
(2014) 10 KL CK 0273

In the High Court Of Kerala

Case No : W. A. Nos. 616, 1151, 1235 of 2012, 1691 of 2013 in W.P. (C) 6436/2012

Biju Ramachandran

APPELLANT

Vs

N. Sureshkumar

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Kerala Lok Ayukta Act, 1999 — Section 12(3), 9

Citation : (2014) 10 KL CK 0273

Hon'ble Judges : Antony Dominic, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : K. Jaju Babu, Sr. Adv., M.U. Vijayalakshmi and Brijesh Mohan, Advocate for the Appellant; P.C. Sasidharan, Addl. Adv., K.B. Pradeep, Renu D.P., S.C. and C.S. Manilal, Sr. Government Pleader, Advocate for the Respondent

Judgement

Antony Dominic, J.—These appeals arise from the judgments in W.P.(C). Nos. 6436/12, 1368/12, 1830/12 and 24824/12 respectively. The issues raised in these appeals are connected and therefore, these cases were listed and heard together and are being disposed of by this common judgment.

2. We shall first notice the facts which gave rise to these litigations, taking W.A. 1151/12 as the leading case.

3. One Biju Ramachandran, petitioner in W.P.(C). 1368/12 and the appellant herein, was a Junior Superintendent in the Sub Registrar's office, Chalai and the first respondent, Sri Sandeep T. George, is an advocate practising in the Trivandrum Bar. On 22.9.2010, he made a complaint before the Inspector General of Registration against the appellant Biju Ramachandran, alleging misbehaviour and misconducts at the time when he approached the appellant in his office for an official business. This was followed by Ext. P2 complaint dated 4.10.2010 made by Sri Sandeep T. George to the Kerala Lok Ayukta, with a prayer to declare the appellant unfit to hold a public office. This complaint was registered as complaint No. 1725/10 and the Lok Ayukta took cognizance of the

complaint on 5.10.2010 and issued notice to the parties concerned. Ext. P3 is the objection filed by the appellant.

4. While the matter was thus pending consideration of the Lok Ayukta, the Sub Registrar, Chalai submitted Ext. P4 report to the District Registrar on the allegations contained in Ext. P1 complaint filed by the first respondent before the Inspector General of Registration, which did not contain any adverse findings against the appellant. On receipt of the said report, the District Registrar submitted Ext. P5 report to the Inspector General of Registration. That report was received by the Inspector General, who, in turn, communicated to the complainant the outcome of the enquiry conducted.

5. Apparently, on receipt of such communication, the first respondent submitted Ext. P6 dated 13.5.2011, another complaint, to the Inspector General of Registration, requesting for a re-enquiry into the allegations. Pursuant to Ext. P6, an enquiry was conducted by the Deputy Inspector General (Licensing) who submitted Ext. P7 report dated 10.8.2011, recommending disciplinary action against the appellant. Based on Ext. P7, Ext. P8 report was made by the Inspector General to the Government of Kerala, recommending to initiate disciplinary action against the appellant for major punishments.

6. In the mean while, the proceedings before the Lok Ayukta in complaint No. 1725/10 were lying in a dormant state, without any appreciable progress. While so, the Government issued Ext. P10 letter dated 19.11.2011, ordering a re-enquiry by the Deputy Inspector General (Registration), South Zone and in this order, reference was made to Ext. P8, the recommendation made by the Inspector General for initiating disciplinary action. Pursuant to Ext. P10, the Deputy Director General of Registration conducted an enquiry and submitted Ext. P11 report dated 23.12.2011, where, he concluded that the allegations against the appellant were unfounded.

7. The Lok Ayukta concluded the proceedings in complaint No. 1725/10 by Ext. P12 report dated 29.12.2011, made under section 12(3) of the Kerala Lok Ayukta Act, recommending the competent authority to take action against the appellant on Ext. P7 report mentioned above. It was at that stage, W.P.(C). 1368/12 was filed by Biju Ramachandran challenging Ext. P7 and Ext. P12, the report of the Lok Ayukta. Later, the first respondent, Adv.Sandeep T. George, filed W.P.(C). 1830/12, where he challenged Exts. P10 and P11, the order for re-enquiry passed by the Government and the report thereon submitted by the DIG (Registration) exonerating the appellant.

8. In the mean while, the appellant was transferred from SRO, Chalai as Chitty Prosecuting Inspector. While matters stood thus, by order dated 20.1.2012, appellant was posted to the office of the Inspector General of Registration. Thereupon, one Sri N. Suresh Kumar filed complaint No. 343/12 before the Kerala Lok Ayukta seeking cancellation of the transfer order dated 20.1.2012 and also requesting to initiate action against the respondents therein for contempt of

the orders of the Lok Ayukta.

9. Considering complaint No. 343/12, Lok Ayukta passed order dated 31.1.2012, directing to maintain status quo ante 29.12.2011, when Ext. P12 report was made by the Lok Ayukta. Although the appellant made an attempt to get the said interim order vacated, he was unsuccessful and the interim order dated 31.1.2012 passed by the Lok Ayukta was given effect by the Government and the Inspector General of Registration by issuing consequential orders. It was in the above circumstances that W.P.(C). 6436/12 was filed by the appellant Biju Ramachandran challenging the proceedings in complaint No. 343/12 and the interim order dated 31.1.2012, which are produced as Exts. P5 and P7 in that writ petition.

10. Now, we shall turn to the facts in W.P.(C). 24824/10. While the matters stood as explained above, on 24.2.2012, Mrs. T.K. Jayasree, wife of Biju Ramachandran, an Under Secretary in the General Administration Department of the Government of Kerala, made a complaint addressed directly to the Chief Minister, alleging that the complaints against her husband were engineered at the instance of three persons, viz., Mr. Venugopal who replaced her husband as Chitty Prosecuting Officer, Smt. Sumangala, the DIG (Licensing) who made Ext. P7 report dated 10.8.2011 recommending disciplinary action against her husband and Sri Vivekanandan, the Inspector General (Registration) who made Ext. P8 report (in W.P.(C). 1368/12) recommending to the Government to initiate disciplinary action against her husband for major punishments. This complaint is produced in this case as Ext. R8(d).

11. The Kerala Secretariat Association forwarded Ext. R8 (d) complaint of Smt. Jayasree under cover of letter dated 24.2.2012 to the Chief Minister with a specific request for an immediate enquiry by the Crime Branch of the police department. On that complaint, the Chief Minister made an endorsement "ACS (Home), Crime Branch enquiry is ordered". This order is dated 26.2.2012. This was followed by Exts. R8(f) and (g), consequential orders of the Additional Chief Secretary to the Government and the Additional Director General of Police. Suffice it to say that an enquiry was conducted by the Crime Branch which culminated in report dated 31.7.2012 produced as Ext. P7 in the writ petition. In this report submitted by the Deputy Superintendent of Police, CBCID, he recommended disciplinary action against Sri Venugopal. This report was forwarded by the Additional Director General of Police to the Director General of Police under cover of Ext. P8. It was at that stage, Sri Venugopal filed W.P.(C). 24824/12, seeking to quash Exts. P4, P7 and P8 and for other consequential reliefs.

12. The writ petitions were heard by a learned single Judge. W.P.(C). 1368/12 and 1830/12 were disposed of by a common judgment rendered on 21.5.2012. Learned single Judge dismissed W.P.(C). 1368/12 and in W.P.(C). 1830/12, Exts. P5 and P8 were quashed. W.P.(C). 6436/12 was dismissed by judgment dated 16.3.2012 mainly taking the view that the same is premature. W.P.(C). 24824/12

was also dismissed by judgment dated 12.9.2013, taking the view that the impugned order was only of a recommendatory nature and that if any final action is taken, the same should be challenged before the Kerala Administrative Tribunal. It is in these circumstances, these appeals are filed.

