

(2008) 11 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22836 of 2008

Nithin Norbert and Others

APPELLANT

Vs

The University of Kerala and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 8, Order 1 Rule 8(1), 151
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Kerala High Court Rules, 1971 — Rule 148
Kerala Lok Ayukta (Powers of Civil Courts) Rules, 1999 — Rule 3, 3(1), 4(3)
Kerala Lok Ayukta Act, 1999 — Section 11(2), 12(1), 12(4), 14, 15

Citation : AIR 2009 Ker 60 : (2008) 4 ILR (Ker) 712 : (2008) 3 KLJ 843

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

Bench : Single Bench

Advocate : K. Gopalakrishna Kurup, for the Appellant; N. Nandakkumar Menon M. Rajagopalan Nair, SC, P.K. Manojkumar, Sushya Rajan, N. Raghuraj, K. Amminikutty and George Poonthottam, for the Respondent

Judgement

K.T. Sankaran, J.

1 The questions involved in this Writ Petition are: (1) Whether the Lok Ayukta and Upa Lok Ayukta appointed under the Kerala Lok Ayukta Act, 1999 have jurisdiction to allow amendment of a complaint or an application; and (2) Whether the Lok Ayukta and the Upa Lok Ayukta have power to invoke Rule 8 of Order I of the CPC and permit a representative action being taken, empowering one or more parties in the complaint to defend the complaint in a representative capacity on behalf of other who are not parties to proceedings.

2. The writ petitioners are not parties to the proceedings before the Lok Ayukta. Their grievance is against Exts. P3 and P5 orders passed by the Upa Lok Ayukta. As per Ext.P5 order dated 4th July 2008, the Upa Lok Ayukta impleaded additional respondents 4 and 5 (respondents 5 and 6 in the Writ Petition) in a

representative capacity representing similarly situated persons. By the same order, the Upa Lok Ayukta directed the complainant (respondent No. 4 in the Writ Petition) to make a publication to that effect in a leading Malayalam daily requesting such persons who are not made parties of "offer their comments". It was also held in Ext.P5 that similarly placed persons can also take part in the proceedings. Ext.P3 order dated 18th July, 2008 was passed by the Upa Lok Ayukta allowing the application for amendment of the complaint.

3. In the proceedings before the Lok Ayukta, the Vice Chancellor, the Registrar and the Pro-Vice Chancellor of the University of Kerala are respondents 1 to 3. The complaint was filed alleging large scale irregularities and corrupt practices in the final selection of the candidates for the post of Assistant Grade II in the University of Kerala. It was alleged that the respondents in the complaint had indulged in unfair and corrupt practices by manipulating the marks obtained by certain candidates in the written examination to ensure that those candidates are included in the final select list. The complaint would disclose that the University of Kerala issued a notification inviting applications for the post of Assistant Grade II in March, 2005. Nearly 50,000 candidates applied and appeared for the written test conducted in July, 2005. Till September 2007, the result were not published by the University, though the valuation conducted by the outside agency was over by October, 2005. The results were published in September, 2007. A Selection Committee was constituted consisting of the Vice Chancellor as the Chairman and four members of the Syndicate as members. The Registrar of the University acted as the Secretary of the Selection Committee. 2114 candidates were called for interview. The interview was conducted during the period from October 2007 to February 2008. The University published a final rank list of selected candidates consisting of 1401 candidates and a supplementary list of 24 candidates. It is alleged that for including the favoured candidates in the top 160 ranks, the marks in the written examination were manipulated.

4. The reliefs prayed for the complaint originally were the following:

- 1) To direct the respondents to produce the original mark sheets of the candidates along with the answer sheets in Ext.P3 Selection List and the answer key of the question before this Hon"ble Lok Ayukta.
- 2) To direct the respondents to furnish the mark list of the written examination of all the candidates as forwarded by the outside agency.
- 3) To direct the respondent to furnish the mark of the candidates regarding the handwriting examination and interview.
- 4) To investigate the allegations with specific reference to the list of 25 candidates as stated in the complaint and if found true to declare that the respondents are unfit for holding public office and thereafter to recommend the prosecution of the respondents.

