

(2015) 03 KL CK 0040

In the High Court Of Kerala

Case No : Contempt of Court Case (Civil) No. 1358 of 2014 (S)

Thomas Aruja

APPELLANT

Vs

K.V. Manoj and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151, 50, 92
Constitution of India, 1950 — Article 134(1)(c), 136, 215, 225, 227
Contempt of Courts Act, 1971 — Section 10, 13, 2(1), 2(f), 20
Kerala Panchayat Raj Act, 1994 — Section 271F, 271J, 271K, 271M, 271M(4)(c)
Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : (2015) CriLJ 2528 : (2015) 2 ILR Ker 829 : (2015) 2 KHC 500 :
(2015) 2 KLJ 655 : (2015) 4 KLT 323

Hon'ble Judges : Ashok Bhushan, C.J.; A.M. Shaffique, J.

Bench : Division Bench

Advocate : Mathew Kuriakose, for the Appellant; P.C. Iype, A.A.G and Viju Abraham, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J.

1. The petitioner has filed this application for initiating proceedings under the Contempt of Courts Act, 1971 alleging non-compliance of the order dated 30.8.2013 passed by the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in O.P. No. 1307 of 2013.

2. The petitioner and some other persons had filed O.P. No. 1307 of 2013 before the Ombudsman for Local Self Government Institutions against the Secretary of Mulavukad Grama Panchayat pursuant to the inaction on the part of the Secretary and other officials of the Panchayat to undo the encroachment committed by certain persons in the Panchayat road having a width of 4 meters. The Ombudsman, vide order dated 30.8.2013 directed the Secretary of Panchayat to measure the property with the assistance of Taluk Surveyor to find

out whether there is any encroachment or not and thereafter take appropriate action. The petitioner's case is that, the order was sent to all concerned, but no action has been taken to comply with the order hence action be taken to punish the respondents for non-compliance of the order of the Ombudsman.

3. We have heard Sri. Mathew Kuriakose, the learned counsel appearing for the petitioner and Sri. Viju Abraham, the learned Government Pleader.

4. The learned Government Pleader raised a preliminary objection regarding the entertainability of this contempt application. It is submitted that the contempt which is alleged by the petitioner is non-compliance of the order dated 30.8.2013 passed by the Ombudsman for Local Self Government Institutions, Thiruvananthapuram, hereinafter referred to as "Ombudsman". It is submitted that under the Contempt of Courts Act, 1971, the High Court can punish for contempts of any courts subordinate to it. It is submitted that since the Ombudsman is not a court subordinate to High Court, no proceedings for contempt can be initiated under Sec. 10 of the Contempt of Courts Act, 1971.

5. Learned counsel appearing for the petitioner has refuted the preliminary objection and submitted that the Ombudsman is a "court" within the meaning of "subordinate court" as defined in the Contempt of Courts Act, 1971 and contempt proceedings can very well be initiated for non-compliance of the order passed by the Ombudsman. It is submitted that the Ombudsman, who has been appointed under the provisions of the Kerala Panchayat Raj Act, 1994, has all trappings of a court. It is submitted that the Ombudsman, being a court has the power of a civil court to conduct enquiry, investigation and to decide a lis between the applicant and the respondent. It can pass orders having consequences thereof and non-compliance of its orders can be made the subject matter of contempt proceedings under Sec. 10 of the Contempt of Courts Act, 1971.

6. Learned counsel appearing for the parties placed reliance on various judgments of the Apex Court, which shall be referred to while considering the submissions in detail.

7. We have heard the learned counsel for the parties on the preliminary objection and proceeded to examine the same. The only issue which arises in this contempt application is whether the power of contempt can be exercised by this Court under Sec. 10 of the Contempt of Courts Act, 1971 for non-compliance of the order of the Ombudsman.

8. The Contempt of Courts Act, 1971 has been enacted to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. The High Court being court of records has inherent power to punish for its contempts. The High Court has also power to punish contempt of subordinate courts. The said power is contained under Sec. 10 of the Contempt of Courts Act, 1971, which is to the following effect:-

10. Power of High Court to punish contempts of subordinate courts.- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself;

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

The crucial words in Sec. 10 are "contempts of courts subordinate to it". Thus, the High Court can exercise same power to punish for contempt of subordinate court as it possesses power in respect of itself.

