

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 21907 of 2015 (K)

PETITIONER:

**MERCY BAI, AGED 59 YEARS,
D/O. ESILY, SPECIAL OFFICER,
DR.SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,
KARAKKONAM, NEYYATTINKARA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.T.PRADEEP,
SMT.M.BINDUDAS.**

RESPONDENTS:

- 1. SHEM P. ISAC,
S/O. REV. S.ISAC, PUNCHIRIYAKAM,
CHITTAZHA, VATTAPARA P.O.,
THIRUVANANTHAPURAM-695 028.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 3. V.S. SIVAKUMAR,
MINISTER OF HEALTH & FAMILY WELFARE,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695 001.**
- 4. SHAJI,
ADDITIONAL SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695 001.**
- 5. RT. REV. A.DHARMARAJ RASALAM, CHAIRMAN,
DR. SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,
KARAKKONAM, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.**
- 6. DR. BENET ABRAHAM, DIRECTOR,
DR. SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,
KARAKKONAM, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.**

WP(C).No. 21907 of 2015 (K)

- 7. DR. SAMSON NESIAH, PRINCIPAL,
DR. SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,
KARAKKONAM, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.**
- 8. KERALA LOK AYUKTA,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM-695 001.**

**R1 BY ADVS. SRI.T.B.HOOD,
SMT.M.ISHA.**

**R2 BY SR. GOVT. PLEADER SRI.ROSHAN D.ALEXANDER.
R8 BY ADV. SMT.RENU. D.P., SC, LOK AYUKTA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1- TRUE COPY OF COMPLAINT DATED 13-03-2014 IN COMPLAINT NO. 725/2014.
- EXHIBIT P2- TRUE COPY OF PRELIMINARY OBJECTION TO MAINTAINABILITY OF COMPLAINT DATED 13-06-2014.
- EXHIBIT P3- TRUE COPY OF OBJECTION TO EXT. P2 BY THE COMPLAINANT.
- EXHIBIT P3(A)- TRUE COPY OF AFFIDAVIT SWORN ON 30-07-2014 ACCOMPANIED WITH PRODUCTION OF EXT. P8 IN THE COMPLAINT.
- EXHIBIT P3(B)- TRUE COPY OF AFFIDAVIT SWORN ON 16-09-2014 ACCOMPANIED WITH PRODUCTION OF EXT. P9 IN THE COMPLAINANT.
- EXHIBIT P4- TRUE COPY OF ORDER DATED 08-01-2015 IN COMPLAINT NO. 725/2014 BY KERALA LOK AYUKTA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.21907/2015**

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Dated this the 11th Day of November, 2015

J U D G M E N T

This writ petition is filed challenging the decision of the Lok Ayukta, overruling an objection raised by the petitioner against a complaint filed by the first respondent before the Lok Ayukta. Ext.P4 is the order impugned.

2. The first respondent approached the Lok Ayukta raising a complaint under Section 7(2) of the Lok Ayukta Act, 1999. The petitioner is the Authorised Officer of the Dr.Somervell Memorial CSI Medical College, a self financing medical college. The medical college entered into a consensual agreement with the Government for admission to the MBBS and other medical programmes. The

agreement also has been approved by the Admission Supervisory Committee for Professional Colleges constituted under the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 (Act 19 of 2006).

3. The first respondent contended before the Lok Ayukta that the tuition fee fixed by the petitioner's college for the Government merit quota and the management quota is same. It is submitted that the Government entered into an agreement with other Self Financing Colleges, wherein the fee structure for the Government merit quota is Rs.1,50,000 and the management quota is Rs.6,50,000/-. Thus, it is alleged that in petitioner's college there is no

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Government fee rate but only a higher flat rate, both for management and Government quota students. It is further alleged that the Secretary to the Government, Health and Family Welfare Department, the Minister for Health and Family Welfare and the Additional Secretary to Government, Health and Family Welfare Department abused their position as public servant for use of favouritism, nepotism and corruption for petitioner's college. It is to be noted, apart from the allegation of different fee structure, there is no allegation in what manner the officials have abused their official position and the same have not been seen pleaded in the complaint.

