

(2009) 11 KL CK 0093

High Court Of Kerala

Case No: W.A. No. 670 of 2007

Ramachandran Master

APPELLANT

Vs

Jyothislal

RESPONDENT

Date of Decision: Nov. 3, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala Government Servants (Conduct) Rules, 1960 - Rule 22
- Kerala Lok Ayukta Act, 1999 - Section 2, 21, 7(1), 9(1), 9(5)

Citation: (2010) 2 ILR (Ker) 23 : (2010) 2 KLT 103

Hon'ble Judges: V.K. Mohanan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: O.V. Radhakrishnan, Babu Joseph Kuruvathazha and Antony Mukkath, for the Appellant; P.K. Babu, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.

Writ Appeal is filed against the judgment of the learned single Judge upholding the maintainability of the complaint filed by the first respondent against the appellant before the Lok Ayukta u/s 7(1) of the Kerala Lok Ayukta Act, 1999, hereinafter called the "Act". We have heard senior counsel Sri O.V. Radhakrishnan appearing for the appellant and Government Pleader appearing for respondents 2 and 3. Even though notice was served on the first respondent, he has not entered appearance.

2. On receipt of copy of the complaint from the Lok Ayukta, the appellant filed an application before the Lok Ayukta raising objection about maintainability of the complaint. Since Lok Ayukta did not hear on the maintainability, the appellant approached this Court with a Writ Petition for issue of a writ of mandamus to Lok Ayukta to consider the preliminary issue on the maintainability of the complaint before proceeding with the complaint. However, the learned single Judge at the admission stage itself dismissed the Writ Petition holding that the appellant's

challenge against maintainability with reference to Rule 22 of the Kerala Government Servants (Conduct) Rules, 1960, hereinafter called the "Rules", is not tenable. It is seen from the copy of the complaint and in the cause title that the first respondent who launched complaint before the Lok Ayukta, is the President of the Akhila Kerala Government Ayurveda College Adhyapaka Sanghatana, Trivandrum. Since the complainant had not specifically stated that he had filed the complaint in his capacity as President of the Ayurveda College Adhyapaka Sanghatana, the appellant herein challenged the maintainability of the complaint filed by the first respondent on the ground that being a Government servant he can maintain a complaint before the Lok Ayukta under Rule 22 of the Rules only with the prior permission of the Government, which the complainant obviously had not obtained. However, the learned single Judge held that Rule 22 does not apply to the complaint in this case because the complaint filed was not for redressal of personal grievance but was only an allegation falling u/s 2(b) of the Act.

3. The learned senior counsel appearing for the appellant relying on the decisions of the Supreme Court in *Kerala Solvent Extraction Ltd. v. Unnikrishnan* 1994 (1) KLT 651 (SC) and [State of Karnataka Vs. The Registrar General, High Court of Karnataka](#), contended that this Court while deciding the dispute on maintainability has exceeded its powers inasmuch as the relief sought was only mandamus and the appellant did not want this Court to decide the matter by itself and pre-empt Lok Ayukta before which the issue was raised. Since the appellant had raised maintainability of the complaint before the Lok Ayukta, it was the duty of the Lok Ayukta to consider and decide the same before proceeding with the complaint. Since the Lok Ayukta failed to do so, the appellant rightly approached this Court and this Court could have issued a writ of mandamus and closed the matter. However, we are of the view that in writ proceedings under Article 226 of the Constitution of India, this Court is not bound to confine itself to the relief sought and it is open to this Court to mould suitable relief depending upon the nature of the case. Even though senior counsel has pressed for the very same relief in this Appeal, that is, a mandamus to the Lok Ayukta to consider the maintainability of the complaint, without being influenced by the findings of the learned single Judge, we are of the view that once the matter is decided by the learned single Judge on merits, the Division Bench should not allow the very same issue to be agitated before the lower authority which will give a handle to a lower authority to overrule the judgment of learned single Judge on merits. In fact, in many cases, Division Benches of this Court have neutralised the judgments rendered on merit by the learned single Judges and remanded the matter to the lower authorities, like Revenue Officials, Panchayath Authorities, etc for reconsideration of the matter untrammelled by the findings of the learned single Judges. This practice is certainly to be deprecated because such a direction will give a handle to the lower authorities to overrule the findings on merits rendered by the learned single Judges of this Court. In our view, once matter is decided by the learned single Judge on merits irrespective of whether it was

