

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WA.No. 2051 of 2015 () IN WP(C).10733/2015

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AGAINST THE JUDGMENT IN WP(C) 10733/2015 DATED 07-07-2015  
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APPELLANT(S)/1ST RESPONDENT :-  
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JOSE V.JACOB  
S/O.JACOB, VELIKKAKATH HOUSE, THALAYOLAPARAMBU P.O  
VADAYAR VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT

BY ADVS.SRI.ABRAHAM P.GEORGE  
SRI.M.RAJENDRAN NAIR  
SRI.K.VINODKUMAR  
SMT.M.SANTHY

RESPONDENT(S)/PETITIONER AND RESPONDENTS 2 TO 4 RESPECTIVELY IN  
THE MEMORANDUM OF WRIT PETITION :-  
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1. THALAYOLAPARAMBU GRAMA PANCHAYATH  
THALAYOLAPARAMBU P.O, VAIKOM, KOTTAYAM DISTRICT- 686 605  
REPRESENTED BY ITS SECRETARY
2. THE KERALA LOK AYUKTA, THIRUVANANTHAPRUAM, PIN - 695 001  
REPRESENTED BY ITS REGISTRAR
3. M/S. CIUDAD BUILDERS PVT LTD.,  
REPRESENTED BY ITS MANAGING DIRECTOR, 38/602  
PIOUS ROAD, EDAPPALLY, KOCHI - 24.
4. STATE OF KERALA  
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPRUAM, PIN - 695 001

R2 BY ADV. SMT.RENU. D.P., SC, LOK AYUKTA

R1 BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)  
SRI.T.A.SHAJI (SR.)  
SMT.NAMITHA JYOTHISH

R4 BY SR.GOVERNMENT PLEADER SRI.JOE KALLIATH  
BY SRI.M.S.IMTHIYAZ AHAMMED

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15-12-  
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS :-

ANNEXURE A1 :- TRUE COPY OF THE ORDER PASSED BY THE 2ND  
RESPONDENT DATED 16.6.2015.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

**'CR'**

**ASHOK BHUSHAN, C.J &  
K. RAMAKRISHNAN, J.**

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**W.A. No.2051 of 2015**  
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**Dated this the 15<sup>th</sup> day of December 2015**

**J U D G M E N T**

**Ashok Bhushan, CJ.**

Heard the learned counsel for the appellant, the learned Government Pleader, the learned counsel appearing for the Panchayat as well as the learned counsel for the 2<sup>nd</sup> respondent and the learned counsel for the 3<sup>rd</sup> respondent.

2. This writ appeal has been filed against the judgment dated 7.7.2015 in W.P.(C) No.10733 of 2015, by which, the learned Single Judge allowed the writ petition filed by the first respondent. The brief facts of the case as emerged from the pleadings of the writ petition are as follows :- The appellant had filed a complaint, Ext.P7, before the Kerala Lok Ayukta arraying seven respondents, wherein, the Grama Panchayat was the first respondent. In the complaint, allegations of corruption, maladministration,

favouritism etc. were made in connection with the execution of a concession agreement under B.O.T basis in favour of the 4<sup>th</sup> respondent therein. The Lok Ayukta issued an order, Ext.P8, on 12.3.2015 directing the first and fourth respondents not to proceed with the construction work in the petition schedule property and issued a notice, Ext.P9, on 21.3.2015 asking the Panchayat to appear on 16.6.2015. Challenging Ext.P8 order, the writ petition was filed seeking for the following reliefs :-

- “i. issue a Certiorari or any other writ order or direction quashing/setting aside Exhibit - P8 order;
- ii. declare that the 2<sup>nd</sup> respondent has no jurisdiction to entertain and to proceed with Exhibit - P7 complaint;
- iii. issue a writ of mandamus or any other writ order or direction commanding the 2<sup>nd</sup> respondent to drop all further proceedings pursuant to Exhibit - P7 complaint.”

