

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 4677 of 2015 (S)

PETITIONER(S) :-

JOY KAITHARATH, AGED 62 YEARS,
S/O.ANTONY, GENERAL SECRETARY,
STATE HUMAN RIGHTS PROTECTION CENTRE,
VELLIKULANGARA P.O., THRISSUR - 680 699.

BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.MALLEENATHAN.M.
SRI.ANEESH JAMES
SRI.ANIL R.NATH

RESPONDENT(S) :-

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME AFFAIRS, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE STATION HOUSE OFFICER,
VIGILANCE & ANTI-CORRUPTION BUREAU HEADQUARTERS,
THIRUVANANTHAPURAM - 695 001.
3. THE DIRECTOR,
VIGILANCE & ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM - 695 001.
4. DR.JACOB THOMAS IPS, AGED ABOUT 55,
S/O.THOMAS, ADDITIONAL DIRECTOR GENERAL OF POLICE,
VIGILANCE & ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM - 695 001.

BY ADVOCATE GENERAL SRI.K.P.DANDAPANI
BY SPECIAL GOVT.PLEADER SMT.GIRIJA GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 4677 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1 : COPY OF THE COMPLAINT DTD.12.1.2015 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P1(a) : COPY OF ENGLISH TRANSLATION OF EXT.P1.

EXT.P2 : COPY OF THE INVESTIGATION REPORT (WITHOUT ANNEXURES)
BY THE 4TH RESPONDENT BEFORE THE LOK AYUKTA.

EXT.P3 : COPY OF THE REPRESENTATION DTD.9.2.2015 SUBMITTED BY
THE PETITIONER.

EXT.P3(a) : COPY OF ENGLISH TRANSLATION OF EXT.P3.

EXT.P4 : COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT
ACKNOWLEDGING THE RECEIPT OF EXT.P3.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.S. TO JUDGE

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

W.P(C).No. 4677 of 2015

Dated this the 20th February, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

This Writ Petition is filed by the petitioner, claiming to be human right activist, as a public interest litigation with the following reliefs:

- “a) Issue a writ of mandamus, or any other appropriate writ, order or direction compelling the 2nd respondent to register a FIR on the basis of Exhibits P1 and P3 applying the principles laid down by the Hon'ble Apex Court in Lalithakumari v. State of UP and others.*
- b) Issue a writ of mandamus, or any other appropriate writ, order or direction compelling the 1st respondent to take action against the respondents 2 and 3 in not registering the FIR on receipt of Exhibits P1 and P3.”*

2. Brief facts of the case giving rise to the Writ Petition are:

The petitioner filed complaint No.964/2014-A before the Kerala Lok Ayukta making allegations against various public servants, who were alleged to have acted in connivance with the private respondents, who unlawfully gained pecuniary benefits. The Kerala Lok Ayukta, on the complaint, directed for a preliminary investigation on 30.7.2014. The Kerala Lok Ayukta directed to investigate into the truthfulness of the allegations raised in Complaint No.964/14. A team was constituted under the leadership of the fourth respondent vide letter dated 5.8.2014. The leader of the team has submitted an investigation report dated 19.11.2014 before the Kerala Lok Ayukta. The Kerala Lok Ayukta, vide order dated 9.1.2015, admitted the complaint and issued notice to the respondents other than respondents 1 and 8, against whom no specific findings were found in the report. On 12.1.2015 the petitioner filed a complaint before the third respondent, Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram praying for registration of FIR on the

basis of enquiry report dated 19.11.2014 submitted by the fourth respondent before the Kerala Lok Ayukta. The fourth respondent, who had submitted enquiry report dated 19.11.2014, submitted a clarification report before the Kerala Lok Ayukta, without the Kerala Lok Ayukta having called for any clarification report. The Kerala Lok Ayukta opened the clarification report on 6.2.2015. On the same day an order dated 6.2.2015 was passed by the Kerala Lok Ayukta expressing its displeasure on the report being widely published in the media, both electronic and print, without the report having been opened by the Kerala Lok Ayukta. The Kerala Lok Ayukta directed the Registrar to keep the clarification report in safe custody. The third respondent, vide his letter dated 27.1.2015, communicated to the petitioner that "as the enquiry report is under consideration of the Kerala Lok Ayukta, it is not proper for the Vigilance and Anti-Corruption Bureau to register a case and conduct investigation on the subject at the moment". The

