

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 379 of 2015 (V)

PETITIONER(S) :

**M.P.VNCENT, AGED 51 YEARS,
S/O.PAULOSE M.V., MANIAKKU HOUSE, PAVOOS LANE,
KIZHAKKUMPATTUKARA, THRISSUR DISTRICT, PIN- 680 005.**

**BY SRI.P.VIJAYA BHANU (SENIOR ADVOCATE)
ADVS.SMT.M.M.DEEPA
SRI.AJEESH K.SASI
SRI.UNNI SEBASTIAN KAPPEN**

RESPONDENT(S) :

- 1. SHAJAN,
S/O.GEORGE, MANDAKAN HOUSE, P.O.NELLIKUNNU,
MENACHERY DESOM, NADATHARA VILLAGE,
THRISSUR DISTRICT, PIN- 680 751.**
- 2. SHIBU T.BALAN,
S/O.BALAN, THULASITHARA VEEDU, SRA 95 J,
SURYA NAGAR, NETTAYAM P.O,
THIRUVANANTHAPURAM - 691 537.**
- 3. JAMAL KUMAR,
LAKE CITY RESORTS, P.O.PATHIRAPPALLY,
ALAPPUZHA - 688 521.**
- 4. PEETHAMBARA KURUP, EX-MP, KOLLAM,
NAVAIKULAM, THIRUVANANTHAPURAM, KERALA -695 603.**
- 5. KERALA LOK AYUKTA LEGISLATURE COMPLEX,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM - 695 001.**

R5 BY ADV. SMT.RENU. D.P., SC, LOK AYUKTA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

WP(C).No. 379 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE COMPLAINT NO.1671/2014 FILED BY
 THE 1ST RESPONDENT BEFORE THE 5TH RESPONDENT.**
- EXT.P2: TRUE COPY OF THE KEY REGISTER, MLA HOSTEL FOR THE PERIOD
 FROM 12/11/2013 TO 23/11/2013.**
- EXT.P3: TRUE COPY OF THE ORDER DATED 23/12/2014 IN COMPLAINT
 NO.1671/2014 OF THE 5TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

C.R.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.379 of 2015

Dated this the 19th day of January, 2015

JUDGMENT

Ext.P3 order passed by the 5th respondent/Lok Ayukta, authorising and directing the District Police Chief, Palakkad, to conduct a 'preliminary investigation' in respect of the allegations in Ext.P1 complaint, is under challenge in this writ petition preferred by the petitioner, who is arrayed as the 3rd respondent in the complaint.

2. The main ground of challenge is that, Ext.P3 order is beyond the power, competence and jurisdiction of the 5th respondent as far as 'preliminary enquiry' is covered and that there is clear violation of statutory prescription, particularly under Section 9(3) of the Kerala Lok Ayuktha Act, 1999, in so far as no copy of the complaint was forwarded to the petitioner before ordering the 'preliminary investigation' and no opportunity of hearing was given to submit any explanation. There is also a case that the proceedings are per se wrong and unsustainable, in so far as 'State' is not a party to the proceedings and that there is

infringement of Section 9(8) of the Act as well.

3. Coming to the factual scenario, the petitioner is a Member of the Legislative Assembly from the Ollur constituency in Trissur District. It is stated that, the petitioner is leading a transparent public life for nearly four decades and is holding various posts in the party and other supporting organisations, functioning without giving any room for complaints of corruption or such other instances in any manner. It is as a bolt from the blue, that Ext.P3 order has come in, without giving any opportunity to put forth his version and to have caused Ext.P1 complaint to be dismissed at the threshold, having been preferred without any truth or bonafides.

4. The crux of Ext.P1 complaint preferred by the 1st respondent (complainant) is that the 2nd respondent had offered to procure employment to the son of the petitioner in the Railways under the sports quota; making use of the connections with the petitioner (sitting M.L.A.) and the 4th respondent (then M.P.). The petitioner, in fact, is a vegetable merchant, while his son is a body builder, who is having several certificates to his

credentials. The 1st respondent was made to believe that, he had to spare a sizable amount to be given to the 4th respondent and the petitioner herein. With this intent, the 1st respondent had gone to Thiruvananthapuram and was permitted to occupy room No.503 in the Periyar Block of the MLA Quarters (which was the room of the petitioner M.L.A.) and was taking rest there, from the early morning on 18.11.2013. It is alleged that the petitioner had telephoned him and instructed to go ahead with the deal. Accordingly, the 1st respondent met the 4th respondent at his residence, when the alleged demand to spare a sum of Rs.25 lakhs for the then M.P. and M.L.A. was made and it was directed to be entrusted with the 2nd respondent.