5. As per Ext.P5 order dated 4.7.008, the Upa Lok Ayukta allowed impleadment

of additional respondents 4 and 5 in a representative capacity representing similarly situated persons. Respondents 4 and 5 are persons included in the final select list. Publication in a leading Malayalam daily, as stated above, was also ordered as per Ext.P5.

6. Thereafter, the complainant filed Ext.P2 application dated 14.7.2008, for amendment of the complaint, to incorporate additional averments and additional reliefs to declare that the persons whose names are found in the rank list are unfit to hold the post of Assistant Grade II in the University and to set aside the rank list. The averments sought to be incorporated include an averment that respondents 1 to 3 in the complaint abused their position as public servants to obtain favour for themselves and other persons whose names are included in the final rank list and that respondents 1 to 3 are guilty of corruption, favouritism, nepotism and lack of integrity in their capacity as public servants. It is also alleged that respondents 1 to 3 in the complaint have committed mal-administration in preparing the rank list.

7. The application for amendment was opposed by the respondents in the complaint. They contended that the Lok Ayukta or Upa Lok Ayukta has no jurisdiction to allow amendment of the pleadings. They also contended that there is no allegation in the complaint that the persons who were appointed as per the rank list have abused their position as public servants. The Kerala Lok Ayukta Act does not confer any power and authority to set aside the rank list or to terminate the employment of persons who were selected for appointment. Hence the prayer to incorporate the additional reliefs was opposed. It was also contended that the relief No. 6 sought to be incorporated by the amendment would affect the vested rights of the appointees and such a relief cannot be incorporated without bringing in all those persons in the array of parties.

8. The Upa Lok Ayukta held in Ext.P3 order that Rule 3(d) of the Kerala Lok Ayukta (Powers of Civil Courts) Rules, 1999 empowers the Lok Ayukta and Upa Lok Ayukta to allow alteration of the complaints or the applications and this includes the power to allow amendment of the complaint. As regards the objection against the incorporation of additional relief No. 6 (to declare that the candidates in the rank list are unfit to hold the post of Assistant Grade II), the Upa Lok Ayukta held as follows:

...The question whether they can be declared unfit to hold the posts need not be considered at this stage. As per Section 14 of the Kerala Lok Ayukta Act where after investigation in the complaint the Lok Ayukta or Upa Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant should not continue to hold the post held by him, the Lok Ayukta or Upa Lok Ayukta as the case may be shall make declaration to that effect in his report under Sub-section (3) of Section 12. If it is found that the rank list is improperly prepared and the appointments are made illegally it is immaterial whether the Lok Ayukta or Upa Lok Ayukta has the power to cancel the rank list or to terminate the employment of the selectees.

According to the Standing Counsel for the University relief No. 6 cannot be incorporated without bringing all appointees in the party array. There is no force in this contention also. Additional respondents 4 and 5 were impleaded as the representatives of the appointees. A paper publication was also made in Mathrubhoomi daily dated 6.7.2008 calling upon the appointees to get themselves impleaded in the proceeding, if they are interested.

9. The additional reliefs incorporated as per Ext.P3 order allowing the amendment, are the following:

5) Declare that the respondents 1 to 3 are unfit to hold the public offices which they are now holding.

6) Declare that the candidates whose name appear in the Ext.P3 rank list are unfit to hold the post of Assistant Grade - II in the University of Kerala and the said rank list is to be set aside.

7) And allow the complainant to realize compensation from the respondents as fixed by this Hon"ble Lok Ayukta.