petitioner filed an interlocutory application in Complaint No.964/2014 before the Kerala Lok Ayukta seeking impleadment of 38 persons, including the Chief Minister and former Revenue Minister as additional respondents in the complaint. By order dated 6.2.2015 the Lok Ayukta stated that “as for issuing notice regarding proposal to implead the other persons including the Chief Minister and former Revenue Minister, we are not inclined to issue notice to them now”. Thereafter the petitioner filed an application on 9.2.2015 before the third respondent again requesting to register an FIR with Chief Minister, former Chief Secretary and former Managing Director of the Kerala Water Authority as the initial accused. After submitting the said letter dated 9.2.2015, the petitioner has rushed to this Court by filing this public interest litigation on 12.2.2015.

3. Learned counsel for the petitioner submitted that the investigation report dated 19.11.2014, which was

obtained by the Kerala Lok Ayukta on the complaint submitted by the petitioner, having disclosed a cognizable offence, the third respondent ought to have registered an FIR on the information submitted by the petitioner by letter dated 12.1.2015, Exhibit P1. Learned counsel for the petitioner submits that the mere fact that the complaint is proceeding before the Kerala Lok Ayukta does not preclude the third respondent from registering an FIR. Learned counsel for the petitioner has referred to and relied on Section 9(7) of the Kerala Lok Ayukta Act, 1999. He further submits that in view of the law laid down by the Apex Court in ***Lalithakumari v. State of UP*** [(2014(2) SCC 1)], the information having disclosed a cognizable offence, it was the duty of the third respondent to register an FIR and even if the third respondent intended to hold any preliminary enquiry, the same could have been held within seven days and thereafter an FIR ought to have been registered.

4. Smt.Girija Gopal, learned Special Government Pleader appearing for the State, submitted that this public interest litigation need not be entertained. It is submitted that the present public interest litigation is not a bonafide Writ Petition, rather has been filed with oblique motive. It is submitted that the fact that the petitioner's application to implead the Chief Minister and the former Revenue Minister in his complaint before the Kerala Lok Ayukta and to issue notice to them having expressly not accepted by the Kerala Lok Ayukta by order dated 6.2.2015, who were neither earlier impleaded in the complaint nor anything has been said against them in the investigation report dated 19.11.2014, clearly indicates that the object of the petitioner is to only raise issues for other purposes including publicity. It is submitted that the petitioner having already approached the Kerala Lok Ayukta by filing a complaint, on which preliminary investigation report having also been obtained and the complaint having been admitted, there is no occasion to entertain

this public interest litigation. It is further submitted that the Kerala Lok Ayukta being seized of the matter, no direction needs to be issued to register an FIR as prayed for by the petitioner. It is submitted that the preliminary enquiry report dated 19.11.2014 and the clarification report submitted by the fourth respondent are all confidential information for the purpose of the Kerala Lok Ayukta Act, the said information cannot be allowed to be used by the petitioner. The proceedings before the Kerala Lok Ayukta are judicial proceedings. It is submitted that the Writ Petition deserves to be dismissed with costs.

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

6. Before we consider the prayers made by the petitioner in this public interest litigation, it is necessary to look into the scheme of the Kerala Lok Ayukta Act, 1999. Before the Kerala Lok Ayukta the petitioner has already filed a complaint, which has been admitted and is proceeding.

7. The Kerala Lok Ayukta Act, 1999 has been enacted to make provision for the appointment and functions of certain authorities for making enquiries. The preamble of the Act is as follows:

“Whereas it is expedient to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relating to matters specified in List II or List III of the Seventh Schedule to the Constitution of India, taken by or on behalf of the Government of Kerala or certain public servants in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto.”