9. The only issue to be answered is whether the Ombudsman is a "court subordinate to High Court". There is no definition of "court" in the Contempt of Courts Act, 1971 nor any definition of "courts subordinate to High Court". What is the definition of "court" came for consideration before the Apex Court in *State of Bombay Vs. Narothamdas Jethabai and Another*, . Mukherjea, J., in paragraph 68 of the said judgment stated the word "court" as follows:-

"The word "Court" certainly means a place where justice is judicially administered. The appointment of Judges and officers or the mere setting apart of a place where the Judges are to meet, are not sufficient to constitute a Court. A Court cannot administer justice unless it is vested with jurisdiction to decide cases and "the constitution of a Court necessarily includes its jurisdiction." 10. The Apex Court again in *Brajnandan Sinha Vs. Jyoti Narain*, had occasion to consider the definition of "court" for the purposes of Contempt of Courts Act, 1952. In the said case, an Enquiry Commissioner was appointed under the Public Servants (Inquiries) Act, 1850. The respondent against whom the Enquiry Commissioner was appointed initiated contempt proceedings in the High Court of Judicature at Patna. The High Court held that the Commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a court and that court was subordinate to the High Court and the appellant was held guilty of contempt. The appellant after obtaining a Certificate under Article 134(1)(c) of the Constitution from the High Court raised a limited question as to whether the Commissioner appointed under the Act is a "court". The Apex Court, in paragraphs 15, 16 and 18 of the said judgment, held as follows:-

"(15) The Privy Council in the case of - *"Shell Co. of Australia v. Federal Commissioner of Taxation"*, 1931 AC 275 (A) thus defined "Judicial Power" at p. 295:

"Is this right? What is "Judicial power"? Their Lordships are of opinion that one of the best definitions is that given by Griffith C.J. In - *"Huddart, Parker and Co. v. Moorehead"*, (1909) 8 CLR 330 at p. 357 (B) where he says: "I am of opinion that the words judicial power as used in S. 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether

the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action".

Their Lordships further enumerated at p. 297 certain negative propositions in relation to this subject:

"1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision;

2. Nor because it hears witnesses on oath;

3. Nor because two or more contending parties appear before it between whom it has to decide;

4. Nor because it gives decisions which affect the rights of subjects;

5. Nor because there is an appeal to a Court;

6. Nor because it is a body to which a matter is referred by another body.

See "Rex v. Electricity Commissioners", 19241 KB 171 (C)" and observed at page 298:

"An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of judicial power".

(16) The same principle was reiterated by this Court in - The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, ; and - Maqbool Hussain Vs. The State of Bombay, where the test of a judicial tribunal as laid down in a passage from - "Cooper v. Willson", 1937-2KB 309 (F) at p. 340, was adopted by this Court:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:-(1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law".

(18) It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

11. The Apex Court further examined various provisions of the Public Servants (Inquiries) Act, 1850, noted the provisions of the Act and held that the provisions may be having some trappings of a judicial tribunal, but they cannot find anything more in a mere fact finding enquiry. In paragraph 27 of the said judgment, it was held that the Commissioner appointed under the 1850 Act is not a "Court subordinate to High Court" and no proceedings for contempt can be taken. The following was laid down in paragraph 30 of the said judgment:-

"We are of the opinion that neither of these cases which have been relied upon by Shri Purshottam Tricamdas is of any help to the respondent or detracts from the true position as we have laid down above. The only conclusion to which we can come on a consideration of all the relevant provisions of the Act is that the Commissioner appointed under the Act is not a Court within the meaning of the Contempt of Courts Act, 1952." 12. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, . In the said case, the question arose for consideration was whether the Assistant Registrar functioning under the Bihar and Orissa Co-operative Societies Act is a "Court subordinate to High Court" for the purposes of Sec. 3 of the Contempt of Courts Act, 1952. The Apex Court, to find out whether the Assistant Registrar was functioning as a "Court", noted the relevant provisions, powers under the Act and came to the conclusion that the Assistant Registrar is a "Court" within the meaning of Contempt of Courts Act, 1952. It is useful to quote paragraphs 9, 10 and 11 of the said judgment, which are to the following effect:-

"9. In order to appreciate whether the Assistant Registrar was functioning as a Court, it is necessary to examine certain provisions of the Act. The Act which is both a consolidating and an amending one was enacted to facilitate the formation, working and consolidation of cooperative societies for the promotion of thrift, self help and mutual aid among agriculturists and other persons with common needs. Section 2(1) defines "Registrar" as a person appointed to perform the duties of a Registrar of cooperative societies under the Act. Under S. 6(1) the State Government may appoint a person to be registrar of Cooperative Societies for the State or any portion of it, and may appoint persons to assist such Registrar. Under S. 6, sub-s. (2)(a) the State Government may, by general or special order published in the official gazette, confer on any person appointed under sub-s. (1) to assist the Registrar, all or any of the powers of the Registrar under the Act except the powers under S. 26. Under S. 13, the registration of a society makes it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to acquire and hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. Chapter V deals with audit and inspection of societies. Under S. 33 the Registrar must audit or cause to be audited by some person authorised by him, the accounts of every registered society once at least in every year. Under sub-s. (4) of S. 33 the auditor has to submit a report including therein inter alia