required or not then Division Bench in appeal is bound to consider the case on merits and either affirm the finding of the learned single Judge or reverse it and the matter should never be remanded to the lower authorities to decide the issue on merits at variance with the findings of the learned single Judge which will certainly affect the authority and prestige of this Court. This is because in our view, a learned single Judge's findings should never be allowed to be reviewed by a lower authority. In other words, the findings of a learned single Judge subject to reversal or modification by Division Bench of this Court or by the Supreme Court should be allowed to achieve finality. Even though Division Benches hearing Appeals have ample powers which include the authority to remand the matter, it is our earnest wish and desire that they should not confer virtual appellate jurisdiction over learned single Judge's judgments on authorities like Tahsildars, Sales Tax Officers, etc. by remanding cases decided by learned single Judges on merits. We therefore decline to grant the relief sought for by the appellant to remand the case to the Lok Ayukta to consider the maintainability of the complaint because we do not want to give authority to Lok Ayukta to overrule judgment of a learned single Judge of this Court, We therefore proceed to consider the correctness of the findings rendered by the learned single Judge with regard to maintainability of the petition before Lok Ayukta.

4. The sole ground on which maintainability is questioned by the appellant is that being a Government servant of the rank of a Gazetted Officer, the complainant could maintain a complaint before the Lok Ayukta only with the prior permission of the Government under Rule 22 of the Rules, which is extracted hereunder:

22. Litigation.- No Government servant shall without the written permission of the Head of Office in the case of a non-gazetted servant and of Government in the case of a gazetted servant.-

(i) take or transfer in his name any actionable claim, or decree, or

(ii) concern himself in any litigation in which he has no direct personal interest. It is obvious from the above that any litigation where a Government servant has no personal interest could be instituted or continued by him without the prior approval of the Head of Office or of the Government, as the case may be. However, if the Government servant who wants to institute or pursue any litigation has personal interest in the matter then he is free to institute or pursue the litigation without the approval of the Head of the Department or the Government, as the case may be. On the face of it, the complaint is filed not to redress personal grievance or to advance any personal interest of the complainant, but is a general allegation against the appellant who then was the Minister in charge of Department of Health and Family Welfare. Apparently, the complainant could institute the litigation only with the prior approval of the Government because he was a Gazetted Officer in the service of the Government at the time of institution of the complaint, though he filed it in a representative capacity as President of the Ayurveda College Adhyapaka

Sanghatana. However, what is required to be considered is whether the complaint filed by the Government servant in violation of the Rules governing him is maintainable under the Act or not. This issue, though not considered or decided by the learned single Judge, requires to be considered by us because if we hold that the complaint is maintainable under the Act, even if it is filed in violation of Rule 22 of the Service Rules, then the appellant's contest against maintainability is no longer tenable.

5. Section 9(1) of the Act says that any person may make a complaint under the Act to the Lok Ayukta or to an Upa-Lok Ayukta. Section 9(5) authorises Lok Ayukta or Upa-Lok Ayukta to reject a complaint as not maintainable, if in their opinion:

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

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complaint to avail of such remedies.

From the above it is clear that maintainability of the complaint is considered only with reference to the above three clauses which do not involve any prior permission for Government servant for filing a complaint in terms of Conduct Rules governing the Government servant. Therefore in our view launching of a complaint by a Government servant in violation of Conduct Rules before the Lok Ayukta does not make the complaint defective or invalid but may attract disciplinary action against the Government servant if there is violation of Conduct Rules. Under Clause (a) of Section 9(5) Lok Ayukta or Upa-Lok Ayukta can reject a complaint if it is frivolous, or vexatious or is not made in good faith and that it applies to every complaint irrespective of as to who files it. In fact prosecution is also provided u/s 21 for filing false complaint before the Lok Ayukta. However, subject to these provisions a complaint filed by a Government servant whether it be in violation of Conduct Rules or not is maintainable before the Lok Ayukta and so much so appellant's challenge against maintainability of the complaint was rightly rejected by the learned single Judge, though not for the reasons stated by him.

