(2009) 09 KL CK 0087

High Court Of Kerala

Case No: Writ Petition (C) No. 23538 of 2009

Krishnan Nair		APPELLANT
	Vs	
Secretary, Corporation of Thiruvananthapuram		RESPONDENT

Date of Decision: Sept. 7, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala Municipalities Act, 1994 - Section 509
- Kerala Panchayat Raj Act, 1994 - Section 271F, 271S, 271S(3), 271S(4), 271U
- Kerala Tribunal for Local Self Government Institutions Rules, 1999 - Rule 21, 21(1), 25, 8
- Penal Code, 1860 (IPC) - Section 193, 228

Citation: (2010) 2 KLT 128

Hon'ble Judges: Thottathil B. Radhakrishnan, J

Bench: Single Bench

Advocate: R.T. Pradeep and V. Vijulal, for the Appellant; Murali Purushothaman and P.K. Manojkumar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.
Notice to second respondent dispensed with, preserving his right to move for rehearing of this Writ Petition, if aggrieved. Heard learned Counsel for the petitioners and for the first respondent Corporation.

2. Petitioners and second respondent are neighbours. The Corporation initiated certain proceedings against the petitioners, referable to a stair case constructed by them. Proceedings were initiated against the second respondent regarding a car porch constructed by him. The Tribunal for Local Self Government Institutions set aside both those proceedings as per Ext.P2 and P3 orders with direction to finalise the matter by initiating fresh proceedings. Petitioners complain that nothing has

followed Exts.P2 and P3 issued in January, 2009. They accordingly seek directions.

3. In its essence, on the plea that the Tribunal''s verdict is not being given effect to, intervention in exercise of constitutional power of this Court is applied for, to effectuate the direction of a statutory Tribunal. Is it necessary that such orders are issued by this Court? Is there any alternate efficacious remedy for the citizen? Is the citizen to be compelled to move the High Court under Article 226 of the Constitution on the affirmation that he has no alternate efficacious remedy for redressal of the grievance in relation to the refusal, delay or inaction on the part of an LSGI or its officials including the Secretary to it in terms of the decisions of the Tribunal?

4. Tribunal for L.S.G.I.''s is constituted u/s 271S of the Kerala Panchayat Raj Act, 1994, for short, the ''PR Act''. ATribunal shall consist of ajudicial officer having the rank of a District Judge. It deals with appeals and revisions u/s 276 of that Act and Section 509 of the Municipality Act. Section 271U of the PR Act provides the Government, the rule making power to prescribe the different matters enumerated under the different clauses of that section, including the effect of the orders of the Tribunals and any other matter which the Government may consider necessary to prescribe. Exercising that power, the Government of Kerala made the Tribunal for Local Self Government Institutions Rules, 1999, the ''Tribunal Rules'', for short. Rule 8 of those Rules provides for submission of appeal or revision against a notice, order or proceeding in respect of any matter specified in the Schedule to those rules. A survey of the Schedule would show that the matters that could reach the Tribunal against the decision of the Local Self Government Institution or its Secretary are multifarious. They are not confined to the private interests of citizens. The twenty four enumerated matters in the Schedule show that the Tribunal is vested with immense jurisdiction of wide sweep touching different matters for which a Local Self Government Institution is conceived under the Constitution.

5. Rule 21(1) of the Tribunal Rules provides the consequence and effect of the order of the Tribunal. The notice or order issued, or action taken by the L.S.G.I. or its Secretary, as the case may be, shall stand as such or be modified or annulled in accordance with the final order of the Tribunal, from the date of issuance of such final order. Rule 25 of those Rules provides that in matters which are not provided for in those Rules, the PR Act and the Municipality Act, the Tribunal shall have the power to regulate the procedure in connection with the disposal of a petition in the manner it thinks proper. Coupled with this, is the fact that the Tribunal is vested with the powers of a judicial authority for trial and disposal of matters coming up before it. To insulate the judicial authority presiding the Tribunal, the proceedings in the Tribunal are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of Indian Penal Code in terms of Section 271S(4) of the PR Act. Sub-section (3) of Section 271S of the PR Act provides that the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, when trying a suit in respect of matters enumerated in that sub-section. The powers

of the Tribunal, referable to the aforesaid provisions, may, at the first blush, give an impression that they relate only to the power to carry the trial to the logical end and issue decision and that the Tribunal has no power to enforce, or obtain obedience of its decisions. Is it so? The answer appears to be in the negative, as would be seen from the reasoning that follows hereunder.

