

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 27TH DAY OF FEBRUARY 2023 / 8TH PHALGUNA, 1944

WP(C) NO. 1948 OF 2021

PETITIONERS:

- 1 THE REGIONAL CANCER CENTRE EMPLOYEES CO-OPERATIVE SOCIETY LTD.NO.1063,MEDICAL COLLEGE P.O.,THIRUVANANTHAPURAM-695 011, REPRESENTED BY ITS SECRETARY, UDAYAKUMAR.K.R., AGED 55 YEARS, S/O.RAVEENDRANATHAN NAIR, RESIDING AT SARGA, CRA 188, PLAVILA LANE,CHENTHI,MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
- 2 THE SECRETARY, THE REGIONAL CANCER CENTRE EMPLOYEES CO-OPERATIVE SOCIETY LTD.NO.1063, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.

BY ADVS.
D.KISHORE
SMT.MEERA GOPINATH
SRI.R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENTS:

- 1 JAYANTHI D.,D/O.DEVAKI.G., MUDUMBIL VEEDU, ORUVATHILKOTTA, ANAYARA P.O., THIRUVANANTHAPURAM-695 029.
- 2 AMBIKA DEVI.S., VAYALNIKATHIYA PUTHEN VEEDU, T.C.16/1128, KARAKKODU, THYCAUD P.O., JAGATHY, THIRUVANANTHAPURAM-695 014.
- 3 THE ACCOUNTS OFFICER,REGIONAL CANCER CENTRE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
- 4 THE DIRECTOR,REGIONAL CANCER CENTRE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
- 5 THE KERALA LOK AYUKTA,REPRESENTED BY ITS DEPUTY REGISTRAR, LEGISLATURE COMPLEX, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM-695 033.

BY ADVS.
SRI.ARUN MATHEW VADAKKAN
SMT.M.M.BABY
SRI.ATHUL SHAJI
SMT.RUBEENA HILAL
SRI.JOHN K. JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27.02.2023, ALONG WITH WP(C).2008/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 27TH DAY OF FEBRUARY 2023 / 8TH PHALGUNA, 1944

WP(C) NO. 2008 OF 2021

PETITIONERS:

- 1 THE REGIONAL CANCER CENTRE EMPLOYEES CO-OPERATIVE SOCIETY LTD NO.1063,MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM- 695011,REP. BY ITS SECRETARY, UDAYAKUMAR K.R., AGED 55 YEARS, S/O.RAVEENDRANATHAN NAIR, RESIDING AT 'SARGA', CRA 188,PLAVILA LANE, CHENTHI, MEDICAL COLLEGE, .O.,THIRUVANANTHAPURAM 695 011
- 2 THE SECRETARY,THE REGIONAL CANCER CENTRE EMPLOYEES CO-OPERATIVE SOCIETY LTD. NO.1063, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM 695 011

BY ADVS.

D.KISHORE

SMT.MEERA GOPINATH

SRI.R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENTS:

- 1 PUSHPA T,W/O.BABU, ANCY BHAVAN, PONNADUTHAMKUZHI, URIYAKODE P.O., THIRUVANANTHAPURAM 695 543
- 2 AMBIKA DEVI S.,VAYALNIKATHIYA PUTHEN VEEDU, T.C.16/1128, KARAKKODU,THYCAUD P.O., JAGATHY, THIRUVANANTHAPURAM 695 014
- 3 THE ACCOUNTS OFFICER,REGIONAL CANCER CENTRE,MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM 695 011
- 4 THE DIRECTOR,REGIONAL CANCER CENTRE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM 695 011
- 5 THE KERALA LOK AYUKTA,REP.BY ITS DEPUTY REGISTRAR,LEGISLATURE COMPLEX,VIKAS BHAVAN P.O.,THIRUVANANTHAPURAM 695 033

BY ADVS.

SRI.ARUN MATHEW VADAKKAN

SMT.M.M.BABY

SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH SCIENCES

SRI.ATHUL SHAJI

SMT.RUBEENA HILAL

SRI.JOHN K. JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27.02.2023, ALONG WITH WP(C).1948/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”**JUDGMENT**Dated this the 27th day of February, 2023**MURALI PURUSHOTHAMAN, J.**

Since common issues arise for consideration in these writ petitions, they are disposed of by this common judgment. For the sake of convenience, unless otherwise specifically indicated, the status of the parties and the exhibits referred to hereinbelow shall be as obtaining in W.P.(C) No.1948/2021.

2. The Regional Cancer Centre Employees Co-operative Society (hereinafter referred to as 'Society'), a Society registered under the Kerala Co-operative Societies Act, 1969, has filed the writ petitions challenging Ext.P5 common order passed by the Kerala Lok Ayukta ('Lok Ayukta' for short) in Complaint Nos.1060/16B and 1062/16C preferred by the 1st respondent in the above writ petitions respectively (hereinafter referred to as 'complainants').

