

(1985) 11 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 437 of 1985

P.C. George M.L.A.

APPELLANT

Vs

Kerala Public Men (Prevention of Corruption) Commission and
2 Others

RESPONDENT

Date of Decision : 07-11-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1986) 23 KLJ 123

Hon'ble Judges : V.S. Malimath, C.J;K. Sukumaran, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, for the Appellant; S. Narayanan Poti, S. Ramesh Babu and S. Easwara Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Malimath, C.J.—Respondent No. 2 Thommen Chacko presented a petition u/s 8 of the Kerala Public Men (Prevention of Corruption) Act, 1983 (hereinafter referred to as the Act) on 12-9-1984 Before the Kerala Public Men (Prevention of Corruption) Commission (for short the Commission) alleging that the appellant Sri P. C. George is guilty of corruption and, therefore, action should be taken against him under the Act, His allegation in brief is that some time between September and December 1981 the appellant received a sum of Rs. 25,000/- from Sri Kurien Joseph promising him to secure a teacher's job for his sister. But the appellant was not able to secure such a job and when he was asked to refund the amount with interest, he partly complied with the request, by returning the amount received by him in the year 1983, but without any interest. The complaint was duly registered by the Secretary of the Commission on the 17th September 1984 and notice was issued to the appellant on 22nd September 1984. fixing 22nd October 1984 as the date of appearance. On 22nd October 1984 the appellant contended before the Commission that the petition is not maintainable, it not having been accompanied by an affidavit and that, therefore,

the same should be dismissed and no further investigation into the matter is called for. The matter appears to have been adjourned to 12th November 1984 on which date the appellant put forward his contention which he had raised on 22nd, October 1984 in writing. On 17th November, 1984 respondent No. 2 filed an application requesting the Commission to grant permission to file an affidavit in support of the petition. The appellant as also the second respondent were duly heard and the Commission passed an order on the 21st March 1985 overruling the objections of the appellant. The Commission granted permission prayed for by the second respondent and directed the receipt of the affidavit filed by the second respondent on 17th November 1984. The Commission declined to agree with the contention of the appellant that it cannot proceed to investigate into the matter. It is in this background that the appellant presented O. P. No. 3342 of 1985 under Articles 226 and 227 of the Constitution of India seeking several reliefs which inter alia include quashing of the order of the Commission, Ext. P-4, dated 21-3-1985 and the issuance of a writ in the nature of prohibition restraining the Commission from proceeding to investigate into the complaint on the basis of the petition filed by the second respondent against the appellant. The learned single Judge has by his Judgment dated 23-8-1985 dismissed the writ petition. Hence this appeal.

2. Sri Kelu Nambiar, learned counsel for the appellant, contended that the learned single Judge has erred in recording the two findings on the principal contentions urged before him. He submitted that the learned single Judge was not right in holding that the Commission has the power of granting time to file the affidavit and to entertain the petition though the same was not accompanied by an affidavit. He also questions the correctness of the finding of the learned single Judge that apart from the statutory powers under the Act and the Kerala Public Men (Prevention of Corruption) Procedure for Preliminary Investigation of Petitions Rule, 1984 (hereinafter referred to as the Rules) the Commission has got inherent power to grant time to file the affidavit and to entertain the petition. As we are inclined to take the view that the provisions of the Act and the Rules expressly empower the Commission to grant time for filing the affidavit and therefore the action taken by the Commission is within jurisdiction, we consider unnecessary to examine the correctness or otherwise of the finding of the learned single Judge on the question as to whether the Commission can be regarded as having inherent power to take such action in these circumstances.

3. Section 8 which provides for initiating proceedings on presenting a petition is extracted below;

(1) Any person other than a public servant or a service association or a trade union may present a petition to the Commission with an additional copy for service on the opposite party requesting that any allegation of corruption against any public man specified in such petition may be investigated under this Act.

(2) Every petition under sub-section (1) shall be accompanied by an affidavit in support of the allegation contained therein and treasury receipt evidencing the

deposit of a sum of five hundred rupees.

Provided that no such treasury receipt shall be necessary where the petition is presented jointly by not less than ten members of the Legislative Assembly.

(3) Every petition under sub-section (1) as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1905 (Central Act 5 of 1908), for the verification of pleadings.

(4) The person who presents a petition under sub-section (1) or any other person shall not publish or cause to be published the contents of the petition in any manner whatsoever.

