
(2001) 08 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 4248 of 1992

Ravindran

APPELLANT

Vs

Joseph

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Calicut University Act, 1975 — Section 7(9)

Kerala Lok Ayukta Act, 1999 — Section 2

Kerala Public Mens Corruption (Investigations and Inquiries) Act, 1987 — Section 11, 13(1), 2

Citation : (2001) 3 ILR (Ker) 215

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar and P.G. Rajagopalan, for the Appellant; Koshy George, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hriharan Nair, J.—The petitioner, Dr. T.K.Ravindran, was formerly the Vice Chancellor of the University of Calicut. The first respondents filed Ext. P1 complaint before the second respondent, the erstwhile Kerala Public Men's Corruption (Investigations and Inquiries) Commission alleging inter alia that favour was shown by the present petitioner in the matter of appointing Shri. Rajendran, who is his brother's son and Shri. Ratna Singh, who is Rajendran's father-in-law as counsel for the Calicut University to appear in the High Court. The said appointment was allegedly made after terminating the appointment given earlier to Shri.M.K. Damodaran. The petitioner therefore wanted proceedings to be initiated under S. 11 of the Act.

2. The present petitioner challenged the jurisdiction of the Commission by filing Ext.P2 counter. It was contended that the petitioner did not come within the definition of the term "public man" as defined in S.2(j) (v) of the Act. The petitioner is aggrieved that as per Ext.P3 order the Commission, applying Heydon's test, held that the definition in the aforesaid section should be deemed

to include in the category of public man the Vice Chancellor also in so far as he member of the Syndicate, which category clearly comes within the definition of the Act.

3. Learned counsel for the petitioner submitted that the findings are absolutely incorrect and against the well accepted principles. According to him, Commission gets jurisdiction to go into the allegations only against "public man"s as defined in the Act. It is pointed out that while a member of the syndicate is specifically referred to therein. Vice Chancellor is significantly omitted. Though Vice Chancellor ex officio, is a Member of the Syndicate and though Syndicate members are also public men,s it cannot be stated that in the discharge of duties as Vice Chancellor he is acting as a public man. The counsel drew a distinction between the definition of "public man" in Kerala Public Men"s Corruption (Investigations and Inquiries)Act, 1987 (for short "the Act") vis-a-vis the definition of "public servant" contained in S. 2(o)(vii) of the Lok Ayukta Act, 1999, which is now in force. According to him, the omission to mention specifically the category of Vice Chancellor in the Act is significant and the Commission cannot be virtue of its interpretation, include Vice Chancellor within the definition of the term "public men" when the Legislature itself did not think of the same.

4. When the matter was heard, the learned counsel for the respondent submitted that the question is only of academic interest now in so far as the petitioner has demitted office; the Act itself has been repealed and in view of the fact that the persons allegedly appointed by the petitioner also have ceased to be counsel for the University.

5. The question for consideration is whether there is any justification for holding that the Vice Chancellor of a University comes within the definition of public men in S. 2(j) (v) of the Kerala Public Men"s Corruption (Investigations and Inquiries) Act, 1987.

6. The aforesaid provision reads as follows:-

"Public man" means a person who holds or has held in the State the office of-

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(v) a member of a local authority or the Executive Committee of a University established by an Act of the State Legislature or a member or Director (by whatever name called) of a body or Corporation or Board or Society referred to in item (C) and item (D) of sub clause (iv);

