



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing - Attendance Monitoring of Engineering Staff posted in Local Self Government Institutions-Judgement dated 01/06/2015 in WP(C)No. 7528/2014 filed by the Kerala Municipal Secretaries' Association -Complied with-Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

G.O. (Rt) No. 3647/2015/LSGD. Dated, Thiruvananthapuram, 05/12/2015

- Read:
1. Government Circular No. 53526/EW3/2010/LSGD dated 16/10/2012.
 2. Representation dated 30/12/2012 submitted by Sri. K. Sudheer, General Secretary, Kerala Municipal Secretaries Association.
 3. Judgement dated 1/06/2015 of the Honourable High Court of Kerala in WP(C)No. 7528/2014 filed by the Kerala Municipal Secretaries' Association.

ORDER

By disposing WP (C) No.7528/15 filed by the Kerala Municipal Secretaries' Association, the Honourable High Court of Kerala in its Judgment dated 1-06-2015 has directed the respondents to consider and pass orders on Ext. P3 representation read as 2nd paper above after affording an opportunity of being heard, within a period of one month from the date of receipt of a copy of the judgement.

2. The Secretary to Government, Local Self Government Department, The Director of Urban Affairs, The Chief Engineer, Local Self Government Department, The Director, State Audit Department, The Accountant General of Kerala, The Executive Director, Kudumbashree, The Secretary, Ombudsman for Local Self Government Institutions, The Registrar, Tribunal for Local Self Government Institutions, The Director, Vigilance & Anti Corruption Bureau, The State Performance Audit Officer and The Secretary to the Ministry of Urban Affairs, Government of India, New Delhi are arrayed as respondents in the Writ Petition.

3. Ext. P3 is a representation dated 30-12-12, read as paper 2nd above, submitted by the Petitioner Association to the Honourable Minister for Urban Affairs & Welfare of Minorities and the same was forwarded to the Chief Engineer, Local Self Government Department.

4. The Writ Petition is filed by the petitioner seeking a prayer to quash Exhibit P2 Circular, read above, issued by the first respondent to the extent it negates the statutory powers, duties and functions of the Secretaries of

Municipalities and Corporations as laid down under the Kerala Municipality Act 1994 and the Rules. The main prayer sought by the petitioner is to declare that powers, duties and functions of the Secretaries of Municipalities and Corporations as laid down under the Kerala Municipality Act 1994 and there cannot be curtailment of powers by the Government by issuing circulars/notifications

5. Exhibit P2 Circular was issued by the Government to tide over some unhealthy situation existing in some of the Municipalities where there existed a cold war between Engineers and Municipal Secretaries. Hence the circular was issued for achieving a uniform code of procedure for all the Engineering staff of not only the 60 Municipalities and the 5 Corporations, but also the 1114 three-tier Panchayati Raj Institutions which come under the control of the Chief Engineer, Local Self Government Department as pointed out in the 2nd para of the circular itself. The intention of the circular was to maintain a structural hierarchy for the Local Self Government Department Engineering Wing as any other Engineering Department of the Government and also to create a better working atmosphere and to avoid clashes between the Local Bodies and the Engineering Staff.

6. In pursuance to the direction of the Honourable High Court a hearing was conducted on 8/9/2015.

7. The contentions put forth by the Petitioner are the following:-

- (i). The Executive Order issued has no legal backing
- (ii). To validate the executive order by amending the Kerala Municipality Act and if not possible the executive order may be cancelled.
- (iii). The Engineers in Municipalities may be made liable for the acts they perform.

8. Government have examined the matter in detail. All the Engineers are authorized to control and supervise their subordinate staff and the Engineering Wing is functioning effectively under the Chief Engineer as any other Engineering Department viz., Public Works Department, Water Resources Department, etc. The Engineering Staff are discharging their duties as Government Servants lent to Municipalities/Panchayats as per the Kerala Municipality Act 1994. Any report regarding the settlement of applications & issuance of permits can be obtained by the Secretary from the the head of the Engineering Wing. Similarly in case any technical report is required from the Engineering Wing, it can be obtained from the Engineer and decision can be taken by the Secretary. If the decision is made on the basis of a technical report from the technical officer concerned, it is the technical officer who becomes answerable. Queries put in by the audit are answered by the officers concerned be it technical or non-technical. Engineers being the implementing officers are

bound to reply to queries and are doing so even before the formation of the department. No Engineer was spared from being liable for any discrepancy in a work executed by him. In the above circumstances, Government is of the view that Exhibit P2 Circular, read above, is not in conflict with any of the statutory powers or functions of the Secretaries of the Municipalities and not in anyway reduces their statutory responsibilities and hence it does not warrant any modification, amendment or withdrawal as requested in the Exhibit P3 representation.

9. In this circumstances Exhibit P3 representation, read as 2nd paper above is disposed of as decided above and orders issued complying with the direction contained in the Judgement above accordingly.

(By Order of the Governor)

SREEKALA C.S.

Under Secretary to Government

To

1. Sri. Harikumar, General Secretary, Kerala Municipal Secretaries Association, 'Pooja', Janatha Road, Chempazhanthi, Thiruvananthapuram.
2. The Director of Urban Affairs, Thiruvananthapuram.
3. The Chief Engineer, LSGD, Thiruvananthapuram.
4. The Director, State Audit Department, Thiruvananthapuram
5. The Accountant General, Kerala, Thiruvananthapuram.(with C/L)
6. The Director, Kudumbashree, Thiruvananthapuram.
7. The Director, Vigilance & Anti corruption Bureau, Thiruvananthapuram.
8. The State Performance Audit Officer, LSGD, Thiruvananthapuram.
9. The Secretary, Ministry of Urban Affairs, Government of India, New Delhi, 110 001(with C/L).
10. The Secretary, Ombudsman for Local Self Government Institutions, Thiruvananthapuram(with C/L).
11. The Secretary, Tribunal for Local Self Government Institutions, Thiruvananthapuram(with C/L).
12. The Advocate General of Kerala, Ernakulam(with C/L).
13. The Director, Information Kerala Mission, Thiruvananthapuram.
14. The Web and New Media, I&PRD.
15. Stock File/Office Copy.

Signature valid

Digitally signed by DINESH P
Date: 2015.12.05 10:04:00 IST
Reason: approved