every transaction which appears to him to be contrary to law, the amount of any deficiency or loss which appears to have been incurred by the culpable negligence and misconduct of any person, the amount of any sum which ought to have been but has not been brought into account by any person and any money or property belonging to the society which has been misappropriated or fraudulently retained by any person taking part in the organisation or management of the society or by any past or present officer of the society or by any other person. Section 35 provides for certain inquiries by the Registrar. Section 40 provides inter alia that where as a result of an audit under S. 33 or an inquiry under S. 35 it appears to the Registrar that any person who has taken part in the organisation or management of the society or any past or present officer of the society has made any payment which is contrary to law or by reason of his culpable negligence or misconduct involved the society in any loss or deficiency, or failed to bring into account any sum which ought to have been brought into account, or misappropriated or fraudulently retained any property of the society, he may inquire into the conduct of such person and after giving such person an opportunity of being heard, make an order requiring him to contribute such sum to the assets of the society. Sub-section (3) of S. 40 provides for an appeal from the order of the Registrar to the State Government on application made by the person or officer against whom the order was passed. Section 48 enumerates various kinds of disputes touching the business of the registered society which must be referred to the Registrar. Such disputes may be amongst members, past members, persons claiming through members, past members or deceased member and sureties of members, past members or deceased members, or between the society and any past or present officer, agent or servant of the society. Under sub-s. (2) the Registrar may on receipt of such reference-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators. Under sub-s. (a) the Registrar may withdraw any reference transferred under Cl. (b) of sub-s. (2) or referred under Cl. (c) of the said sub-section and deal with it in the manner provided in the said sub-section. Under sub-s. (6) any person aggrieved by any decision given in a dispute transferred or referred under Cl. (b) or (c) of sub-s. (2) may appeal to the Registrar. Sub-section (7) gives the Registrar, in the case of dispute under this section, the power of review vested in a civil Court under S. 114 and under Or. XLVII, R. 1 of the Code of Civil Procedure, 1908 as also the inherent jurisdiction specified in S. 151, C.P.C. Sub-section (8) gives the Registrar the power to state a case and refer it to the District Judge for decision whereupon the decision of the District Judge is to be final. Under sub-s. (9) a decision of the Registrar under this section and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or

referred under Cl. (b) or (c) of sub-s. (2) is to be final. Section 49 gives the Registrar power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books of account, documents or property by the same means and so far as may be, in the same manner as is provided in the case of a civil Court under the Code of Civil Procedure. Section 50 authorises the Registrar in certain cases to direct attachment of property of any person who with intent to defeat or delay the execution of any order that may be passed against him under S. 48 is about to dispose of the whole or any part of his property or to remove any part of his property from the local limits of the jurisdiction of the Registrar. Section 57(1) provides that-

"(1) Save in so far as expressly provided in this Act, no civil or revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by S. 48 to be referred to the Registrar or of any proceedings under Chap. VII-A."

Chapter VII-A of the Act headed "distrain" provides for recovery of debt or outstanding by distraining while in the possession of the defaulter any crops or other products of the earth standing or ungathered on the holding of the defaulter. The Chapter contains sections making elaborate provision for the sale of property distrained. Section 66 gives the State Government power to frame rules for any registered society or a class of registered societies. The latest rules are those framed in the year 1959. Rule 68 lays down the procedure for adjudication of disputes under S. 48. It provides for a reference to the Registrar in writing, on receipt whereof the Registrar has to cause notice of it to be served on the opposite party requiring him to show cause within a specified time. After a written statement is filed, the Registrar may decide the dispute himself or transfer it to any person exercising the powers of a Registrar in this behalf or to an arbitrator. There is also a provision for substitution of the heirs or legal representatives of a party to the dispute who dies pending the adjudication. The Registrar or the arbitrator is obliged to give a decision in writing after considering the evidence adduced by the parties. Before the Registrar or arbitrator, a party has a right to be represented by a legal practitioner.

10. In this case, the Assistant Registrar concerned, along with several other persons, was given the power of the Registrar under various sections of the Act including S. 48 [excepting sub-ss. (6) and (8)] by the State Government. He was not a nominee of the Registrar.