8. Section 2 of the Kerala Lok Ayukta Act, 1999 is the definition clause. Section 2(a) defines the word 'action', Section 2(b) defines the word 'allegation' and Section 2(e) defines the word “corruption”, which are to the following effect:

“2. Definitions.- In this Act, unless the context otherwise requires.-

(a) “action” means any action including administrative action taken by way of decision,

recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly;

(b) “allegation”, in relation to a public servant, means any affirmation that such public servant,-

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;

(c) xx xx

(d) xx xx

(e) “corruption” includes anything made punishable under Chapter IX of the Indian Penal Code (Central act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).”

9. Section 7 provides for matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas. Section 7(1) of the Act is quoted as below:

“7. Matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas.- (1)

Subject to the provisions of this Act, the Lok ayhukta and one of the Upa Lok Ayuktas, as may be nominated by the Lok Ayukta for the purpose, may investigate any action which is taken by or with the general or specific approval of-

(i) the Chief Minister; or

(ii) a Minister; or

(iii) a Member of the state legislature; or

(iv) a Secretary; or

(v) an office bearer of a political party at the state level; or

(vi) an officer referred to in sub-clause (iii) of clause (d) of Section 2,

in any case where a complaint involving a grievance or an allegation is made in respect of such action and where there is difference of opinion between the Lok ayhukta and the Upa-Lok Ayukta as so nominated, the action shall be investigated by the Lok Ayukta and both the Upa-Lok Ayuktas together and the decision of the majority therein shall prevail.”

10. Section 9 deals with provisions relating to complaints and investigations. Section 10 empowers the Kerala Lok Ayukta or Upa-Lok Ayuktas to issue search

warrants. Section 11 deals with the evidence. Section 11 (3) provides that any proceeding before the Lok Ayukta and Upa-Lok Ayukta shall be deemed to judicial proceeding within the meaning of Section 193 of the India Penal Code. Section 12 deals with the reports of Lok Ayukta. Section 13 provides for payment of compensation. Section 14 deals with public servant to vacate office if directed by Lok Ayukta. Section 15 deals with initiation of prosecution, which is to the following effect:

“15. Initiation of Prosecution.-
Notwithstanding anything contained in Section 14, if after investigation into any complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the public servant has committed any criminal offence and that he should be prosecuted in a Court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned, if there is no necessity for prior sanction; and, if prior sanction of any authority is required, with the sanction of the appropriate authority.”

Section 17 deals with secrecy of information. Section 21 deals with prosecution for false complaint.

11. The scheme of the Kerala Lok Ayukta Act, 1999 indicates that the said Act is a complete code for enquiring allegation or grievance made by a person before the Kerala Lok Ayukta. The Kerala Lok Ayukta has all powers for investigation and enquiry. The provisions of the Act further indicate that after submission of the report by the Kerala Lok Ayukta, all necessary action can be taken by the Kerala Lok Ayukta for ensuring that the recommendations in the reports are complied with including a declaration that public servant shall vacate the office. The Kerala Lok Ayukta is also fully empowered for initiation of prosecution after investigation of a complaint against public servant. In the present case the petitioner has filed the complaint before the Kerala Lok Ayukta being Complaint No.964/14A. Copy of the complaint filed before the Kerala Lok Ayukta has not been brought on record by the petitioner. However, the complaint submitted before the third respondent dated 12.1.2015 has been brought on record as Exhibit P1. Exhibit P1(a) is

the English translation of Exhibit P1 complaint. Gist of the complaint made by the petitioner before the Kerala Lok Ayukta has been stated by the petitioner in Exhibit P1 complaint dated 12.1.2015 in the following words:

“The accused 1 to 4 misusing the powers as public servants and misusing the powers which they do not possess and issuing government orders using such official powers and also giving directions implementation and recommendations acting as part of conspiracy and committed corruption to aid and help accused 5 and 6 to construct the huge flat complex and mall in the name Artech Empire at Pattoor Desom, Vanchiyoor Village, Thiruvananthapuram and helped them to encroach into the Kerala Water Authority government puramboke property of government revenue and without complying with the act and rules illegally and against law allowed to shift the kerala water authority main sewage pipeline in Vanchiyoor Village and allowing and supporting the illegal construction encroaching the government property belonging to water authority by which accused 5 and 6 gained unlawful pecuniary benefit and made comfortable their illegal act.”

