

(2023) 02 KL CK 0265

High Court Of Kerala

Case No: Writ Petition (C) No.37839 Of 2022

President Kizhakkambalam
Grama Panchayath,
Kizhakkambalam P. O.,
Ernakulam 683562

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Feb. 28, 2023

Hon'ble Judges: N.Nagaresh, J

Bench: Single Bench

Advocate: Blaze K.Jose, Urmila Zacharia, Gopika P., K.R.Deepa

Final Decision: Allowed

Judgement

N. Nagaresh, J

1. The President of Kizhakkambalam Grama Panchayat is before this Court seeking to quash decision No.4.42 in Ext.P12 and to command respondents 1 to 3 to sanction the work of Maliyekkalpadiâ€Pazhanganad Road of Ward No.16 and Thykavuâ€Choorakottu Road Second Reach of Ward No.5 of Kizhakkambalam Grama Panchayat as per the project No.147/22 and 140/22 respectively under the maintenance grant allocated for the year 2021â€2022. The petitioner further seeks to direct respondents 1 to 3 to carry forward the work of Maliyekkalpadiâ€Pazhanganad Road of Ward No.16 and Thykavuâ€Choorakottu Road Second Reach of Ward No.5 of Kizhakkambalam Grama Panchayat as per the project No.147/22 and 140/22 utilising the maintenance grant allocated for the year 2021â€2022 itself.

2. The petitioner states that the Grama Panchayat is taking up various developmental projects using own funds, plan funds, maintenance funds and by public and private participation during the past three years. The Panchayat prefers the road maintenance work in BM and MC standards, which will have a long life. Any other mode of road maintenance will be waste of money by next rainy season.

3. The petitioner states that the Government has issued guidelines for spending annual funds, Maintenance Grant (Road and non-Road), from time to time. Ext.P2 is the Government Order providing guidelines for utilising the funds.

4. As per Ext.P3 Circular dated 14.03.2005, Maintenance Grant can be utilised for metalling and tarring of the roads. In the year 2018, the Government had permitted the Panchayat to construct certain roads in BM&BC specifications using own fund and Maintenance Grant, as per Ext.P4.

5. In the year 2021, the Panchayat as per Ext.P5, submitted projects before the District Planning Committee (DPC). The Maliyekkalpadi-

Pazhanganad Road of Ward No.16 and Thykavu-Choorakkottu Road Second Reach of Ward No.5 were proposed and included to be retarred using

Maintenance Grant. Four other roads were proposed to be maintained under own funds. By Ext.P6, the DPC granted sanction for projects relating to

those roads. However, the DPC forwarded the project relating to retarring the roads to the 2nd respondent-State Level Co-ordination Committee

(LSGD).

6. The 2nd respondent as per Ext.P10 proceedings dated 10.02.2022 rejected the proposal of the Panchayat to do the tarring of Maliyekkalpadi-

Pazhanganad Road of Ward No.16 and Thykavu-Choorakkottu Road Second Reach of Ward No.5 holding that Maintenance Grant cannot be utilised

for BM&BC tarring/renovation. The petitioner challenged the said decision of the State Level Co-ordination Committee filing W.P.(C) No.11229 of

2022. This Court stayed the impugned decision in Ext.P10 by an interim order and directed the respondents to take further appropriate action. But, the

2nd respondent passed Ext.P12 order allowing the Panchayat to carry out the work utilising Own Fund, Development Fund (General) and Finance

Commission Grant (United). The 2nd respondent refused approval to utilise Maintenance Grant for the purpose.

7. The petitioner states that the Panchayat is not having any unutilised funds under the heads Development Fund (General) and Finance Commission

Grant (United) as those funds have already been utilised for other projects. The Panchayat does not have enough Own Fund for the entire project and

₹25,00,000/- is already allotted for the project. In the Maintenance Grant, there is enough surplus fund available. There is no reason for denying the

Panchayat permission to utilise the Grant which would otherwise get lapsed.

