

(2016) 07 KL CK 0032
In the High Court Of Kerala
Case No : W.P.(C). No. 23431 of 2016

Kerala State Co-Operative Bank Ltd.	APPELLANT
Vs	
Kerala Lok Ayukta Legislature Complex	RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Kerala Lok Ayukta Act, 1999 — Section 10, 11, 12, 13, 14, 15

Citation : (2016) 3 ILRKerala 501 : (2016) 3 KLT 591

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. George Poonthottam (SC., KSCB), Advocate, for the Appellant;
Smt. Renu. D.P., S.C., Lok Ayukta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition is filed by the petitioner, Kerala State Co-operative Bank Ltd. [hereinafter called "the Bank"], seeking to quash Ext.P4 order passed by the Upa Lok Ayukta dated 14.06.2016, whereby the petitioner was directed to issue loan closure certificate and repay an amount of Rs.30,000/- paid by the 2nd respondent towards the closure of loan on the basis of the benefit accrued to the petitioner in a Settlement Scheme, and for other related reliefs. Brief facts for the disposal of the writ petition are thus:

2. Petitioner is a scheduled Bank registered under the Kerala Co-operative Societies Act, 1969. The 2nd respondent had defaulted repayment of the loan availed by him. Consequently, action was taken by the Bank to recover the amount due from his salary and retirement benefits. However, on 24.08.2012, 2nd respondent remitted an amount of Rs.1,30,000/- to the loan account under the One Time Settlement (OTS) scheme for the year 2012. As per the calculation of the Bank, an amount of Rs.1,73,392/- had to be remitted before the expiry of the scheme. The 2nd respondent did not remit the balance amount on or before the last date set out under the scheme.

3. It is contended that, 2nd respondent preferred a complaint before the 1st respondent Lok Ayukta, stating that the retirement benefits are not being disbursed by his employer for the reason that the petitioner Bank has refused to issue non-liability certificate. Petitioner entered appearance and filed a counter affidavit traversing through the facts relating to recovery proceedings initiated against the 2nd respondent. That apart, a contention was raised that the complaint itself is not maintainable, and the prayer sought for in the complaint cannot be granted as it being outside the scope and jurisdiction of the 1st respondent. However, the 1st respondent, without taking into consideration the pleadings put forth by the petitioner, had issued an order directing the petitioner to issue loan closure certificate to the 2nd respondent in respect of his loan account and to reimburse an amount of Rs.30,000/-. It is thus aggrieved by Ext.P4, this writ petition is preferred.

4. Heard learned counsel for the petitioner and learned Standing Counsel appearing for the 1st respondent. Perused the documents and pleadings.

5. Learned counsel for the petitioner reiterated the contentions raised in the writ petition. The predominant contention advanced by the learned counsel for the petitioner is that, the 1st respondent has no manner of jurisdiction to entertain a complaint of this nature. Learned counsel has invited my attention to the Preamble of the Kerala Lok Ayukta Act, 1999 and contended that, the subject matters which Lok Ayukta is entitled to entertain is relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India, taken by or on behalf of the Government of Kerala or certain public servants in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto. Therefore, it is the contention of the learned counsel that the petitioner Bank venturing in commercial and contractual matters will not come under the jurisdiction of the Lok Ayukta Act and therefore the 1st respondent should not have entertained the complaint submitted by the 2nd respondent.

Moreover, learned counsel has invited my attention to Section 12

(1) of the Act, which read thus:

"12. Reports of Lok Ayukta etc.--(1) If, after investigation of any action in respect of which a complaint involving grievance has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lok Ayukta or an Upa-Lok Ayukta shall, by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time, as may be specified in the report and also intimate the complainant about its having made the report."

6. A proposition was canvassed by referring to Section 12 (1) that the Lok Ayukta is vested with power only if it is satisfied that after investigation of any action in respect of which a complaint involving grievance has been made, injustice or undue hardship is caused to the complainant or any other person, the

Lok Ayukta or an Upa-Lok Ayukta can only provide a report in writing and recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time. Therefore, the contention of the learned counsel is that, Lok Ayukta or an Upa-Lok Ayukta cannot issue any direction to any competent authority, but it can only provide a report with respect to the injustice committed to the complainant. However, on a reading of the said provision, it is categoric and clear that, the Lok Ayukta or Upa-Lok Ayukta is vested with powers to issue necessary direction and ensure a report from the competent authority that the grievance of the complainant is remedied or redressed. Therefore, the contention that the Lok Ayukta has only power to make a report cannot be sustained. That apart, sub-section (2) of the said section mandates that the competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the said period specified in the report, intimate or cause to be intimated, as the case may be, to the Lok Ayukta or Upa-Lok Ayukta the action taken on the report. So also, sub-section (5) of Section 12 read thus:

"12(5). If the Lok Ayukta or Upa-Lok Ayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in subsections (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."

