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W.P.No.35622 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.35622 of 2024

G.Ramu

...Petitioner

Vs.

1. The Tamil Nadu Lokayukta
Represented by its Registrar
SIDCO Corporate Office,
6th and 7th floor,
SIDCO Industrial Estate, Guindy,
Chennai-600 032.

2. Ramesh
Municipal Engineer,
Thittagudi Municipality
Cuddalore District.

3. Karuppaiah
The Contractor,
Dharmakudikadu
Thittagudi Taluk,
Cuddalore District.

4. Ms.Mallika
Commissioner
Thittagudi Taluk
Cuddalore District.

5. Ms.Vennila

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Chairman,
Thittagudi Municipality
Cuddalore District.

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6. Paramaguru
Vice President
Thittagudi Municipality
Cuddalore District.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records, relating to impugned proceedings in R.No.71 of 2024 dated 11.11.2024 from First Respondent and quash the same as illegal and subsequently directing the first respondent to entertain the petitioners complaint and take further action in accordance with law.

For Petitioner

: M/s.M.Velmurugan

ORDER

The writ petition is filed challenging the order passed by the 1st respondent, Tamil Nadu Lok Ayuktha rejecting the complaint preferred by the petitioner making allegations of corruption against the respondents 2 to 6 on the ground that the jurisdiction of Tamil Nadu Lokayukta is barred under Section 13(1)(h) of Tamil Nadu Lokayukta Act, 2018.

2. The petitioner filed a complaint before the 1st respondent stating that



Thittagudi Municipality had allotted Rs.4,35,00,000/-(rupees four crores thirty five lakhs only) for the purpose of de-silting of T.Elamanagalam lake. The work has been allotted to 3rd respondent, a contractor for execution of the work. However, the 3rd respondent executed the work only to the tune of Rs.25,00,000/- (rupees twenty five lakhs only) and the remaining amount was allegedly shared between the respondents 2, 4 and 5. Therefore, it is the case of the petitioner that respondents 2, 4 and 5 had committed an offence punishable under Prevention of Corruption Act.

3. On scrutiny of the complaint, the Registrar of 1st respondent formally entertained a doubt with regard to the jurisdiction of the 1st respondent to go into the allegations made by the petitioner and therefore, the matter was considered on the judicial side and the impugned order was passed holding that the proper forum for the petitioner to redress his grievance is the Ombudsman constituted under Tamil Nadu Local Bodies Ombudsman Act, 2014 and in view of Section 13(1)(h) of Tamil Nadu Lokayukta Act, 2018, the 1st respondent had no jurisdiction to entertain the complaint. Aggrieved by the same, the petitioner has come before this Court.



4. The learned counsel for the petitioner submits that a mere reading of the complaint would make it clear that there are allegations of corruption against the respondents 2 to 6 and therefore, 1st respondent ought to have enquired into the complaint made by the petitioner. The learned counsel by relying on the judgment of this Court in W.P.No.7920 of 2022 submitted that the 1st respondent has got jurisdiction to entertain the complaint made by the petitioner.

5. A perusal of complaint preferred by the petitioner before the 1st respondent would establish that he alleged misappropriation of funds and illegal enrichment on the part of the respondents 2, 4 to 6. The 2nd respondent is a Municipal Engineer of the Thittagudi Municipality. The 4th respondent is the Commissioner of the said Municipality. The 5th and 6th respondents are the Chairman and Vice President of the said Municipality. Therefore, they will come within the definition of Public Servant as defined under Section 2(11) of Tamil Nadu Local Bodies Ombudsman Act, 2014 which reads as follows:-

“2(11)"public servant" means an elected member



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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”

6. Section 7 of Tamil Nadu Local Bodies Ombudsman Act, 2014 reads as follows:-

(7) Functions of Ombudsman:-

- The Ombudsman shall perform all or any of the following functions, namely :-

(i)enquire 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;



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

7. Therefore, it is clear that the respondents 2, 4 to 6 will come within the definition of public servant as defined under Section 2(11) of Tamil Nadu Local Bodies Ombudsman Act, 2014 and hence, the said authority has got jurisdiction to go into the allegations of corruption against them under Section 7 of the said Act.

