



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Cr1.O.P. (MD) .No.22773 of 2015

S.Pramesh

: Petitioner

Vs.

1.The Superintendent of Police,
Southern Range,
Directorate of Vigilance and Anti Corruption,
Chennai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Tirunelveli.

: Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, directing the second Respondent to register a case on the basis of the complaint given by the Petitioner on 12.10.2015.

For Petitioner

: Mr.P.R.Prithiviraj

For Respondents

: Mr.P.Kandasamy

Government Advocate (crl. Side)

ORDER

Heard both sides.

2.The Petitioner has filed the present Criminal Original Petition praying for passing of an order by this Court in directing the second Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli to register a case on the basis of the complaint given by him, on 12.10.2015.

3.According to the Petitioner, his area viz., 'Pattamadai' comes under the Pattamadai Town Panchayat, Tirunelveli District. One Alla Pitchai is the Chairman of the said Town Panchayat. The grievance of the Petitioner is that the said Alla Pitchai/Chairman of Pattamadai Town Panchayat, Tirunelveli District is not discharging his duty in a proper manner and used to commit of malpractices against the welfare of the said Town Panchayat. More over, on 09.11.2012, the said Chairman had obtained a building plan approval in his wife's name, viz., Sheik Seeniammal in a forged manner and added further, he used the Government fund as Chairman of the said Town Panchayat and had constructed his house in an illegal fashion. That apart, he had obtained water connection as well as levied water tax receipts in his favour in an illegal manner.



4.The prima facie plea taken on behalf of the Petitioner is that the said Alla Pitchai after becoming the Chairman of the Town Panchayat had acquired many property and also that he purchased a costly car and a Bike. By the said acts of Alla Pitchai/Chairman of Pttamadai Town Panchayat, the public of the said Panchayat, who are residing in the Panchayat are very much affected.

5.At this juncture, the Learned counsel for the Petitioner submits that the Petitioner being a public interested person had lodged a complaint before the second Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli on 12.10.2015 as well as made complaint through registered post on 14.10.2015, but the second Respondent had not taken any steps to register a case. Hence, it is represented on behalf of the Petitioner that the Petitioner has focussed the present Criminal Original Petition praying for passing of an order by this Court in directing the second Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli to register a case on the basis of the complaint given by him, dated 12.10.2015.

6.In response, the Learned Government Advocate (crl. Side) appearing for the Respondents contends that the Petitioner's petition, dated 12.10.2015, addressed to the second Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli, was received on 14.10.2015 and the same was forwarded to the Directorate of Vigilance and Anti Corruption, Chennai, on 26.10.2015.

7.Advancing his arguments, the Learned Government Advocate (crl. Side) submits that after processing the Petitioner's petition, dated 12.10.2015 by the Directorate of Vigilance and Anti Corruption, Chennai, it came to light that the allegations levelled against public servants are coming under the ambit of 'Local Bodies'. Continuing further, it is the categorical stand of the Respondents that as per the ingredients of the Tamil Nadu Local Bodies Ombudsman (Act 27 of 2014), Act, 2014, the institution of Ombudsman was established with a view to make enquiries into the allegations of corruption for maladministration against such public servants coming under the local bodies.

8.At this juncture, the Learned Government Advocate (crl. Side) brings it to the notice of this Court that the Tamil Nadu Local Bodies Ombudsman (Manner of filing inquiry and disposal of complaints) Rules, 2015, specifically provide for furnishing of complaints in the prescribed format by the complainant. As such, the original petition, dated 12.10.2015 of the Petitioner, addressed to the second Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli, was returned back to the Petitioner for pursuing further course of action in terms of the ingredients of Tamil Nadu Local Bodies Ombudsman Act, 2014, along with the copy of the Act, Rules and proforma.



9. It is to be noted that Section 2(2) of the Tamil Nadu Local Bodies Ombudsman (Act 27 of 2014), Act, 2014, speaks of 'allegation', which run thus:-

"(a) in relation to a public servant, means any affirmation that such public servant.-

(i) has abused position as such for 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;

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity;

(iv) is guilty of any action as public servant which facilitates or causes to make any loss of the fund or other property of the local bodies; or

(v) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs;

(b) in relation to a local body, means and includes any affirmation that such local body has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the orders and directions of the Government;"

10. Section 2(3) of the Act deals with 'complaint' means a statement of allegation that a public servant or a local body is guilty of corruption or maladministration and includes any reference to an allegation in respect of which *suo-motu* enquiry has been proposed or recommendation for enquiry has been made by the Government.

