

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

WA.No.922 OF 2020

AGAINST THE JUDGMENT DATED 03.12.2019 IN WP(C) 11043/2010(E) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, OFFICE OF THE UNIVERSITY OF
KERALA, PALAYAM, THIRUVANANTHAPURAM-695 034.

BY ADV. SRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA

RESPONDENTS/RESPONDENTS:

- 1 DR. K.P.SATHEESAN
ADVOCATE, HIGH COURT OF KERALA, ERNAKULAM, OFFICE
42/2087A, DWARAKA, CHITTOOR ROAD, KOCHI – 682 018.
- 2 DR.V.JAYAPRAKASH,
PROFESSOR, DEPARTMENT OF AQUATIC BIOLOGY AND FISHERIES,
UNIVERSITY CAMPUS, KARYAVATTOM,
THIRUVANANTHAPURAM – 695 034.

SRI.N.RAGHURAJ FOR R2

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24-08-2020, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Shaji. P. Chaly, J.

This appeal is filed by the writ petitioner, University of Kerala, challenging the judgment of the learned Single Judge dated 03.12.2019 in W.P.(C) No. 11043 of 2010 upholding the order passed by the Upa Lok Ayukta dated 18.12.2009 in Complaint No 286/2009 filed by the first respondent, Dr. K.P. Satheesan, presently a Senior Advocate practising in the High Court of Kerala, complaining that the University of Kerala has failed to pay the bills towards his professional fees, on account of his appearance for one Dr. V. Jayaprakash, who was the then Pro-Vice Chancellor of the University of Kerala.

2. Brief material facts for the disposal of the writ appeal are as follows:

Dr. K.P. Satheesan filed complaint No. 286 of 2009 before the Upa Lok Ayukta stating that he was appearing for the second respondent ie., Dr. V. Jayaprakash, the then Pro-Vice Chancellor of the Kerala University in complaint No. 572 of 2008 filed by one Sujith S.S alleging wide spread corruption and undue favoritism in the matter of selection to the post of Assistant Grade-II in the University of Kerala. In the complaint, Dr. M.K. Ramachandran Nair, then Vice Chancellor of the University of Kerala and Prof. K.A. Hashim, Registrar of University of Kerala alone

were made parties and they were represented in the proceedings apparently by the Standing Counsel for the University of Kerala, Adv. Konchira G. Neelakandan Nair. However, when the matter came up for consideration before Upa Lok Ayukta on 13.06.2008, the Upa Lok Ayukta found that the Pro-Vice Chancellor of the University was in charge of the selection and it was thereupon that Dr. V. Jayaprakash was *suo motu* impleaded as additional third respondent in the proceedings. According to Dr. K.P. Satheesan, on request made by Dr. V. Jayaprakash, he entered appearance before the Upa Lokayukta on 13.06.2008 and filed vakalath and thereafter, he was appearing for Dr. V. Jayaprakash before the Upa Lok Ayukta. While so, when the matter was posted before the Upa Lok Ayukta on 18.07.2008, Upa Lok Ayukta found that the University of Kerala is a necessary party and accordingly impleaded the University of Kerala. On 22.07.2008, Upa Lok Ayukta found that the selection to the post of Assistant Grade-II, was conducted by a Selection Board consisting of the then Vice Chancellor, M.K. Ramachandran Nair as Chairman, other members of the Syndicate and Dr. A.A. Hashim, Registrar of the University and thereupon, the members of the Selection Board were *suo motu* impleaded as additional respondents. Circumstances being so, in the meeting of the Syndicate held on 24.07.2008, among other agenda items, a special item was included and

resolved to appoint Adv. V.K. Radhakrishnan Nair to appear for and on behalf of the Vice Chancellor on and with effect from 21.07.2008. The above stated aspects are evident from Annexures A4 to A7 documents produced by the University along with I.A. No. 3 of 2020 in the captioned writ appeal.