5. In furtherance to the alleged deal, the 1st respondent contends that he had entrusted a sum of Rupees Six lakhs to the 3rd respondent, who was reportedly holding some public office as instructed and a sum of Rupees 5 lakhs each on 28.11.2013 and 15.12.2013 to the 2nd respondent. A sum of Rupees Five lakhs was deposited in the name of the wife of the 2nd respondent by name 'Deepa' in her Account with the Thrissur Aswini Branch of

the UCO Bank on 04.12.2014 and a further sum of Rs.1.25 lakhs was deposited in the name of her daughter by name 'Sai Krishna' on 12.04.2014, as instructed. After parting with the money as above, the 2nd respondent turned his back, which made the 1st respondent to meet the petitioner herein and the 4th respondent, demanding return of money, as the assurance to have secured employment to his son turned to be futile. Non-return of the money led to Ext.P1 complaint preferred before the 5th respondent/Lok Ayukta.

6. Obviously, an affidavit was sworn to and filed by the 1st respondent/complainant before the 5th respondent, along with Ext.P1 complaint, as stipulated under the relevant Rules, virtually reproducing the version in the complaint. Considering the pleadings and evidence in the form of affidavit, the 5th respondent commenced a 'preliminary enquiry' on 23.12.2014 and observed that, if the allegation in the complaint was true, the petitioner herein, who was a public servant, would have to be found guilty, simultaneously observing that the Lok Ayuktha was not yet convinced as to the truth of the allegations and as such, the

preliminary enquiry commenced on that date should continue. It was accordingly, that the person by name H. Manju Nath IPS, District Police Chief, Palakkad, who was stated as having an unblemished track record, was required to conduct a 'preliminary investigation' into the truth or otherwise into the allegation contained in the complaint, with liberty to constitute his own investigation team, giving appropriate directions to the State Police Chief to make available the service of the concerned officers. The said Officer is directed to expedite the matter and to file a report for considering the further course of action. This obviously is without giving any notice to the petitioner or affording an opportunity of hearing, calling for his version. Hence the challenge, mainly contending that, it is contrary to the relevant provisions of law and that, it will tarnish the image and reputation of the petitioner, demeaning him in the general public, thus seeking for immediate interference of this Court.

7. Heard Mr. Vijayabhanu, the learned Senior Counsel appearing for the petitioner and Smt. D.P. Renu, learned Standing Counsel for the 5th respondent.

8. The learned Senior Counsel appearing for the petitioner submits that, the stage of 'investigation' contemplated under the statute, comes only after the 'preliminary enquiry' and that the preliminary enquiry is not intended to be conducted by way of investigation by an IPS Officer. By virtue of the mandate under Section 9(3), there is a statutory obligation for the 5th respondent to serve a copy of the complaint to the petitioner and to call for his version, without which no order could have been passed to have investigation in the matter. The 5th respondent having observed in Ext.P3 that the concerned Officer is engaged, invoking the power under Section 16(3) of the Lok Ayukta Act, it could only be for the matter of 'investigation' and not for preliminary enquiry. Investigation can be pursued only if the Lok Ayukta considers to proceed with the complaint after the preliminary enquiry and such a course can be there, only after affording an opportunity of hearing. Infringement of Section 9(8), for not having impleaded the State in the party array, and such other instances are also adverted to, in support of the challenge.

9. The learned Standing Counsel for the 5th respondent

submits that, the idea and understanding of the petitioner is per se wrong and unfounded, as Ext.P3 itself reflects the correct position to the effect that it is only in the course of preliminary enquiry, that the matter has been entrusted with the concerned Officer. By virtue of the specific wording in the statute, it is open for the Lok Ayukta to conduct the preliminary enquiry in the manner, as he deems fit and as such, there is nothing wrong in it. It is pointed out that, no notice is intended to be given to the public servant at the stage of preliminary enquiry and the said requirement will arise only if the Lok Ayukta decides to proceed further to conduct investigation, after making the preliminary enquiry. It is also pointed out that, there is no violation of Section 9(2) and (3) and that the scope of the provision has already been considered and explained by this Court as per a common judgment dated 21.05.2012 in WP(C) Nos.1368 and 1830 of 2012 (rendered by me) and further that the said verdict has been affirmed by a Division Bench of this Court, as per judgment dated 31.10.2014 in WA No.1151 of 2012 and connected cases. Reliance is also sought to be placed on the

decision rendered by the Apex court in **Rama Rao Vs. Lokayukta and others (AIR 1996 SC 2450)** in this regard.

