

Venugopal.. Vs. State of Kerala

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Court : Kerala

Decided On : Sep-12-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Venugopal..

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE 12^H DAY OF SEPTEMBER 2013 21ST BHADRA, 1935 WP(C).No. 24824 of 2012 (C) ----- PETITIONER : ----- VENUGOPAL.A., AGED 53 YEARS ASWATHY, PARASUKKAL, PARASSALA, THIRUVANANTHAPURAM (SENIOR SUPERINTENDENT, OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION THIRUVANANTHAPURAM). BY ADV. SRI.P.C.SASIDHARAN RESPONDENTS : ----- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT TAXES (E) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001 2. INSPECTOR GENERAL OF REGISTRATION, OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION VANCHIYOOR, THIRUVANANTHAPURAM - 695035 3. STATE POLICE CHIEF, OFFICE OF THE STATE POLICE CHIEF THIRUVANANTHAPURAM-695001 4. THE ADDITIONAL DIRECTOR GENERAL OF POLICE, (CRIMES), THIRUVANANTHAPURAM 69500 5. K.S.SURESHKUMAR, DEPUTY POLICE SUPERINTENDENT, CBCID OCW-1, EENCHAKKAL, THIRUVANANTHAPURAM

- 695035 6. SANDEEP T.GEORGE, T.C11292, CHRIST NAGAR, KOWDIAR P.O. THIRUVANANTHAPURAM.

7. T.K.JAYASREE, UNDER SECRETARY GENERAL ADMINISTRATION DEPARTMENT (SPECIAL) B & E DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM. WP(C).No. 24824 of 2012 (C) 8. BIJU RAMACHANDRAN, CHITTY PROSECUTING OFFICER OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION THIRUVANANTHAPURAM - 695 035. R1 TO R4 BY GOVERNMENT PLEADER MR.MANILAL R7 & R8 BY ADV. SRI.GEORGE POONTHOTTAM R6 BY ADV. SRI.SUMAN CHAKRAVARTHY THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BP WP(C).No. 24824 of 2012 (C) APPENDIX PETITIONER(S) EXHIBITS EXHIBIT P1. TRUE COPY OF THE COMPLAINT PREFERRED BY THE 6TH RESPONDENT. EXHIBIT P2. TRUE COPY OF THE ENQUIRY REPORT. EXHIBIT P3. TRUE COPY OF THE RECOMMENDATION OF THE KERALA LOK AYUKTA. EXHIBIT P4. TRUE COPY OF THE

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OF THIS HONOURABLE COURT IN W.P(C) 1368 OF 2012 EXHIBIT P5. TRUE COPY OF THE

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IN W.P(C) NO.6436 OF 2012 EXHIBIT P6. TRUE COPY OF THE

ORDER

DATED 01.08.2012 IN W.A.616 OF 2012 EXHIBIT P7. TRUE COPY OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT. EXHIBIT P8. TRUE COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT. P9: COPY OF THE COMPLAINT PREFERRED BY SMT.MALLIKA. P10: COPY OF THE COMPLAINT PREFERRED BY SMT.SUNITHA RESPONDENTS' EXHIBITS : EXT.P8(a): COPY OF THE COMPLAINT PREFERRED BY K.SUNITHA BEFORE THE CHIEF MINISTER. EXT.P8(b): COPY OF THE WRITTEN DEPOSITION FILED K.SUNITHA BEFORE THE DISTRICT REGISTRAR, THIRUVANANTHAPURA. EXT.P8(c): COPY OF

THE COMMUNICATION NO.12-6224/11 DT311/2012. EXT.P8(d): COPY OF THE COMPLAINT PREFERRED BY THE R7 TO THE CHIEF MINISTER DT242/2012. EXT.P8(e): COPY OF THE REPRESENTATION DT242/22012 PLACED BEFORE THE CHIEF MINISTER BY THE KERALA SECRETARIAT ASSOCIATION. EXT.P8(f): COPY OF THE COMMUNICATION NO.18912/M3/2012 DT213/2012. WP(C).No. 24824 of 2012) EXT.P8(g): COPY OF THE COVERING LETTER NO.D1/25815/2012 DT213/2012. EXT.P8(h): COPY OF THE DEPOSITION AS MADE BEFORE THE CRIME BRANCH BY THE PETITIONER DT86/2012. EXT.P8(i): COPY OF THE DEPOSITION MADE BYT MR.SURESHKUMAR BEFORE THE CRIME BRANCH. EXT.P8(j): COPY OF THE PETITION ENQUIRY REPORT NO.9/PTN/CB OCW-1/12 DT307/12 ALONG WITH THE DEPOSITIONS. EXT.P8(k): COPY OF THE COMMUNICATION NO.9/PTN/CB PCW112 DT317/2012. EXT.P8(l): COPY OF THE COVERING LETTER DT NO.152/CR/ADMN/PTN/12 01/09/2012. //TRUE COPY// P.A. TO JUDGE BP A.M.SHAFFIQUE, J * * * * * W.P.C.No.24824 of 2012 ----- Dated this the 12th day of September 2013

JUDGMENT

This writ petition is filed seeking to quash Ext.P7 report and Ext.P8 recommendation to take disciplinary action against the petitioner, for a declaration that the fifth respondent has no power, authority or jurisdiction to conduct an enquiry and arrive at a different finding from the decision taken by the Kerala Lok Ayuktha and upheld by this Court and to take action against the seventh respondent for misusing and abusing her official position by initiating a complaint against the petitioner.

2. The facts as disclosed would reveal that on the basis of a complaint given by the sixth respondent an enquiry was conducted by the District Registrar and thereafter further enquiry was conducted by the Deputy Inspector General (Licensing). Ext.P2 is the enquiry report. According to the petitioner, though it was found that the W.P.C.No.24824/2012 2 averments in the complaint as against the 8th respondent was found to be correct, no action was taken against him. Sixth respondent therefore approached the Kerala Lok Ayuktha and as per Ext.P3

recommendation the Lok Ayuktha directed stringent action to be taken against the erring officer. Though Ext.P3 report was challenged before this Court in W.P.(C) No.1368 of 2012 the same came to be dismissed. Writ Appeal is filed by the 8th respondent against the judgment in W.P.(C) No.1368 of 2012 which is pending consideration.

3. According to the petitioner, even after the report was submitted by the Kerala Lok Ayuktha, the 8th respondent was brought back to the Establishment Section as Senior Superintendent and this was challenged by one Suresh Kumar and Lok Ayuktha directed to maintain status quo ante. By virtue of the said order, the 8th respondent was to continue as Chitty Prosecuting Officer. The said order of Kerala Lok Ayuktha was challenged in W.P.C.No.6436 of W.P.C.No.24824/2012 3 2012 and this court by Ext.P5 judgment dismissed the writ petition. The 8th respondent filed Writ Appeal No.616 of 2012 and though an order of stay was initially issued the same was clarified by the Division bench as per Ext.P6 order dated 01/08/2012 and the petitioner was retained as Senior Superintendent in the Establishment Section till the disposal of the appeal. In the light of Ext.P6 order the 8th respondent is posted as Chitty Prosecuting Officer.

4. The subject matter of this writ petition had arisen when the 7th respondent who is the wife of the 8th respondent and working as Under Secretary in the General Administration Department preferred a complaint against the petitioner and got it enquired through CBCID who submitted a report as Ext.P7, wherein it was inter alia stated that it is at the instance of the petitioner that the complaints happened to be preferred against the 8th respondent and therefore departmental action was proposed against the petitioner. Ext.P7 is the said report and by Ext.P8 the 4th W.P.C.No.24824/2012 4 respondent issued a communication to the 3rd respondent to take departmental action against the petitioner.

5. The main contention urged by the petitioner is that when the complaints against the 8th respondent were considered by the Lok Ayuktha and their report was given to the Government, there is no legal basis for conducting a fresh enquiry through CBCID and to arrive at a finding that the 8th respondent was not involved in any of the complaints as stated in the Lok Ayuktha report. It is also contended that the

report Ext.P7 and the recommendation at Ext.P8 happened to be the result of a complaint initiated by the 7th respondent alleging that her husband is being victimised by false complaints and she, abusing her official position, obtained directions to conduct an enquiry into matters which have already been considered and approved by a competent authority under law. It is also contended that Ext.P7 report had been obtained behind the back of the petitioner and without notice to the petitioner. W.P.C.No.24824/2012 5 6. Counter affidavit is filed by respondents 3 and 4 inter alia explaining the findings revealed during the enquiry by the Superintendent of Police, CBCID. Paragraph 6 of the counter affidavit is relevant which reads as under: "6. The further shocking revelations are as follows: (i) The enquiry conducted revealed that a petition in the name of K.Sunitha, a licensed Vendor working under the jurisdiction of Chala Sub Registry Office was received at the office of the Chief Minister. It was alleged in the said complaint that she is a member of the scheduled caste and she was abused in front of the public by Sri.Biju Ramachandran while he was working as a Junior Superintendent attached to the Sub Registrar office, Chalai on 11.08.2010. It was also stated by her that she had submitted a petition before the SC/ST Welfare Committee on 13.08.2010. The petition was enquired into by the senior officials of the Registration Department. It is alleged that no action was taken on the complaint because of the fact that the complaint W.P.C.No.24824/2012 6 as well as further proceedings were freezed on account of influence exerted by Smt.T.K.Jayasree, Under Secretary, General Administration Department, who is none other than the wife of Shri.Biju Ramachandran. The enquiry reveals that the petition was enquired into by the District Registrar (General). It is stated by Smt.Sunitha that she had not submitted any petition against Sr.Biju Ramachandran. On 31/01/2012, the enquiry officer reported to the Inspector General (Registration) that the subject matter in the petition was false and no action is to be initiated against Sri.Biju Ramachandran. (iii) The enquiry further reveals that Advocate Sandheep.T.George submitted a petition against Shri.Biju Ramachandran before the Inspector General (Registration) and to the Director, Vigilance and Anti-Corruption Bureau on 22.09.2010. The allegation was about the misbehavior on the part of Biju Ramachandran who was then the Junior Superintendent attached to Sub Registrar Office, Chalai. At the relevant time, one A.K.Ramakrishnan was

the Inspector General, Registration when the petition was W.P.C.No.24824/2012 7 received. The petition was forwarded to the District Registrar for enquiry. The enquiry revealed that the allegation against Shri.Biju Ramachandran is not correct and the allegations are baseless. The enquiry by the Vigilance and Anti Corruption Department was done by the Inspector of Police Shri.Sheen Tharayyil. It is found in the enquiry that Biju Ramachandran is not guilty and recommended that no action is to be initiated against him. It is in the aforesaid background that Advocate Sandheep.T.George submitted a complaint to the Honourable Lok Ayuktha against Sri.Biju Ramachandran and the higher officials. The Inspector General of Registration submitted the enquiry report of the District Registrar before the Honourable Lok Ayuktha. It is submitted that on the basis of a complaint by Adv.Sandeep.T.George to the then I.G, Registration, a further enquiry was ordered to be conducted by Smt.Sumangala, Deputy Inspector General of Registration (Licensing). In the second enquiry it was found that the Officer (viz) Shri.Biju Ramachandran is guilty of misconduct towards public and recommended W.P.C.No.24824/2012 8 stringent disciplinary action against him. The report was accepted by the Inspector General Registration and the same was sent to the Government for taking stringent disciplinary action against Shri.Biju Ramachandran. The Government on receipt of the report found that there is an apparent divergence in the factual findings between the report of the District Registrar and the Deputy Inspector General of Registration. As such, the Government ordered a third enquiry on 19.11.2011 and the matter was entrusted to Deputy Inspector General of Registration (South Zone). In the third enquiry it was revealed that the allegation against Shri.Biju Ramachandran were found to be baseless. It is to be noted that the enquiry further revealed that the Inspector General of Registration (viz) Shri.K.R.Vivekanandan filed an adverse statement against Shri.Biju Ramachandran before the Honorable Lok Ayuktha on 23.11.2011, knowing fully well that the second report of Smt.Sumangala was rejected by the Government which ordered a third enquiry on 19.11.2011. W.P.C.No.24824/2012 9 (iii) The enquiry revealed that the petitioner before the Lok Ayuktha, (viz) T.Suresh Kumar, S/o.Narayana Pilla, T/C39225, Frinds Nagar, Puthuveltheruvu, Chala filed a Public Interest Petition before the Lok Ayuktha against Ajith Kumar, Secretary to Government, Taxes Department and four others.

Shri.Biju Ramachandran was one of the respondents in that case. The enquiry revealed that Shri.Suresh Kumar had no knowledge about the Public Interest Petition filed by him before the Lok Ayuktha. He stated that he was studied up to 8th standard and he was accosted to an Advocates office by his relative (viz) Venugopal, Senior Superintendent Registration Department and requested him to be a surety for taking bail and to make him to sign papers. (iv) The enquiry further revealed that Sri.Venugopal, Senior Superintendent of the Registration Department had made a note in the file no.E7-22733/2010 to the effect that enquiry report on the petition filed by Smt.K.Sunitha was forwarded to the Government and that it was not for the first time that petitions were received W.P.C.No.24824/2012 10 against Sri.Biju Ramachandran and it was further stated that petitions were received against him from all officers where he worked and that, while working in the District Registrars office, Thiruvananthapuram, he abused Mrs.Mallika, a Peon and a member of the Scheduled Caste and later, the said lady submitted a complaint to the Womens Commission and that the said petition had not been disposed of by the Commission. It appears that he had also recommended to call for that file from the Commission and forwarding the same along with the enquiry report on the petition by Smt.K.Sunitha to the Government. He has also recommended disciplinary action against Sri.Biju Ramachandran. The enquiry reveal that Smt.Mallika had not filed any petition against Sri.Biju Ramachandran. It was further found that Sri.Venugopal filed false remarks against Sri.Biju Ramachandran in the office files recommending disciplinary action against him. It was also further revealed that Shri.Venugopal got signature of his relative Shri.Suresh Kumar, who was instrumental in thereby filing a public interest litigation by deceitful means. W.P.C.No.24824/2012 11 v) On a consideration of the sequence of events in the whole transactions, the enquiry officer found that Shri.Venugopal is the person who is behind the petition submitted in the name of K.Sunitha before the Chief Minister of Kerala. It was also further revealed that during the period in which Sri.Vivekanandan was the Inspector General of Registration, he posted or tried to post Shri.A.Venugopal as Senior Superintendent in the Establishment Wing. It is also revealed that the statement filed by Sri.Vivekanandan, Inspector General, Registration before the Lok Ayuktha dated 23.11.2011 is not the correct statement of facts as of then existing in relation to the

statement of affairs. In fact there was willful suppression of material fact as respect the fate of the second enquiry. Since the same was turned down and third enquiry was ordered by the Government. Had these real facts disclosed to the Honourable Lok Ayuktha probably, the order as it stands would not have passed by it." 7. It is further contended that the writ petition is not maintainable as Ext.P7 is only a report obtained in the usual W.P.C.No.24824/2012 12 course and Ext.P8 is an interoffice communication. It is contended that judicial review is not possible in respect of matters relating to enquiry conducted against Government officers on the basis of complaints received against them.

8. Respondents 7 and 8 have also filed counter affidavit inter alia contending that the 7th respondent had to give a complaint to the Chief Minister on 24/02/2012 pointing out the attempts made by several persons in the Registration Department against the 8th respondent. Ext.R8 (d) is the said complaint. In fact a similar representation was also given by the Kerala Secretariat Association. The complaint given by the association was forwarded to Crime Branch for enquiry. Thereafter the representation of the 7th respondent was also forwarded to the State Police Chief requesting him to enquire into the matter through Crime Branch and to report the same to the Government. It is pursuant to the same that an inquiry was conducted and the impugned report had been submitted. The respondents W.P.C.No.24824/2012 13 supports the action taken by the Government in conducting the enquiry.

9. The petitioner had filed a reply affidavit reiterating their contentions raised in the writ petition. Reference is made by the learned Government Pleader to the judgment of the Supreme Court in Union of India v. Vartak Labour Union [2011 (1) KLT SN105C.No.148) SC], wherein the Supreme Court held that in the departmental communication and notice in departmental files do not have the sanction of law and does not create a legally enforceable right. It is held that only when such notice in the file culminates into an executable order affecting the rights of the parties and when it reaches the final decision in the Department and only after approval is received and final order is communicated that it becomes an effective order. The learned counsel for respondents 7 and 8 relied upon Gireesh Babu v. Pavithran [2013 (3) KLT453, wherein a Division Bench of this Court held

that aggrieved persons W.P.C.No.24824/2012 14 cannot approach the High Court directly in respect of their service disputes for adjudication after Constitution of the Central administrative Tribunal. The argument is that if at all any disciplinary proceedings are taken against the petitioner his right is to approach the Kerala Administrative Tribunal.

10. Having regard to the factual situation arising in the case, the questions to be decided are whether this Court can interfere with the Exts.P7 and P8 at this stage and whether any direction as sought for by the petitioner could be granted.

11. Ext.P7 is the report of Deputy Police Superintendent CBCID. This report is based on a complaint apparently given by the 7th respondent making allegations against the petitioner and two others. This complaint was forwarded for enquiry by the Chief Minister. The complaint is regarding false petitions being submitted against her husband who is working as Senior Superintendent in the Registration Department at the instance of some officers in W.P.C.No.24824/2012 15 the Registration Department in order to oust him from the Central office and make him liable for departmental action. One such complaint is by one Sunitha which was sent to the Chief Minister. It is seen that the Enquiry Officer had questioned several persons and their statements were obtained and several records were verified. He had come to certain findings and made certain remarks and ultimately he had come to a finding that the petitioner was behind most of the complaints and recommended departmental action to be taken against the petitioner.

12. The first question would be whether the 7th respondent could have filed such a complaint and whether the Chief Minister could have obtained an enquiry report in a matter which is seized by the Lok Ayuktha and this Court. In fact there were two proceedings before the Lok Ayuktha. One complaint was filed by an Adv.Sandeep.T.George who complained about the maladministration in the Registration Department. The Lok Ayuktha in its report dated 29/12/2011 W.P.C.No.24824/2012 16 had directed stringent action to be taken against the 8th respondent on the basis of the enquiry report of the Deputy Inspector General (Licensing). This report was challenged in W.P.(C) No.1368 of 2012 and the same came to be dismissed against which an appeal is pending. The second complaint

before the Lok Ayuktha is filed by one N.Sureshkumar as Complaint No.343/2012. The allegation in the said complaint was that the 8th respondent was transferred as Senior Superintendent at the office of the Inspector General of Registration inter alia contending that such transfer was in violation of the recommendation of the Lok Ayuktha in its order at Ext.P3. The Lok Ayuktha passed an order which is challenged in W.P.(C) No.6436 of 2012. This Court found that Lok Ayuktha has jurisdiction to entertain the said complaint though it is filed by another person.

13. Therefore as far as the subject matter in Ext.P3 order passed by the Lok Ayuktha and the judgment of this W.P.C.No.24824/2012 17 Court in Ext.P4, the issue involved is with reference to the complaint given by Adv.Sandheep.T.George alleging maladministration wherein Ext.P3 order came to be passed and the subject matter is pending in appeal before this Court. The report at Ext.P7 indicates that the Government ordered a third enquiry into the allegations against the 8th respondent on 19.11.2011 and the matter was entrusted to Deputy Inspector General of Registration (South Zone). In the third enquiry it was revealed that the allegation against 8th respondent were found to be baseless. The enquiry also revealed that the Inspector General of Registration (viz) Shri.K.R.Vivekanandan filed an adverse statement against the 8th respondent before the Lok Ayuktha on 23.11.2011, knowing fully well that the second report of Smt.Sumangala was rejected by the Government which ordered a third enquiry on 19.11.2011. Therefore the report at Ext.P7 apparently ventilates the manner in which cases are handled by responsible officers and it cannot be stated that a W.P.C.No.24824/2012 18 Government shall not conduct any enquiry even in respect of a concluded matter. That apart since the lis is still pending before this court it is always open for the Government to place on record such additional materials as are required for a proper adjudication of the case.

14. In respect of the second complaint by Mr.N.Suresh Kumar, the question of maintainability of the complaint before the Lok Ayuktha is pending consideration before this court. It is stated in Ext.P7 report that Shri.Suresh Kumar had no knowledge about the Public Interest Petition filed by him before the Lok Ayuktha. If the Government is of the opinion that the complainant had filed a false complaint before the Lok Ayuktha or that the complainant was not actually aware of the filing

of the said complaint, nothing prevents the Investigating Officer or the Government as the case may be to bring the same to the notice of the Lok Ayuktha. As far as this Court is concerned the question involved is only whether the Lok Ayuktha had jurisdiction to W.P.C.No.24824/2012 19 entertain a second complaint when the cause of action was not relating to the action taken against the 8th respondent. In other words it is for the Government to decide whether they should rely upon Ext.P7 report in the proceedings before Lok Ayuktha or in the Writ Appeals pending before this Court. Merely for the reason that an enquiry was conducted by the Government does not indicate that an action follows automatically. Hence I do not intend to interfere with Ext.P7 report or the recommendation made at Ext.P8.

15. The further question would be whether the 7th respondent could have filed a complaint to the Chief Minister. There is no law that prevents a citizen to submit a complaint to the Chief Minister or to the Government as the case may be. Merely for the reason that the 7th respondent is holding an office in the Secretariat as an Under Secretary by itself does not preclude her from filing a complaint for a proper investigation into a matter. If a complaint is received, necessarily the Government will have to make an enquiry W.P.C.No.24824/2012 20 and arrive at the truth by conducting necessary investigation. As matters stand now, petitioner is only faced with a report and an inter office communication between the police authorities. It cannot be said that the enquiry was totally unwarranted. Any complaint requires a follow up measure and it is for the Government to decide whether an investigation is necessary or not under the circumstances. But the materials against the petitioner, if any, can be utilised only in a proceeding initiated against him after giving him appropriate opportunity and in accordance with the procedure prescribed. Therefore, as matters stand now, it cannot be stated that the petitioner can challenge the report at Ext.P7 or the inter-office communication at Ext.P8. The challenge according to me is premature and cannot be entertained at this stage.

16. In regard to the other issues involved in the matter, I have already opined that the 7th respondent has a right to prefer a complaint to the Government as a citizen of W.P.C.No.24824/2012 21 the country and merely for the reason that she happened to be the Under Secretary to the Government in a particular Department by itself will not preclude her from filing such a complaint. Prima facie, according to

the Investigating Officers, there is genuinity in her complaint. Therefore there is no basis for the petitioner to seek any direction against the 7th respondent. Equally unsustainable is the claim that no enquiry could be conducted in a matter concluded by the Lok Ayuktha. In the result, this writ petition lacks merits and is dismissed. (sd/-) (A.M.SHAFIQUE, JUDGE) jsr

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