6. Senior counsel for the appellant contended that the finding of the learned single Judge that complaint is not a litigation within the meaning of Rule 22 of the Conduct Rules is not correct. We notice that the learned single Judge has considered the scope of Rule 22 of the Conduct Rules with reference to type of complaints covered by Section 2 of the Act. Broadly complaints covered by Section 2 are two types, of which one is the allegation defined u/s 2(b) of the Act and the other is grievance covered by Clause (h) of Section 2 of the Act. The learned single Judge noticed that the complaint does not fall within the definition of "grievance" under Clause (h) because complaint does not advance personal grievance or hardship caused as a result of mal-administration. On the other hand, the finding of the learned single

Judge is that the complaint is an allegation, that is against abuse of position by the appellant in the discharge of his functions as State Minister. We do not think litigation referred to in Rule 22 has any technical meaning. This Court has in the appellant's own case in [Ramachandran Master Vs. Kerala Lok Ayukta](#), held that Lok Ayukta has no power to institute suo motu proceedings for enquiry and it can only initiate action based on a proper complaint filed in accordance with the provisions of the Act and Rules. Therefore in our view every proceeding instituted before the Lok Ayukta through a proper complaint is initiation of litigation which the Lok Ayukta is bound to adjudicate under the provisions of the Act and Rules. So much so, in our view, the initiation of a complaint may certainly answer the description "litigation" as referred to in Rule 22 of the Conduct Rules. However, what is excluded from the scope of permission under the above Conduct Rules is litigation to protect personal interest of the Government servant. In other words, all litigations other than those instituted to protect the personal interest are covered by Rule 22 of the Conduct Rules. The next question to be considered is whether the finding of the learned single Judge that the complaint filed by the first respondent not being one for redressing personal grievance is art allegation which does not amount to litigation is correct. Section 2(b) defines "allegation" in the following terms:

2. Definitions.- In this Act, unless the context otherwise requires.-

....

(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 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;

From the above what is clear is that in order to maintain a complaint positive allegation has to be made against public servant implicating him in any of the charges covered by Clauses (i) to (iii). Even though such allegation is not to redress any personal grievance, but to protect public interest, still in our view, it amounts to litigation because the same involves launching of a complaint with evidence in support of the allegation and establish the same with evidence and if finally the Lok Ayukta finds that the complaint is without bona fide, then Lok Ayukta is free to grant compensatory costs and order prosecution of the complainant u/s 21 of the Act. So much so, we feel launching of a complaint in the form of allegation falling u/s 2(b) is also initiation of litigation and if it is done by a Government servant other than to

protect personal interest necessarily permission has to be taken as contemplated under Rule 22. However, it is upto the Government servant to file complaint after getting permission or if he is apprehensive of not getting permission to launch a complaint against a Minister, it is upto him to launch a complaint without permission required under Rule 22 of the Conduct Rules even at the risk of disciplinary action against him, to protect public interest. Therefore in our view, a Government servant devoted to public interest is free to take the risk of disciplinary action and proceed with launching of the complaint without any prior permission under Rule 22 of the Service Rules. However, the validity of the complaint before the Lok Ayukta cannot be questioned on the ground of violation of Rule 22 of the Conduct Rules. It is also open to the Government servant to seek permission under Rule 22 and if it is not granted to take the matter to Court for getting permission to launch a complaint.

7. Senior counsel for the appellant has also prayed for expunging the observations made in the impugned judgment about the appellant and about his counsel. We find that the observations are made on the basis of averments in the Writ Petition that Lok Ayukta acts with mala fides and enimity against the appellant as a tool/instrument for some of the vested interest. We do not think there is any need for us to consider these matters because Lok Ayukta against whom these remarks are made is no longer there and appellant's averments against Lok Ayukta are out of frustration, because the complaint led to his resignation as Minister. However, we do not think the observations against counsel are justified because counsel always goes by the instruction of the parties. We therefore expunge the remarks in the judgment about counsel.

Writ Appeal is disposed of as above.