(5) Any person who contravenes the provisions of sub-section (4) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Our attention was specifically invited to the requirements of subsection (2) of Section 8 which requires: (1) every petition u/s 8(1) shall be accompanied by an affidavit in support of the allegations contained therein; and (2) a treasury receipt evidencing the deposit of a sum of Rs. 500/-. It was contended that this requirement is mandatory in as much as failure to comply with these requirements entails the dismissal of the petition itself. Our attention in this behalf was invited to the provisions of section 9 of the Act which provides as follows:-

9. The Commission shall not conduct any investigation under this Act.

(a) if the allegation of corruption mentioned in the petition has been the subject matter of another investigation or inquiry or other proceedings by or before a Commission of Inquiry appointed under the Commission of Inquiry Act, 1952 or any other Commission appointed by the Government; or

(b) if the petition does not comply with the provisions of S. 8; or

(c) if the corruption is alleged to have taken place before a period of five years immediately preceding the commencement of this Act; or

(d) if the petition u/s 8 has been presented after the expiry of a period of twenty-four months from the date on which the corruption is alleged to have taken place; or

(3) in respect of corruption alleged to have taken place within a period of five years immediately preceding the commencement of this Act, if the presentation of the petition is after the expiry of a period of twenty-four months from the date on which the corruption is alleged to have taken place or six months from such commencement, whichever is later.

It is clear from the provisions of clause (b) of section 9 that the Commission is precluded from conducting any investigation under the Act if the petition does not comply with the provisions of Section 8 of the Act. We therefore agree with

the contention of the learned counsel for the appellant that the filing of an affidavit in support of the petition falling under sub-section (2) of section 8 is mandatory.

4. Sub-Section (4) of Section 10 of the Act confers power on the Governor to make rules prescribing the procedure to be followed for conducting any investigation contemplated by the Act, which rules are to be made in consultation with the Commission. In exercise of the powers conferred under the said provision, the Rules have been framed prescribing the procedure to be followed in dealing with the petitions presented u/s 8(1) of the Act. Rule 3 of the Rules provides that --

On receipt of a petition, the Secretary (hereinafter in this Chapter referred to as the registering authority") shall scrutinise it and if he is satisfied that the petition is in accordance with the provisions of the Act and the rules made there under, he shall direct the petition to be registered in a register maintained for that purpose.

If there are defects in the petition presented, rule 4 provides:

If the registering authority finds that the petition is not according to the Act or the rules or is otherwise defective, he shall postpone the registration of the petition and inform the petitioner in Form A to rectify the defects within a specified time and after such compliance he shall direct the petition to be registered.

So far as the effect of noncompliance is concerned, it is provided in rule 5 of the Rules which is extracted below for easy reference:-

If the necessary requirements are not complied with within the time specified under rule 4 or such further time as the registering authority may allow, the petition shall be placed before the Commission and the Commission may summarily reject such petition or pass such other order as it deems fit in the circumstances of the case.

Rule 5 of the Rules requires that the petition should be placed before the Commission if the same, in the opinion of the registering authority, is defective in the sense that the requirements of law not having been complied with. It expressly empowers the Commission either to summarily reject the petition on the ground that there is non-compliance of the requirements or to pass such other orders as it deems fit in the circumstances of the case.

The Act or the Rules do not confer power on the registering authority to dismiss the petition on the ground that the requirements of sub-section [2] of section 8 of the Act have not been complied with. Even if the registering authority has come to the conclusion that the affidavit has not been filed within time, he is not competent to deal with the matter finally and dismiss the petition on the ground that there has been non-compliance with the provisions of sub-section [2] of section 8 of the Act. It is no doubt true that clause [b] of section 9 provides that

the Commission shall not initiate proceedings if the petition does not comply with the provisions of section 8. The power to decide as to whether there has been compliance with section 8 or not and whether the Commission should investigate into the case or not is exclusively conferred on the Commission. Hence, if there is noncompliance with the provisions of sub-section [2] of section 8 of the Act, the proper procedure to be followed by the registering authority is to place the petition before the Commission for its decision as required by rule 5 of the Rules. When the petition is so placed before the Commission, it may either dismiss it for noncompliance with the provisions of section 8 or grant such further time as it deems fit in the circumstances of the case. That is the clear intendment of rule 5 of the Rules.

5. The fact that the registering authority has in this case ignored noncompliance of the provisions under sub-section [2] of section 8 of the Act and registered the petition does not, in our opinion, take away the power of the Commission to decide as to whether the provisions of section 8 have been complied with or not, as that power has been expressly conferred on the Commission as per clause [b] of section 9 of the Act. The decision of the registering authority either on the fact of compliance or noncompliance with the provisions of section 8 of the Act is not final or binding on the Commission. As and when such question arises the Commission is required to examine as to whether there has been compliance with the provisions of section 8, as the Commission can proceed to investigate into the matter only if the provisions of section 8 have been duly complied with. Hence the fact that the registering authority has in this case made a mistake and registered the petition, does not in any way prohibit the Commission from discharging its functions u/s 8 of the Act. We have no hesitation in coming to the conclusion that the Commission has the power of granting time for compliance with sub-section [2] of section 8. In this case, the Commission was justified in granting permission to file the affidavit by the second respondent. Hence, we do not find any good ground to interfere with the decision of the learned single Judge. We have come to the same final conclusion as the learned single Judge, though for different reasons as aforesaid. So far as the inherent powers of the Commission are concerned, we do not express any opinion on the correctness or otherwise of the finding of the learned single Judge.

For the reasons stated, the appeal is dismissed. No costs.