11. It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted under S. 57 of the Act "in case of disputes which fell under S. 48. A Registrar exercising powers under S. 48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including

the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S. 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S. 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

13. Learned counsel for the petitioner has also placed reliance on the judgment of the Full Bench of Gujarat High Court in Mohammedbhikhan Hussainbhai and etc. Vs. The Manager, Chandrabhanu Cinema and Others etc., . The question which arose for consideration before the Full Bench was whether the Labour Court and Industrial Tribunal constituted under the Industrial Disputes act are "Courts" and "Courts subordinate to High Court". The Full Bench, after noticing various judgments of the Apex Court and the provisions of the Industrial Disputes Act, came to the conclusion that the Industrial Tribunal is a "Court" within the meaning of Contempt of Courts Act, 1971. The following conclusion was recorded in paragraph 45 of the said judgment:-

"45. Conclusion:- As a result of the aforesaid discussion, our answers to the referred questions in these Misc. Civil Applications are in the affirmative, meaning thereby that the Labour Courts under the Bombay Industrial Relations Act, 1946 and Industrial Disputes Act, 1947 and the Industrial Courts under the Bombay Industrial Relations Act, 1946 and Industrial Disputes Act, 1947 are courts and courts subordinate to the High Court in terms of Section 3 of the Contempt of Courts Act, 1971 or rather section 10 thereof and equally nominee of the Registrar acting under section 96 of the Gujarat Co-operative Societies Act, 1961 and deciding disputes under section 101 and the Co-operative Tribunal under that Act are courts and that too courts subordinate to the High Court, as contemplated by section 10 of the Contempt of Courts Act, 1971. Both the Misc. Civil Applications will now be placed before the Division Bench for proceeding further in accordance with law in the light of the answers given by us in the present references." 14. The learned counsel for the petitioner has placed reliance on another judgment of the Apex Court in K. Shamrao and Others Vs. Assistant Charity Commissioner, . In this case, the question arose for consideration was whether the Assistant Charity Commissioner appointed under Sec. 5 of the Bombay Public Trusts Act, 1950 is a "Court" for the purposes of the Contempt of Courts Act, 1971. After noticing the relevant provisions of the Bombay Public Trusts Act, 1950, the Apex Court concluded that the Assistant Charity Commissioner is a "Court" within the meaning of Contempt of Courts Act, 1971. It is useful to quote paragraphs 12, 14, 15 and 17 of the said judgment, which are to the following effect:-

"12. Section 74 provides that all inquiries and appeals under the Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code. Section 76 provides that save insofar as they may

be inconsistent with anything contained in the Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under the Act.

14. Chapter XI dealing with functions of the Charity Commissioner, procedure, jurisdiction and appeals, provides for appeal against the finding or order of the Deputy or Assistant Charity Commissioner to the Charity Commissioner under Section 70 in the following cases:

"(a) the finding and order, if any, under Section 20;

(b) the finding under Section 22;

(b-1) the finding under Section 22-A;

(c) the finding under Section 28;

(d) the order under sub-section (3) of Section 54;"

15. Under Section 72, any person aggrieved by the decision of the Charity Commissioner under various provisions mentioned therein or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the court to set aside the said decision. It also, inter alia, provides that an appeal shall lie to the High Court, against the decision of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies. The matters relating to the public trust in respect whereof the jurisdiction is conferred on the officers appointed under the Act, but for the bar of jurisdiction of civil court, would be triable by the civil court as provided in Section 92 of the Code of Civil Procedure. A person to be appointed as a Deputy Charity Commissioner and/or the Assistant Charity Commissioner, as provided in Section 5(2) of the Act, shall be either a judicial officer or a member of the Bar. The officer is, therefore, required to have a legal background. As already noticed, the Assistant Charity Commissioner, in the present case, was a serving judicial officer of the State Judicial Services whose services had been placed at the disposal of the Government to be appointed as an Assistant Charity Commissioner.

17. The aforesaid provisions make it clear that the Assistant Charity Commissioner has not only the trappings of a judicial tribunal but also has power to give a decision or a definitive judgment which has finality and authoritativeness which are essential tests of a judicial pronouncement. The Assistant Charity Commissioner, therefore, possesses all the attributes of a court. The fact that the Assistant Charity Commissioner has also to perform some administrative functions is not of any relevance for coming to the conclusion that he is not a court, having regard to the provisions of the Act which substantially confer on him the power to give a definite judgment subject to finality in appeal, after hearing all concerned. Functions of the Assistant Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all

the powers which an ordinary civil court has including power of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted.