8. The respondents did not opt to file a counter affidavit in the writ petition. The Senior Government Pleader, however, resisted the writ petition

contending that the Maintenance Grant can be utilised only for maintenance work. In view of the provisions in G.O. dated 09.12.2004 and Circular

dated 28.11.2012, there should be a unanimous decision of the Panchayat Committee for such utilisation. The Government has not permitted any

Panchayat to utilise Maintenance Fund for BM&BC work. Therefore, the writ petition is liable to be rejected.

9. I have heard the learned counsel for the petitioner and the learned Senior Government Pleader representing the respondents.

10. The petitioner-Panchayat has been taking up various developmental projects using Own Funds, Plan Funds, Maintenance Grants and Public and

Private participation during the past years. As the roads constructed are found short lived, the Panchayat has decided to adopt BM&BC standards for

maintenance of roads. It is not in dispute that the roads constructed and maintained as per BM&BC specifications have much longer life. The

petitioner-Panchayat therefore decided to re-tar Maliyekkalpadi-Pazhanganad Road and Thykavu Choorakkottu Road with BM&BC standards

utilising the Maintenance Grant available.

11. Ext.P6 decision of the DPC would show that the DPC has rejected certain other proposals of the Panchayat but not the proposals on

Maliyekkalpadi-Pazhanganad Road and Thykavu- Choorakkottu Road with BM&BC standards. The 2nd respondent, however, granted permission for

the proposal on condition that only Own Fund, Development Fund (General) and Finance Commission Grant (Untied) can be utilised. In effect, the

permission to utilise Maintenance Grant for the purpose stands rejected.

12. The petitioner would submit that the Panchayat has exhausted all other funds, than Maintenance Grant, by implementing various projects in a time bound manner. An amount of ₹62,16,013/- is available under the Maintenance Grant, which unless utilised in this financial year, would get lapsed.

13. In this regard, it is to be noted that Ext.P2 guidelines provide that Maintenance Grant is non-divertible and can be utilised only for maintenance of the existing roads. Maintenance Grant cannot be used for construction of new roads. In the case of Maliyekkalpadi-Pazhanganad Road and Thykavu-Choorakkottu Road, those are existing roads. The Panchayat only wants to surface the road in BM&BC standards. Therefore, the said work can be treated as maintenance work.

14. According to the petitioner, in the year 2018, the Government had granted permission to the Panchayat for renovation of Thamarachal Bypass-Sevanapadi Link Road in BM&BC standards and the Panchayat has utilised Own Fund and Maintenance Grant for the said road renovation work.

15. In this year, the Panchayat has fully utilised Funds under all other heads than Maintenance Grant for development purposes. The Panchayat has allotted ₹25,00,000/- for the Maliyekkalpadi-Pazhanganad Road and Thykavu-Choorakkottu Road. Unless the Maintenance Grant is utilised, the fund would be lapsed.

16. The Assistant Engineer, Local Self Government Department has given Ext.P9 report to the effect that taking into consideration the heavy traffic on these roads and all other relevant factors, these roads are to be maintained in BM&BC standards.

17. In the afore special facts of the case, I am of the firm view that the respondents have to give permission to the petitioner-Panchayat to construct the roads in question in BM&BC standards utilising the available funds under the Maintenance Grant, in the larger public interest.

The writ petition is therefore allowed. Respondents 1 to 3 are directed to sanction the work of Maliyekkalpadi-Pazhanganad Road of Ward No.16 and

Thykavu-Choorakkottu Road Second Reach of Ward No.5 of Kizhakkambalam Grama Panchayat submitted as per Project Nos.147/22 and 140/22

utilising the Maintenance Grant allocated for the year 2021-2022. Taking into consideration the fact that the current Financial Year is coming to an

end, respondents 1 to 3 shall pass appropriate orders expeditiously.