3. Anyhow, it is an undisputed fact that Dr. K.P. Satheesan was appearing for and on behalf of the Pro-Vice Chancellor, Dr. V. Jayapraksh and apparently he raised a bill on 18.07.2008 before the University of Kerala for an amount of Rs.25,000/- and another bill of Rs.80,000/- on 27.11.2008, towards the professional charges and other expenses. The bill was not paid by the University and it was thereupon that Dr. K.P. Satheesan approached Lok Ayukta by filing the above specified complaint alleging maladministration;. The Upa Lok Ayukta, after taking into consideration the submission made by Dr. K.P. Satheesan as well as the learned Standing Counsel for the University of Kerala, the Vice Chancellor, Registrar and the Pro Vice Chancellor who were parties to the proceedings, has found that the University is liable to pay the fee claimed by Dr. K.P. Satheesan and accordingly, directed to pay it within one month, and file an action taken report on 03.02.2010. Even though the University has contended in the said proceedings that there was no privity of contract between the University and Dr. K.P. Satheesan, that

was not acceptable to the Upa Lok Ayukta. It was being aggrieved by the said order of the Lok Ayukta, the writ petition was preferred. On a consideration of the rival submissions, learned Single Judge has found that the issue in question, based on facts and laws were considered by the Upa Lok Ayukta, and it was accordingly that the University was directed to pay the professional fees and expenses of Dr. K.P. Satheesan, and therefore, there was no reason for interfering with the order passed by the Upa Lok Ayukta. The main thrust of the contention advanced by the University in the appeal is that the engagement of the first respondent by Dr. V. Jayaprakash was in his personal capacity and the University had not approved such engagement and had, in fact, rejected the claim raised by the petitioner for such engagement. It is also contended that the Lok Ayukta is a statutory body, which is bound to constrain itself within the ambit of the powers granted under the Kerala Lok Ayukta Act, and orders in the nature of a writ of mandamus cannot be issued by the Lok Ayukta as is done in the instant case. Therefore, it is submitted that the order of the Lok Ayukta is void in law and the same is issued in excess of the jurisdiction conferred on the Lok Ayuka under the Act. It is also submitted that the learned Single Judge was not correct in finding that Dr. K.P. Satheesan had been engaged by the Registrar of the University, which is evident from Ext.P3 written

statement filed before the Upa Loka Ayukta that the second respondent had engaged the first respondent in his personal capacity and that there had not been any decision on the part of the University to engage him.

4. That apart, it is submitted that on a perusal of Ext.P2 complaint filed before the Upa Lok Ayukta, it would reveal that the first respondent had failed to point out any action of the University, which could be construed as *mal* administration defined under Section 8(3) of the Kerala Lok Ayukta Act, 1999, especially relying upon the judgment of this Court in ***University of Kerala v. Parvati Krishna*** [AIR 2014 Ker. 99 =(2014 (2) KLT 233], ***Sunaoeana v. Tahsildar, Trivandrum and others*** [2013 (1) KHC 836]. It is also contended that the Lok Ayukta does not have any power to issue any directions in the nature of an adjudicatory order. That apart, relying upon Section 2(b) of the Act, the definition in respect of allegation, it is submitted that the claims raised by the first respondent would not fall in the category of 'allegation'. Along with the appeal, the University has produced Annexure A1 minutes of the meeting of the Syndicate held on 24.07.2008, declining the request made by Dr. V. Jayaprakash to appoint Dr. K.P. Satheesan for and on his behalf before the Kerala Lok Ayukta in the complaint in question. Annexue A2 is a note submitted by Dr. V. Jayaprakash to the Syndicate on 25.10.2008 stating that a Sub Committee was constituted to monitor the

complaint in the Upa Lok Ayukta on 13.06.2008 and it was decided to engage an Advocate for the Pro-Vice Chancellor and it was accordingly that he had submitted a note to the Vice Chancellor stating that Adv. K.P. Satheesan may be appointed to appear for him before the Lok Ayukta and the same was done after intimating the matter to the Syndicate Member, Adv. A.A. Rasheed and Shri. B.S. Rajeev. It is also stated thereunder that the engagement of all other counsel for and on behalf of the other syndicate members and officials of the University were ratified by the Syndicate, and further that Dr. K.P.Satheesan conducted the case in absolute co-operation with the Advocates appearing for the other parties, and therefore, requested to ratify engagement of Dr. K.P. Satheesan. Annexure A3 is the minutes of the meeting of the Syndicate held on 25.10.2008 by which the Syndicate considered the proposals for challenging in the High Court the report dated 13.09.2008 of the Upa Lok Ayukta in Complaint No. 572 of 2008 filed by Sri. S.S. Sujith in the light of the advice offered by Adv. V.K. Radhakrishan Nair and the learned Standing Counsel for the University and it was resolved that (1) Adv. Krishnan Unny be engaged to file the writ petition for Dr. M.K. Ramachandran Nair (former Vice Chancellor) (2) Adv. M.K. Damodaran be engaged to file the writ petition for the members of the Syndicate (3) Adv. K. Ramkumar be engaged to file writ petition for the Pro Vice