10. To have an effective adjudication of the issue involved, reference to the relevant provisions of law is extremely necessary. Section 9(3)(a), (b) and (c) of the Act reads as follows:

"9(3) (a) shall forward a copy of the complaint to the public servant and the competent authority concerned.

(b) shall afford to such public servant, an opportunity to offer his comments on such complaint.

(c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit."

11. There is no obscurity in the above provisions to infer that the necessity to forward a copy of the complaint to the public servant as envisaged under Section 9(3)(a), affording an opportunity to offer his comments on such complaint, as contemplated under Section 9(3)(b), is only if the Lok Ayukta proposes to conduct any 'investigation' under the Act, after the 'preliminary enquiry', as he deems fit. It doesn't mean that in all cases, there has to be preliminary enquiry of a tangible form.

This is more so, since a complaint has necessarily to be supported by an affidavit and the Lok Ayukta is empowered under Section 11(2)(c) to receive evidence on affidavit, which could be made use of for the purpose of preliminary enquiry. It is also open for the Lok Ayukta to collect further material, if necessary, in the course of preliminary enquiry, either by examining the party or by such other mode and to consider whether regular investigation is to be pursued. The statute confers absolute discretion on the Lok Ayukta in so far as the procedure, as to how the preliminary enquiry is to be conducted. It is nowhere mentioned, either in the Act or in the Rules as to the manner in which 'preliminary enquiry' is to be conducted and it says that the preliminary enquiry could be done in the manner as he deems fit [Section 9(3)]. That apart, Section 11 dealing with evidence, refers to the authority of the Lok Ayukta/Upa-Lok Ayukta to require any public servant or any other person, who in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish information or produce any such document, for the purpose of any investigation

(including the **preliminary enquiry, if any**) before such investigation. The words used, '**if any**', under Section 11(c) is a clear indicator to the effect that 'preliminary enquiry' is not mandatory in all the cases and further that, it could be in any form as the Lok Ayukta deems it fit [as mentioned under Section 9(3)]. The question to be considered is whether the enquiry now ordered by the Lok Ayukta as per Ext.P3 is a preliminary one, or part of the 'regular investigation' intending to proceed with the complaint.

12. The scope of preliminary enquiry and the need to serve copy of the complaint to the public servant, calling for his version, had come up for consideration before the Apex Court in **AIR 1996 SC 2450** (cited supra).

13. The decision rendered by the Apex Court as mentioned above was with reference to the relevant provisions of the Andhra Pradesh Lok Ayukta and Upa Lok Ayukta Act. 1983. The scope of issuance of notice to the public servant was considered and it was observed as follows:

" It would not be necessary to issue any

notice or to give opportunity to a public servant at preliminary verification or investigation. When the Lokayukta or Upa-Lokayukta, as the case may be, conducts regular investigation into the complaint, it would be necessary to give prior opportunity to the public servant etc. By implication, such an opportunity stands excluded when preliminary verification or investigation is conducted. The object appears to be that the preliminary investigation or verification is required to be done in confidentiality to get a prima facie evidence, so that the needed evidence or material may not be got suppressed or destroyed."

14. Coming to the case in hand, the point to be considered is whether the course pursued by the 5th respondent/Kerala Lok Ayukta while passing Ext.P3 order, entrusting the job with the District Police Chief of Palakkad District, is in the course of 'regular investigation' or is it in the course of 'preliminary verification' . To have a better analysis of the facts and figures, the observation made by the Lok Ayukta in Ext.P3, to the extent it is relevant, is extracted below:

"If the allegation of the complainant which are allegation as defined under Sec.2 (h) of the Lok Ayukta Act are true, the 3rd respondent who is a public servant coming within the domain of the Lok Ayukta, will have to be found to be guilty.. But we must say immediately that we are not yet convinced as to the truth of the allegation made by the complainant. Eventhough Sri Shajan, the complainant was emphatic about the truth of what he has stated in the complaint, we feel that the preliminary enquiry which we commenced today should continue. We decide to utilize the service of Sri. H.Manjunath, IPS, District Police Chief,. Palakkad, who we are informed is an efficient experienced officer with impeccable integrity, invoking our powers under Section 16(3) of Lok Ayukta Act. Hence we direct Sri H. Manjunath IPS to conduct a preliminary investigation into the truth or otherwise of the allegation contained in this complaint. It is open to Sri H. Manjunath, IPS to constitute his own investigation team. If Sri Manjunath wants to include in his team any police officer, who is not under his control now, he can request the State police Chief for

sparing such officers to be members of his team and the State Police Chief will favourably consider such request. Sri Manjunath is directed to expedite matters and file his report at the earliest, so as to enable us to take a decision as to whether this complaint should be admitted to file. Communicate this orders to Sri Manjunath H, IPS and also to the Police Chief. Post on 12.02.2015 at Thrissur Camp."

15. The Lok Ayukta has observed that, if the allegation of the complainant was true, the 'third respondent' (who happens to be the petitioner herein), has to be found guilty. But on the very next breath, the Lok Ayukta notes that they are not at all convinced with the truth with the made in the complaint and that they felt that a 'preliminary enquiry' initiated on that date should continue. It was only to continue the said preliminary enquiry, that the service of the District Police Chief was sought to be utilised . The concerned officer has been directed to conduct a 'preliminary investigation' into the truth, by constituting a team as specified and to file a report before the Lok Ayukta. The scope of the said enquiry and report is discernible from the

penultimate sentence of Ext. P3 order, wherein it has been categorically made clear that, it is to enable the Lok Ayukta to take a decision as to whether the complaint should be admitted to file. This means, Ext.P1 complaint preferred before the fifth respondent/Kerala Lok Ayukta is still to be admitted ; that the Lok Ayukta was not convinced as to the truth of the allegation and further that 'preliminary investigation' will start, if necessary and if the Upa Lok Ayukta gets convinced on the basis of the report to be filed by the concerned officer. As it stands so, non-issuance of notice at this stage or non-forwarding of a copy of the complaint to the petitioner is of no consequence, as there is no violation of Section 9(3) (a) & (b) of the Act.

16. The case of the petitioner is that, service of an officer of IPS level could be utilized by the Lok Ayukta only in the course of 'investigation' and since Ext.P3 order has been passed with reference to Sec.16(3) of the Act, it has to be presumed that, it is in the process of 'regular investigation'. As a matter of fact, **Sec. 16 deals with Staff of Lok Ayukta** and the provision reads as follows:

*"Sec.16. Staff of Lok Ayukta etc:- (1)
There shall be such officers and employees, as may be prescribed, to assist the Lok Ayukta and the Upa Lok Ayukta in the discharge of their functions under this Act.*

(2) The categories of officers and employees referred to in sub-section (1) and their appointment and other conditions of service including such special conditions, as may be necessary, for enabling them to act without fear in the discharge of their functions, shall be such, as may be prescribed, in consultation with the Lok Ayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lok Ayukta or an Upa-Lok Ayukta may, for the purpose of conducting investigations under this Act, utilise the services of -

(a) any officer or investigating agency of the State Government; or

(b) any officer or investigating agency of the Central Government with the prior concurrence of that Government; or

© any other agency

17. Section 16 is only an enabling provision, by virtue of which, the Lok Ayukta can call for assistance of the concerned officer and employees in discharge of the functions under the Act. Conducting 'preliminary enquiry' is also part of discharging the functions conferred upon the Lok Ayukta. The provision does not place any bar in making use of the service of the concerned officers for conducting 'preliminary enquiry' as well, if it is deemed fit by the Lok Ayukta, in view of wide discretion conferred upon the Lok Ayukta under Section 9(3) with regard to the conduct of the preliminary enquiry and the absence of any stipulation either under the Act or Rules as to the manner in which the preliminary enquiry is to be conducted.

18. There is yet another contention for the petitioner, that the complaint itself is not maintainable for non-jointer of necessary parties, in so far as the State is not impleaded as a respondent, by virtue of which, there is clear violation of the mandate under Section 9 (8) of the Act. The said provision reads as follows :

“9(8) In every proceeding before the Lok Ayukta or an Upa-Lok Ayukta under this Act, the State shall be made a party thereto and the Government shall appoint Special Attorney and one or more senior Government Pleaders to represent the Government before the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, on the terms and conditions prescribed.