4. The petitioner raised a question regarding maintainability of the complaint. In view of the approval granted by the Admission Supervisory Committee for Professional Colleges, the Lok Ayukta

overruled the preliminary objection and observed in para.19 as follows:

“19. Functioning of the Lok Ayukta and that of the Fee Regulatory Committee are not the same or similar. Power conferred on this Forum by the Kerala Lok Ayukta Act has to be exercised to find whether allegations of abuse of power, corrupt practices, improper motives and maladministration attributed to public servants are true or not. Such a function is not entrusted to the Fee Regulatory Committee. Hence the Fee Regulatory Committee cannot be cited as an alternate forum to enter findings in respect of the allegations made in this complaint. We also note in this context sub-section (2) of Section 24 of the Kerala Lok Ayukta Act which provides that the provisions of the said Act shall be in addition to the provisions of any other enactment or any rule or law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under the said Act, in respect of any action and that nothing in the said Act shall limit or affect the right of such person to avail of such remedy. Power conferred under sub-section (5) of Section 9 of the Kerala Lok Ayukta Act is discretionary and it is for this Forum to get satisfied that other remedies, if any, available to the complainant are such that, in the circumstances of the

case, it would be more proper for the complainant to avail of such remedies. We are not satisfied, in the circumstances of this case, that the complainant shall be relegated to any other remedy, especially for the reason that the nature of the investigative power conferred on this Forum and the impact of the investigation thus conducted are not comparable with the jurisdiction or power of investigation conferred on any other forum subordinate to the Constitutional Courts."

5. The learned counsel for the petitioner, Shri R.T.Pradeep would urge before this Court that the right to fix the fee is conferred on the Self Financing College by various judgments of the Hon'ble Supreme Court, subject to twin objective tests, which are, transparency in admission and non exploitative fees. Therefore, when the Admission Supervisory Committee for Professional Colleges, having approved the fee structure, the same cannot be the subject matter of further investigation by the Lok Ayukta unless there is any

specific allegation of personal gain alleged against the officials. It is further argued that the allegations in the complaint would clearly indicate that the decision of the petitioner's college to have a fee structure different from that of the other self financing colleges is the main grievance of the complainant.

6. On the other hand, the learned counsel for the complainant before the Lok Ayukta would argue that the allegations in the complaint must be subjected to an investigation. It is further submitted that there is a specific pleading in the complaint that the official respondents have abused their position for entering into an agreement with the petitioner's college. Therefore, The Lok Ayukta is perfectly justified in holding that the complaint is maintainable and

the veracity of the complaint can be verified only through investigation.

7. It is appropriate to refer Section 2(b) of the Kerala Lok Ayukta Act which 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."

8. The complaint in this matter can be entertained by the Lok Ayukta only on satisfying any of the criteria based on the above

section. It is to be noted that the complainant as such has espoused a cause, on a larger public interest. As noted from the pleadings, the main grievance of the complainant is regarding different fee structure adopted by the Government with the petitioner's college. The complainant's case is that in respect of the other Government Colleges, lesser fees have been collected from the admitted students. However, it is to be noted that higher fees are levied from the management quota students in those colleges. The learned counsel for the petitioner points out that different fee structure adopted by the self financing colleges is always dragged into a legal battle alleging cross-subsidy and therefore, the Management have decided to have a uniform fee structure for the Government and Management students. It is to be noted that the Admission Supervisory Committee

for Professional Colleges did not find any fault with the fee structure adopted in the petitioner's college. Therefore, the only question now remains is whether the allegations in the complaint would warrant investigation by the Lok Ayukta.

9. There is no single allegation in the complaint, in what manner the officials have abused their official position to favour the petitioner's college. The verbatim reproduction of the statutory provision as such itself will not constitute a complaint as contemplated under the Kerala Lok Ayukta Act. The complaint as a whole has to be read to understand the cause of action. As it is discernible, the grievance of the petitioner is on account of the different fee structure for the petitioner's college comparing to other self financing colleges.

10. The self financing colleges do not have a legal duty to enter into an agreement with the Government. They are free to admit students on a fee determined by them subject to the inquiry conducted by the Admission Supervisory Committee for Professional Colleges as to the fee structure. The Self Financing College, however, has chosen to enter into an agreement and surrendered the seats to the Government to benefit larger students' community and to ensure that admission are made in a transparent manner. A kind gesture or a good intention, to surrender seats to the Government cannot be held against them to contend that meritorious students will suffer on account of higher fee structure fixed for the Government allotted students. As already noted these seats could have been filled by the petitioner's college without surrendering it to the Government.

Therefore, any such agreement entered by the Self Financing Institute cannot be subjected to any investigation by the Lok Ayukta unless there is any specific allegation raised in the complaint establishing "allegation" as referred under Section 2(b) of the Kerala Lok Ayukta Act. Such complaint, prima facie, is unsustainable. The Lok Ayukta has therefore, erred in holding that abuse of power, corrupt practices, improper motives could be investigated by the Lok Ayukta without there being any specific pleading in that regard. Therefore, the writ petition is allowed, the impugned order is set aside and the complaint filed before the Lok Ayukta is quashed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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