(2015) 01 KL CK 0239

In the High Court Of Kerala

Case No : W.A. No. 461 of 2012 in WP(C) 29811/2008 and Writ Appeal Nos. 608, 681 of 2012

The Director of Local Funds Audit — APPELLANT

Vs

V.C. Joseph — RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243-J
Kerala Local Fund Audit Act, 1994 — Section 16, 16(3), 22, 9, 9(2)
Kerala Municipalities Act, 1994 — Section 294, 295
Kerala Panchayat Raj Act, 1994 — Section 215, 215(11), 215(13)

Citation : (2015) 01 KL CK 0239

Hon'ble Judges : Antony Dominic, J;Alexander Thomas, J

Bench : Division Bench

Advocate : Noushad Thottathil, Senior Government Pleader, for the Appellant; Murali Purushothaman, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J—These writ appeals are filed against the judgments of the learned single Judge dismissing WP (C) Nos. 29811/08, 8850/10 and 7373/09 respectively.

2. We heard the learned Government Pleader appearing for the appellants and the learned counsel appearing for the respondents.

3. The issues raised in these writ appeals are common and, therefore, these cases were heard together and are disposed of by this common judgment.

4. Briefly stated, the facts of the case are that the respondents in these cases were Secretaries of different Panchayats in the State. They were issued surcharge notices and on the finding that their explanations were unsatisfactory, surcharge certificates were issued against them. These surcharge certificates were challenged by the respondents in original petitions filed before the District Courts. Some petitions were filed under Section 215(11) of the Kerala Panchayat

Raj Act read with Section 16(3) of the Kerala Local Fund Audit Act, 1994 while certain other petitions were filed under Section 16(3) of the latter Act only. Orders were passed by the District Court allowing the OP for different reasons, the details of which are not necessary for this judgment.

5. Challenging those orders, the appellants herein filed writ petitions before this Court. The learned single Judge, before whom the writ petitions came up for hearing, held that, in the light of the principles laid down in the judgment in C.V. Moni Achari Vs. The Director, Local Fund Audit, (2012) 1 KLJ 435 , the writ petitions filed were not maintainable. It is aggrieved by these judgments, the appeals are filed.

6. Learned Government Pleader contended that Section 22 of the Local Fund Audit Act provided that if any provision contained in any other law for the time being in force relating to the audit of accounts of a local authority or a local fund included in the Schedule is repugnant to the provisions of the Local Fund Audit Act, the said Act shall prevail. According to him, therefore, even if there is an appellate remedy provided under Section 215(13) of the Kerala Panchayat Raj Act, so long as there is no appellate remedy provided in the Local Fund Audit Act, the only remedy available against an order passed by the District Court is a writ petition. He, therefore, contended that the conclusion of the learned single Judge on the maintainability of the writ petitions is illegal and incorrect. Learned counsel also sought to contend that even if it is assumed that the appellate remedy is available as found by the learned single Judge, still, such alternate remedy is no bar for the High Court to entertain a writ petition filed under Articles 226 or 227 of the Constitution of India.

7. Learned Government Pleader further brought to our notice that in at least one petition filed before the District Court, the provisions of the Local Fund Audit Act alone was invoked and that therefore the learned single Judge was not justified in relegating the appellants to pursue their remedies under Section 215(13) of the Kerala Panchayat Raj Act. On these grounds, while the learned Government Pleader sought to impugn the judgments of the learned single Judge, the respective counsel appearing for the respondents sought to sustain the judgments of the learned single Judge.

8. We have considered the submissions made.

9. As we have already stated, the only issue that arises for consideration is whether the conclusion of the learned single Judge that the remedy against an order passed by the District Court in an OP filed either under Section 215(11) of the Kerala Panchayat Raj Act or under Section 16(3) of the Local Fund Audit Act or both, is an appeal under Section 215(13) of the Kerala Panchayat Raj Act is legal and sustainable.