Chancellor; (4) the Standing Counsel be authorised to closely monitor and supervise the conduct of all the cases before the High Court connected to the selection of Assistants. (5) the action of engaging Adv. P.K. Suresh Kumar and Adv. M.K. Damodaraan for filing writ petitions before the High Court challenging the earlier orders of the Upa Lok Ayukta be ratified. (Adv. P. K. Suresh Kumar filed W.P.(C) No. 18390 of 2008 and Adv. M.K. Damodaran filed W.P.(C) No. 27469 of 2008 and both the writ petitions were disposed of); (6) the action of engaging Adv. V.G. Govindan Nair to appear before the Lok Ayukta on behalf of the Syndicate Members be ratified. These are the basic facts and materials available before this Court to consider the issues raised by the appellant University.

5. We have heard Adv. Thomas Abraham appeared for the Kerala University, Dr. K.P. Satheesan in person and Adv. N. Raghuraj for the second respondent, Dr V. Jayaprakash, and perused the pleadings and documents on record.

6. The material facts discussed above would make it clear that Dr. K.P. Satheesan was appearing for an on behalf of Dr. V. Jayaprakash, the then Pro Vice Chancellor of the university of Kerala which is an undisputed fact. It is also clear that even though originally in the complaint the University of Kerala and the Vice Chancellor alone were

parties, during the course of proceedings, the Upa Lok Ayukta *suo motu* impleaded respective members of the Syndicate in person. It is also clear from the discussions made above that various counsel have appeared for the respective parties. It is also clear that the engagement of the counsel before the Upa Loka Ayukta by respective parties was later ratified by the Syndicate of the University, which is also an undisputed fact. It is also vivid from Annexure A3 discussed above that the Syndicate has resolved to appoint various Senior Advocates of this Court to file writ petitions challenging the order of the Upa Lok Ayukta and from item No. 3 of the Syndicate Resolution, it is clear that the Syndicate has resolved to appoint Adv. K. Ramkumar for and on behalf of Dr. V. Jayapraksh, the Pro Vice Chancellor. The sum and substance of the above undisputed fact would prove that Dr. V. Jayaprakash did not have any personal interest in the matter detached from his official capacity as the Pro-Vice Chancellor of the University of Kerala and that is the reason why the University has decided to file writ petition for and on behalf of Dr Jayaprakash before this Court challenging the order of the Upa Lok Ayukta. It is evident from the documents produced and discussed above, that for reasons best known to the Syndicate of the University alone, the engagement of Dr. K.P. Satheesan by Dr. V. Jayaprakash was not ratified by the University. Apparently, Dr. K.P.

Satheesan raised the bill for professional charges to the University of Kerala, since according to him, even though he was engaged by Dr. Jayaprakash, he was acting in tandem with the other learned counsel appearing for the University of Kerala and the officials and Syndicate Members who were impleaded in their personal capacity. Therefore, according to Dr. K.P. Satheesan, the said conduct of the University of Kerala in not ratifying his engagement made by Dr. V. Jayaprakash, and ratifying engagement of other counsel by the Syndicate of the University was nothing but a *mal* administration, thus entitling him to file complaint before the Upa Lok Ayukta. It was also specifically contended in the complaint before the Upa Lok Ayukta that University has paid the professional fees of such lawyers, which is not disputed at all.

7. Learned Standing Counsel for the University, however, strenuously contended that since there was no ratification of the engagement made, by the University, there is no privity of contract by and between the University and Dr. K.P. Satheesan entitling Dr. K.P. Satheesan to raise a bill for professional charges against the University of Kerala.