13. We heard Adv. Jaju Babu, learned senior counsel for the appellant in W.A. Nos. 616/12, 1151/12 and 1235/12, Adv. P.C. Sasidharan appearing for the appellant in 1691/13, Adv. Suman Chakravarthy appearing for Adv. Sandeep T. George, Adv. K.B. Pradeep appearing for Sri Suresh Kumar, standing counsel appearing for the Kerala Lok Ayukta and the learned Government Pleader appearing for the official respondents.

14. We shall first deal with W.A. Nos. 1151/12 and 1235/12 arising from the judgments in W.P.(C). Nos. 1368/12 and 1830/12. As we have already stated, in W.P.(C). 1368/12, what was challenged was Ext. P7, report of enquiry by the Inspector General (Licensing) and Ext. P12, the report of the Lok Ayukta. This was essentially on the ground that Ext. P12 report relying on Ext. P7 report of enquiry was made by the Lok Ayukta without taking notice of Ext. P10 Government Order, whereby, a re-enquiry was ordered by the Deputy Inspector General (Registration) and Ext. P11, the report of enquiry submitted pursuant to Ext. P10.

15. It was Exts. P5 and P8 (Exts. P10 and P11 in W.P.(C). 1368/12) which were under challenge in W.P.(C). 1830/12 filed by Sri Sandeep T. George. When the learned single Judge quashed Exts. P5 and P8 in his judgment in W.P.(C). 1830/12, necessarily, as a consequence, W.P.(C). 1368/12 could only have been dismissed and was rightly dismissed. Therefore, among the two writ appeals, first case that needs to be considered is W.A. 1235/12 filed against the judgment in W.P.(C). 1830/12.

16. In so far as Ext. P10 by which re-enquiry was ordered by the Government and Ext. P11 report submitted pursuant to Ext. P10 are concerned, though it is open to the Government to order a re-enquiry in appropriate cases, a valid reason for such an order for re-enquiry should be disclosed in the Government Order or at least in the files. Nothing is disclosed in the Government Order or in the pleadings in the writ petition, justifying a re-enquiry by the Government and thus, setting at naught Ext. P7 report submitted by the Deputy Director General (Licensing) and Ext. P8, the recommendation thereon made by the Inspector General of Registration. It was in such circumstances that the learned single Judge quashed Ext. P10 and Ext. P11 report made pursuant to Ext. P10. We do not find any illegality in this conclusion of the learned single Judge. Therefore, we do not find any merit in W.A. 1235/12 filed against the judgment in W.P.(C). 1830/12. W.A. 1235/12 is accordingly dismissed.

17. Coming to W.A. 1151/12 filed against the judgment in W.P.(C). 1368/12, in the writ petition, challenge, as we have already stated, was against Ext. P7 report of the enquiry and Ext. P12 report made by the Lok Ayukta. The facts

stated by us show that Ext. P2 is the complaint made by Sri Sandeep T. George against Biju Ramachandran, the appellant herein. It was during the pendency of that complaint, pursuant to Ext. P6, enquiry was conducted and Ext. P7 report was made. Reading of Ext. P12 report of the Lok Ayukta under section 12(3) of the Kerala Lok Ayukta Act shows that the Lok Ayukta has only directed the Government, the competent authority, to take necessary action on Ext. P7 report. This action of the Lok Ayukta is unexceptionable, especially when the enquiry and the report thereon are quashed by this Court.

18. Despite the above, there is one aspect, which requires to be clarified. As we have already stated, the complaint made to the Lok Ayukta under section 9 of the Act, on which enquiry was set in motion, is Ext. P2. This complaint contains allegations with reference to an incident that took place on 22.9.2010 at the SRO, Chalai. Ext. P7 report is made on the basis of the enquiry conducted into the allegations contained in Ext. P6. In Ext. P6 complaint, there are allegations, not only concerning the incident that took place on 22.9.2010, but also other incidents which are levelled for the first time against Biju Ramachandran. Necessarily therefore, Ext. P7 report contains findings on such additional allegations which were not mentioned in Ext. P2 complaint.