7. On a reading of sub-section (5), it leads me to a safe conclusion that the Lok Ayukta has to ensure that an action is taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), and then only the case can be closed under intimation to the complainant, the public servant and the competent authority concerned. The second limb of sub-section (5) further makes it clear that if there is no compliance of the report made by the Lok Ayukta or Upa-Lok Ayukta and if it is not satisfied, the Lok Ayukta is empowered to make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant. Therefore, on a harmonious construction of sub-sections (1) to (5) of Section 12, it can be seen that the report intended in the said provision is the direction to comply with the findings in the report.

8. Moreover, on going through Sections 10, 11 and 13 to 15 of the Lok Ayukta Act, I am of the considered opinion that plenary powers are provided to the Lok Ayukta as well as Upa-Lok Ayukta. Therefore, the issue with respect to the directions to comply with its order, are implied under law. As per Section 14, both Upa-Lok Ayukta and Lok Ayukta are vested with powers even to declare that a public officer shall be removed from service under certain contingencies. In that view of the matter, I am of the definite opinion that all powers are vested with the Lok Ayukta and Upa-Lok Ayukta to ensure that its orders are complied

with. In that view of the matter, I am of the considered opinion that, the contention raised by the petitioner that Lok Ayukta has no manner of jurisdiction to entertain the complaint filed by the 2nd respondent, cannot be sustained under law.

9. It is also contended by the learned counsel for the petitioner that consequent to the introduction of Section 69 of the Kerala Co-operative Societies Act, the 1st respondent had no manner of jurisdiction to entertain the complaint since Section 69 excludes "any other authority" in any matter with respect to transactions with a Co-operative Bank or a Co-operative society.

10. So far as the contention with respect to Section 69 is concerned, under the Kerala Lok Ayukta Act, power is conferred under Section 7 to investigate into any matters recited thereunder. However, as per Section 8, the Lok Ayukta is excluded from investigating into the matters recited thereunder and as provided under the Second Schedule of the Act.

11. Perusal of these two provisions takes me to the conclusion that the 1st respondent is vested with powers to entertain Ext.P1 complaint, especially due to the fact that it will not come under the exclusion provided under Section 8 and further that officers of the petitioner come under the "public servant" defined under Section 2(o)(v) of the Act. When parallel remedies are available under law, the choice is that of the litigant. The authorities considering the lis, only need to look into whether they are empowered under law to entertain a litigation and whether any prohibition is created. Petitioner is not having a case that 1st respondent is not vested with powers to entertain the complaint. Therefore, the contention with respect to Section 69 of the Kerala Co-operative Societies Act, in my considered opinion, cannot be sustained.

12. On a perusal of Ext. P4 order of the 1st respondent, it is categoric and clear that on the basis of the Settlement Scheme launched by the Government for settlement of loan transactions of the Co-operative Banks and societies viz. "Ashwas 2012", 2nd respondent was liable to pay the principal amount and equivalent amount towards interest alone, which thus means, even if the interest accrued is more than Rs.50,000/-, the 2nd respondent was not liable to pay the same. However, the 2nd respondent has remitted an amount of Rs.1,30,000/-, when the scheme was launched without exactly calculating the amount the 2nd respondent was liable to pay. However, 1st respondent found that 2nd respondent was liable to pay only Rs.1,00,000/- (Rupees one lakh only) and therefore it was ordered that the retention of Rs.30,000/- by the petitioner is illegal. Thereupon only it was directed to return the said amount. So also, 1st respondent has found that since the petitioner did not issue a Loan Closure certificate, terminal benefits of the 2nd respondent were not released. First respondent passed the impugned order after identifying that the 2nd respondent had a grievance to be settled, and on realising that the 1st respondent is vested with powers to entertain the complaint, the relief was granted.

13. Learned Standing Counsel for the 1st respondent has contended that, Ext.P4 order does not suffer from any illegality or arbitrariness warranting interference of this Court under Article 226 of the Constitution of India. Learned counsel has also invited my attention to the judgment of the Apex Court in "Rama Rao v. The Lok Ayukta and others" [AIR 1996 SC 2450], to canvass the proposition that Lok Ayukta is empowered to issue directions to the competent authority by way of an interim order or final order. Therefore, it is contended that Ext.P4 order was passed after being satisfied that the 1st respondent is vested with powers to proceed with the grievance voiced by the 2nd respondent. I find force in the said contentions.

14. Reckoning the above facts and circumstances and law involved in the subject matter, I am of the considered opinion that there are no legal or other factual circumstances warranting interference of this Court in Ext.P4 order passed by the 1st respondent, exercising the power of judicial review under Article 226 of the Constitution of India.

15. Resultantly, writ petition fails and accordingly the same is dismissed.