8. The jurisdiction of Tamil Nadu Lokayukta and its exceptions are mentioned in Section 12 and 13 of Tamil Nadu Lok Ayukta Act, 2018 and the same reads as follows:-

“12. Jurisdiction of Lokayukta to include Ministers, Members of Legislative Assembly, officers and employees of Government.

(1) Subject to the other provisions of this Act, the Lokayukta shall have its jurisdiction on all the following categories, namely:-



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(a)any person who is or has been a Minister of the State;

(b)any person who is or has been a Member of the Legislative Assembly;

(c)all officers and employees of the State, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) when serving or who has served, in connection with the affairs of the State;

(d)all officers and employees referred to in clause (c) equivalent in any Body or Board or Corporation or Authority or Company or Society or Trust or Autonomous Body (by whatever name called) established by an Act of the Parliament or the Legislative Assembly of the State or wholly or partly financed by the Government or controlled by it:Provided that in the case of officers and employees referred to in clauses (c) and (d) but are working in connection with the affairs of the Union or in Body or Board or Corporation or Authority or Company or Society or Trust or Autonomous Body under the control of the Union, the Lokayukta and officers of its



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Inquiry Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the Central Government;

(e)any person who is or has been a Director, Manager, Secretary or other officer of every other Society or Association of persons or Trust (whether registered under any law for the time being in force or not) by whatever name called, wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Government may, by notification, specify.

(2)Notwithstanding anything contained in subsection (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the Legislative Assembly in respect of anything said or a vote given by him in the Legislative Assembly of the State or any committee thereof covered under the provisions contained in clause (2) of Article 194 of the Constitution.

(3)The Lokayukta may inquire into any act or conduct of any person other than those referred to in



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sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) against a person referred to in sub-section (1): Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government”.

“13. Matters not subject to inquiry.

(1) Except as hereinafter provided, the Lokayukta shall not conduct any inquiry under this Act, in the case of a complaint in respect of any action, if such action relates to any matter as follows:-

(a) action taken for the purpose of investigating crime relating to the security of the State;

(b) action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not;

(c) administrative action taken in matters which arise out of the terms of a contract governing purely



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commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation;

(d) action taken in respect of appointment, transfer and postings, removal, pay, discipline, superannuation, actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service, or other matters relating to conditions of service of public servants;

(e) grant of honours and awards;

(f) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta;

(g) any action in respect of a matter which has been referred to inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952);

(h) any action relating to a person or Local Body which is under the purview of Ombudsman constituted under section 3 of the Tamil Nadu Local Bodies Ombudsman Act, 2014 (Tamil Nadu Act 27 of 2014). (2) In the case of any complaint, nothing in this



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Act shall be construed as empowering the Lokayukta to question any administrative action involving the exercise of a discretion, except where Lokayukta is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima-facie be regarded as having been improperly exercised.

Explanation. - *For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity”.*

9. A perusal of above sections would make it clear that Tamil Nadu Lok Ayukta shall not conduct any enquiry under the Act in respect of any action relating to a person or local body which is under the purview of Ombudsman constituted under Section 3 of Tamil Nadu Local Bodies Ombudsman Act, 2014. This Court already came to the conclusion that official respondents herein (R2, R4 to R6) will come under the definition of the expression “public servant” as defined under the Tamil Nadu Local Bodies Ombudsman Act, 2014 and hence, only ombudsman constituted under the said Act is entitled to go into the allegations of corruption made against them. In view of Section



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13(1)(h) of Tamil Nadu Lokayukta Act, 2018, its jurisdiction to go into the allegations of corruption against official respondents 2, 4 to 6 are ousted and the 1st respondent rightly came to the conclusion that complaint made by the petitioner cannot be enquired into and rejected the complaint. I do not find anything to interfere with the said conclusion.

10. Accordingly, the writ petition is dismissed. However, it is open to the petitioner to move the competent authority namely ombudsman constituted under Tamil Nadu Local Bodies Ombudsman Act, 2014. No costs.

03.12.2024

Index : Yes
Internet : Yes
Speaking Order
Neutral Citation Case : Yes/No
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To

The Tamil Nadu Lokayukta
Represented by its Registrar

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SIDCO Corporate Office,
6th and 7th floor,
SIDCO Industrial Estate, Guindy,
Chennai-600 032.

S.SOUNTHAR, J.

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