The issue raised in the writ petition was that the complaint filed by the appellant before the Lok Ayukta was not maintainable and it is barred by Sec.271 O of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act 1994'). The learned Single Judge proceeded to examine the

said submission and held that the Lok Ayukta shall have no jurisdiction in view of the provisions contained in Sec.271 O, which were inserted with non obstante clause in the Act 1994. The writ petition was allowed leaving open the remedy of the petitioner to agitate the allegations before the Ombudsman. The appellant, aggrieved by the said judgment, has come up in the writ appeal.

3. Learned counsel for the appellant, in support of the writ appeal, contends that the complaint filed by the appellant before the Lok Ayukta was fully maintainable. It is submitted that the provisions brought in the Act 1994 by adding Sec.271 O shall not take away the jurisdiction of the Lok Ayukta under the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as 'the Act 1999) to consider the complaint. He submits that the definition of 'public servant' as given in Sec.2(o) of the Act 1999 is wide enough to include any local authority or other public servant. It is further contended that although under Sec.271 O sub-section(1) complaints both against public

servant as well as Local Self Government Institution have to be transferred, but the bar as contained in Sec.271 O(3) is only with regard to public servants and not against the Local Self Government institutions. Hence, the complaint filed was fully maintainable. He further submits that in the complaint, certain other persons were arrayed including the Deputy Director, who was not covered by any complaint before the Ombudsman and the jurisdiction to proceed with the said complaint is still lying with the Lok Ayukta. Learned counsel further submits that the non obstante clause in Sec.271 O(1) has to be given harmonious construction and the said provision cannot be treated as a provision, which has any direct conflict with the provisions of the Act 1999.

4. We have considered the submissions of the learned counsel for the parties and perused the records.

5. The Act 1999 was introduced to make provision for the appointment and functions of certain authorities for making enquiries into any action relatable to matters

specified in List II or List III of the Seventh Schedule to the Constitution of India. Sec.2 of the Act 1999 contains definition clause. The definition of 'public servant' given under Sec.2(o) contains a vide definition including a person in the service or pay of a local authority in the State. It is submitted that no complaint against public servant coming within the meaning of Sec.271 O of the Act 1994 can be entertained by the Kerala Lok Ayukta after the constitution of Act 12 of 2001, by which, amendments were made in the Act 1994 by adding the Chapter XXVB with the heading 'Ombudsman for Local Self Government Institutions'. Sec.271A contains definition clause and under Sec.271F(1)(g) 'public servant' was defined in the following manner :-

“'Public Servant' means an employee, or officer under the Local Self Government Institution or an elected member of the Local Self Government Institution including its President or Chairperson and includes an employee or officer of any office or institution transferred to the Local Self Government Institution under the provisions of this Act.”

Sec.271 O, which is relevant in the present case is to the following effect :-

**“271 O. Existing cases to be transferred to Ombudsman.--**

(1) Notwithstanding anything contained in the Kerala Lok-Ayuktha Act, 1999 (8 of 1999) or any other law, if any proceedings, filed and not disposed of under the said Act, before the constitution of Ombudsman as per the provisions of this chapter, relate to a public servant or Local Self Government Institution as per the provisions of this Act, all cases with regard to such proceedings shall be transferred to the Ombudsman and the Ombudsman shall decide the cases in accordance with the provisions of this Act.

(2) All cases, with regard to the loss, wastage and misappropriation of any land of the Local Self Government Institution, pending before the Government or any other authority and disposed of just before the constitution of Ombudsman and the Ombudsman shall dispose of the cases in accordance with the provisions of this Act.

(3) No complaint, against a public servant as defined in this chapter, shall be entertained by a Lok-Ayukta or Upalok-Ayukta constituted as per the Kerala Lok-Ayukta Act, 1999 (8 of 1999) on or after the date of the constitution of Ombudsman as per the provisions of this chapter.”

-: 7 :-

In the present case, the issue to be decided is as to whether the complaint, Ext.P7, ought to have been filed before the Ombudsman and the Lok Ayukta have no jurisdiction to proceed with the complaint. As noted above, the learned Single Judge has held that the Lok Ayukta shall have no jurisdiction to proceed with the complaint.