6. What is the purpose of filing an appeal or revision before a Tribunal, in relation to any among the various matters enumerated in the Schedule to the Tribunal Rules? No citizen is interested in any empty formality before any judicial authority, be it a court or a tribunal; constitutional or statutory. A result oriented adjudicatory redressal process with sufficient teeth to enforce the decision rendered by the judicial authority is the power of judicial enforcements in any civilized nation working under a Constitution. Judicial exercise is not merely a drill to answer competing claims, to be left there. The fruit of the litigation has to be enjoyed. Otherwise, the very existence of a judicial system would be questionable. If the fruits of a judicial process cannot be enjoyed in a time bound manner, through the judicial process itself, the frightening growth of in vasion of extra constitutional and extra legal power points on to the resolution of disputes would gallop faster than what has now been taken note of by the different constitutional limbs; the Legislature, judiciary and the executive. The very purpose of a Tribunal to resolve disputes relating to matters arising under the PR Act and the Municipality Act is to achieve the object of resolving a dispute and delivering the result of the resolution in a manner enabling the fruits to be enjoyed by the citizens, collectively or individually, depending upon the context and the subject in relation to which the decision is being rendered. Looking at the Schedule to the Tribunal Rules, it could easily be gathered that no dispute is left out of the pale of the resolution mechanism for which the Tribunal is in place. If that were so, the clear constitutional dictate is that the result of the complaint or grievance raised before the Tribunal, shall transform from out of the paper on which it is written to reality in action, which is the very purpose for which the citizen had to go for the litigation. An unassailable constitutional mandate is that no citizen could be told to hawk from jurisdiction to jurisdiction weeping over the fact that he has the result of the litigation in a piece of paper; but is yet precluded from enjoying it. The prescription in Rule 25 of the Tribunal Rules that in matters which are not provided form those Rules; the PR Act and Municipality Act, the Tribunal shall have power to regulate the procedure in connection with disposal of a petition in the manner it thinks proper, has necessarily to be taken to clothe the Tribunal with further powers, having regard to the purpose of its existence.

7. A Tribunal in the nature of the one under consideration; vested with the power to answer a complaint made by way of an appeal or revision; has to be held to have the power to adjudicate, decide on the issues and enable the successful party enjoy the fruit of the complaint. The Tribunal has to be held to have the continued power to issue further directions until then. A formidable reason for this view is that the

citizen is compelled to go to that Tribunal to the exclusion of the Civil Courts, where he would have got the express statutory procedure of execution. Then, ubi jus ibi idem remedium: where there is a right, there is a remedy. Remedy is not merely the judicial certification as to the existence of a right, at any rate, when right to further relief is irrefutable. The remedy on a founded right has to result in the enjoyment of the fruit by the entitled. Bereft of that, adjudication would not be remedial. The principle that the Tribunal being a creature of statute, should be confined to the enumerated powers, finds no application to the jurisdiction of the Tribunal for Local Self Government Institutions in the context of the statutory provisions, including Tribunal Rules, as interpreted above. This purposive approach of construing the statutory provisions, including the Tribunal Rules, will only augment the constitutional need of a justice delivery system which is the primary goal of having constituted that Tribunal and clothing it with powers. There is no legislative prohibition to the aforesaid approach in the PR Act, Municipality Act or any of the Rules framed the reunder.