Provided that it shall not be necessary that State should be made a party in cases where Government interests are not involved”

Evidently, Section 9 (8) requiring the State to be impleaded in the party array, is attached with a rider in the form of '**proviso**'. The proviso makes it clear that, it is not obligatory for the party to make implead the State in the party array, where the Government interests are not involved. In the instant case, grievance is purely with regard to the parting of money by the first respondent, allegedly on instructions of the 3rd and 4th respondents in Ext. P1 complaint (i.e. petitioner and 4th respondent respectively), for procuring employment for his son and refusal to return the said amount, when the alleged assurance did not turn to be fruitful. This does not form a case where Government interests are involved. As such, it is not mandatory to have the State Government in the party array and the situation is

saved by the **proviso** to Section 9 (8).

19. The learned senior counsel for the petitioner points out with reference to the pleadings in the writ petition, that the 4th respondent is no more a 'public servant' and as such, no proceedings will lie against him and this is projected as a shield for not proceeding with the complaint, contending that the complaint itself has to be dismissed. Specific case in Ext. P1 complaint is that the 4th respondent was the then M.P. when the transaction took place. With regard to the question whether the 4th respondent will satisfy the definition of 'public servant' as defined under Section 2 (o) of the Act; or whether the scope of the provision has to be made with reference to the date of arising of cause of action or as on the date of filing the complaint, is the matter to be considered by the Lok Ayukata. This Court does not intend to express anything on merits in this regard. But it cannot, but be mentioned that the Lok Ayukta also was very much restrictive in action, while passing Ext. P3 order, in so far as no observation was made for the time being with reference to the alleged involvement of the 4th respondent while deciding to continue preliminary enquiry. The observation is only to the extent as "*if the allegation of the complainant which are allegation as defined under Section 2 (h) of the Lok Ayukta Act are true, the **3rd respondent** who*

is a public servant coming within the domain of Lok Ayukta, will have to be found to be guilty." In other words, the course of action intended is more with reference to the alleged involvement of the 3rd respondent in Ext. P1 complaint i.e. the petitioner. Obviously, the Lok Ayukta has not taken a decision as to whether the complaint should be admitted or whether any regular investigation is necessary. The present attempt is only a data collection exercise and that 's all.

20. With regard to the assignment of task to an officer at higher level, it has to be seen that the course pursued by the Lok Ayukta cannot be deprecated in any manner. The Lok Ayukta can be seen as very vigilant to protect the dignity and individuality of the person of a public servant named in the complaint, particularly, being a sitting MLA (petitioner) and a former M.P. (4th respondent) and hence the data collection exercise has ordered to be done by a competent and responsible officer of higher level, lest, it should be misused by anybody else, if engaged in this regard. It is also relevant to note that the petitioner is a sitting MLA from Palakkad and as such, the Lok Ayukta found it fit and proper to engage District Police Chief, Palakkad to collect the factual particulars and to file a report to consider whether complaint is to be admitted or not. It is also made a mention in Ext. P3 that the particular officer mentioned therein to whom the basic task

has been assigned is reportedly an efficient and responsible officer with impeccable integrity. This is with a view that under no circumstances shall the image, dignity or reputation of the public servant be tarnished, even by a remote chance. In the above circumstances, this Court finds that there is nothing objectionable as to the course ordered to be pursued by the Lok Ayukta vide Ext. P3 and no prejudice has been caused to the petitioner in any manner.

21. It is made clear that the present task assigned to the officer concerned will only be as a part of **"preliminary enquiry"**, preceding the regular investigation. If the report to be submitted by the concerned officer persuades the Lok Ayukta to admit the complaint to file and proceed with regular investigation, no doubt the mandate of Section 9 (3) (a) and (b) shall necessarily be satisfied by forwarding a copy of the complaint to the public servant and affording a chance to put forth his/their version and to proceed with further steps in accordance with law. On the other hand, if the report does not make out any prima facie case, it is open for the Lok Ayukta, in their discretion, to refuse regular investigation for the reasons stated in Section 9 (5) (a) to (c) and nothing is mentioned herein with regard to the merits involved. Since Section 17 of the Act casts an obligation upon the Lok Ayukta/members of the staff to maintain secrecy of the

information obtained in the course of or for the purpose of any investigation under the Act, utmost care and caution shall be maintained by the concerned officer and the members of its team to ensure confidentiality of the particulars collected in the course of such data collection exercise and as to the report to be filed before the Lok Ayukta, pursuant to Ext. P3.

With the above observation, the writ petition stands disposed of, declining interference.

**P. R. RAMACHANDRA MENON,
(JUDGE)**

lk/kmd/sp