

**(2011) 01 KL CK 0031**  
**In the High Court Of Kerala**  
**Case No : M.F.A. No. of 2011**

C.V. Moni Achari

APPELLANT

Vs

The Director, Local Fund Audit

RESPONDENT

**Date of Decision :** 13-01-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227, 243J  
Guruvayur Township Act, 1961 — Section 2  
Kerala Local Fund Audit Act, 1994 — Section 10, 11, 126(3), 13, 14  
Kerala Panchayat Raj Act, 1961 — Section 215(10), 215(11), 215(13), 215(14), 215(5)  
Kerala Panchayat Raj Act, 1994 — Section 215, 215(13), 215(3)

**Citation :** (2012) 1 KLJ 435

**Hon'ble Judges :** K.T. Sankaran, J

**Bench :** Single Bench

**Advocate :** George Mathew and Celine Joseph, for the Appellant; Shahul Hameed Mooppan, for the Respondent

## **Judgement**

K.T. Sankaran, J.—This Memorandum of Regular First Appeal arises out of the order passed by the District Court, Thodupuzha in a petition filed by the appellant u/s 16(3) of the Kerala Local Fund Audit Act, 1994. The appeal was filed u/s 215(13) of the Kerala Panchayat Raj Act, 1994. The Registry entertained a doubt whether the appeal is maintainable since no appeal was provided under the Kerala Local Fund Audit Act. The petitioner was working as Secretary of Vannappuram Grama Panchayat in Idukki District. He retired from service in 1999. In the audit, it was found that a loss of 68,000/- was caused to the Panchayat in the matter of purchase of television sets under the Peoples Planning Scheme. The Director of Local Fund Audit initiated surcharge proceedings against the petitioner. Surcharge certificate was issued and revenue recovery proceedings were initiated. Challenging surcharge, the petitioner filed O.P.(L.F.) No. 19 of 2009 before the District Court, Thodupuzha u/s 16(3) of the Kerala Local Fund Audit Act. The District Court dismissed the Original Petition, which is under challenge in this appeal filed u/s 215(13) of the Kerala Panchayat Raj Act.

2. Notice was given to the Advocate General.

3. Sri. Gracious Kuriakose, the learned Senior Counsel appearing for the appellant, submitted that though Section 16(3) of the Kerala Local Fund Audit Act does not contain any provision for filing an appeal, the appellant being governed by the Kerala Panchayat Raj Act, he is entitled to prefer an appeal u/s 215(13) of the said Act against the order passed by the District Court u/s 16(3) of the Kerala Local Fund Audit Act.

4. Learned Government Pleader submitted that since there is no provision in the Kerala Local Fund Audit Act to file an appeal against an order u/s 16(3) of the Act, the only remedy available to the appellant is to challenge the order in a Writ Petition under Article 227 of the Constitution of India.

5. The Kerala Local Fund Audit Act is an Act to provide for and to regulate the audit of the local funds under the management or control of certain local authorities in the State of Kerala. "Local fund" is defined u/s 2(g) as follows:

"(g) "local fund" means-

(i) a fund administered by a local authority which, though not part of a Government Department, has been established by or under a law or orders of the Government, and

(ii) any other fund which the Government may, by notification in the Gazette, declare to be a local fund for the purpose of this Act:

6. The term "Local authority" is defined u/s 2(f) of the Kerala Local Fund Audit Act as follows:

"(f) "local authority" means-

(i) a Municipal Corporation constituted under the Kerala Municipal Corporation Act, 1961 (30 of 1961) or a Municipality constituted under the Kerala Municipalities Act, 1960 (14 of 1961) or Township specified in section 2 of the Guruvayur Township Act, 1961 (43 of 1961) or a Panchayat Constituted or deemed to have been constituted for the local administration of a Panchayat area under the Kerala Panchayats Act, 1961 (32 of 1960) or a Panchayat or a Municipality or a Metropolitan Planning Committee or a District Planning Committee constituted in the State in accordance with the provisions in Part IX and Part IX A respectively of the Constitution of India:

(ii) any other authority, body or institution established by or under any law or orders of the Government and responsible for the administration of a local fund:

7. Section 3(1) of the Kerala Local Fund Audit Act provides that the Government shall, by notification in the Gazette, appoint a person, to be the Director of Local Fund Audit in charge of the audit of accounts of a local authority or a local fund included in the Schedule to the Act. The Schedule to the Kerala Local Fund Audit Act includes various other authorities like Guruvayoor Township, The Kerala State

Housing Board, Temples under the management of Hindu Religious and Charitable Endowments Administration Department, Orphanages and Poor Homes, Harijan Hostels, Wakf Board, Kerala Kalamandalam, Bharat Scouts and Guides, The Travancore-Cochin Medical Council, The Kerala Dental Council and several other institutions.

