

(2010) 02 KL CK 0044
In the High Court Of Kerala
Case No : W.A. No. 16 of 2008

Narayanan K.I.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Constitution of India, 1950 — Article 243Z
Kerala Local Fund Audit Act, 1994 — Section 2(g), 9, 9(2)

Citation : (2010) 2 ILR (Ker) 3 : (2010) 1 KLJ 549 : (2010) 1 KLT 918

Hon'ble Judges : P.R. Raman, Acting C.J.; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.V. Surendranath and P. Ravindran, for the Appellant; K. Meera (Sr. G.P.), for the Respondent

Final Decision : Dismissed

Judgement

P.R. Raman, Actg. C.J.

1. Appellant is the petitioner in O.P. No. 31184 of 2001. During the relevant time, he was the Secretary of Kannur Municipality. A show cause notice was issued by the Local Fund Audit Department u/s 9(2) of the Kerala Local Fund Audit Act, 1994, produced as Ext.P4 in the original petition, to show cause as to why steps for prosecution shall not be initiated for non submission of accounts in terms of Section 9(2) of the said Act. Petitioner challenged the said notice on various grounds. In the writ petition, he, inter alia, challenged the very provision contained in Section 9(2) of the Local Fund Audit Act and also contended that in the light of the subsequent enactment, namely the provisions contained in Sections 294 and 295 of the Kerala Municipality Act, 1994, Section 9(2) of the Local Fund Audit Act should be deemed to have been repealed. The learned Single Judge considered the contentions and repelled the challenge against Section 9 (2) of the Local Fund Audit Act. It is also held that the provisions of the Kerala Local Fund Audit Act in so far as they relates to the Municipalities do not stand repealed impliedly or otherwise by reason of Sections 294 and 295 of the

Municipality Act. It was further held that the Secretary of the Municipality is the executive officer as contemplated u/s 9(2) of the Act and it is he who can be arrayed as accused for prosecution but in case the duties of the Secretary have been duly delegated to some other officer, then the Director of Local Fund Audit has to look into those aspects. In that view, a further opportunity was given to the appellant/petitioner to file an explanation to the show cause notice and the Deputy Director or the Director, as the case may be, was directed to consider the objection and see whether he is satisfied that a criminal prosecution u/s 9(2) of the Local Fund Audit Act is to be launched or not

2. Not satisfied with the relief as granted above and in view of the repelling of the contentions raised against Section 9(2) of the Local Fund Audit Act, the appellant has preferred this writ appeal.

3. We have heard learned senior counsel Sri. P. Ravindran appearing on behalf of the appellant and Smt. K. Meera, learned senior Government Pleader appearing on behalf of the respondents.

4. Learned counsel for the appellant contends that the Kerala Local Fund Audit Act, 1994 and by virtue of Section 9(2), the local authorities are liable to prepare and present accounts for audit. The local authorities include the Municipality also. But, subsequently in terms of the provisions contained in Article 243Z of the Constitution of India which provides that the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts. Sections 294 and 295 of the Municipality Act were inserted and notified with effect from 14.12.1995. It is his contention that by virtue of those provisions contained in Sections 294 and 295 of the Municipality Act, the provisions contained in the Local Fund Audit Act, more particularly Section 9(2), should have been held as impliedly repealed. According to him, since specific provisions have been inserted in the Municipality Act by way of Sections 294 and 295, it is a self contained Code. He also contended that Rule 11 of the Kerala Municipality (Manner of Inspection and Audit System) Rules, 1997 provided that the financial statement published under sub-section (1) of Section 294 shall be submitted for audit within four months after the completion of the financial year that is before the 31st day of May, to the Auditor authorised to conduct the audit of the accounts of that Municipality and sub-rule (2) of Rule 11 makes the Secretary responsible for submitting the financial statement for audit in accordance with the rules, and within the time limit as above and on default action shall be taken against the Secretary under sub-section (2) of Section 9 of the Kerala Local Fund Audit Act, 1994 and the provisions of the Rules made thereunder. So according to him, in the absence of any provision contained in Sections 294 and 295 of the Municipality Act or any other provision in the Municipality Act authorising penal action as contemplated by it in terms of Section 9(2) of the Local Fund Audit Act is contrary to the provisions of the parent Act and hence ultra vires of the provisions of the Act.

5. The learned Government Pleader, on the other hand, supports the judgment.

6. As per sub-sections (1) and (2) of Section 9 of the Local Fund Audit Act, the accounts of an authority or a local fund included in the schedule relating to a financial year shall be prepared or caused to be prepared by the Executive authority, in such form and in such manner as may be prescribed, and presented for audit within four months of the close of that financial year and where an Executive authority makes default in the preparation and presentation of accounts for audit within the period specified under sub-section (1), he shall be punishable, on conviction, with fine which may extend to three thousand rupees but which shall not be less than one thousand rupees and such proceedings u/s 9(2) shall be taken by the Director after giving notice as provided under sub-section (3) of Section 9. There is no dispute that the Municipality is included in the schedule item 9.

7. The only point arising for consideration is what is the effect of Sections 294 and 295 of the Kerala Municipality Act over Section 9 of the Kerala Local Fund Audit Act. The Local Fund Audit is provided to verify and regulate the audit of the local fund under the management and control of the local authorities in the State of Kerala. "Local fund" is defined u/s 2(g) of the Local Fund Act which means 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 any other fund which the Government may, by notification in the Gazette declare to be a local fund for the purposes of the Act. Therefore, Section 9 on the Local Fund Audit Act provides for auditing of the "local fund" as defined in the said Act, and whereas the Municipality may have other accounts for which the Local Fund Audit Act would not in the absence of specific provision apply. Therefore, in terms of the provisions contained in Article 243Z of the Constitution of India necessary provisions were incorporated in the Municipality Act, that is Sections 294 and 295. Therefore, as per Section 295 of the Municipality Act, the Municipality is obliged to maintain its accounts and other books connected with the accounts in the manner and in the form as prescribed. The responsibility to maintain or cause to maintain the accounts and the connected books of the Municipality in such manner and as prescribed above and submit or cause to submit such accounts to the Local Fund Examiner for conducting audit in the time shall vest with the Secretary, hi other words, akin to the provisions contained in Section 9(2) of the Local Fund Audit Act, now there is a provision in the Municipality Act also to maintain and prepare accounts other than local fund also and subjected to audit to the same department namely the Local Fund Audit Department. In other words, Section 295 of the Municipality Act has enlarged the scope of audit of the local fund and included the other accounts also. The effect of it, as already stated, is to enlarge the audit of the local fund to the other accounts also. Therefore the argument that the effect of Sections 294 and 295 of the Municipality Act has impliedly repealed Section 9 of the Kerala Local Fund Audit Act is per se unacceptable as rightly found by the learned Single Judge. The next argument is based on the provision contained in Rule 11 (2) of the Kerala Municipality (Manner of Inspection and Audit System) Rules referred

to above. As a matter of fact, the present notice is issued only confining to the non-production of accounts under the Local Fund Audit Act. Therefore, the question as to whether penal action can be taken for non-submission of the accounts in terms of Rule 11 of the said Rules need not be considered by us in this writ appeal. That issue is left open. No other points are argued.

In the result, we agree with the view expressed by the learned Single Judge and dismiss the writ appeal. However, since the time fixed by the learned Single Judge for submission of reply is over and in view of the pendency of the appeal, we extend the time by one month from today. All other directions contained in the impugned judgment will automatically follow.