12. The allegation, in substance, is that the private respondents have encroached the State puramboke land belonging to the Kerala Water Authority. From the material on record it does indicate that the extent of such encroachment has been referred to in the report dated 19.11.2014 as 24 cents (0.097 hectare), whereas the report of the Advocate-Commission as noted by the Kerala Lok Ayukta itself indicates that the allegations of encroachment of Government puramboke land may be 12.279 cents (0.049 hectare) or 16.602 cents (0.066 hectare). As noted above, the complaint filed by the petitioner before the Kerala Lok Ayukta has been admitted by order dated 9.1.2015, which is to the following effect:

“We feel that it is high time that the preliminary enquiry be stopped and the complaint is admitted to file. We admit the complaint issue notice to the respondent other than respondents 1 and 8, as we don't find any specific finding against them, in the reports presently submitted.”

13. After the complaint was admitted by the Kerala Lok Ayukta, the petitioner filed application dated 12.1.2015 before the third respondent for registering FIR under Section 154 Cr.P.C.

14. The learned Special Government Pleader has handed over copy of orders dated 6.2.2015 passed by the Kerala Lok Ayukta in Complaint No.964/14, I.A.No.369/15 in C.No.964/14 and I.A.No.835/14 in C.No.964/14. As noted above, the fourth respondent, leader of the investigation team, has submitted a clarification report before the Kerala Lok Ayukta. The Kerala Lok Ayukta and the Upa-Lok Ayukta in their order dated 6.2.2015 has made the following observations:

“We are surprised to find that Sri.Jacob Thomas IPS, the head of the investigation team, which was constituted pursuant to an order we had passed in terms of Section 16(3) of the Lok Ayukta Act, has submitted what is described as a “clarification report”. Such a report was uncalled for. In fact, by our order dated 9.1.2015 we had observed through paragraph 6 as follows:

"We feel that it is high time that the preliminary enquiry be stopped and the complaint is admitted to file. We admit the complaint issue notice to the respondent other than respondents 1 and 8, as we don't find any specific finding against them, in the reports presently submitted."

In fact the very purpose of soliciting the services of Sri.Jacob Thomas and enabling him to constitute an investigation team was to obtain a report for the purpose of deciding whether a case is made out for investigation by the Lok ayukta in terms of Section 9 (3) of the Lok Ayukta act into the complaint. By the filing of separate reports by sri.K.B.Ravi, Sri.G.L. Ajithkumar, sri.P.R.Sarish and sri.Reji Jacob, members of his team by the DBP himself, the above purpose stood served. The report of dr.Jacob Thomas and the department wise reports submitted by the other four officers do not yet form substantive evidence in this complaint. In fact going by the scheme of the Lok Ayukta Act, the proceedings before the Lok ayukta at the post admission stage is somewhat akin to that of a trial in a civil case. This is why at that stage we invite pleadings from the parties and posted the case on reception of pleadings and for taking up steps towards evidence. After adduction of evidence by parties, the case will be posted for hearing and then only Lok ayukta will come to findings and decisions.

2. We are very much disturbed to find that the clarification report submitted by Dr.Jacob thomas os opened by us only today in this court hall, was widely published in the local media both eleectronic and print. We now realise that most of what was reported by the media was incorrect information. The so called clarification report is actually a compilation of the ote file which we notice, was produced before the Lok ayukta pursuant to orders passed by us at the time of commencement of the present proceedings. In other words, the note file (presently produced in the form of computer printed matter was already made available before us in original and it was utilising those original note files that the original reports were submitted by the DGP and his team members. We summoned Sri.K.B.Ravi, Superintendent of Police, Investigation Agency, who after Dr.Jacob Thomas, is the senior most member of the investigation team and who submitted his own separate report relating to survey and Land Records department, basic documents of land correspondence communication and registration department. We expressed our displeasure to him in the matter of the publicity which this clarification report received in the press as we are assure that nobody in the Kerala Lok Ayukta has seen this report before the same was opened by us today in this court hall. On going through this

clarification report we find that no additional persons have been implicated as having committed any maladministration or corruption. This is contrary to what was reported in the press regarding the contents of this report.

