



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Establishment – O.A No.2644/13 filed by Shri. Paulson Robert, Upper Division Clerk, Corporation of Cochin, Ernakulam – Order dated 25/07/2016 of the Hon. Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EU) DEPARTMENT

GO(Rt)No.676/2017/LSGD. Dated, Thiruvananthapuram, 13.03.2017

Read:-

1. Proceedings No. A4- 4768/2002 dated 10/9/2002 of the Director of Urban Affairs Thiruvananthapuram
2. Letter No. A4- 4768/2002 dated 28/4/2005 of the Director of Urban Affairs, Thiruvananthapuram
3. Letter No. 7788/EU1/09/LSG Dated 20/8/2010 (Annexure A9)
4. Letter No 76907/EU1/2010/LSGD dated. 29/6/2013. (Annexure A11)
5. Representation dated 30.06.2005 submitted by Shri. Paulson Robert, Upper Division Clerk, Corporation of Cochin Government (Annexure A8).
6. Order dated 25/07/2016 of the Hon. Kerala Administrative Tribunal in O.A No.2644 of 2013 filed by Shri. Paulson Robert, Upper Division Clerk, Corporation of Cochin
7. Letter.No.V3-4768/02 dated 11.01.2017 and 14.02.2017 from the Director of Urban Affairs, Thiruvananthapuram.

ORDER

In connection with acceptance of a tender in the North Paravur Municipality the Director of Urban Affairs in his Proceedings read as 1st paper above ordered to recover Rs. 17000 each from Sri. Paulson Robert, Section Clerk and Sri. C.M. Mohammed Sheriff, Municipal Secretary of that office.

2. The case is that, the North Paravur Municipality in their Notification

dated. 21/7/2001 invited quotation for preparing the structural design for Integrated Development of Semi & Medium Towns (IDSMT) Project. The Architects and Engineers were called upon to submit their sealed quotations on or before 3/8/2001. 13/8/2001 was the date on which the quotations were to be opened. When the quotations were opened on 13/8/2001, there were only 4 valid quotations. The Municipality accepted the lowest quotation of one Sri. V.N. Ramachandran, Architect and awarded the contract to him. But it was later found that there was a fifth quotation also received from one firm named 'M/s Architects Engineers Combine'. They had offered a lower rate than Sri. V.N. Ramachandran. This issue was considered by the Hon. High Court of Kerala in OP No. 2808/2002. The High Court found that the Municipality had suffered a loss of Rs. 34,000 by the non-consideration of the 5th quotation. The Hon. High Court in the judgment dated. 14/3/2002, directed the Director of Municipal Administration to conduct an investigation into the circumstances under which the the 5th respondent's lowest offer remain suppressed. The Court directed to identify such person or persons who is responsible for such suppression and recover Rs. 34,000 in such proportion as deems fit and remit the same to the Municipality. The Court allowed 6 months time to complete the entire exercise .

3. Based on the above the Senior Finance Officer, Joint Director in charge of the Municipal Administration conducted a preliminary enquiry. In the enquiry report it was pointed out that Sri. Paulson Robert, the then Section Clerk and Sri. C.M. Mohammed Sheriff, the then Secretary, North Paravur Municipality are responsible for the loss. Subsequently, the Director of Urban Affairs as per his Proceedings read as 1st paper above ordered to recover Rs. 17000 each from Sri. Paulson Robert, Section Clerk and Sri. C.M. Mohammed Sheriff, Municipal Secretary. Against this decision, Sri. Paulson Robert filed Appeal Petition dated 30/9/2002 before the Government. In the meantime, Sri. C.M. Mohamed Sheriff

challenged this order before the High Court of Kerala by filing OP No. 27424/2002. The Hon. High Court in the judgment dated. 30/9/2002 directed the Director of Urban Affairs to pass fresh orders after affording an opportunity of being heard to the petitioner. The Hon. High Court made it clear that the Director of Urban Affairs shall issue a notice containing all the materials against the petitioner and the petitioner shall be given an opportunity to file a detailed representation and also to produced other materials. Later the Director of Urban Affairs as per 2nd paper above instructed the Secretary, North Paravur Municipality to recover Rs. 34,000 from Sri. C.M. Mohammed Sheriff, Municipal Secretary and Sri. Polson Robert, UD Clerk equally.

4. In the letter read as 3rd paper above Government rejected the appeal petition of Sri. Paulson Robert.

5. Against the above decision Sri. Paulson Robert filed review petition before Government and Government, after considering all the aspects, rejected the review petition as per letter read as 4th paper above.

6. Against the above decision, Sri. Paulson Robert filed O.A No. 2644/2013 before the Kerala Administrative Tribunal. In the order read as 6th paper above, the Hon. Kerala Administrative Tribunal set aside Annexure A9 and A11 Orders issued by the Government in Appeal and Review petitions. The Hon. KAT observed that Government considered the appeal petition as well as the review petition in a cursory manner. The Hon. KAT directed Government to take back Annexure A.8 Appeal on record and consider the same afresh and pass appropriate orders in accordance with law after affording an opportunity of being heard to the applicant within a period of 3 months from the date of receipt of a copy of this order.