8. The definition of "local fund" and "local authority" in the Kerala Local Fund Audit Act, when considered along with the Schedule to the Act, it is clear that the Act not only applies to the local authorities in the State of Kerala but also to any other authority responsible for the administration of a local fund. Section 4(2) of the Kerala Local Fund Audit Act empowers the Government to issue notification in the Gazette to add any other authority, body, institution or local fund to the Schedule to the Act and on publication of the notification, such authority, body, institution or local fund shall be deemed to be added to the Schedule. It is thus clear that the application of the Kerala Local Fund Audit Act is not restricted to Panchayats, Municipalities and Municipal Corporations.

9. The term "auditor" is defined in Section 2(a) of the Kerala Local Fund Audit Act as follows:

(a) "auditor" means the Director of Local Fund Audit and includes any other officer of the Local Fund Audit Department empowered by the Director to perform the functions of an auditor under this Act;

Section 2(d) of the Kerala Local Fund Audit Act states that the "Director" means the Director of Local Fund Audit and includes any person empowered by the Government to perform the functions of the Director of Local Fund Audit. Section 3(4) of the Kerala Local Fund Audit Act provides that notwithstanding anything contained in sub-section (1), the Examiner of Local Fund Accounts in the State functioning as such immediately preceding the commencement of the Act shall be deemed to be the Director appointed under subsection (1) of Section 3 and shall continue to function as such Director till a new Director is appointed under that sub-section. Section 4(1) of the Kerala Local Fund Audit Act provides that the Director shall, in the manner provided by or under this Act, conduct the audit of accounts of a local authority or a local fund included in the Schedule. Section 9 of the Kerala Local Fund Audit Act mandates the Executive Authority of a local authority or a local fund included in the Schedule to prepare or cause to be prepared the accounts of the authority or the local fund in such manner as may be prescribed. Sections 10, 11, 13 and 14 provide for the procedure for conducting the audit of accounts. Section 15 of the Kerala Local Fund Audit Act provides for the procedure to be followed after getting the report of the Director u/s 13.

10. It is relevant to extract Section 16 of the Kerala Local Fund Audit Act, which reads:

16. Audit to surcharge illegal payments and loss caused by negligence or misconduct: -

(1) The auditor may disallow any item which appears to him to be contrary to law and, surcharge the same against the person making or person or body of persons authorising the making of the illegal payment and may charge against any person responsible therefor, the amount of any deficiency or loss caused by the negligence or misconduct of that person or any sum received which ought to have been, but has not been brought into account by that person and shall, in every such case, certify the amount due from such person.

(2) The auditor shall state, in writing the reasons for his decision in respect of every disallowance, surcharge or charge and shall communicate the same by registered post to the person against whom it is made together with an extract of the relevant objection in the audit report.

(3) Any person aggrieved by disallowance, surcharge or charge made may, within one month after he has received or been served with the decision of the auditor, apply to the District court, to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surcharge or charge.

(4) Every sum certified to be due from any person by the auditor under this Act shall be paid by such person to the Executive authority within one month after the intimation to him of the decision of the Director unless, within that time, such person has filed an application before the District Court against the decision under sub-section (3) and such amount, if not so paid, or such amount as the District Court shall declare to be due, shall be recoverable under the provisions of the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the time being in force, as if it were an arrear of public revenue due on land.

11. A person aggrieved by disallowance, surcharge or charge may, within one month, apply to the District Court to set aside such disallowance, surcharge or charge. The District Court is empowered to take evidence as is necessary. The District Court may confirm, modify or remit such disallowance, surcharge or charge. Subsection (3) of Section 16 of the Kerala Local Fund Audit Act does not provide that the order passed by the District Court shall be final. At the same time, Section 16 of the Kerala Local Fund Audit Act or any other provision in the Act does not provide for an appeal against an order passed by the District Court u/s 16(3) of the Act.