15. One more judgment which is relevant to note is the judgment of the Constitution Bench of the Apex Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, wherein, the Apex Court had occasion to explain the expression "Court". It is relevant to quote paragraphs 30, 31 and 32 in this judgment, which are to the following effect:-

"30. The orders which the Central Government passes, certainly fall within the words "determination" and "order". The proceeding before the Central Government also falls within the wide words "any cause or matter." The only question is whether the Central Government, when it hears and decides an appeal, can be said to be acting as a Court or tribunal. That the Central Government is not a Court was assumed at the hearing. But to ascertain what falls within the expression "Court or tribunal", one has to begin with "Courts". The word "Court" is not defined in the Companies Act, 1956. It is not defined in the Civil Procedure Code. The definition in the Indian Evidence Act is not exhaustive, and is for the purposes of that Act. In the New English Dictionary (Vol. II, pp. 1090, 1091)}, the meaning given is:

"an assembly of judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military or naval." All tribunals are not Courts, though all Courts are tribunals. The word "Courts" is used to designate those tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed. Judicial power, according to Griffith, C.J. in *Huddart, Parker and Co Proprietary Ltd. v. Moorehead*, (1909) 8 CLR 330 (357) means:-

"the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not being until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

31. When rights are infringed or invaded, the aggrieved party can go and commence a *querela* before the ordinary Civil Courts. These Courts which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent

and go under the compendious name of "Courts of Civil Judicature". There can thus be no doubt that the Central Government does not come within this class.

32. With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of "Courts" in Art. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227."

16. The ratio laid down by the Apex Court in the aforesaid cases clearly indicate that to find out whether an Authority or Body exercising judicial functions is a "Court" or not, the scheme of the Act under which the Body or Authority has been constituted and discharging its functions has to be examined. For answering this question, we have to examine the nature of the institution, ie; Ombudsman.

17. Sir William Wade in Administrative Law 9th edition has explained "Ombudsman" in the following words:-

"The ombudsman: tribune of the people Ombudsman is a Scandinavian word meaning officer or commissioner. In its special sense it means a commissioner who has the duty of investigating and reporting to Parliament on citizens' complaints against the government. An ombudsman requires no legal powers except powers of inquiry. In particular, he is in no sense a court of appeal and he cannot alter or reverse any government decision. His effectiveness derives entirely from his power to focus public and parliamentary attention upon citizens' grievances. But publicity based on impartial inquiry is a powerful lever. Where a complaint is found to be justified, an ombudsman can often persuade a government department to modify a decision or pay compensation in cases where the complainant unaided would get no satisfaction. For the department knows that a public report will be made and that it will be unable to conceal the facts from Parliament and the press.

The essence of the ombudsman's technique is to receive the complaint informally, to enter the government department, to speak to the officials and read the files, and to find out exactly who did what and why. No formal procedure is involved at any stage, nor is any legal sanction in question.

As his name implies, the ombudsman first appeared in Scandinavia. Sweden has had the institution, in a somewhat special form, for over a century and a half. But it was as established in Denmark after 1954 that it suddenly captured the attention of other countries, largely as a result of the missionary spirit of the first Danish ombudsman. The first Commonwealth country to adopt it was New

Zealand, which established an ombudsman (under that name) in 1962. His reports soon showed the success of the experiment, and the innovation flourished and was adopted elsewhere."

In De Smith's Judicial Review 6th edition, the functions and jurisdiction of Ombudsman have been noted in paragraph 1-066, which is to the following effect:-

"1-066 Over recent decades there has been a burgeoning of grievance-handling schemes independent of the public authority (or private enterprise) against which a complaint is made. In recent years the main public sector ombudsmen have dealt with over 38,000 complaints per annum. The picture, as exemplified by Table 3 below, is complex. Some schemes are established by statute, others are non-statutory schemes set up by public authorities, and others are self-regulatory schemes run by particular private sector industries. All the grievance-handling schemes discussed here have the resolution of complaints from members of the public as one of their primary functions. They are independent of bodies against which the complaint is made, and in this important respect different from internal grievance-handling mechanisms. Some have powers to make binding decisions, but many have formal powers only to make recommendations. They provide a free service to the aggrieved person and typically operate using techniques of investigation, though ever greater reliance is being placed on informal alternative dispute resolution techniques. The scope of their jurisdictions varies, but commonly includes injustice caused by "maladministration", as defined below, or failure to comply with a code of practice. Policies to encourage proportionate dispute resolution are likely to lead to a further proliferation of such agencies. As well as providing individual redress, the ombudsmen often have a role in promoting principles and standards of good administration." 18. In India the institution of Ombudsman was also adopted as mechanism and procedure to redress the grievance of the individual against the administration. The Administrative Reforms Commission in its report dated 20.10.1966 advocated the adoption of the Ombudsman-type institution for redress of citizen's grievances. In the Principles of Administrative Law by M.P. Jain and S.N. Jain, the Ombudsman in India is described as follows:-