10. Section 16 of the Local Fund Audit Act, 1994 provides for audit to surcharge illegal payments and loss caused by negligence or misconduct. Section 16(3) provide that any person aggrieved by surcharge may, within one month after he

has received or been served with a decision of the auditor, apply to the District Court, to set aside such surcharge and the Court, after taking such evidence as is necessary, may confirm, modify or remit such surcharge. Similarly, Section 215 of the Kerala Panchayat Raj Act providing for accounts and audit contains sub-section (11), which, in similar terms, provide that a person, who is aggrieved by levy of surcharge, may apply to the District Court to set aside such surcharge. Though there is no appellate or other remedy provided in the Kerala Local Fund Audit Act against an order passed by the District Court under Section 16(3) thereof, Section 215(13) of the Kerala Panchayat Raj Act provide that from the decision of the District Court under sub-section (11), an appeal shall lie to the High Court. It was considering these provisions that in Moni Achari''s case (supra) it was held that against an order of the District Court, remedy provided is appeal under Section 215(13) of the Kerala Panchayat Raj Act.

11. Dealing with an argument that in view of Sections 294 and 295 of the Kerala Municipality Act, providing for annual financial statement and accounts and audit, Section 9 of the Kerala Local Fund Audit Act providing for liability of local authorities to prepare and present accounts for audit, is impliedly repealed, a Division Bench of this Court in the judgment in Narayanan K.I. Vs. State of Kerala and Others, (2010) 2 ILR (Ker) 3 : (2010) 1 KLJ 549 : (2010) 1 KLT 918 held that, 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 by the same department, namely, the Local Fund Audit Department. It was then clarified that, 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 and that the effect of it, is to enlarge the audit of the local fund to the other accounts also. If the same logic is accepted and applied, in so far as the provisions contained in Section 16 of the Local Fund Audit Act and Section 215 of the Kerala Panchayat Raj Act are concerned, it can be seen that the provisions of the Local Fund Audit Act has only enlarged the scope of the provisions of the Kerala Panchayat Raj Act and though there is no appellate remedy provided in the Local Fund Audit Act, in so far as orders passed under Section 16(3) of the Local Fund Audit Act or under Section 215(11) of the Kerala Panchayat Raj Act, the remedy available to a person, who is aggrieved by the levy of surcharge, is appeal as provided under Section 215(13) of the Kerala Panchayat Raj Act, 1994. This, therefore, means that the conclusion of the learned single Judge that if the appellants were aggrieved by the orders passed by the District Court, the remedy was appeal under Section 215(13) does not spell out any illegality justifying interference.

12. Learned Government Pleader contended that even if it is assumed that appellate remedy as provided under Section 215(13) is available, still, alternate remedy so provided is not a bar for maintaining a writ petition before this Court invoking powers of this Court under Articles 226 or 227 of the Constitution of India. We are unable to agree. Though it is true that the availability of alternate remedy is no bar for invoking the jurisdiction of this Court under Articles 226 or

227, Courts have always held that, ordinarily, when alternate remedies are available, the parties should seek such remedies. However, in cases where parties prove violation of the principles of natural justice or in cases where violation of fundamental rights are involved and in cases where orders are questioned on the ground of total absence of jurisdiction, the rule of alternate remedy has been held to be not a bar for the High Courts to entertain writ petitions. In so far as these cases are concerned, none of these grounds or exceptions laid down by this Court and Apex Court are made out by the appellants in order to bypass the alternate remedy of appeal as provided under Section 215(13) of the Kerala Panchayat Raj Act. Therefore, we are unable to accept this contention of the learned Government Pleader.

13. Lastly, it was contended by the learned Government Pleader that atleast in cases where the power of the District Court was invoked only under Section 16(3) of the Local Fund Audit Act, the writ petition should be held maintainable. As we have already stated, the provisions of the Local Fund Audit Act are only supplementary in nature and therefore, necessarily, the parties are governed by the provision of Section 215(13) of the Kerala Panchayat Raj also. We cannot forget the fact that the provisions of Section 215 have been introduced into the Kerala Panchayat Raj Act only in pursuance of the provisions contained in Part IX of the Constitution of India and in particular, Article 243-J. In such circumstances, this contention of the learned Government Pleader also does not merit acceptance.

14. In the result, we do not find any reason to take a view different from the one taken by the learned single Judge and we affirm the principles laid down by the learned single Judge in the judgment in Moni Achari''s case (supra).

15. From the judgment under appeal, we notice that while holding that the remedy available to the appellants is to pursue appeal as provided under Section 215(13) of the Kerala Panchayat Raj Act, the learned single Judge has directed that the period from the date of filing the writ petitions till the date of the judgment shall be excluded, when period of limitation is counted.

16. Taking note of this, we further direct that, in case the appellants file appeals, the period from the date of filing the writ appeals till this date will be excluded, when period of limitation is counted.

Subject to the above, the appeals are dismissed.