10. The Kerala Lok Ayukta Act, 1999 provides for appointment of Lok Ayukta and Upa Lok Ayukta u/s 3 of the Act for the purpose of conducting investigations and inquiries in accordance with the provisions of the Act. The Lok Ayukta and one of the Upa Lok Ayukta may exercise powers in respect of matters mentioned in Section 7(1) of the Act. Section 7(2) states that subject to the provisions of the Act, an Upa Lok Ayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being the Chief Minister or a Minister or a Member of the State Legislature or a Secretary or an office bearer of a political party at State level or an officer referred to in Sub-clause (iii) of Clause (d) of Section 2, in any case where a complaint involving a grievance or an allegation is made in respect of such actions or such action can be or could have been in the opinion of the Upa-Lok Ayukta, the subject of a grievance or an allegation. The expression "action", "allegation", "grievance" and "public servant" are defined in Clauses (a), (b), (h) and (o) of Section 2, which are extracted below for easy reference:

(a) "action" means any action including administrative action taken by way of decision, recommendation or finding or in an other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly;

(b) "allegation", in relation to a public servant, means any affirmation that such public servant;

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to Cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by

personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant.

(h) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;

(o) "public servant" means a person who is or was at any time,-

(i) the Chief Minister,

(ii) a Minister,

(iii) a member of the Legislative Assembly of the State of Kerala;

(iv) a Government servant;

(v) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and such other Corporations or Boards, as the Government may, having regard to its financial interest, in such Corporations or Boards by notification, from time to time, specify;

(vi) a member of a Committee or Board or Authority or Corporation, statutory or non-statutory, constituted by the Government of Kerala;

(vii) a person in the service or pay of,-

(A) a local authority in the State;

(B) a statutory Body or a Corporation (not being a local authority) established by or under a State or a Central Act, owned or control led by the Government of Kerala and any other Board or Corporation as the Government may, having regard to its financial interest therein, specify, by notification in the Gazette from time to time;

(C) a Company registered under the Companies Act, 1956 (Central Act 1 of 1956), in which not less than fifty-one percent of the paid up share capital is held by the Government of Kerala or any company which is a subsidiary of such company;

(D) a society registered or deemed to have been registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1956 (XII of 1955) or the Societies Registration Act, 1860 (Central Act 21 of 1860), which is subject to the control of the Government of Kerala and which is notified, in this behalf, in the Gazette;

(E) a co-operative society;

(F) a University;

11. Section 9 of the Act provides that subject to the provisions of the Act, any person may make a complaint under the Act to the Lok Ayukta or an Upa Lok Ayukta. The complaint shall be in such form and in such manner as may be prescribed. Section 9 also provides for a preliminary enquiry and for forwarding copies of the complaint to the public servant and the competent authority concerned. It also provides for affording such public servant an opportunity to offer his comments on such complaint. Sub-section (5) of Section 9 confers discretion on the Lok Ayukta or Upa Lok Ayukta to refuse to investigate or discontinue investigation of any complaint involving a grievance or an allegation, in certain circumstances mentioned therein. It is apposite to extract Section 8 of the Act, which reads as follows:

8. Matters not subject to investigation- (1) Except as hereinafter provided, the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule.

(2) The Lok Ayukta or an Upa-Lok Ayukta shall not investigate-

(a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lok Ayukta or an Upa-Lok Ayukta, as the case may be;

(b) any action in respect of matter which has been referred to inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952).

(c) Any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place;

Provided that a complaint referred to in Clause (c) may be entertained by the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, after the expiry of the period referred to in the said clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in that clause.

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lok Ayukta or an Upa-Lok Ayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised.

12. Section 11(2) provides that for the purpose of any investigation (including the preliminary inquiry), the Lok Ayukta or Upa-Lok Ayukta shall have all the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the matters mentioned in Clause (a) to (f). The said Clauses are the following:

(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 affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for the examinations of witnesses or documents;
- (f) such other matters as may be prescribed.

13. Section 12 provides for the report to be made by the Lok Ayukta or Upa-Lok Ayukta. The relevant portion of Section 12 reads as follows:

12. Reports of Lok Ayukta: (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.

(2) The competent authority to whom a report is sent under Sub-section (1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated, as the case may be, to the Lok Ayukta or the Upa-Lok Ayukta the action taken on the report.