19. When the Lok Ayukta has made Ext. P12 report, directing the competent authority to take action on the basis of Ext. P7 report, such action should be in relation to allegations contained in Ext. P2 complaint. Necessarily therefore, when the competent authority takes cognizance of the findings in Ext. P7 report, it should be confined to the findings rendered in the context of the allegations which are raised in Ext. P2 complaint. This is because the provisions of the Kerala Lok Ayukta Act, particularly section 9, shows that proceedings before the Lok Ayukta can be set in motion only on a complaint made to it. Therefore, the report made by the Lok Ayukta under section 12(3) of the Act should be with reference to the allegations made in the complaint filed before it. As a consequence, the action recommended by the Lok Ayukta in Ext. P12, on the basis of Ext. P7, should be limited to the findings on the allegations made against Biju Ramachandran in Ext. P2 complaint filed before the Lok Ayukta and not the other allegations which are there in Ext. P6 complaint made before the Inspector General (Registration).

20. Therefore, while confirming the judgment of the learned single Judge dismissing W.P.(C). 1368/12, we clarify that while the competent authority takes action based on Ext. P12 report made under section 12(3) of the Lok Ayukta Act, it shall be confined to the findings contained in Ext. P7 report on the allegations made in Ext. P2 complaint in relation to the incident that took place on 22.9.2010. Clarifying the position as above, W.A. 1151/12 is disposed of.

21. W.A. 616/12 is filed by Biju Ramachandran aggrieved by the judgment of the learned single Judge in W.P.(C). 6436/12. In this writ petition, what he challenged was Ext. P5, the proceedings in complaint No. 343/12 filed by the first respondent Sri Suresh Kumar seeking cancellation of the appellant's transfer and

also with a prayer to initiate contempt proceedings. He is also aggrieved by Ext. P7 order passed by the Lok Ayukta on 31.1.2012 directing that status quo ante 29.12.2011 be maintained. Though the learned single Judge has dismissed the writ petition on merits, we feel it relevant to notice certain subsequent developments which are relevant in deciding this writ appeal.

22. We notice that while admitting the writ appeal, this Court had passed interim order staying further proceedings in complaint No. 343/12. Referring to the interim order dated 3.7.2012, the Secretary to the Government (Taxes-E) Department issued order No. 16718/E1/2012/ to the Inspector General of Registration that in view of the interim order passed by the High Court, the previous Government Orders are withdrawn enabling posting of Sri Biju Ramachandran as Senior Superintendent in the Establishment section in the office of the Inspector General of Registration. As a consequence, Sri Venugopal, who was then holding the post was transferred out.

23. Thereupon, Sri Venugopal filed I.A. 608/12 in this writ appeal seeking clarification of the interim order and considering the matter at length, this Court passed order dated 1.8.2012, directing the authorities to retain Sri Venugopal as Assistant Senior Superintendent till the disposal of the appeal. As a result of this order, Biju Ramachandran was posted back as Chitty Prosecuting Officer and this position continues even today. Thus the factual position emerging is that, as on today, complaint No. 343/12 filed by Sri Suresh Kumar is pending on the files of the Lok Ayukta and Sri Venugopal and Biju Ramachandran are now working as Senior Superintendent in the Establishment Section and Chitty Prosecuting Officer respectively.

24. Considering the prevailing factual situation, at this distance of time, it is unnecessary for this Court to go into the merits of the rival contentions and according to us, the proper course to be adopted now is to direct that status quo as on today be continued and leave it open to the Lok Ayukta to proceed with complaint No. 343/12. It is clarified that the contentions raised by Biju Ramachandran, including that of locus standi and jurisdiction of the Lok Ayukta are left open to be raised before the Lok Ayukta itself. W.A. 616/12 is disposed of accordingly.