8. After evaluating the rival submissions made across the Bar, we are of the considered opinion that when the Syndicate Members and other officials of the University were permitted to be appeared through

the counsel of their choice, it was not proper and appropriate on the part of the University of Kerala in not permitting Dr. V. Jayaprakash to make his appearance through Dr. K.P. Satheesan. We do not know, under what circumstances the University declined the request made by Dr. V. Jayaprakash to approve the engagement of Dr. K.P. Satheesan, because there is no reason assigned at all in Annexure A1 minutes of the Syndicate dated 24.07.2008, which reads thus:

“MINUTES OF THE MEETING OF THE SYNDICATE HELD ON
24.07.2008

Item No.13 Case before the Kerala Lok Ayukta (Complaint No.572/2008 filed by Sri. S.S. Sujith)-appointment of a Lawyer for the Pro-Vice Chancellor-reg.

The Syndicate considered the request from the Pro-Vice Chancellor to appoint Dr. K.P. Satheesan, Advocate to appear on his behalf before the Lok Ayukta in the case (Complaint No.572/2008) relating to the recruitment of Assistants Grade II in the University.

RESOLVED that the request be rejected.

(Adv. AIV)”

9. It is curious to note that Annexure A3 minutes of the meeting of the Syndicate held on 25.10.2008 shows that it is resolved to engage a Senior Advocate of this Court for and on behalf of Dr. V. Jayaprakash, the then Pro Vice Chancellor to file a writ petition challenging the report

of the Upa Loka Ayukta. It was on the said date that Dr. Jayaprakash submitted Annexure A2 to the Syndicate requesting to ratify engagement of Dr. K.P. Satheesan for and on his behalf before the Lok Ayukta. Since strenuous contentions were raised by the counsel for the University, we have called for the records relating to W.P.(C) No. 519 of 2012, R.P. No. 125 of 2012 and W.A. No. 1456 of 2017 which were all proceedings in relation to the complaint filed by Sri. S.S. Sujith before the Lok Ayukta and considered by this court. On a close scrutiny of the documents available thereunder and the pleadings made, we are of the opinion that the Syndicate has resolved to ratify the engagement of different advocates by the members of the Syndicate and the officials of the University, since by the nature of the allegations made in the complaint, and the manner in which the proceedings were taking place before the Upa Lok Ayukta, there were conflict of opinion by and between the parties and unless different advocates were engaged there would have been enough and more complications in conducting the case. Thus, on an appreciation of the facts and circumstances, we are of the view that even though Dr. K.P. Satheesan was engaged by Dr. V. Jayaprakash, it can only be treated as an appointment made to protect the interest of the University of Kerala on account of the allegations made against the University, especially due to the fact that selection was conducted by a

Selection Board consisting of the Vice Chancellor as the Chairman and the other Senior Officials and Syndicate Members in the panel constituted for that purpose. Judged so, it cannot also be said that there was no mal administration enabling Dr. K.P. Sathesan to approach the Lok Ayukta as contented by the University.

10. In that regard, Sections 8 and 9 of the Kerala Lok Ayukta Act, 1999 are relevant to the context, which read thus:

“8. **Matters not subject to investigation** (1) Except as hereinafter provided the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule.

(2) The Lok Ayukta or an Up-Lok Ayukta shall not investigate:-

(a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lok Ayukta or an Upa-Lok Ayukta, as the case may be.

(b) any action in respect of a matter which has been referred to inquiry under the Commissions of inquiry Act, 1952 (Central Act 60 of 1952)

(c) Any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that a complaint referred to in clause (c) may be entertained by the Lok Ayukta or an Upa-Lok Ayukta, as the case

may be, after the expiry of the period referred to in the said clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in that clause.

(3) in the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lok Ayukta or an Upa-Lok Ayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima-facie be regarded as having been improperly exercised.

9. Provisions relating to complaints and investigations:- (1)

Subject to the provisions of this Act, any person may make complaint under this Act to the Lok Ayukta or an Upa-Lok Ayukta.

(2) Every complaint shall be made in such form and in such manner, as may be prescribed, and shall be supported by an affidavit.

(3) Where the Lok Ayukta or an Upa-Lok Ayukta proposes, after making such preliminary inquiry as he deems fit, to conduct any investigation under this Act he-

(a) shall forward a copy of the complaint to the public servant and the competent authority concerned.