11. Section 2(4) of the Act deals with 'corruption' which includes anything punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988.

12. Section 2(7) of the Act enjoins 'local body' meaning as under:-

"(i) The Municipal Corporation of Chennai, Madurai, Coimbatore, Tiruchirappalli, Tirunelveli, Salem, Tiruppur, Erode, Vellore, Thoothukudi, Thanjavur, Dindigul or any other municipal corporation that may be constituted under any law for the time being in force; or

(ii) A Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920; or

(iii) A District Panchayat constituted under the Tamil Nadu Panchayats Act, 1994."

13. Section 2(10) of the Act refers to 'Ombudsman' which means an authority for making enquiries in respect of charges on any action involving corruption or maladministration or irregularities in the discharge of administrative functions in accordance with the provision of the relevant law, by the local bodies and public



servants working under the local bodies and for the disposal of such complaint.

14. Section 2(11) speaks of public servant meaning of an elected member of the local body including its Chairperson or Vice-Chairperson, Mayor or Deputy Mayor and includes the officers and employees working under the local body.

15. Section 7 of the Act, deals with the functions of the Ombudsman, which runs as under:-

"(i) enquiry into any written complaint from the Government or that has come to the notice of the Ombudsman in which corruption or maladministration of a public servant or a local body is alleged.

(ii) pass an order on the proved allegation in the following manner, namely:-

(a) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate investigating agency for necessary action;

(b) where the irregularity involves loss of the fund of the local body, order recovery of such loss from those who are responsible for such irregularity;

(c) where the irregularity is due to wilful negligence or dereliction of duty of any officer or employee of the local body, recommend for department action by the appropriate authority under the relevant rules."

16. Section 8 of the Act, refers to the powers of Ombudsman, which are extracted as under:-

"(1) The Ombudsman shall, for the purpose of any enquiry, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of complainant or witnesses and examining him/her on oath;

(b) requiring the discovery and production of any relevant and necessary document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record, or copy thereof from any Court or office;

(e) issuing commission for the examination of witness and documents; and

(f) any other matter which may be prescribed.

(2) Where the Ombudsman finds after enquiry that the allegation contained in a complaint is without any substance, he/she may, by an order, direct the complainant to pay to the opposite party an amount specified in the order by way of cost.

(3) Where the allegation contained in a written complaint is about the loss of the fund of the local body, the Ombudsman may, during enquiry, collect evidence,



determine the loss and direct in his/her order, the amount to be realised from the person responsible.

(4) If the amount payable as per the order passed by the Ombudsman under sub-section (2) or sub-section (3) is not paid within the period specified by him/her, the same shall be recovered as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864."

17. Section 10 of the Act reads as follows:-

"(1) Notwithstanding anything contained in this Act, the Government may refer any allegation of corruption or maladministration against the local body or a public servant which is within their knowledge or brought to their notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under this Act.

(2) The Ombudsman may, on receipt of a complaint, examine the complaint and supporting documentary proof and where there is a prima facie case, he/she may enquire into it.

(3) The Ombudsman shall not enquire into matters relating to.-

(a) any matter in respect of which a formal and public enquiry has been ordered by the Government.

(b) any matter in respect of which an enquiry has been ordered under which Commission of Inquiries Act, 1952 or any matter pending before a Court;

(c) any complaint filed after the expiry of five years from the date on which the occurrence is said to have taken place.

(4) After an enquiry, if the Ombudsman is satisfied that,-

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there is no sufficient ground to continue proceedings; or

(c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case,

he/she may reject the complaint after recording his/her findings stating the reason therefor, and communicate the same to the complainant.

(5) The Ombudsman shall, subject to the provisions of this Act and the rules made thereunder, have power to regulate its procedure by fixing the time and place of sitting."

18. It is to be pertinently pointed out that Section 11 of the Act significantly speaks of initiation of prosecution and the same is mentioned as under:-

(1) If, after an enquiry, the Ombudsman finds that there is a prima facie case against a public servant involving a criminal offence, the Ombudsman may refer the



complaint and the findings with recommendation to the appropriate investigating agency.