(3) 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.

(4) The competent authority shall examine the report forwarded to it under Sub-section (3) and, within three months of the date of receipt of the report, intimate or cause to be intimated to the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, the action taken or proposed to be taken on the basis of the report.

14. Section 14 provides that if it is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall make a declaration to that effect in his report under Sub-section (3) of Section 12.

15. Section 8 is to be read along with the Second Schedule to the Act. As per Section 8, a Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule. Clause (d) of the

Second Schedule is to the following effect:

(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service.

16. Rule 3 of the Kerala Lok Ayukta (Powers of Civil Court) Rules, 1999 states that the Lok Ayukta or Upa-Lok Ayukta shall have the powers of a Civil Court in respect of the matters enumerated therein. It is relevant to quote Clauses (c) to (e) of Rule 3(1):

(c) to make, during the pendency of any complaint, any interlocutory order, as may appear to the Lok Ayukta to be just and equitable to meet the ends of justice;

(d) to allow alteration of the complaints or applications;

(e) to implead as parties, the legal representatives of a deceased party in any complaint pending before it, subject to the provisions of Order XXII of the Code of Civil Procedure, 1908, in so far as they are applicable;

17. Rule 4(3) reads as follows:

4. Powers of the Lok Ayukta or Upa-Lok Ayukta to correct errors:

....

(3) The Lok Ayukta or an Upa-Lok Ayukta may, at any stage of the proceedings in a complaint either suo-motu or on application, delete the name of any party, improperly joined or, add as party any person who ought to have been joined or whose presence before the Lok Ayukta or an Upa-Lok Ayukta is felt necessary, in order to enable the Lok Ayukta or Upa-Lok Ayukta, as the case may be, in any complaint and the provisions of Rule 10 of Order I of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, as far as may be, apply to such deletion or addition of parties.

18. The powers of the Lok Ayukta and Upa-Lok Ayukta enumerated in Section 11(2) of the Act and Rule 3 of the Rules, do not as such, provide for instituting a complaint in a representative capacity, either as regards the petitioners or as regards the respondents. The Lok Ayukta or the Upa-Lok Ayukta does not have all the powers of a Civil Court while trying a suit. They have only the powers of a Civil Court as specified in the Act and Rules. Rule 8 of Order I of the Code of Civil Procedure, empowers the Civil Court to grant permission to one or more of the parties, to sue or be sued or to defend the suit on behalf of or for the benefit of all the persons interested, where there are numerous persons having the same interest in one suit. The Court may also direct that one or more such persons may, sue or be sued, or any defend such suit, on behalf of, or for the benefit of, all persons so interested. There is no provision in the Lok Ayukta Act or the Rules

empowering the Lok Ayukta or Upa-Lok Ayukta to grant such permission or to issue a direction as is provided in Clauses (a) and (b) of Sub-rule (1) of Rule 8 of Order I of the Code of Civil Procedure.

19. Sri. Nandakumara Menon, learned Senior Advocate appearing for the Lok Ayukta, submitted that Rule 3(c) of the Rules contains, though does not specifically confer, the jurisdiction for the Lok Ayukta and Upa-Lok Ayukta to grant permission as provided in Order I Rule 8 of the Code of Civil Procedure. I am not inclined to accept this contention. Clause (c) empowers the Lok Ayukta and Upa-Lok Ayukta to pass any interlocutory order as may appear to be just and equitable to meet the ends of justice. Such Power, to my mind, does not include a power to grant permission to institute a complaint against one or more persons in a representative capacity representing similarly situated persons. In civil disputes, there could be large number of persons having the same interest as involved in the suit and adjudication of the dispute can be had with some of them in the party array so as to bind others. It cannot be said that the matters arising for consideration of the Lok Ayukta or Upa-Lok Ayukta, under the Kerala Lok Ayukta Act, would be something akin to such civil disputes. The Scheme of the Kerala Lok Ayukta Act would indicate that an "action" leading to an "allegation" or a "grievance" could be the subject of an investigation. In the case of a complaint involving a "grievance", if the Lok Ayukta or Upa-Lok Ayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, a report in writing shall be made recommending to the competent authority that such injustice or hardship shall be remedied or redressed in such manner as may be specified. In the case of a complaint involving an "allegation", if the Lok Ayukta or Upa-Lok Ayukta is satisfied that such "allegation" is substantiated, he shall, by report in writing, communicate his findings and recommendations to the competent authority.