"Ombudsman in India

(a) Introductory

Needless to say that the need to establish an Ombudsman system is no less intense in India than other countries having the same system for the considerations which led to the creation of Ombudsman in those countries exist in ample measure in India as well. Administrative delay and discourtesy are proverbial. The mechanism and procedure to redress the grievances of the individual against the administration are inadequate. The administration in India has been acquiring vast powers in the name of socio-economic development and, thus, chances for administrative excesses and abuse of powers abound.

Therefore, close supervision over the administration, and a mechanism for redressal of grievances become essential. If in countries like New Zealand, Britain or Australia which have a high standard of administration, cases of maladministration can be found, there is no gainsaying the fact that many more such cases will be revealed here if there were a proper mechanism for investigation. The procedures to redress individual complaints through the courts or the legislature or the administration are as inadequate as in other common-law countries.

There is a peculiar element present in the Indian scenario which is not so much visible elsewhere, viz., widespread public perception of administrative corruption which has very much undermined public confidence in the administration and has very much corroded its moral authority and image. Conferment of large administrative and discretionary powers breed corruption and, therefore, if the administrator knows that his decisions are subject to scrutiny by an independent authority, he will be more careful in arriving at his decisions and be less tempted to misuse his powers and show undue favours to any one. Impelled by these considerations, the Central Government took some steps in the past to create the Ombudsman system but somehow all these steps proved abortive.

(b) Recommendations of the Administrative Reforms Commission.

In its report dated the 20th October, 1966, the Administrative Reforms Commission, after carefully evaluating the pros and cons, advocated the adoption of the Ombudsman-type institution for redress of citizens' grievances. The redressal of citizens' grievances, the Commission felt, is basic to the functioning of democratic governments, and will strengthen the hands of the government in administering the laws of the land, its policies "without fear or favour, affection or ill-will", and enable it to go up in public faith and confidence without which progress would not be possible."

19. It is interesting to note that the Ombudsman for Local Self Government Institutions in the State of Kerala is specifically considered and noted in the Principles of Administrative Law by M.P. Jain and S.N. Jain, which is extracted hereunder:-

"(a) Ombudsman for Local Self-government Bodies The State of Kerala has created a very interesting institution, viz., Ombudsman for Local Self Government (LSG) bodies. The object of the Ombudsman is "to conduct a detailed inquiry regarding any proceedings of the Local Self Government bodies and the public servants holding office there under concerning corruption, maladministration or defects in the administration and settle such complaints."

The authority has been created under the Kerala Panchayat Raj Act, 1994 as amended in 1999. The authority known as Ombudsman is to consist of seven persons as follows: (1) a person who is or has been a High Court Judge as chairman; (2) two district judges; (3) two government officials not below the rank of government secretary; (4) two "honest and respectable" social service

workers. Adequate provisions have been made to ensure their independence and objectivity. Appointments are to be made by the State Governor on the advice of the Chief Minister.

The institution has been created on the recommendation of the Sen Committee. The committee suggested that while tribunals would adjudicate upon appeals from decisions taken in exercise of regulatory authority, there should be an institution "to investigate the field of administrative activity, i.e., to investigate independently complaints from individuals and groups and even the government relating to defective administration by the local bodies". In the words of the committee:

"Ombudsman can go into the reasonableness of a decision. Ombudsman can follow up complaints which relate to action or inaction. It can also take up matters relating to internal administration which need not necessarily affect any individual's interest. The Ombudsman system goes beyond the judicial process, as, after redressal of a grievance it can choose to monitor the behavior of the local authority concerned and it can point out systemic deficiencies and suggest improvements".

The Ombudsman system thus lies outside the court system. Its main objectives are two:

- (1) redressal of grievances of people against the administration of the LSG bodies;
- (2) supervisory to spot systemic deficiencies and suggest improvements.

There is need for other States to emulate the Kerala System Local bodies which are immediately in contact with the people and are in very bad shape. Their administration needs to be improved if they have to serve the people well. The Kerala system may go a long way to improve the administration by local bodies."