12. Even if it is provided in a statute that the order passed by a court or authority is final, that does not preclude the aggrieved party from approaching the High Court under Article 226 or 227 of the Constitution of India, as the case may be. However, an appeal is a statutory remedy and if the statute does not provide for an appeal, the party aggrieved would have no right to file an appeal. The question to be decided is whether, in the absence of any provision for appeal under the Kerala Local Fund Audit Act, an appeal can be filed u/s 215(13) of the Kerala Panchayat Raj Act, by the aggrieved party who is governed by the Kerala Panchayat Raj Act.

13. It is relevant to extract Section 215 of the Kerala Panchayat Raj Act, which reads thus:

215. Accounts and Audit--(1) The Panchayat shall maintain such books of accounts and other books in relation to its accounts and prepare an annual statement of accounts in such form as may be prescribed.

(2) Accounts of receipts and expenditure of every Panchayat shall be maintained for every financial year in such form as may be prescribed.

(3) The Examiner of Local Fund Accounts and his nominees shall be the auditors of the Panchayat.

(4) The auditors shall conduct a continuous audit of the accounts of the Panchayat and shall after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the Panchayat concerned and duplicate copies thereof to the officer authorised by the Government in this behalf.

(5) The auditors shall specify in the report under sub-section (4) all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Panchayat, or any loss or waste of money or other property thereof caused by neglect or misconduct of the officer and authorities of the Panchayat.

(6) The auditors shall also report on any other matter relating to the accounts of the Panchayats as may be required by the Government, to the officer authorised by the Government in this behalf.

(7) The Panchayat shall forthwith remedy any defect or irregularity pointed out by the auditors and report the action taken to the officer authorised by the Government in this behalf.

(8) The auditors shall in the performance of their functions under this Act have all the powers of the civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 12908) while trying a suit in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copy thereof from any court or office; and

(e) such other matters as may be prescribed.

(9) The auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising

the incurring of, such expenditure and may charge against any person responsible therefor the amount of any deficiency, loss or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in very such case, certify the amount due from such person:

Provided that no surcharge under this sub-section shall be made after a period of four years from the date on which the expenditure in question was incurred.

Explanation.-- It shall not be open to any person whose negligence or misconduct as caused or contributed to any such deficiency or loss, to contend that, notwithstanding his negligence or misconduct the deficiency or loss would not have occurred, but for the negligence or misconduct of some other person.

(10) The auditors shall state in writing, the reasons for their decision in respect of every disallowance, surcharge or charge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(11) Any person aggrieved by any disallowance, surcharge or charge may, within fourteen days after the date of service on him of the decision of the auditor, make an application to the district court to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances.

(12) Where an application is made to the court under sub-section (11) the auditors shall be the sole respondents thereto and the applicant shall not make either the Government or any other person a party to the proceedings.

(13) From the decision of the district court under sub-section (11) an appeal shall lie to the High Court.

(14) Every sum certified by the auditors to be due from a person under this Act shall be paid by such person to the Secretary of the Panchayat concerned within thirty days after the date of service on him of the decision of the auditors unless within that time such person has made an application to the court against the decision; and such sum, if not so paid, or such sum as the court declares to be due shall be recoverable as if it were an arrear of land revenue.

(15) An abstract of every annual report of a panchayat as certified by the auditor showing its income under each head of receipt, the charges for the establishment, works undertaken, the sum expended on each work, the balance, if any, remaining unexpended together with the audit report hereon shall be submitted to the officer authorised by the Government in this behalf not later than fifteenth day of the second month of the next financial year.

(16) On receipt of the report referred to in sub-section (15), the officer shall forthwith consolidate the report and submit it to the Government.

(17 The Government shall-

(a) cause the accounts of the Panchayat together with the audit report thereon received by it under sub- section (16) to be laid before the Legislative Assembly; and

(b) cause the accounts of the Panchayat to be published in such manner as may be prescribed.

14. Sections 14, 15(1), 16(1), 16(2), 16(3) and 16(4) of the Kerala Local Fund Audit Act are similarly worded as Sections 215(5), 215(7), 215(9), 215(10), 215(11) and 215(14) of the Kerala Panchayat Raj Act. u/s 16(3) of the Kerala Local Fund Audit Act, a period of limitation of one month is provided for filing an application to the District Court, while in Section 215(11) of the Kerala Panchayat Raj Act, a period of 14 days is provided for the same. The District Court has jurisdiction to confirm, modify or remit the disallowance, surcharge or charge, both u/s 16(3) of the Kerala Local Fund Audit Act and Section 215(11) of the Kerala Panchayat Raj Act.

