

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 10733 of 2015 (N)

PETITIONER :

**THALAYOLAPARAMBU GRAMA PANCHAYATH,
THALAYOLAPARAMBU P.O., VAIKOM,
KOTTAYAM DISTRICT, REPRESENTED BY ITS SECRETARY.**

**BY SRI.T.A.SHAJI,SENIOR ADVOCATE
ADVS. SMT.NAMITHA JYOTHISH
SRI.V.VINCENT DIDACOSE**

RESPONDENT(S):

- 1. JOSE JACOB, S/O.JACOB,
VELICKAKATHU HOUSE, THALAYOLAPARAMBU P.O.,
VADAYAR VILLAGE, VAIKOM TALUK, KOTTAYAM,
PIN - 686 605.**
- 2. THE KERALA LOK AYUKTA, THIRUVANANTHAPURAM,
REPRESENTED BY ITS REGISTRAR, PIN - 695 001.**
- 3. M/S.CIUDAD BUILDERS PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
38/602, PIOUS ROAD, EDAPALLY, KOCHI - 24.**
- 4. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.**

**R1 BY ADVS. SRI.ABRAHAM P.GEORGE
SRI.M.RAJENDRAN NAIR
SMT.M.SANTHY**

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

**R3 BY ADVS. SRI.M.S.IMTHIYAZ AHAMMED
SRI.SHIRAZ ABDULLA**

**R4 BY ADDL. ADVOCATE GENERAL SRI.K.A.JALEEL
BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS)
NO.298/2004/LLSGD DATED 13/10/2004.
- EXT.P2: TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS)NO.244/09/LSGD
DATED 11/12/2009.
- EXT.P3; TRUE COPY OF THE JUDGMENT DATED 21/05/2012 IN WPC.9203/2012
BY THIS HON'BLE COURT.
- EXT.P4: TRUE COPY OF THE JUDGMENT DATED 01/07/2013 IN
W.A.NO.2094/2012 BY THIS HON'BLE COURT.
- EXT.P5: TRUE COPY OF THE ORDER DATED 20/11/2012 OF THE DISTRICT
COLLECTOR WTHDRAWING THE STOP MEMO.
- EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 12/01/2015 OF THE
PRINCIPAL SECRETARY TO GOVERNMENT.
- EXT.P7: TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT
ALONG WITH THE INTERLOCUTORY APPLICATION BEFORE THE
KERALA LOK AYUKTA.
- EXT.P8: TRUE COPY OF THE ORDER DATED 12/03/2015 BY THE UPA LOK
AYUKTA.
- EXT.P9: TRUE COPY OF THE SUMMONS ISSUED ON 21/03/2005 TO THE
PETITIONER.

RESPONDENT(S)' EXHIBITS

- EXT.R1(A) COPY OF THE COUNTER AFFIDAVIT FILED BY THE GOVERNMENT IN
WP(C).NO.4420/2013.

/TRUE COPY/

P.A.TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.10733 of 2015

Dated this the 07th day of July, 2015.

JUDGMENT

The only question raised in the above writ petition is with respect to the jurisdiction of the Kerala Lok Ayuktha in entertaining a complaint filed by the 1st respondent herein, against the petitioner Panchayat and the 3rd respondent. Admittedly, even going by the interim order issued at Ext.P8, the complaint is on the ground of an allegation of mal-administration in the award of work of construction of Thalayolapparambu Bus Stand Complex on Build, Operate and Transfer (B.O.T.) basis.

2. Chapter XXV B of the Kerala Panchayat Raj Act, 1994 [for brevity, Act of 1994], by Section 271G, constituted an "Ombudsman" and defined "mal-administration" in Clause 271F (1)(e) as follows:-

"271F(1)(e). 'Maladministration' means action taken or purporting to have been

taken in the exercise of administrative function in any case,-

(i) Where such action, administrative procedure or practice governing such auction is unreasonable, unjust, oppressive, discriminatory or nepotistic and will make illegitimate, gain or loss or will deny deserving benefits; or

(ii) Where there is wilful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by mal-feasance or misfeasance."

3. In such circumstances, any allegation of mal-administration with respect to a Panchayat or its Officers has to be canvassed before the Ombudsman. The Lok Ayuktha would not have jurisdiction going by Section 271 O, which is also extracted hereunder:

"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."

4. The respondent has a case that since two types of complaints are provided under Section 271 O of the Act; one relating to allegation against a 'public servant' and the other against 'Local Self Government Institution' and the prohibition contained in sub-section(3) of Section 271 O only relates to a complaint against a public servant, the present complaint made against the Local Self Government Institution is maintainable. However, Section 271 O(1) specifically takes away the jurisdiction of Lok Ayuktha, both with respect to complaints relating to a public servant and a Local Self Government Institution. In such circumstance, it cannot be said that a complaint against a public servant alone can be maintained

before the Ombudsman.

5. The proceedings issued against the petitioner is against the specific provisions brought in the Act of 1994, which provision brought in by way of an amendment, is a *non obstante* clause. Ext.P8 order will stand set aside and it is declared that the Lok Ayuktha does not have jurisdiction to deal with the subject complaint.

The writ petition is allowed, however leaving open the remedy of the petitioner to agitate the allegations, before the Ombudsman, if so advised. Parties to suffer their respective costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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