7. As per the direction in the order in O.A No. 2644/2013 the Under

Secretary, Local Self Government department heard Sri. Paulson Robert on 16/1/2017. During the hearing and in the Annexure A8 appeal petition he submitted that he did not open the 5th quotation. It was opened by the then Supdt. Smt. Girija Devi. He got that tappal only on 01/08/2001 and the same day he submitted that quotation. Before directing recovery, the Director of Urban Affairs did not consider the findings of the Regional Joint Director, Kochi. He is on the stand that it is the duty of the Secretary and the Supdt to inform the Municipal Council that there is a 5th quotation. But they didn't do so. He therefore requested to absolve him from the liabilities.

8. Government examined the matter in detail with the original file related to this disciplinary action from the Directorate of Urban Affairs. It is found that in the Kerala Municipality (Execution of Public Works and Purchase of Materials) Rules, 1997 there is no provision to recover any loss caused to the Municipality from the officers whom were entrusted the quotation/tender related works, even if there is negligence or breach of orders on the part of officers. It is not a disciplinary rule. In Rule 11 (1) (iv) of Kerala (Civil Services, Classification, Control& Appeal) Rules, 1960, there is a penalty of 'Recovery from pay of the whole or part of any pecuniary loss caused to a State Government or the Central Government or to a local authority by negligence or breach of orders'. But before imposing such a penalty Memo of Charges and Statement of Allegations should be served on to the accused officer and his explanation (Written Statement of Defence) on the charge should be obtained and procedure for imposing major/minor penalty under Rule 15 or Rule 16 of KCS (CC&A) Rules, 1960 should be followed in accordance with the Memo of Charges given. In this case no memo of charges (either MOC for Major Penalty or MoC for Minor Penalty) has served on to the accused Officer. In this case the Director of Urban Affairs as per his letter dated. 24/5/2004 had earlier requested Government to

enlight him whether the loss in this case need be recovered from Chairperson and Councillors as they did not go for re-quotation. In the letter No. 34655/A1/04/LSGD dated. 14/3/2005, Government directed the Director of Urban Affairs to recover the loss from Sri. Mohammed Sheriff, the then Secretary and Sri. Paulson Robert, the Section Clerk. But without observing formalities under KCS (CC&A) Rules, 1960, the Director of Urban Affairs in his Letter read as 2nd paper above, strightway instructed the Secretary, North Paravur Municipality to recover amount from Section Clerk (appellant) and the then Secretary. It may pertinently be noted that the Hon. KAT has directed to consider the Anneuxre A.8 Appeal Petition of Sri. Paulson Robert in accordance with law. The Rule 31 of KCS (CC&A) Rules, 1960 insists as how to consider an appeal. As per Rule 31 (2) (c), the Appellate Authority has a duty to verify whether procedure prescribed under KCS (CC&A) Rules, 1960 is complied with before imposing penalty on the appellant. In this case there is procedural lapse on the part of the Director of Urban Affairs. Another point to be noted in this case is that Sri. C.M. Mohammed Sheriff, Municipal Secretary and Sri. Paulson Robert, the then Clerk were found to be responsible for the loss of Rs. 34,000. But in the recent Order No. V3-4768/2002 dated. 26/7/2016, the Director of Urban Affairs absolved Sri. C.M. Mohammed Sheriff from the charges and declared that the then Superintendent and the Section Clerk are responsible for the loss and action will be taken against them.

9. In the above circumstances, Government hereby ordered to set aside the decision as per letter read as 2nd paper above of the Director of Urban Affairs as it is seen made without serving Memo of charges and following the mandatory formalities to impose Minor/Major penalty as per Kerala Civil Services (Classification, Control & Appeal) Rules, 1960. The Director of Urban Affairs is

hereby directed to issue Memo of Charges and Statement of Allegations to Sri. Paulson Robert and finalise disciplinary action against him after observing due procedure under Kerala Civil Services (Classification, Control & Appeal) Rules, 1960.

10. The direction contained in the Order read as 6th paper above of the Hon. Kerala Administrative Tribunal is complied with accordingly.

(By Order of the Governor)

S MOHANDAS

Joint Secretary

To

The Advocate General, Kerala, Thiruvananthapuram(With C/L)

The Director of Urban Affairs, Thiruvananthapuram

The Director, Kerala State Audit Department, Thiruvananthapuram

Shri. Paulson Robert, Upper Division Clerk, Corporation of Cochin,

Ernakulam, Kochi-682011

✓ The Executive Director, Information Kerala

Mission, Thiruvananthapuram (For publishing this order in the web-site).

Stock file/Office Copy.

Forwarded/By Order


Section Officer