6. We have looked into the complaint, Ext.P7. The complainant/first respondent is a member representing Ward No.IX of the petitioner Panchayat. The grievance principally raised was with regard to concession agreement dated 14.1.2010 awarded by the Panchayat in favour of the 4<sup>th</sup> respondent in the complaint. In the complaint, apart from Deputy Director of Panchayat, the Communist Party of India (Marxist) and the Contractor were also made parties. The relief claimed in the complaint is to the following effect :-

“A. To pass an order for the investigation of the allegation of corruption, mal-administration, favouritism, inaction etc. in connection with the execution of the Concession Agreement under B.O.T. basis and unwanted steps for implementation etc.

-: 8 :-

against the respondents and their men and to dealt them in accordance with law.

- B. To pass an order to pay cost and compensation to the complainant for this proceedings.
- C. To pass any other order or orders which are deem fit and proper to this case by the Honourable Lok-Ayukta."

A reading of the complaint, especially, the relief claimed would clearly indicate that the substantial relief in the complaint was against the mal-administration of the Panchayat in granting the contract in favour of the 4<sup>th</sup> respondent in the complaint. The issue before us is to whether the allegations made in the complaint regarding grant of contract is the issue, which can be gone into and decided by the Lok Ayukta or the complaint was to be necessarily preferred before the Ombudsman as constituted by the amendment made in Act 12 of 2001. The definition of 'public servant' as contained in the Kerala Lok Ayukta Act, 1999 is vide enough and it shall be useful to reproduce the definition of 'public servant' as contained under Sec.2(o) of the Act 1999, which is to the following effect :-

“‘public servant’ means a person who is or was at any time,-

- (i) the Chief Minister;
- (ii) a Minister;
- (iii) a member of the Legislative Assembly of the State of Kerala;
- (iv) a Government servant;
- (v) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and such other Corporations or Boards, as the Government may, having regard to its financial interest, in such Corporations or Boards by notification, from time to time, specify;
- (vi) a member of a Committee or Board or Authority or Corporation, statutory or non-statutory, constituted by the Government of Kerala;
- (vii) a person in the service or pay of,-
  - (A) a local authority in the State;
  - (B) a statutory Body or a Corporation (not being a local authority) established by or under a State or a Central Act, owned or controlled by the Government of Kerala and any other Board or Corporation as the

-: 10 :-

Government may, having regard to its financial interest therein, specify, by notification in the Gazette from time to time;

- (C) a Company registered under the Companies Act, 1956 (Central Act 1 of 1956), in which not less than fifty-one percent of the paid up share capital is held by the Government of Kerala or any company which is a subsidiary of such company;
- (D) a society registered or deemed to have been registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (XII of 1955) or the Societies Registration Act, 1860 (Central Act 21 of 1860), which is subject to the control of the Government of Kerala and which is notified, in this behalf, in the Gazette;
- (E) a co-operative society;
- (F) a University.”

7. Secs.271F to 271R were the provisions, which were inserted by Act 12 of 2001 by Chapter XXVB in the Act 1994. The definition of 'public servant' as given in Sec.271F(1)(g) as quoted above is a restricted definition, which confines to an

employee or officer under the Local Self Government Institution or an elected member of the Local Self Government Institution including its President or Chairperson. Sec.271 O contemplated transfer of existing cases to the Ombudsman. Sub-section (1) of Sec.271 O contemplates transfer of all cases “notwithstanding anything contained in the Kerala Lok-Ayukta Act, 1999”, which if it relates to a public servant or Local Self Government Institution as per the provisions of the Act 1994 as amended by Act 12 of 2001. Sec.271 O(1) clearly indicates that any pending complaint before the Lok Ayukta relating to a public servant or Local Self Government Institution was to be transferred to the Ombudsman. As noted above, the definition of 'public servant' under the Act 1999 was wide enough and only a category of limited complaints were taken out, which were to be considered by the Ombudsman. Thus, it is clear that after the enactment of Sec.271 O, Lok Ayukta could not have been proceeded with any complaint with

regard to a 'public servant' or a Local Self Government Institution.