3. As already indicated, barring the first paragraph which goes to say that this report forms part of the investigation report already submitted to us and that this report relates clarifications on paragraph 6.9 inferences of the investigation report in complaint No.964 of 2014-A with reference to the note file at the policy level of governance as given below. There is no report at all submitted by Dr.Jacob Thomas implicating any fresh person as guilty. The entire rest thus running to 34 ½ pages is printed copies of the note files as already indicated. Sri.Ravi, Superintendent of Police also would agree before us regarding the above aspect.

The Registrar is directed to keep this clarification report in his safe custody. Placing reliance on the same is unnecessary as the original of the note files are already before us."

The serious displeasure expressed by the Kerala Lok Ayukta and the Upa Lok Ayukta is reflected in the order dated 6.2.2014 as noted above.

15. Section 17 of the Kerala Lok Ayukta Act, 1999 provides for Secrecy of Information. Section 17 is relevant for the present case, which is quoted as below:

“17. Secrecy of information.- (1) Any information obtained by the Lok Ayukta or an Upa-Lok Ayukta or members of his staff, in the course of, or for the purpose of, any investigation under this Act and any evidence recorded or collected in connection with such information, shall be treated as confidential and no Court shall be entitled to compel the Lok ayukta or the Upa-Lok Ayukta or any public servant to give evidence relating to such information or to produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars referred to therein.-

(a) for the purpose of investigation or for any report to be made thereon or for the purpose of any action or proceedings to be taken on such report under Section 12.

(b) for the purpose of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923), or an offence of giving or fabricating false evidence under the Indian Penal Code (Central Act 45 of 1860) or for the purposes of trial of any offence under Section 15 or any proceedings under Section 18; or

(c) for such other purposes as may be prescribed.”

16. Section 17(1) provides that any information obtained by the Lok Ayukta or an Upa-Lok Ayukta or

members of his staff, in the course of, or for the purpose of, any investigation under the Act and any evidence recorded or collected in connection with such information, shall be treated as confidential. The investigation report, which was submitted before the Kerala Lok Ayukta was, thus, a confidential information to the Kerala Lok Ayukta.

17. The Kerala Lok Ayukta and the Upa Lok Ayuktas have expressed serious displeasure on publicity of the said report/clarification report in the media even before the same was opened before the Court. The confidential report given to the Court is for the purpose and object of the Act. What is the value and correctness of the investigation report is yet to be pronounced, since the complaint before the Kerala Lok Ayukta is still pending.

18. Although learned counsel for the petitioner has referred to Section 9(7) of the Kerala Lok Ayukta Act, 1999, which provides that the conduct of an investigation under the Act against a public servant in respect of any action shall not affect such action or any power or duty of

any other public servant to take further action with respect to any matter subject to investigation, there can be no dispute to the intention of Section 9(7), which clearly does not prohibit any action by any other public servant with respect to any matter subject to investigation. But in the present case the issue is as to whether during the investigation of the complaint before the Kerala Lok Ayukta, which was filed by the petitioner himself, this public interest litigation filed by the petitioner be entertained by this Court in exercise of jurisdiction under Article 226 of the Constitution.

19. The petitioner himself is a complainant before the Kerala Lok Ayukta in Complaint No.964/14-A, which has been admitted by the Kerala Lok Ayukta only on 9.1.2015 and the Kerala Lok Ayukta is proceeding further in the matter. As noted above, the Kerala Lok Ayukta has all power to take appropriate action in the complaint, including the jurisdiction to direct for initiation of prosecution or prosecution for false complaint. In so far as

the judgment of the Apex Court in ***Lalithakumari's case (supra)***, there cannot be any dispute to the proposition as laid down by the Apex Court in the said case.

20. In the above background of the facts as noted above, we are of the view that this is not a fit case to be entertained as public interest litigation at the instance of the petitioner, whose complaint on the same allegation, on the basis of which he has made application before the third respondent, is pending before the Kerala Lok Ayukta. We, thus, refuse to entertain the Writ Petition as a public interest litigation.

The Writ Petition is dismissed.

**Sd/-
ASHOK BHUSHAN
ACTING CHIEF JUSTICE**

**Sd/-
A.M.SHAFFIQUE
JUDGE**

vgs