20. Sub-sections (1) and (3) of Section 12 provide for making such reports. The competent authority has to act on the report as provided in Sub-sections (2) and (4) of Section 12. Section 12 also provides as to what should be done in cases where the Lok Ayukta or Upa-Lok Ayukta is satisfied or dissatisfied with the action taken or proposed to be taken by the competent authority. Section 14 provides for the consequences of a finding made by the Lok Ayukta or Upa-Lok Ayukta.

21. Section 15 empowers the Lok Ayukta or Upa-Lok Ayukta to pass an order for the purpose of initiating prosecution against the public servant who is found to have committed any criminal offence. If the procedure as provided in Rule 8 of Order I of the CPC is made applicable to the investigation of the complaints under the Kerala Lok Ayukta Act, it would offend the scheme of the Act. The purpose of permitting a representative action under Order I Rule 8 of the CPC cannot be achieved by resorting to such a procedure in respect of a complaint made before the Lok Ayukta under the Kerala Lok Ayukta Act.

22. Reliance was placed by Sri. Nandakumara Menon on the decision reported in

Cheru Ouseph v. Kunjipathumma 1981 KLT 495. In that case, the question which was decided was whether the Rent Control Court could set aside an order dismissing a Rent Control Petition for default. It was held by Justice M.P. Menon that the Rent Control Court has power, in appropriate cases, to restore an application dismissed for default, in spite of the fact that the Rent Control Act does not specifically provided for the power to order restoration of the petition dismissed for default. In that context, it was held thus:

12. What, after all, is the inherent power saved by Section 151 of the Code of Civil Procedure? A court is constituted for doing justice and must be deemed to possess all powers as may be necessary to do the right and undo wrongs in the course of administration of justice. Of course, the court must have jurisdiction over the proceedings before it can exercise the inherent power, but when that is granted, its power to advance the cause of justice by relying on unenumerated powers - on inherent or residuary power, as it is often called - cannot be denied to it. And therefore, where a tribunal exercises the same kind of power i.e., part of the judicial power of the State, as the Supreme Court has observed, why should it be denied similar inherent or residuary powers? If you do not like the name, call it by another; but so long as the tribunal is deciding legal disputes and determining the rights of citizens as any other court, you cannot, without endangering its efficiency, deny to it all powers which are necessary for the administration of justice. This is not to convert every tribunal into a tyrant, but only to recognize the reality that tribunals have come to stay as instruments of administration of justice, and that occasions may arise where they too will have to step into areas unchartered by the statute and the rules, in the interest of justice. If a tribunal goes out of its way in the fullness of its powers, the superior courts are there to correct it, as noticed by Allen; and as also observed by him, the first adjudication is more important to the litigant than the last.

23. A situation akin to the one dealt with in Cheru Ouseph v. Kunjipathumma 1981 KLT 495 could be dealt with by the Lok Ayukta or Upa-lok Ayukta under Clause (c) of Sub-rule (1) of Rule 3 of the Rules. By passing an interlocutory order, which may appear to be just and equitable by the Lok Ayukta or Upa-Lok Ayukta, the ends of justice could be met. The power to implead parties in a representative character, is distinct and different from the power to pass in interlocutory order to meet the ends of justice. The power to implead parties or to delete or add parties is specifically provided for in Clause (e) of Sub-rule (1) of Rule 3 and Sub-rule (3) of Rule 4 of the Kerala Lok Ayukta (Powers of Civil Court) Rules. Clause (e) deals with impleading the legal representatives of a deceased party, subject to the provisions of Order XXII of the Code of Civil Procedure. What is provided in Sub-rule (3) of Rule 4 is the power similar to the power of the Civil Court under Rule 10 of Order I of the Code of Civil Procedure. Such power can be exercised only in the contingencies mentioned therein. I am of the view that Rule 3(1)(c) of Rule 4(3) of the Rules does not empower the Lok Ayukta or Upa-Lok Ayukta to permit the complainant to institute a complaint against one or more of the respondents in a representative capacity, those