8. Now, we come to sub-section (3) of Sec.271 O, which provides “no complaint, against a public servant as defined in this Chapter, shall be entertained by a Lok Ayukta or Upalok-Ayukta constituted as per the Act 1999 on or after the date of the constitution of Ombudsman”. There was clear injunction for entertaining any complaint by Lok Ayukta against a public servant as defined in this Chapter.

9. The submission, which has been pressed by the learned counsel for the appellant is that sub-section (3) of Sec.271 O uses only the phrase 'public servant' and it does not include the phrase 'Local Self Government Institution’, which has been used in sub-section (1) of Sec.271 O. A combined reading of Sec.271 O(1) and (3) indicate that what the legislation intended was that all pending complaint pertaining to a public servant or Local Self Government Institution should be transferred to Ombudsman and further,

no such complaint shall be entertained by Lok Ayukta. It is true that sub-section (3) uses the word 'public servant' only. However, the word 'public servant' shall have to be read in accordance with the definition contained under Sec.271F(1)(g) of the Act 1994, which means, an employee or officer under the Local Self Government Institution or an elected member of the Local Self Government Institution including its President or Chairperson. It does not appeal for the reason that the complaint against an employee or Local Self Government Institution including its President or Chairperson ought to have been filed before the Ombudsman since the complaint against the Local Self Government Institution is still to be filed before the Lok Ayukta. In view of the fact that a 'public servant' was defined under Sec.271F(1)(g), no elaboration was given in sub-section (3) of Sec.271 O. Learned counsel for the appellant has also referred to a Division Bench judgment reported in **Thoppil Sreekumar and etc. v. State of Kerala and others** [AIR 2001 Kerala

140], especially, paragraph 27. In paragraph 27, the following was stated :-

**"27.** On the question of declaring a provision in a statute as unconstitutional, the learned Advocate General invited our attention to a passage from Justice G.P.Singh's Interpretation of Statutes, 7<sup>th</sup> Edn., Page 33. Under the heading : "State to be construed to make it effective and workable" it is stated as under :

"The Courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative "on the principle expressed in the maxim: ut res magis valeat quam pereat". It is an application of this principle that Courts while pronouncing upon the constitutionality of a statute start with a presumption in favour of constitutionality and prefer a construction which keeps the statute within the competence of the Legislature. The importance of the principle can be judged from the fact that there is hardly any reported decision, where a state may have been declared void for sheer vagueness, although theoretically it may be possible to reach such a conclusion in case of "absolute intractability of the language used", or when "it is impossible to resolve the ambiguity", i.e., when the language is absolutely meaningless. As laid down by FAREWELL, J., "unless the words were so absolutely senseless that I could do

nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty". Lord Denning approving FAREWELL, J., stated the principle thus: "But when a statute has some meaning even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the statute is to bear, rather than reject it as a nullity". And it was said by LORD DUNEDIN: "It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a Judge to declare a statute unworkable". The principle was reiterated by him in a later cases where he observed: "A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable". The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used." If the choice is between two interpretations", stated VISCOUNT SIMON, L. C. "the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result". The Courts may complain that the

enactment is “mind twisting” or an “enigma” yet they do not readily concede that no meaning can be given to it, and in their comity with the Legislature, they strive hard to give meaningful life to legislative enactments and avoid cadaveric consequences. “It is not an adequate discharge of duty”, said HOLMES, J., “for Courts to say: we see what you are driving at, but you have not said it, therefore we shall go on as before”. So the Courts are at least now, when purposive construction is gaining momentum, very reluctant to hold that Parliament has achieved nothing by the language it used when it tolerably plain what is wished to achieve”.

There cannot be any dispute to the proposition as noticed by the Division Bench of this Court as noted in the above paragraph. It is well established principle of statutory interpretation that the Courts strongly lean against a construction which reduces the statute to a futility. The principle of interpretation, which has to be adopted is not to declare the statute unworkable since the statute is designed to be workable and the interpretation should be put by a court to secure the object unless due to crucial omission or clear direction the said end is unattainable.