(2) The appropriate investigating agency, on completion of investigation, shall initiate prosecution after obtaining sanction from the competent authority."

19. Section 12 of the Act deals with disposal of 'complaints' and the same is as follows:-

"(1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, namely:-

(a) order the recovery of loss caused to the local body from the person responsible;

(b) order the recovery of loss from the accused failing which order for recovery of the amount as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864;

(c) refer the complaint to the appropriate authority to take disciplinary action for wilful negligence or dereliction of duty of any officer or employee of the local body;

(d) order other necessary remedial measures considering the facts and circumstances of the case;

(e) where the Ombudsman finds that the procedure or practice regarding the administration of local body relating to the measures for avoiding the recurrence of such complaint.

(2) The Ombudsman shall submit an annual report regarding the performance of his/her functions under this Act to the Government and the Government shall lay it before the Legislative Assembly with an explanatory memorandum."

20. Section 13 of the Act speaks of 'protection of action taken in good faith', which reads as follows:-

"No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder."

21. That apart, it is to be relevantly pointed out that in a perfect system of prevention and deduction of crimes, undeniably, the prime duty of a police officer to whom the commission of a cognizable offence is reported to register a case without causing any delay and promptly commence the investigation without perverting or subverting the law. However, before a public servant is publicly charged with acts of dishonesty and corruption and an First Information Report is lodged against him, there should be some preliminary enquiry into the allegations by a responsible officer as per decision of Hon'ble Supreme Court in **SATE OF HARYANA v. BHAJANLAL** reported in



22. Continuing further, it is to be significantly pointed out that the obligation to register a case is not to be confused with remedy, if the same is not registered. The answer to the question whether the registration of a criminal case under Section 154(1) of Cr.P.C. *ipso facto* warrants the setting in motion of an investigation under chapter XII of Cr.P.C. is provided by Section 157(1) proviso of Cr.P.C. and Section 157(2) of Cr.P.C. Section 156(3) of Cr.P.C. vests the discretionary power of a Magistrate empowered under Section 190 of Cr.P.C. to order an investigation by a police officer, as contemplated under Section 156(1) of Cr.P.C. Further, Section 156(3) of Cr.P.C. does not empower a Magistrate to stop an investigation undertaken by the police, as per the decision of **PARKASH SINGH BADAL v. STATE OF PUNJAB** reported in **AIR 2007 SC 1274**.

23. More over, in the decision of **JOHN C.V. ALIAS JOHN PERUVANTHANAM v. STATE OF KERALA AND OTHERS** reported in **2008 Cr1.L.J. 1305** at page 1312, whereby and where under, at paragraph No.27, it is among other things, observed as follows:-

".... The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his F.I.R. Has not been registered by the police, or after being registered, proper investigation has not been done by the police, or this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail under Section 156(3) Cr.P.C. Before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C."

24. Be that as it may, in view of the crystallised fact that the Tamil Nadu Local Bodies Ombudsman (Act 27 of 2014) Act, 2014, which had created the institution of Ombudsman to make enquiries into the allegations of corruption for maladministration against such public servants coming under the local bodies and also, this Court taking note of yet another fact that the Tamil Nadu Local Bodies Ombudsman (Manner of filing inquiry and disposal of complaints) Rules, 2015, specifically and categorically provide for furnishing of complaints in the prescribed format by the complainants and also in view of the fact that the original petition, dated 12.10.2015 of the Petitioner, addressed to the second respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli, to register the case on the basis of the complaint given by him was returned to him together with a copy of the Act, Rules and Proforma etc., this Court directs the Petitioner to pursue his remedy, as per the ingredients of Tamil Nadu Local Bodies Ombudsman (Act 27 of 2014) Act, 2014, coupled with the Rules 2015, made thereunder and in the manner known to Law and in accordance with Law, if he so desires/advised.



WEB COPY

8

25. Accordingly, this Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Southern Range,
Directorate of Vigilance and Anti Corruption,
Chennai.
2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr. P. R. Prithivi Raj, Advocate Sr. No. 69262

Akm/15.12.2015/8p-5c/SKS/RR/SAR-I

Order made in
Cr1.O.P. (MD) .No.22773 of 2015