15. Article 243J of the Constitution of India provides that the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

16. Section 25 of the Kerala Local Fund Audit Act provides for bar of jurisdiction of the civil courts. Section 25 reads as follows:

Save as otherwise provided in sub-section (3) of Section 126, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any action taken or to be taken by the Government or the Director or my officer in pursuance of any power conferred by or under this Act.

17. Section 22 of the Kerala Local Fund Audit Act reads as follows:

22. Act to override other enactment:- If any provision contained in any other law for the time being in force relating to the audit of accounts of a local authority or a local fund included in the Schedule is repugnant to the provisions of this Act, the latter shall prevail and the former be void to the extent of such repugnancy.

18. A question would arise whether sub-section (13) of Section 215 of the Kerala Panchayat Raj Act is repugnant to the Kerala Local Fund Audit Act. I am of the view that the repugnancy as provided in Section 22 of the Kerala Local Fund Audit Act does not arise in this case, since the repugnancy contemplated u/s 22 is only "relating to the audit of accounts". It does not relate to the provision for an appeal from the decision of the District Court. The Kerala Local Fund Audit Act does not provide for an appeal to the High Court against the decision of the District Court, while the Kerala Panchayat Raj Act provides for an appeal to the High Court. That does not constitute a repugnancy within the meaning of Section 22 of the Local Fund Audit Act. Persons who are governed by the Kerala Panchayat Raj Act would have a further right to file an appeal challenging the

decision of the District Court. As stated above, the Kerala Local Fund Audit Act not only applies to the Panchayats but it applies to several other institutions and funds as well. In respect of those cases coming under the Kerala Panchayat Raj Act, sub-section (13) of Section 215 of the Kerala Panchayat Raj Act would apply and the person concerned would have a right to challenge the decision of the District Court in an appeal before the High Court. In respect of persons who are not governed by the Kerala Panchayat Raj Act or any other statute which specifically provides for an appeal to the High Court, the Kerala Local Fund Audit Act would apply and they would have no right to file an appeal against the decision of the District Court. They would have only the right to challenge the decision of the District Court in any other manner under law, other than by filing an appeal before the High Court.

19. Two enactments may be inconsistent to certain extent. However, it may be that obedience to each of them may be possible without disobeying the other. Statutes not only impose duties, but they may confer rights also. If a right conferred under one statute is taken away by the other statute, it can be said that there is inconsistency. If the rights conferred under two different statutes could co-exist, there would be no repugnancy. If one of the statutes provides for certain additional rights, it cannot be said that the said statute is repugnant to the other statute which does not confer such right. It cannot be said that Section 215 of the Kerala Panchayat Raj Act is wholly incompatible with the provisions of the Kerala Local Fund Audit Act. When a question of repugnancy arises, every effort should be made to reconcile the two enactments and to construe them in such a way so as to avoid the Acts being repugnant to each other.

20. Applying these principles and taking into account the provisions of the two Acts as aforesaid, it can be seen that subsection (13) of Section 215 of the Kerala Panchayat Raj Act is not repugnant to the provisions of the Kerala Local Fund Audit Act and particularly Section 16 of the said Act.

21. The Kerala Panchayat Raj (Manner of Inspection and Audit System) Rules, 1997 defines "Local Fund Audit Director" thus:

Local Fund Audit Director" means the Local Fund Audit Director appointed by the Government u/s 3 of the Kerala Local Fund Audit Act, 1994 (14 of 1994).

Sub-section (3) of Section 215 of the Kerala Panchayat Raj Act states that the Examiner of Local Fund Accounts and his nominees shall be the auditors of the Panchayat. Sub-section (1) of Section 3 of the Kerala Local Fund Audit Act speaks of appointment of Director of Local Fund Audit for the audit of accounts of a local authority or a local fund included in the Schedule to the Act. Sub-section (4) of Section 3 of the Kerala Local Fund Audit Act states that notwithstanding, anything contained in sub-section (1) of Section 3, the Examiner of Local Fund Accounts in the State functioning as such immediately preceding the commencement of the Act shall be deemed to be the Director appointed under sub-section (1) of Section 3. These aspects would also fortify the conclusion that

there is no conflict as such between sub-section (13) of Section 215 of the Kerala Panchayat Raj Act and the provisions of the Kerala Local Fund Audit Act, to the extent of the right of the aggrieved party to file an appeal before the High Court under sub-section (13) of Section 215 of the Kerala Panchayat Raj Act.

For the aforesaid reasons, I hold that the Memorandum of First Appeal is maintainable. The objections raised by the Registry are overruled.