

(2023) 08 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29798 Of 2015

Corporation Of Thiruvananthapuram

APPELLANT

Vs

D. Vinsat Ray

RESPONDENT

Date of Decision : 04-08-2023

Acts Referred:

Kerala Lok Ayukta Act, 1999 — Section 12, 12(3), 12(5)

Citation : (2023) 08 KL CK 0037

Hon'ble Judges : A. J. Desai, CJ; V. G. Arun, J

Bench : Division Bench

Advocate : N.Nandakumara Menon, P.K.Manojkumar, Suman Chakravarthy, A.Jerone, Renu. D.P., T.K.Vipindas

Final Decision : Allowed

Judgement

A.J. Desai, C.J

1. By way of the present petition filed under Article 226 of the Constitution of India, the Corporation of Thiruvananthapuram has challenged the order dated 20.04.2015 passed by the Kerala Lok Ayukta, entertaining the complaint filed by the 1st respondent with regard to the delayed payment of his pensionary benefits and directing the writ petitioner to pay interest at the rate of 10% per annum from 10.05.2013 till the date of actual payment of gratuity to the original complainant.

2. Today when the matter is taken up for final hearing, the learned Advocate appearing for the petitioner, after taking us through the impugned order, would submit that the Lok Ayukta and Upa Lok Ayukta have passed the order beyond the jurisdiction vested with them. He would submit that as per section 12 of the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as the "Act" for short), the powers vested with the Lok Ayukta is to communicate the report prepared after investigation to the concerned authority for appropriate action. Whereas, in the present case, by the impugned order, the Lok Ayukta and Upa Lok Ayukta have

specifically ordered the writ petitioner to pay interest at the rate of 10%. He would submit that it is beyond the scope of jurisdiction and a similar issue has been considered by a Division Bench of this court in *Sudha Devi K. v. District Collector, Thiruvananthapuram and Others*, reported in 2017 (2) KLT 1127. He would submit that the issue laid down by the Division Bench of this court is with regard to the powers of the Lok Ayukta under section 12 of the Act. He, therefore, would submit that the Lok Ayukta has exercised such powers which are not vested with them and, therefore, the order is required to be quashed.

3. On the other hand, the learned Advocate appearing for the original complainant/1st respondent has supported the order impugned in the present petition. He would submit that the payments have been made by the writ petitioner only after the impugned orders have been passed and, therefore, the complainant is entitled to interest as directed by the Kerala Lok Ayukta. He, therefore, would submit that the petition be dismissed.

4. We have heard learned Advocates appearing for the respective parties. We have also considered the directions issued by the impugned order.

5. In paragraph 18 of the impugned order, it has been directed that the original complainant would be entitled to interest at the rate of 10% per annum from 10.05.2013 till the date of actual payment of gratuity. In our considered opinion, by issuing such directions, the Lok Ayukta and Upa Lok Ayukta have exercised jurisdiction not vested with them.

6. As per sub-section (3) of section 12 of the Act, if, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such allegation is substantiated, either wholly or partly, he shall, by report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority and also intimate the complainant about its having made the report.

7. As per sub-section (5) of section 12 of the Act, if the Lok Ayukta or the Upa-Lok Ayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case, under intimation to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant.

8. We are also in complete agreement with the decision of the Division Bench of this court in the case of *Sudha Devi K.* (supra). In paragraph 9 of the said judgment, it has been held that the Lok Ayukta can make recommendations, but no positive direction can be issued by the Lok Ayukta.

Hence, we allow the writ petition. The order impugned is hereby quashed and set

aside. We hereby remit the case to Lok Ayukta for passing further orders in consonance with the provisions of section 12 of the Act and the issue laid down by this court in the case of Sudha Devi K. (supra). It is expected that the Lok Ayukta will take an appropriate decision at the earliest.