respondents representing the whole body of persons having same interest. Publication of the notice in the newspaper, as was done in the present case, would not cure the lack of jurisdiction of the Lok Ayukta or Upa-LokAyukta. No power is vested in the Lok Ayukta or Upa-Lok Ayukta to pass an order as could be passed by the Civil Court under Order I Rule 8.

24. Advocate Sri. Gopalakrishna Kurup, learned Counsel appearing for the petitioner, relied on the decisions in *Siraj v. High Court of Kerala* (2006) 6 S.C.C. 396 : 2006 (2) KLT 923 (SC)); *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, and *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, to support his contention that the Upa-Lok Ayukta erred in permitting the complainant to proceed with the complaint in a representative capacity. In *Siraj v. High Court of Kerala*, the select list issued by the High Court of Kerala for the appointment to the post of Munsiff/Magistrate was challenged. The Supreme Court held that all the candidates in the select list should have been impleaded in the Writ Petitions. It was held thus:

75. The Writ Petitions have also to fail on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the Writ Petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified number, namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the Writ Petitions have to fail for non-joinder of necessary parties also.

25. In *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, the Supreme Court held thus:

40. It is seen from the materials that after the appointments of the aforesaid 58 employees, a complaint was lodged with Lokayukt by one Shri N.K. Saxena and the said complaint was investigated by the Lokayukt. Though it is stated that the Lokayukt afforded an opportunity of hearing to the Chairman of the petitioner Bank as well as officials of the Bank and Cooperative Department, admittedly the employees were not afforded notice of opportunity of being heard in the enquiry by the Lokayukt.

41. It is not in dispute that on receipt of the report of Lokayukt, the competent authority forwarded the same to the Registrar of Co-operative Societies who, in turn, without taking a decision or an order by following the Service Rules or any of the provisions of the M.P. Co-operative Societies Act mechanically directed the

Managing Director of the Bank to terminate all the appointees.

42. We are of the view particularly, as observed earlier, though the officers of the society under the M.P. Cooperative Societies Act are amenable to the jurisdiction of the Lokayukt, per persons concerned who are lower grade employees i.e., clerks-cum-typist cannot be terminated without following the Service Rules applicable to them. It is not in dispute that elaborate procedures are to be followed before terminating the M.P., Cooperative Societies Act and the Service Rules made thereunder. In those circumstances, in the absence of opportunity to the employees, the termination order which was sent at the instance of Commissioner, Cooperative Societies based on the report of Lokayukt cannot be sustained.

26. In Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another, , the Supreme Court was considering the question of validity of the appointment of the employees in District Cooperative Banks. The Supreme Court held as follows:

The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity in as much as the relevant documents had not been put to them nor even to the bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties.

27. In the light of the principles laid down in the aforesaid judgments of the Supreme Court and also on a careful consideration of the scheme of the Kerala Lok Ayukta Act and the Rules, I hold that the Lok Ayukta or Upa-Lok Ayukta has no jurisdiction to permit the complainant to institute a complaint or to proceed with a complaint against one or more persons in a representative capacity for and on behalf of similarly situated persons, invoking power either under Order I Rule 8 of the CPC or under Rule 3(1)(c) of Rule 4(3) of the Kerala Lok Ayukta (Powers of Civil Court) Rules. Ext.P5 order, therefore, is liable to be set aside.