10. The provisions of Secs.271F to 271R have been enacted subsequent to the enactment of Act 1999 for a limited purpose that is for creating an Ombudsman for Local Self Government Institution and the complaint pertaining to the Local Self Government Institution, its officers and employees and elected personnels have been taken out from the purview of Lok Ayukta with specified purpose and object.

11. The submission of the learned counsel for the appellant that still there is jurisdiction with the Lok Ayukta to consider and hear the complaint against the Local Self Government Institution is to make the enactment of Act 12 of 2001 is futile and unworkable. There cannot be any uncertainty with regard to filing of any complaint pertaining to officers, employees and elected members of Local Self Government Institution. The use of word “notwithstanding anything contained in the Kerala Lok Ayukta Act, 1999” in sub-section (1) of Sec.271 O is for a specified purpose and the non obstante clause used is specifically overwrites the

provisions of Act 1999 in so far as the subject as covered by Sec.271 O is concerned. No other interpretation is possible for the aforesaid provisions. We, thus, have to consider that Sec.271 O has to be taken out to consider the complaints against the Local Self Government Institution out of the purview of Act 1999.

12. Coming to the submission of the learned counsel for the appellant that in Ext.P7 complaint, apart from the Panchayat, its Secretary, contractor and other official, namely; the Deputy Director was also arrayed as parties. It is submitted that the complaint against a contractor or Deputy Director could not have been entertained by Ombudsman. Thus, the complaint was clearly maintainable before the Lok Ayukta.

13. On a perusal of the array of parties in the complaint, it would indicate that the Panchayat was made a party through its Secretary and the Secretary was also arrayed as the 5<sup>th</sup> respondent in its personal capacity. The

Deputy Director of Panchayat was arrayed as 2<sup>nd</sup> respondent, the Communist Party of India was arrayed as 3<sup>rd</sup> respondent and the contractor was arrayed as the 4<sup>th</sup> respondent. The 6<sup>th</sup> respondent is the President of the Panchayat and the 7<sup>th</sup> respondent is a Memorial Trust.

14. As noted above, the substantial complaint in Ext.P7 was against the concession agreement dated 14.1.2010 executed in favour of the 4<sup>th</sup> respondent by the Panchayat. The petitioner, a member of the Panchayat, who was aggrieved by the grant of contract, allegations were made with regard to mal-administration and corruption in the grant of contract. The prayers made in the complaint also indicate that investigation was asked against allegation of corruption, mal-administration, favouritism etc. with regard to execution of concession agreement. Since the agreement having been executed by the Panchayat, the complaint was to be enquired into by the Ombudsman and merely because the complainant has impleaded Deputy Director of Panchayat and the

contractor or some other private persons does not take away the investigation of the complaint from the purview of Ombudsman. While deciding the above jurisdiction to enquire the complaint, the substance of the complaint has to be looked into and the investigation of the complaint cannot be permitted to proceed with the Lok Ayukta merely because some additional persons have been impleaded in the complaint. Any inclusion of some additional persons may be for completion of narration of facts for deciding the issue, which may have relevance in the allegations made in the complaint and that cannot take away the original jurisdiction of the complaint, which has to be enquired by the Ombudsman. Thus, we are not persuaded to accept the submission made by the learned counsel for the appellant that since other individual persons were impleaded, who were not covered under the definition of 'public servant' as defined under Sec.271F(1)(g), the complaint was within the jurisdiction of Lok Ayukta. We do not find any error in the

W.A. No.2051 of 2015

-: 21 :-

judgment of the learned Single Judge allowing the writ petition. However, we observe that it shall be open for the appellant/complainant to agitate the matter before the Ombudsman.

With the above observation, this writ appeal is dismissed.

**Sd/-  
ASHOK BHUSHAN  
CHIEF JUSTICE**

**Sd/-  
K. RAMAKRISHNAN  
JUDGE**

Jvt/21.12.2015