25. Now what remains is W.A. 1691/13 filed against the judgment in W.P.(C). 24824/12. We have already mentioned that in this writ petition, the challenge was against Exts. P7 and P8, the report of enquiry by the CBCID and the recommendation of the Additional Director General of Police to the Director General of Police to take departmental action against Sri Venugopal. The enquiry which led to Exts. P7 and P8 commenced on Exts. R8(d) and R8(e), the complaint of Smt. Jayasree, wife of Biju Ramachandran and the letter of the Association forwarding the complaint to the Chief Minister on which an endorsement was made by the Chief Minister, ordering the enquiry. In our view, the very complaint of Smt. Jayasree was an ill-motivated one and should not have been entertained by the authorities. As we have already seen, the

allegations of Smt. Jayasree, who is none other than the wife of Biju Ramachandran, was that the complaints against her husband were engineered by Sri Venugopal, Smt. Sumangala and Sri Vivekanandan. Even if it is assumed that she has reasons to be suspicious against Sri Venugopal, we see no reason why she should have implicated Smt. Sumangala and Sri Vivekanandan.

26. The role of Smt. Sumangala in the whole episode is that she was the one who made Ext. P7 report dated 10.8.2011 on Ext. P6 complaint made by Sandeep T. George, where she, in her capacity as Deputy Inspector General (Licensing), recommended disciplinary action against Sri Biju Ramachandran. Similarly, the role of Sri Vivekanandan was that as the Inspector General of Registration, he, on receipt of Ext. P7 report made by Smt. Sumangala, the DIG (Licensing), made recommendation to the Government to take disciplinary action against Biju Ramachandran.

27. There is absolutely no material with anybody or even with the complainant herself to have implicated these two people. It is despite the untenable and unsubstantiated allegations made in the complaint that the Government readily obliged the Association and the complainant by ordering a crime branch enquiry which was the specific demand of the Association.

28. Secondly, if Biju Ramachandran had any complaint against anyone of his superiors or colleagues, we wonder why he did not make a complaint and instead authorised his wife, an under Secretary in the General Administration Department, to make a complaint and route it through the Association, loyal to the present ruling disposition, to the Chief Minister. All this show that the endeavour was to engineer an enquiry against Sri Venugopal, Smt. Sumangala and Sri Vivekanandan, which was ultimately achieved by them.

29. Yet another aspect is that Smt. Jayasree, the complainant, is a Government servant and she is governed by the provisions contained in Government Servants Conduct Rules. Rule 94 provides that it is improper for a Government servant who makes any representation to the Government, through the official channel to approach the Governor or the Ministers with advance copies thereof or with personal representations. In this case, she did not make any representation through proper channel. Instead, she made a personal representation addressed to the Chief Minister, violating Rule 94. Similarly, Rule 77(10) provides that the service association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene any of the provisions of the Government Servants' Conduct Rules. We have already found that Smt. Jayasree could not have made the complaint. If that be so, in view of Rule 77(10) of the said Rules, the Association could not have assisted her in making the said complaint to the Chief Minister. Similarly, the manner in which the aforesaid representation is made also is in violation of the procedure laid down in Rule 77(c).

30. The sum and substance of the above is that the complaint made by Smt.

Jayasree was an irregular one and should not have been taken cognizance of. We, therefore, are of the firm view that the complaint made by Smt. Jayasree and routed through the Association was also an illegal one and consequently, the enquiry ordered thereon is also illegal. If that be so, Exts. P7 and P8 report and the recommendation thereon are also illegal. Necessarily therefore, Exts. P7 and P8 are to be quashed and we do so.

31. For the aforesaid reasons, judgment of the learned single Judge dismissing W.P.(C). 24824/12 is set aside and W.A. 1691/13 is allowed.

In the result, W.A. 1235/12 is dismissed and W.A. Nos. 1151/12, 616/12 and 1691/13 are disposed of.