28. As regards the power of the Lok Ayukta or Upa-Lok Ayukta to allow amendment of the complaint or application, I am inclined to hold that Rule 3(d) of the Rules empowering alteration of the complaint or application would include the power to allow amendment of the complaint or application. The expression "amend" is defined in Black's Law Dictionary as follows;

To improve. To change for the better by removing defects or faults. To change, correct, revise.

The word "amendment" is dealt with in the Black's Law Dictionary as:

To change or modify for the better. To alter by modification, deletion, or addition.

The expression "alter" is defined in Black's Law Dictionary as follows:

To make a change in; to modify to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially. To change in one or more respects, but without destruction of existence or identity of the thing changed, to increase or diminish.

29. "Alteration" operates upon a subject matter which continues objectively the same while modifying in some particular. "Amendment" implies modification made in the subject to improve it. "Amendment" always involves an "alteration". The object of the Kerala Lok Ayukta Act is to ensure fairness in administrative action. A complaint could be made to investigate in respect of an action involving a "grievance" or "allegation". Necessarily, the "grievance" or "allegation" should form the basis of the complaint. For that purpose, a complainant has to make out the necessary grounds by way of sufficient pleading. The necessary materials are to be placed before the Lok Ayukta or Upa-Lok Ayukta for commencing the investigation. Section 9(3) of the Act makes provision for a preliminary enquiry. If, after the preliminary enquiry, the Lok Ayukta or Upa-Lok Ayukta purposes to conduct an investigation, he shall forward a copy of the complaint to the public servant and the competent authority concerned.

30. For the purpose of making a preliminary enquiry, the Lok Ayukta or Upa-Lok Ayukta has to necessarily take into account the averments in the complaint. If a complaint is forwarded to the public servant and the competent authority, the recipient of the same must be able to understand the "allegation" or "grievance" put forward in the complaint. The importance of the necessary pleadings could not be lost sight of in the matter of a complaint. If it were to be held that there could be no amendment to a complaint at any stage of the proceedings, that the Lok Ayukta and the Upa-Lok Ayukta have no power to permit an amendment of the complaint, that the power is only limited to "alteration" of the complaint and not "amendment" and that "alteration" mentioned in Clause (d) of Rule 3(1) does not contemplate amendment, it would seriously jeopardise the very purpose of the Act. An "allegation" could be made even by a person who is not personally affected. The complainant has to collect the necessary facts for making a foundation for the "allegation". All the facts would not sometimes be readily available to the complainant. The relevant materials may surface, sometimes after calling for the records or documents from the respondent concerned. It may become necessary for the complainant to alter or amend or change the pleadings. This could be done by making further averments or by amending the averments already made or by substituting some averments for the other. The Lok Aynkta and Upa-Lok Ayukta certainly would have the power to allow such amendments and alterations for the fair and effective in vestigation as

contemplated under the Act.

31. Now the question to be considered is whether the Upa-Lok Ayukta was right in allowing the amendment to incorporate relief No.6. As stated earlier, relief No. 6 is for a declaration that the candidates whose name appear in the rank list are unfit to hold the post of Assistant Grade II in the University of Kerala. The complainant has produced before the Lok Ayukta a true copy of the final selection list of the top 160 candidates. The averments in the complaint would also indicate that there was a likelihood of those 160 persons being appointed. As held by the Supreme Court in *Siraj v. High Court of Kerala* 2006 (2) KLT 923 (SC); *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, and *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, the employees concerned must be heard before any action is taken. All the persons who are included in the select list are not made parties in the proceedings before the Lok Ayukta. Even assuming that the necessary amendment by which relief No. 6 is sought to be incorporated could be allowed, a representative action could not be allowed by the Lok Ayukta.

32. Therefore, Ext.P3 order, to the extent it allowed the amendment incorporating relief No. 6 and incorporating the supporting averments for the same, is unsustainable. There is yet another reason for holding so. A complaint could be made in respect of an action which may constitute an "allegation" or a "grievance". Section 8 is a bar for the Lok Ayukta or Upa-Lok Ayukta to conduct any investigation under the Act in the case of a complaint involving a "grievance" in respect of any action, if such action relates to any matter specified in the Second Schedule. Clause (d) in the Second Schedule deals with appointment of a public servant as well. A distinction has been maintained in the Act between an "allegation" and a "grievance". Section 9(3) provides forwarding of copy of the complaint to the public servant and the competent authority concerned. In the case on hand, the competent authority was not addressed, submits the petitioner. This is not controverted by the respondents. An "allegation" could be made against a public servant. The persons included in the rank list in the present case were not public servants at the relevant time. Therefore, it cannot be said that the complaint discloses an "allegation" against them. To constitute a "grievance", the complainant concerned must have sustained injustice or undue hardship in consequence of mal administration. There could be no "grievance" and no investigation could be made on the basis of such "grievance", if the complaint involving the "grievance" is in respect of any action relating to a matter specified in the Second Schedule. In respect of the matters mentioned in the second Schedule, there could be no "grievance", but there could be an "allegation". If a "grievance" is put forward in the complaint in respect of an action, the person concerned must be heard. Going by the averments in the complaint, it can be seen that the complaint is based on an "allegation" in respect of an action. If it is an "allegation", the Lok Ayukta or Upa-Lok Ayukta cannot grant the relief made in relief No. 6. If so, the Upa-Lok Ayukta was not justified in allowing the amendment to incorporate relief No. 6 in the complaint.

and to incorporate the supporting averments in the complaint. To that extent, Ext. P3 order passed by the Upa-Lok Ayukta is unsustainable.

33. Power is vested in the Lok Ayukta and Upa-Lok Ayukta, in exercise of their discretion, to refuse to investigate or to discontinue investigation of, any complaint involving a grievance or an allegation, in any of the circumstances mentioned in Clauses (a) to (c) of Sub-section (5) of Section 9 of the Act. If a complaint is sought to be amended, the Lok Ayukta or Upa-Lok Ayukta, would have the same power as provided in Sub-section (5) of Section 9 and may refuse amendment, if he arrives at the conclusion that the additional relief or reliefs sought to be made would be hit by any of the Clauses (a) to (c) in Sub-section (5) of Section 9. If such power is not conceded, a person may prefer a complaint with certain reliefs in it, which may pass the test of Sub-section (5) of Section 9 and later he may incorporate by way or amendment other reliefs which may not pass such test, yet he may successfully continue to pursue such reliefs. In such cases, the Lok Ayukta or Upa-Lok Ayukta may legitimately disallow the amendment. The Upa Lok Ayukta has not considered this aspect of the matter while passing Exhibit P3 order.

34. Senior Advocate Sri. Nandakumara Menon and Advocate Sri. George Poonthottam, appearing for the respondents, raised a contention that the Writ Petition is premature and that no grounds are made out by the petitioner to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. In *Surya Dev Rai v. Ram Chander Rai* (2003) 6 S.C.C. 676, the Supreme Court held thus:

38(3): Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

35. In *P.K. Sreekantan and Ors. v. P. Sreekumaran Nair and Ors.* (2006) 13 S.C.C. 574, the Supreme Court held:

Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee*

v. Meet Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor (1855) 6 MIA 134 , wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise. See Mohammed Hasnuddin Vs. State of Maharashtra, .

36. In the light of the aforesaid decisions of the Supreme Court, I have no hesitation to reject the contention raised by the Counsel for the respondents. I am of the view that the Upa Lok Ayukta acted without jurisdiction in passing Exhibit P5 order and Exhibit P3 order to the extent indicated above.

For the aforesaid reasons, I set aside Ext.P5 order dated 4.7.2008 and also set aside in part Ext.P3 order dated 18.7.2008 by which the Upa-Lok Ayukta allowed the amendment of the complaint incorporating relief No. 6 and incorporating the supporting averments. The Writ Petition is allowed to the above extent. No order as to costs.