**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936**

**WP(C).No. 32208 of 2009 (U)**

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**PETITIONER(S):**

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1. **THE BRANCH MANAGER,**
   **KERALA STATE FINANCIAL ENTERPRISES LTD.,**
   **MANACAUD BRANCH, THIRUVANANTHAPURAM.**

2. **THE MANAGER DIRECTOR,**
   **KERALA STATE FINANCIAL ENTERPRISES LTD.,**
   **THRISSUR.**

**BY SRI.BABU VARGHESE (SR.)**
**ADVS.SRI.M.SASINDRAN**
**SRI.JOHNSON T.JOHN**

**RESPONDENT(S):**

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1. **K.ANNAPOORNESWARI AMMA,**
   **THEKKAE VENGARA VEEDU,**
   **THIRUVALLOM P.O.,**
   **THIRUVANANTHAPURAM - 695027.**

2. **THE KERALA LOK AYUKTA,**
   **THIRUVANANTHAPURAM,**
   **REPRESENTED BY ITS, REGISTRAR.**

**R1 BY ADV. SRI.J.S.AJITHKUMAR**
**R2 BY GOVERNMENT PLEADER SMT.LILLYK.T**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**mbr/**

**WP(C).No. 32208 of 2009 (U)**
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**APPENDIX**

**PETTIONER'S EXHIBITS:**
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**EXHIBIT P1 :** **A TRUE COPY OF THE APPLICATION IN COMPLAINT NO.860 OF 2008 FILED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.**

**EXHIBIT P2 :** **A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER.**

**EXHIBIT P3 :** **A TRUE COPY OF THE REPLICATION FILED BY THE PETITIONER IN COMPLAINT NO.860 OF 2008.**

**EXHIBIT P4 :** **A TRUE COPY OF THE ADDITIONAL COUNTER STATEMENT FILED BY THE PETITIONERS IN COMPLAINT NO.860 OF 2008.**

**EXHIBIT P5 :** **A TRUE COPY OF THE ORDER DATED 23.10.2009 ISSUED BY THE LOK AYUKTA IN COMPLAINT NO.860 OF 2008.**

**RESPONDENT'S EXHIBITS: - NIL**
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**/TRUE COPY/**

**P.A. TO JUDGE**

**mbr/**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No. 32208 of 2009 (U)**

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Dated this the 6th day of February, 2015

**JUDGMENT**

The petitioner is a non banking financial company conducting Chits/Kuries. Along with charges for the services rendered by it to the subscribers, by way of Foremans' commission, the petitioner was also collecting the service tax, paid by it to the Central Excise Department, on the said Foremans' commission. The tax amount was collected along with the Foremans' commission from the subscriber to the chit. The 1st respondent was a subscriber to a chit that was conducted by the petitioner, and on finding that the petitioner had collected amounts from him by way of service tax on the Foremans' commission charged from him, approached the 2nd respondent/Lok Ayuktha with a complaint.

2. By Ext.P5 order the 2nd respondent/Lok Ayuktha found that, the action of the petitioner, in recovering service tax on Foremans' commission from the subscriber of the chit, amounts to a maladministration. It, therefore, directed the petitioner not to realise any amounts towards service tax from the complainant, and further to re-fund the amounts collected from the 1st respondent within a period of one month from the date of receipt of a copy of the order. Ext.P5 order of the 2nd respondent/Lok Ayuktha is impugned in the present writ petition, inter alia, on

the ground that, in issuing the directions in Ext.P5 order, the 2nd respondent/Lok Ayuktha had exceeded its jurisdiction under the Kerala Lok Ayuktha Act, 1999. It is also contended that, the service tax being an indirect tax, it was open to the petitioner to pass on the said tax to the subscriber of the chit, and collect the same along with Foremans' commission that was collected from the subscriber of the chit .

3. A counter affidavit has been filed on behalf of the 1st respondent wherein it is stated that, insofar as the contract between the petitioner and the 1st respondent did not contain an express clause that enabled the petitioner to collect the service tax amounts from the 1st respondent, the petitioner’s action in collecting the said amounts from the 1st respondent, was wholly illegal. As regards the issue of jurisdiction of the Lok Ayuktha, the 1st respondent would submit that, the illegal action on the part of the petitioner in collecting amounts that were not due to it from the 1st respondent, virtually amounted to maladministration and misappropriation for unlawful gain and, hence, it was an aspect that fell within the jurisdiction of the Lok Ayuktha under the Kerala Lok Ayuktha Act, 1999.

4. I have heard Sri.Babu Varghese, learned senior counsel for the petitioners, Sri.J.S.Ajith Kumar, learned counsel for the 1st

respondent and Smt.Lilly K.T., learned Government Pleader for the 2nd respondent.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that the jurisdiction of the Lok Ayuktha under the Kerala Lok Ayuktha Act, 1999, is subject to limitations that are specified in Section 8 of the Act. Section 8 clearly states that, the Lok Ayuktha or an Upa Lok Ayuktha shall not conduct any investigation under the Act, in the case of complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule. Under the Second Schedule to the Kerala Lok Ayuktha Act, 1999, administrative action, taken in matters, which arise out of the terms of a contract, governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations, is specified as one of the matters in respect of which, the Lok Ayuktha shall not conduct any investigation under the Act.

6. On a perusal of Ext.P5 order of the Lok Ayuktha, it is clear that, there is no dispute with regard to the fact that, the transaction between the petitioner on the one hand, and the 1st respondent on the other, was contractual in nature. The entitlement of the

petitioner to collect tax amounts from the 1st respondent would involve an interpretation of the contractual document and in that sense, it was an issue that concerned the interpretation of a contract document. In that view of the matter, I am of the view that, it was not open to the 2nd respondent to entertain the complaint of the 1st respondent, in respect of a contractual matter. That apart, it is also settled law that, the power of the Lok Ayuktha does not extend to issuing any positive directions, as part of the final order passed by him, and he has neither any adjudicatory power nor power to enforce his recommendations or findings. In taking the said view, I am fortified by the decisions of the Division Bench of this Court in **<u>State of Kerala v. Bernard</u> [2002 (3) KLT 254]** and **<u>University of Kerala v. Parvathy Krishna</u> [2014 (2) KLT 233].** Thus, I am of the view that, Ext.P5 order of the 2nd respondent, cannot be legally sustained. The said order is, therefore, quashed and the writ petition is allowed. No order as to costs.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

AMV/07/02/