

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 22249 of 2007 (W)

PETITIONERS :

1. THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, VELLAYAMBALAM
THIRUVANANTHAPURAM.
2. ASSISTANT EXECUTIVE ENGINEER,
SOUTH SUB DIVISION, THIRUVANANTHAPURAM.
3. THE ASSISTANT ENGINEER,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM.

BY ADV. SMT.AMBIKA DEVI, SC, KWA

RESPONDENTS :

1. D.RAJENDRAN,
SUMATHY MANDIRAM, PETTAH, THIRUVANANTHAPURAM.

*ADDL.R2 IMPLADED

ADDL.R2. KERALA LOK AYUKTA, REPRESENTED BY ITS REGISTRAR
THIRUVANANTHAPURAM

CAUSE TITLE IS CORRECTED VIDE ORDER DATED 25/7/07 IN I.A 10116/07

R BY ADV. SRI.MOHAN PULIKKAL

R BY ADV. SMT.MANJU RAJAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF CONSUMER PERSONAL LEDGER, RELEVANT PAGES

EXT.P2 : COPY OF BILL NO.1/03 DATED 16/1/03 ISSUED TO THE 1ST RESPONDENT

EXT.P3 : COPY OF THE COMPLAINT NO.757/05 DATED 14/2/2005 FILED BY THE 1ST RESPONDENT BEFORE THE HON'BLE LOK AYUKTA

EXT.P4 : COPY OF THE ORDER PASSED BY THE HON'BLE LOK AYUKTA DATED 7TH DAY OF MARCH 2007

EXT.P5 : COPY OF THE NOTICE FOR PERSONAL APPEARANCE ISSUED TO THE 1ST PETITIONER BY THE DEPUTY REGISTRAR OF KERALA LOK AYUKTA THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS :

EXT.R1(a) : COPY OF RECEIPT DT.20.7.2000 ISSUED BY THE PETITIONERS

EXT.R1(b) : COPY OF LETTER DT.20.4.2003 SUBMITTED BY THE RESPONDENT TO THE 3RD PETITIONER

EXT.R1(c) : COPY OF CONSUMER METERCARD NO.PWS 42 OF THE PETITIONER

EXT.R1(d) : COPY OF THE SLIP ISSUED BY 3RD PETITIONER

EXT.R1(e) : COPY OF BILL DT.16.01.2003 ISSUED BY THE 3RD PETITIONER

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.22249 of 2007

Dated this the 20th day of March, 2015

J U D G M E N T

The petitioners have filed this writ petition seeking the following reliefs :

- i. to call for the records leading to Ext.P4 and Ext.P5 and quash them by the issuance of a writ of certiorari, any other appropriate writ, order or direction.
- ii. to issue any other appropriate writ, order or direction, this Hon'ble Court deems fit in the circumstances of the case.

2. The short facts necessary for our purpose are summarised as under. The 1st petitioner is a statutory autonomous body conferred with the duty of supplying water. The 1st respondent is a consumer. The 1st respondent was granted a consumer connection on 03.06.1985 with Consumer No.TWS 42 under the non domestic category. He approached the 2nd respondent Kerala Lok Ayukta by submitting Ext.P3 petition complaining of arbitrary and illegal action on the part of the petitioners in disconnecting his water supply on the allegation that, he had not paid water charges, which according to him was demanded without any authority. The case of the 1st respondent was that, from April 1999 onwards, his water connection was remaining disrupted and that, he had not consumed any water as alleged. Callous negligence

and illegality were alleged against the action that was challenged. The complaint was considered by the Upa-Lok Ayukta and an order Ext.P4 was passed directing the petitioners to recompute the water charges due from the 1st respondent for the period from August 1998 to April 2003. It was further directed to restore the water connection on payment of the amount due as per the revised invoice to be issued on such re-computation. Since no action taken report was filed before the Upa-Lok Ayukta as directed, personal appearance of the petitioners was ordered by Ext.P5. It was under the said circumstances that this writ petition was filed.

3. This writ petition was admitted and an order of stay of Ext.P5 was granted. The said interim order is still in force.

4. The contention of the petitioners is that, the Upa-Lok Ayukta had no jurisdiction to entertain Ext.P3 complaint submitted by the 1st respondent. Therefore, the first question to be considered is whether the 2nd respondent had jurisdiction to entertain Ext.P3 complaint. According to the learned counsel for the 1st respondent Sri.Mohan Pulikkal, the 2nd respondent had the jurisdiction to entertain Ext.P3 complaint.

5. Section 7 of the Kerala Lok Ayukta Act 1994 (hereinafter referred to as 'the Act' for short) reads as follows :

“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 Ayukta 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 Ayukta 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,

(2) Subject to the provisions of this Act, an Upa-Lok Ayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being the Chief Minister or a Minister or a Member of the State Legislature or a Secretary or an office bearer of a political party at State level or 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 actions or such action can be or could have been in the opinion of the Upa-Lok Ayukta, the subject of a grievance or an allegation.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Lok Ayukta or an Upa-Lok Ayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the Government.

(4) The Lok Ayukta may, by general or special order, assign to each of the Upa-Lok Ayuktas the matters which may be

investigated by them under this Act.

(5) Notwithstanding anything contained in sub-sections (1) to (4), when an Upa-Lok Ayukta is unable to discharge his functions owing to absence, illness or any other cause, his functions may be discharged by the other Upa-Lok Ayukta, and in the absence of both, by the Lok Ayukta

(6) Notwithstanding anything contained in any other provisions of this Act, no investigation made by an Upa-Lok Ayukta under this Act and no action taken or things done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

(7) For the removal of doubts, it is hereby clarified that the term 'Lok Ayukta' wherever it is used in this Act, in relation to any of the persons referred to in sub-section (1), shall mean the Lok Ayukta and, as the case may be, one or both of the Upa-Lok Ayuktas as provided in that sub-section."

Sub Section 2 of the above provision confers jurisdiction on the Upa-Lok Ayukta to investigate any action which is taken by, or with the general or specific approval of any public servant where a complaint involving a grievance or an allegation is made in respect of such actions or such action can be or could have been in the opinion of the Upa-Lok Ayukta, the subject of a grievance or an allegation. The expressions "grievance" and "allegation" have been defined in the Act. Section 2 (b) defines allegation as follows :

- (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;

Section 2(h) defines grievance as follows :

- (h) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;

Section 2(k) defines maladministration as follows :

- (k) "mal-administration" means action taken or purporting to have been taken in the exercise of administrative functions in any case where,-
 - (i) such action or the administrative procedure or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) there has been wilful negligence or undue delay in taking such action or the administrative procedure or practice adopted in such action involves undue delay;

5. It is clear from the above provisions that, the 2nd respondent, Upa-Lok Ayukta, has been conferred with sufficient jurisdiction to undertake an investigation on Ext.P3 complaint. The above provisions confer specific powers on the Upa-Lok Ayukta to investigate the said grievance. What the Upa-Lok Ayukta has done by Ext.P4 is only to direct a re-computation of the water charges actually due from the petitioner. I do not find any infirmity in the said order. It is also worth noticing that, a learned Single Judge of this Court has in

Commissioner of Police v. Abida Beevi [2006 (2) KLT 112] held that, even assuming the Lok Ayukta had no jurisdiction, if the order passed by it renders justice, this Court need not interfere with it. In the present case as already found, the 2nd respondent had the necessary jurisdiction to pass Ext.P4.

In view of the above, the petitioners are not entitled to any of the reliefs claimed in this writ petition. The writ petition is, therefore, dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV