

Achuthan Vs. State of Kerala

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Court : Kerala

Decided On : Oct-28-2004

Reported in : 2004(3)KLT912

Judge : K.S. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 271P

Appeal No. : O.P. No. 11995 of 2003

Appellant : Achuthan

Respondent : State of Kerala

Advocate for Def. : Thomaskutty, Government Pleader

Advocate for Pet/Ap. : K.V. Bhadra Kumari, Adv.

Judgement :

K.S. Radhakrishnan, J.

1. What is the procedure prescribed under law for the Ombudsman in exercising his power under Section 271 P of the [Kerala Panchayat Raj Act, 1994](#) to order initiation of prosecution against the elected members or officers in a Panchayat? Section 271 P reads as follows:--

'271 P. Initiation of Prosecution.-- (1) If, after an investigation of inquiry, the Ombudsman finds that there is a prima facie case against the accused, involving a criminal offence, the Ombudsman may refer, the complaint and the findings to a competent, authority with recommendation to initiate prosecution.

(2) The authority responsible, for initiating such prosecution shall conduct a detailed enquiry if necessary and charge a case'.

2. A reading of Section 271 P would show that (1) the Ombudsman has to conduct an investigation or enquiry, (2) he has to enter a finding that there is a prima facie case against the accused involving a criminal offence, (3) for that purpose the accused should be on the party array, (4) the Ombudsman has to refer the complaint along with the findings to the competent authority with recommendation to initiate prosecution, (5) it is open to the concerned authority to conduct a detailed enquiry, if required before charging a case. There is a duty cast on the Ombudsman to conduct an investigation or enquiry on a complaint. In case the Ombudsman decides to refer a complaint to a competent authority with recommendation to initiate prosecution, he has to enter a finding that there is a prima facie case involving a criminal offence against identified accused. Not only that the findings thus entered by the Ombudsman is part of the reference made to the competent authority.

3. It is in this background, the facts in the instant case are to be appreciated. The challenge is on Ext.P2 order passed by the Ombudsman. There is also a prayer for direction to the second respondent Ombudsman to consider the complaint O.P.No.994/2000 afresh after giving an opportunity to file a counter statement/ affidavit. The second respondent disposed of O.P. No. 994/2000 as per Ext.P2. To the extent relevant the order reads as follows:--

'On going through the records now available and after hearing the parties I am of the view that this is a matter where a police investigation is warranted. I therefore direct the Director of Vigilance and Anti Corruption. Bureau, Thrissur to conduct an investigation into the various allegations, contained in the petition and if found necessary, to initiate criminal proceedings against the erring officers including the elected members and submit a report. The report shall be submitted as

expeditiously as possible, in any event within a period of 6 months from the date of receipt of the copy of this order.

The O.P. accordingly is closed, reserving the right of the petitioner to approach this Forum or any other authority for redressal of his grievances after receipt of the report of the Vigilance and if so advised'.

4. As can be seen from the impugned order the Ombudsman has only formed a view that the complaint requires investigation by the Director of Vigilance and Anti Corruption Bureau. The Ombudsman, in that view of the matter, has directed a vigilance investigation. There is a further direction 'to initiate criminal proceedings against the erring officers including the elected members.....'. This does not meet the requirements of Section 271 P. There is no investigation or enquiry conducted by the Ombudsman so as to enter a finding regarding the prima facie case against the accused. Not only that the Ombudsman is bound under law to enter a prima facie finding regarding the involvement of the accused in a criminal offence. Then alone the Ombudsman is legally justified in referring a complaint to the competent authority for initiating prosecution. Necessarily the accused should be on the party array before the Ombudsman for conducting such an investigation or enquiry. The Ombudsman is also bound to forward his findings to the competent authority. The proceedings in the instant case do not meet the requirements of the law. The accused - the elected members or officers - are not on the party array. There is no enquiry or investigation by the Ombudsman. There is no finding of a prima facie case involving a criminal offence. And yet there is a direction to the Police to conduct an investigation and if necessary to initiate prosecution.

5. The legal duty to enter a finding of prima facie case involving criminal offence against elected members or officers in the local authority cannot be relegated to the investigating authority under Section 271 P of the Act. Unless power is used in accordance with the procedure prescribed under law, and if the procedural safeguards are bypassed, such exercise of power may not achieve the expected purpose sought under the statute. Not only that such exercise would tempt the authorities to be arbitrary, resulting in violation of the constitutional rights and

statutory protection to the concerned.

6. Ext.P2 is set aside. Since the petitioner has a case that he was not given an opportunity for filing counter in the complaint before the second respondent, it is made clear that it will be open to the petitioner to file counter affidavit before the second respondent within six weeks from today. Thereafter the learned Ombudsman will consider the case afresh with notice to the parties.

The Writ Petition is disposed of as above.

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