8. In the aforesaid context, it needs to be viewed as to what is the end point of authority of the Tribunal for Local Self Government Institutions. A plain and simplicitor reading of the provisions contained in Chapter XXV(c) of the Panchayat Raj Act relating to the constitution of the Tribunal and the provisions contained in the Tribunal Rules, may tend to suggest teat the Tribunal ends its proceedings by the passing of the final order. Rule 21 of the Tribunal Rules speaks of the consequence of the order of the Tribunal and says that the final order will affect the notice or order issued or taken by Local Self Government Institutions or its Secretary and the effect is that such notice, order or action shall stand as such, if not interfered with; or be modified or annulled in accordance with the final order. Therefore, the final orders contemplated in Rule 21 of the Tribunal Rules are all those orders which result in affirmation, modification or annulment of the order of the Local Self Government Institution or its Secretary. But in cases where orders of the Local Self Government Institution or its Secretary are set aside, directing further proceedings in terms of the statutory provisions, a purposive and contextual appreciation of ground realities should trigger the application of Rule 25 of the Tribunal Rules. It has to be held that, purposively and contextually, the Tribunal would, in such case, have the power to reach at the L.S.G.I. concerned and its Secretary and other officers who defy the command of the Tribunal to take further steps. In the case in hand, the direction was Jo take further steps in the light of what is stated in the orders of the Tribunal. Therefore, in the absence of any direction in the PR Act, Municipality Act or Tribunal Rules, as to what the Tribunal shall do in a situation of alleged lethargy or disobedience to the directions, the Tribunal should necessarily be held to be clothed with, and would have the power to regulate its procedure in action with the disposal of the petition in the manner in which it thinks proper. The concept of disposal of a petition as envisaged in Rule 25 is not the mere making of an order of remand but the final disposal of the lis between the parties

which reaches the Tribunal as a revision or an appeal.

9. Where the Tribunal, after setting aside the decisions already taken by the Secretary, issues an order directing the Secretary of a Corporation to decide on an issue, the time frame within which the further proceedings should commence and conclude ought to be the shortest possible time for a statutory authority to conclude a statutory proceedings under the PR Act or Municipality Act, as the case may be. Dereliction of duty in this regard, tantamounting to maladministration, if demonstrated in the office of any public authority falling under the Municipality Act or the PR Act, would make that authority amenable to the jurisdiction of the Ombudsman for Local Self Government Institutions in terms of the provisions of Chapter XXV(b) of the PR Act. The Corporation, though a statutory body, is a constitutional institution, in as much as it is envisaged in terms of the 74th Amendment to the Constitution. The primary constitutional goal of that amendment is to provide Local Self Government Institutions (LSGI) as independent institutions and confer them the power to ensure local self governance. The statutory duties of the officers of Municipalities and Corporations under the Kerala Municipality Act, 1994 vest in them statutory as well as a constitutional obligation to perform such duties in terms of the Constitution and the laws. Bereft of their such performance, their continuance in office may even be purposeless. Laudable objects are sought to be achieved by the constitution of the Ombudsman for Local Self Government Institutions, a pioneer and salutary one in the State of Kerala. That the L.S.G.I. officials are not expected to shirk their duties and responsibilities or sleep over the files and let people run pillar to post for relief; or otherwise, seek refuge from unlawful forces to secure their needs, is among the clear legislative dictates of having such a machinery. In the hierarchy of adjudicatory process under the PR Act or Municipality Act, an L.S.G.I. and its Secretary stand lower to the Tribunal and are duty bound to carry out the commands of the Tribunal. If they refuse to do so, that would be nothing short of maladministration and failure to perform the duty to exercise statutory power coming under the relevant legislations. Adverting to Section 271F(e), ''maladministration'' means different shades of acts and omissions which fall under the two limbs of that definition clause. Unreasonable, unjust, oppressive, discriminatory or nepotist administrative action, procedure or practice, which may lead the illegitimate gain or loss or denial of deserving benefits and willful negligence or delay in taking action would fall within the term maladministration. Administrative procedure which will result in loss, waste or misuse of funds, by malfeasance or misfeasance, would also lead to maladministration. An affirmation that a Local Self Government Institution had defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law in implementing lawful orders and directions of the Government, may also fall within the term ''allegation'' for the purpose of action by Ombudsman. It also needs to be mentioned that the Tribunal would also be well within authority, in appropriate cases; not essentially the one in hand; to make appropriate

recommendations to the Ombudsman for further action for maladministration and corruption, if necessary.

For the aforesaid reasons, this Writ Petition is ordered directing that if the petitioner moves the Tribunal for further orders, it would consider issuing further directions as may be called for on the facts of the case. Equally, the petitioners could seek relief from the Ombudsman in accordance with law in the light of what is laid down above. With the aforesaid jurisdictions being available as alternate efficacious remedies, I do not find any ground to grant any further relief. Writ Petition ordered thus, without entering on the merits of the controversy.