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The definition is not inclusive definition; but f specific nature. Only those who come within the various categories mentioned under clause (j) aforementioned can be public men for the purposes of the Act, who , in turn can be prosecuted under S.11 of the Act. There is substance in the contention of the petitioner that

as long as Vice Chancellor is not included in the category of public men, there is no scope for prosecuting a Vice Chancellor in respect of an act allegedly committed in exercise of statutory powers given to a Vice Chancellor and not as a member of the Syndicate. It can be seen from S.2(j)(j)(v) aforementioned that a member of a Syndicate would be a public man. If it were the intention of the Legislature to bring in Vice Chancellor also within the definition, there was no difficulty in mentioning so. True, by virtue of his capacity as Vice Chancellor he will also be a member of the Syndicate; but then, is it not any order of the Syndicate that is alleged in Ext.P1 as the cause of action. On the other hand, it is the specific allegation that by virtue of the authority as Vice Chancellor the petitioner made the acts of favouritism alleged in the petition. It can therefore be seen that the petitioner, for purpose relevant for the dispute, is not public man as defined in S.2(j)(v) as the definition stands.

7. It cannot be said that the absence of the designation "Vice Chancellor" in S.2(j)(v) of the Act is the result of a mere omission. Under S. 2(o)(vii) of the Lok Ayukta Act, 1999 a person in the service or pay of a University comes within the definition of public servant. A Vice Chancellor being a person in the service or pay in the University is clearly a public servant. If it were the intention of the Legislature to include the Vice Chancellors also as public men, there was nothing which prevented it from doing so. The difference between the definitions given in the two Acts, that is with reference to "public man" and "public servant" clearly shows that the Legislature was aware of the distinction between the two and also the persons who were intended to be brought within the sweep of the two enactments.

8. Another aspect highlighted by the petitioner in Ext.P2 counter filed before the Commission for the rejecting the complaint was the fact that alternative remedy was available to the present first respondent. Under S.13(1) (c) of the Act the availability of other remedies to the complainant was sufficient justification for the Commission to direct the complainant to resort to such remedies and to reject the complaint. Under S.7(9) of the Calicut University Act, 1975, the Chancellor of the University has the power to remove the Vice Chancellor or the Pro Vice Chancellor from office by an order in writing on charges of misappropriation or mismanagement of funds or misbehaviour. The misconduct alleged in Ext.P1, if true, comes within the scope of the term "misbehaviour" for the purpose of S.7(9) and there was thus an alternative remedy available for the first respondent. Such being the case, even assuming that the petitioner was a public man, the Commission ought to have refrained from proceedings with the complaint any further by virtue of the provisions in S.13(1)(c) aforementioned.

9. The next aspect to be considered is the propriety of applying the Heydon's case to supply the omission. The decision in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, states that for applying the principles in Heydon's case and for interpretation of Statutes the four criteria to be tested are the following:

- 1) What was the common law before the making of the Act;
- 2) What was the mischief and defect for which the common law did not provide;
- 3) What remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth; and
- 4) The true reason of the remedy.

When the aforesaid principles are applied, what emerges is that the Act in question was not first of the kind. The Kerala Public Men (Prevention of Corruption) Act, 1983 (Act 68/4) was in force earlier. There also Vice Chancellors of Universities were beyond the purview of the definition of public men. In fact S. (j)(v) of the Act quoted in para 6 above is an exact reproduction of S.2(i)(v) of the Act 6/84. Under the general law in force prior to Act 6/84 also Vice Chancellor was never specified as a "public man" in any enactment. The public of the Act was constitution of a Commission to deal effectively with the investigation of and inquiring into complaints against public men and for matters connected therewith only. The mischief contemplated through the enactment was to cover particular category of officers and elected persons alone and not others. It was also with the contemplation of the Legislature that only in cases where alternative remedy was not available the remedial action under the Act were intended to be initiated. When viewed from this perspective, I feel that the Commission was not justified in applying the principles in Heydon's case to conclude that the post of Vice Chancellor should also be deemed to have been included in the category of public man. The Commission should have applied the law as it is. True, members of Syndicate are include in the definition under the Act, but then there is a lot of difference between the powers exercised by the Syndicate and by the Vice Chancellor.

In these circumstances I find that the decision making process and reasoning in Ext. P3 are incorrect and accordingly allow the Original Petition and quash Ext. P3 as also all proceedings pursuant to Ext. P1 complaint.