passage through the road in order to construct a cross drain. The grievance highlighted by the petitioner is that consequent to the cutting opening of the road, the road is completely blocked and there is no alternative passage for the public to reach

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the destinations mentioned above. It is also pointed out that due to the cutting opening of the road, huge traffic block is created, and due to the traffic congestion, the public is put to heavy difficulties. Being so, the petitioner has submitted representations before the Minister for Public Works Department and District Collector and other statutory authorities seeking to ventilate the grievances of the public. However, the same are not attended to by them and therefore, the petitioner had no other alternative than to approach this Court invoking the discretionary jurisdiction conferred on this Court under article 226 of the constitution of India. That apart, it is stated by the petitioner that the difficulties caused to the public is carried in a vernacular daily dated 12.5.2020. It is also submitted that there is drainage facility on both sides of the road for draining out the rain water and there is a water line connection connecting the drainage on both sides. Therefore, according to the petitioner, the inaction of the respondents have caused serious difficulties to the public which requires to be corrected by this Court.

3. We have heard learned counsel for the petitioner

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and the learned Senior Government Pleader, who on instructions, submitted that the work pointed out by the petitioner is complete and after the curing period of the concrete, the road will be opened to the public on 8.6.2020 and he relied upon a communication issued by the Public Works authorities to the Advocate General to substantiate the same.

4. We have evaluated the rival submissions made across the bar and perused the pleadings and documents of the petitioner, including the photographs and the newspaper cutting. It is an admitted fact that the Public Works Department has cut open the road in question. However, the same is with the intention of protecting the larger interest of public to avoid inundation, and flooding during rainy season. There is no much dispute with respect to the fact that the work was done by the Public Works Department without awarding any contract. The contention put forth by the learned Senior Government Pleader is that since the work had to be carried out as an urgent work, no tender could be invited. We find force in the said contention because when the Public Works Department

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itself has carried out the work, taking into account the urgent nature, it cannot be said that there is any illegality or *mala fides* on the part of the Public Works Department. So also, PWD do not require any sanction from any other authorities, being a road belonging to the department itself. That apart, at times some inconveniences may have to be suffered by the individuals for the common good and welfare of the public at large and that cannot be termed as violative of any fundamental rights guaranteed to the citizens under the Constitution of India. So much so, the action taken to rectify a defect cannot be said to be *mala fide*, arbitrary or illegal.

5. Moreover, the sole contention advanced by the petitioner is that the work was not awarded by inviting a public tender, but that by itself will not constitute any illegality, corruption or other *mal practices*. The petitioner has not substantiated any case to establish that there is any impropriety or illegality in the work carried out by the Public Works Department. we are also of the view that in order to substantiate the contentions advanced and the legal grounds raised, the petitioner has not produced any

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material. Apart from all the above, the main relief sought for by the petitioner is for a direction to the Executive Engineer, Public Works Department, Kakkanad, Ernakulam to complete the work as early as possible and solve the public nuisance occurred due to the cutting opening of the road in question. Eventhough petitioner has sought for a relief of, not to disburse any amount towards the illegal work done without any tender or work order, it is not supported by any material, documents or pleadings. According to us, such an allegation is made without making due enquiries as to the nature of work carried out by the Public Works Department and also as to whether the work was carried out due to the urgent nature of the same. Anyhow, the petitioner has no contention that the work was awarded by the Public Works Department to any third persons.

6. It is trite and settled law that a Public Interest Litigant approaching a constitutional court should aid the court with sufficient materials so as to substantiate the pleadings. But, in the instant case, petitioner has failed to produce any such materials other than producing certain

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photographs and paper publication in respect of the traffic block occurred due to the urgent work carried out by the Public Works Department. Thinking so, we do not think that the petitioner has made out any case to secure the relief as is sought for in the writ petition . However, we are inclined to dispose of the same by recording the submission made by the learned Senior Government Pleader that the road will be opened for the use of the public on 8th June, 2020.

Accordingly, the writ petition is disposed of recording the above submission.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE REPRESENTATION BEFORE THE 1ST RESPONDENT ON 12.05.2020 AND ENGLISH TRANSLATION.
EXHIBIT P2	THE TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT DATED 12.05.2020 AND ENGLISH TRANSLATION.
EXHIBIT P3	THE TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE MINISTER FOR PUBLIC WORKS DEPARTMENT THROUGH ONLINE AND ENGLISH TRANSLATION.
EXHIBIT P4	THE TRUE COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P5	THE TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 4TH RESPONDENT AND ENGLISH TRANSLATION.
EXHIBIT P6	THE TRUE COPY OF THE MALAYALAM NEWS PAPER DAILY DATED 12.05.2020 AND ENGLISH TRANSLATION.
EXHIBIT P7(a)	THE TRUE PHOTOGRAPHS OF THE BLOCKAGE.
EXHIBIT P7(b)	THE TRUE PHOTOGRAPHS OF THE BLOCKAGE.
EXHIBIT P7(c)	THE TRUE PHOTOGRAPHS OF THE BLOCKAGE.
EXHIBIT P8	THE TRUE COPY OF THE REPRESENTATION BEFORE THE 5TH RESPONDENT AND ENGLISH TRANSLATION.
EXHIBIT P9	THE TRUE COPY OF THE RECEIPT ISSUED BY THE 5TH RESPONDENT AND ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS TO JUDGE.

RV

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