(b) shall afford to such public servant, an opportunity to offer his comments on such complaint.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held, either in public or in camera, as the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, considers appropriate in the circumstances of the case.

(5) The Lok Ayukta or an Upa-Lok Ayukta may, in his discretion, refuse to investigate or discontinue investigation of, any complaint involving a grievance, or an allegation, if in his opinion.

- (a) the complaint is frivolous or vexatious or is not made in good faith.
- (b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or
- (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(6) In any case where the Lok Ayukta or an Upa-Lok Ayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(7) The conduct of an investigation under this Act against a public servant in respect of any action shall not affect such action or any power or duty of any other public servant to take further action with respect to any matter subject to investigation.

(8) In every proceeding before the Lok Ayukta or an Upa-Lok Ayukta under this Act, the State shall be made a party thereto and the Government shall appoint a special Attorney and one or more senior Government Pleaders to represent the Government before the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, on the terms and conditions prescribed:

Provided that it shall not be necessary that State should be made a party in cases where Government interests are not involved.”

11. On a deeper analysis of the said provisions, it is clear that the Lok Ayukta or an Upa Lok Ayukta is prohibited from conducting certain investigations specified in the second schedule and under sub-Section 2 of Section 8 of the Act. Thinking so, it can be seen that the issue raised by Dr. K.P. Sathhesan was not in respect of any prohibition created under Section 8, thus disabling the Upa Lok Ayukta to investigate into the complaint. Moreover, as pointed by us above, there was a clear question of *mal administration* in the matter of ratification of the appointments by the syndicate of the University in respect of the advocates engaged by some of the syndicate members and engaged by the University for the officials. In that regard, the definition given to mal administration under Section 2(k) is relevant, which read thus:

“(k) “mal-administration” means action taken or purporting to have been taken in the exercise of administrative functions in any cases where:-

- (i) such action or the administrative procedure or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory; or
- (ii) there has been wilful negligence or undue delay in taking into account such action or the administrative procedure or practice adopted in such action involved undue delay;”

12. Therefore, on a reading of the definition of mal administration, it is clear that discriminatory, unreasonable, unjust or oppressive action can be treated as mal administration. On going through the complaint filed by Dr. K.P. Satheesan, we are quite sure that such clear allegations are made in the complaint. That being so, we do not find any force in the contention advanced by the learned Standing Counsel for the University that the Lok ayukta has exceeded its jurisdiction.

13. Therefore, we have no hesitation to hold that there are no reasons to interfere with the judgment of the learned Single Judge as the appellant University has failed to make out any case of legal infirmity or other justifiable circumstances to interfere with the discretionary power exercised by the learned Single Judge.

Resultantly, writ appeal fails and accordingly it is dismissed.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

APPENDIX

APPELLANT'S EXHIBITS:

ANNEXURE A1 TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE SYNDICATE AT ITS MEETING HELD ON 24.7.2008.

ANNEXURE A2 TRUE COPY OF THE LETTER DATED 25.10.2008 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE UNIVERSITY.

ANNEXURE A3 RELEVANT PORTION OF THE MINUTES OF THE MEETING OF THE SYNDICATE HELD ON 25.10.2008.

ANNEXURE A4: TRUE COPY OF THE ORDER DATED 13.06.2008 OF THE LOK AYUKTA IMPEADING DR. V. JAYAPRAKASH, PRO VICE CHANCELLOR AS THE ADDITIONAL 3RD RESPONDENT.

ANNEXURE A5: TRUE COPY OF THE ORDER OF THE LOK AYUKTA DATED 18.07.2008.

ANNEXURE A6: TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE MEETING OF THE SYNDICATE AT ITS MEETING HELD ON 24.07.2008 WHEREIN ADV. V.K. RADHAKRISHNAN NAIR WAS ENGAGED TO APPEAR BEFORE TEH LOK AYUKTA ON BEHALF OF THE VICE CHANCELLOR AND THE REGISTRAR.

ANNEXURE A7: TRUE COPY OF THE ORDER DATED 22.07.2008 OF THE LOK AYUKTA IMPEADING MEMBERS OF THE SYNDICATE.

RESPNDENTS' EXHIBITS : NIL

/True Copy/

PS to Judge.

Rv