20. It is further relevant to note that the Administrative Reforms Commissions in its report in 1966, while advocating appointment of Ombudsman, it has been emphasized that the appointment of Ombudsman cannot be regarded as a breach of Spirit of Constitution. In essence, there is no difference between the Commission of Enquiry and enquiries which are proposed by the institution of Ombudsman. In the Principles of Administrative Law by M.P. Jain and S.N. Jain, the reasons given by the Administrative Reforms Commission in its report in 1966 for advocating the adoption of Ombudsman have been extracted, which is to the following effect:-

"The Commission considered carefully the question whether ministerial decisions should come within the purview of the Ombudsman or not. The position in other countries in this respect has already been noted. The Commissioner recommended that these decisions should be included within the jurisdiction of the Ombudsman. The reasons advanced by the Commission for its position were as follows:

(1) Having regard to the manner in which democracy has been functioning in India, both at the Centre and the States, cases of injustice at the ministerial level must be dealt with.

(2) It is only at the level of the Minister or the Secretary, subject to his instructions and directions, that many of the important orders of the Government affecting the citizen acquire finality. At lower levels, correctives through appeals, representations and personal access to various authorities are available, but at the level of the Minister or his Secretary there is a finality from which, only in very rare cases, there is any escape.

(3) If the institution could deal effectively and expeditiously with matters at the source of authority, it would have an exemplary effect on other officials and other levels of official hierarchy and thereby it would induce a rise in the general level of efficiency, propriety and justice.

(4) It is true that it is open to the Parliament or the Legislature to deal with a Minister when he goes wrong, or to deal with an officer, under him and for whom he is answerable when he commits a wrongful act or is guilty of a culpable omission. But these institutions are not, in the nature of things, easily accessible to the common man, and the time at their disposal, their procedures, their conventions and practices would not make for quick, speedy or effective action in a large number of cases.

In these circumstances, it is necessary that an opportunity be given to an adversely affected citizen to ventilate his grievance against the order of a Minister or his Secretary. The action of the Ombudsman in respect of a ministerial decision need not be to the exclusion of legislative control. Thus, the ministerial responsibility to the Legislature would not be diluted, but strengthened, by the establishment of this institution.

(5) The appointment of the Ombudsman cannot be regarded as a breach of the spirit of Constitution. In recent years, in a number of cases, commissions under the Commissions of Inquiry Act have been appointed to enquire into ministerial conduct. In essence, there is no difference between these and the enquiries which the proposed institution would be conducting."

21. After noticing the advent of institution of Ombudsman, it is now relevant to refer to the provisions of the Kerala Panchayat Raj Act, 1994 pertaining to Ombudsman for Local Self Government Institutions. Chapter XXVB in the Kerala Panchayat Raj Act, 1994 containing the relevant provisions regarding the Ombudsman for Local Self Government Institutions, its functions, power of investigation, enquiry, initiation of prosecution, disposal of complaints etc. The functions of the Ombudsman have been defined under Sec. 271J, which is to the following effect:-

"271J. Functions of the Ombudsman.- (1) The Ombudsman shall perform all or any of the following functions, namely:-

(i) Investigate into any allegation contained in a complaint or on a reference from Government, or that has come to the notice of the Ombudsman;

(ii) Enquire into any complaint in which corruption or maladministration of a public servant or a Local Self Government Institution is alleged;

(iii) Pass an order on the allegation in the following manner, namely:-

(a) Where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate authority for investigation.

(b) Where the irregularity causes loss or inconvenience to a citizen, direct the Local Self Government Institution to give him compensation and to reimburse the loss from the person responsible for the irregularity.

(c) Where the irregularity involves loss or waste or misuse of the fund of the Local Self Government Institution, realise such loss from those who are responsible for such irregularity, and

(d) Where the irregularity is due to omission or inaction cause to supply the omission and to rectify the mistake.

(2) In addition to the functions enumerated in Sub-section (1), the Ombudsman may pass interim order restraining the Local Self Government Institution from doing anything detrimental to the interest of the complainant if it is satisfied that much loss or injury will be caused to the complainant due to the alleged act.

(3) The Ombudsman may by order, impose penalty in addition to compensation if it is of opinion that the irregularity involves corrupt practice for personal gain."

Under Sec. 271K, the powers of the Ombudsman are defined. The Ombudsman shall, for the purpose of any investigation or enquiry, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure. Sec. 271M deals with the investigation, which is quoted below:-

"271M. Investigation.- (1) The Ombudsman may, according to the provisions of this Act, enquire into any complaint filed before it under this Act.

(2) Notwithstanding anything contained in this Act the Government may refer any allegation of corruption or maladministration against a Local Self Government Institution or a public servant which is within its knowledge or brought to its notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under this Act.

(3) The Ombudsman may, on receipt of a complaint, conduct an investigation in the matter and where there is prima facie case it may conduct a detailed enquiry.

(4) The Ombudsman shall not enquire into matters relating to,-

(a) any matter in respect of which a formal and public enquiry has been ordered

by Government;

(b) any matter in respect of which a remedy is available from the Tribunal for Local Self Government Institutions constituted under Section 271S;

(c) any matter in respect of which an enquiry has been ordered under the Commission of Inquiries Act, 1952 (Central Act 60 of 1952) or any matter pending before a Court;

(d) any complaint filed after the expiry of three years from the date on which the matter complain against have taken place:

Provided that the Ombudsman may entertain such complaint if the complainant satisfies that he had sufficient reason for not filing the complaint within the specified period."

According to Sec. 271M(4)(c), the Ombudsman shall not enquire into matters relating to any complaint which is pending before a Court. Sec. 271Q deals with disposal of complaints, which is to the following effect:-

"271Q. Disposal of complaints.- (1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner,-

(i) Award of compensation, to a citizen in case of loss or grievance;

(ii) Order the recovery of loss caused to the Local Self Government Institution from the person responsible;

(iii) Order the supply of omission or rectification of defects due to inaction;

(iv) Order the recovery of loss from the accused failing which, order realisation through Revenue Recovery Proceedings;

(v) Order other necessary remedial measures considering the facts and circumstances of the case.

(2) Where the Ombudsman finds that the procedure or practice regarding the administration of Local Self Government Institution gives room for complaint, it may give suggestions to the Government or Local Self Government Institutions relating to the measures for avoiding the recurrence of such complaint.

(3) The Ombudsman shall give annually a detailed report regarding the performance of its functions under this Act to the Government and the Government shall lay it before the legislative Assembly with an explanatory memorandum."

22. A Rule has been framed, namely; The Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999, where the form and procedure for filing the complaint, manner and procedure for conducting investigation, hearing the complaint etc. have been

mentioned. Rules 22 and 25, which are relevant to quote in the present case, which are to the following effect:-

"22. Prosecution and further action.- If the Ombudsman is satisfied that there is a prima facie case involving of a criminal offence against the alleged person, the Secretary to Ombudsman shall send the complaint to the District Superintendent of Police along with the findings and recommendations thereon.

(2) The District Superintendent of Police shall, on receipt of complaint and recommendation under sub-rule (1), register the case and intimate the Ombudsman the details regarding the further action and orders from time to time without failure.

(3) For the failure in taking action mentioned in sub-rule (2) the action may be taken by the Ombudsman against the concerned parties which it thinks fit.

25. Action, if the order of the Ombudsman is not enforced.- All the persons concerned are liable to enforce the orders of Ombudsman and action may be taken by the Ombudsman against those who make default in it."

The scheme of the institution of Ombudsman as delineated by the above provisions clearly indicate that the said institution has been created to redress the grievances of a citizen and to provide a mechanism for enquiring about the allegations and complaints as defined under Sec. 271F of the Act. The Ombudsman is an institution created by the Government to take remedial measures and action to redress the grievances of a citizen and to keep a check on the maladministration. The functions of the Ombudsman are not same as the functions of a Court. A clear indication in the provision that the Ombudsman shall not enquire a complaint, which is pending consideration in a Court, which would clearly indicate that the said institution was not created under the legislation as a "Court". Under Rule 25 of the Ombudsman for Local Self Government Institutions (Inquiry of Complaints and Service Conditions) Rules, 1999 as quoted above, it is clear that all the persons concerned are liable to enforce the orders of Ombudsman and in case of default, action has to be taken by the Ombudsman against them.

23. The relevant Rule which need to be noted is the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971 published in the Kerala Gazette Extra No. 39 dated 4.10.1988. The said Rule has been framed by the High Court of Kerala in exercise of the powers conferred under Articles 215 and 225 of the Constitution of India, Sec. 23 of the Contempt of Courts Act, 1971. In Sec. 2(f), "Subordinate Court" is defined as follows:-

"Subordinate Court" means any court subordinate to the High Court." 24. In view of the foregoing discussions, we are of the considered opinion that the institution Ombudsman as defined under the Kerala Panchayat Raj Act, 1994 cannot be treated to be a "subordinate court" within the meaning of Contempt of Courts Act, 1971. Hence, for the alleged disobedience of the order of the

Ombudsman, proceedings under the Contempt of Courts Act, 1971 cannot be initiated.

Thus, the preliminary objection raised by the learned Government Pleader is accepted and this contempt application is rejected.