
(2012) 03 KL CK 0182

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34436 of 2008 (Y)

Dr. M.M. Paulose, Civil Surgeon (Retd.), Mappanikkattu
House, Adimali, Idukki District

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Kerala Public Accountants Act, 1963 — Section 2, 3

Citation : (2012) 03 KL CK 0182

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : T.I. Abdul Salam and Sri. K. Range, for the Appellant; Noble Mathew, Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Challenge in this writ petition is against Exts. P6 and P7. Ext.P6 is an order passed by the first respondent, directing the Director of Health Services to proceed against the petitioner to recover an amount of Rs. 1,49,903/- towards the loss sustained Government, invoking the provisions of the Public Accountants, the Kerala Public Accountants Act, 1963. Based on Ext.P6 Revenue Recovery Proceedings were initiated by Ext.P7 and these proceedings which are under challenge.

2. Petitioner is a retired Civil Surgeon. On his retirement, complaining of delay in disbursing his terminal benefits, he approached the Kerala Lok Ayukta. In that complaint, the Kerala Lok Ayukta passed Ext.P6 order directing the respondents to issue the non-liability certificate of the petitioner, in order to enable him to get the DCRG amount sanctioned by the Accountant General. It was also ordered that the respondents are at liberty to recover the dues if any from the petitioner in accordance with law. It is in pursuance to this order that the impugned proceedings were issued.

3. Petitioner challenges in the impugned proceedings mainly contended that the procedure laid down in the Kerala Public Accountants Act itself were not complied

with by the respondents.

4. I have considered the submissions made.

5. Even if it is assumed that the provisions of the Kerala Public Accountants Act applied to the petitioner for realizing money in terms thereof, the procedure laid down u/s 3 of the Act should be complied with.

6. This provision reads as under:

3. Statement of particulars of claim to be drawn up by Collector or Head of Department:

(1) Whenever it appears to be Collector or the Head of a Department of the Government or other authority or institution notified under clause (b) of Section 2, under whom a public accountant is or was serving that the Government or such authority or institution have or has a claim on such public accountant for moneys, securities for money, documents or other property, he shall draw up a statement of the particulars of the said claim, and if he is not a Collector, may send the statement to the Collector in whose jurisdiction such accountant is or was employed.

(i) A Government Law Officer appointed to conduct cases before any court (other than the High Court of Kerala or the Supreme Court), tribunal or other authority shall be deemed to be a public accountant serving under the Collector; and

(ii) the Advocate General shall be deemed to be Head of a Department of the Government, under whom a Government Law Officer appointed to conduct cases in the High Court of Kerala or the Supreme Court is or was serving.

(2) The collector when he has himself recorded a statement as aforesaid may, and on receipt of such a statement from the Head of a Department of the Government, other authority or institution shall, by writing under his official seal and signature, require the moneys, securities for money, documents or other property, to be delivered either immediately to the person bearing the said writing or to such other person on such date and at such place as the writing may specify. Such notice of demand may be served on the public accountant in the same manner as a summons is served on a defendant under the Code of Civil Procedure, 1908.

(3) If the public accountant does not satisfy the demand, but appears and objects to the claim wholly or in part, the Collector shall enquire into the objection and record a decision.

7. There is nothing on record to indicate that in this case the aforesaid procedure has been complied with by the respondents. Consequently, the proceedings initiated against the petitioner, cannot be sustained. Therefore, this writ petition is disposed of quashing Exts.P6 and P7 and giving liberty to the respondents to initiate fresh proceedings in accordance with law as ordered by the Kerala Lok Ayukta.

Writ petition is disposed of as above.