3. The short facts necessary for the disposal of the writ petitions are as follows: -

The complainants were Class-IV employees working as

Cleaners in the Regional Cancer Centre (RCC), Thiruvananthapuram. They received a letter dated 25.10.2014 from the Society informing that they had stood as sureties to Smt. Ambika Devi, the 2nd respondent, another Class-IV employee of the RCC (hereinafter referred to as 'loanee') for a loan of Rs.3,00,000/- availed by her on 12.03.2012 from the Society and the loanee committed default in repayment of the loan and an amount of Rs. 1,40,472/- remains to be paid by the loanee. The complainants were therefore informed that if they failed to remit the said dues to the Society, monthly recovery will be effected from their salary starting from November, 2014. The complainants immediately got in touch with the Society and made a request to show the alleged agreement stated to have been executed by them before the Society in connection with the said loan transaction. Later, they were served with another notice dated 13.01.2015 indicating that a sum of Rs.1,43,483/- remains to be paid out of the loan transaction and that a sum of Rs.2,000/- each will be recovered from their monthly salary starting from January, 2015 till the closure of the loan account. The complainants submitted a representation and also caused

to issue lawyer's notice to the Secretary of the Society stating that they are not liable to make any remittance towards the loan availed by Smt. Ambika Devi and not to make further recovery from their salary. However, the Society informed them that the recovery at the rate of Rs.2,000/- each from their salary will be continued till the entire dues payable by the loanee under the loan transaction are recovered. The complainants, therefore, approached the Lok Ayukta contending that there is clear mal-administration on the part of the Society as well as their employer and they are being subjected to misery and hardships and prayed to issue necessary direction to the Society to realise the dues to the Society from the principal debtor and to recommend to drop further proceedings against the complainants.

4. The Society filed a version before the Lok Ayukta wherein it was contended that the complainants had stood as sureties for a loan of Rs.3,00,000/- availed by the loanee which was disbursed to her on 12.03.2012. It was further stated that the 3rd respondent, the Accounts Officer of RCC, had been effecting recovery from the monthly salary of the loanee as

requested by the Society till her superannuation on 31.10.2014. According to the Society, a sum of Rs.1,64,697/- was due to it as on 23rd October, 2014. Complainants were accordingly informed about the outstanding dues in the loan account and monthly recovery was being effected from the complainants from January, 2015 and an amount of Rs.42,000/- had already been recovered. It is stated that the balance amount payable towards the loan account as on 12.01.2017 is Rs.85,862/-.

5. The loanee filed a version before the Lok Ayukta admitting that she had taken a loan of Rs.3,00,000/- in March, 2011 and since she was sent out of employment prematurely on 31.10.2014, the amounts could not be deducted from her salary. According to her, she has remitted Rs.3,00,000/- from 2011 upto the date of her retirement.

6. The Accounts Officer of RCC has filed a version before the Lok Ayukta wherein it is stated that the recovery from the salary of the complainants was made by virtue of Section 37 of the Kerala Co-operative Societies Act. The Director of RCC filed a version before the Lok Ayukta adopting the stand of the Society.

7. The Lok Ayukta called for the records relating to the loan transaction including the two loan Registers relating to 2011-2012, the loan application forms, the loan bonds, the forms of undertaking and observed that the then officials of the Society had shown utter carelessness and disregard in their statutory functions and responsibilities and acted with unclean hands. The Lok Ayukta found that the transactions are under cloud and that amounts to harassment by the Society and that the loanee as well the sureties, who are low paid employees, have been made scapegoats of the machinations of the Society. Accordingly, the Lok Ayukta, by Ext. P5 common order, held that the Society has to stop further recovery in the loan transaction and directed the Society to refund to the complainants the amounts (Rs.42,000/- each) recovered from their salary within one month from the date of receipt of a copy of the order. It was further ordered that the Society and the RCC shall not be entitled to make any further recovery from the loanee in future towards the dues under the loan account. It will be apposite to extract the observations made by the Lok Ayukta on perusal of documents and records of the loan

transactions. They read as under:-

"11. The above two loan applications (Ext.X1 and X2) do contain a lot of surprise elements, so to say. In Ext.X1 relating to Rs.1,80,000/-, the two complainants have of course signed as sureties and respondent no.2, the loanee, has also put her signature. In this application submitted by the loanee, her basic salary is shown as Rs.5154/- and the loan amount in Column No.6 is shown as Rs.3 lakhs and the purpose for applying for the loan is shown as "marriage purpose". But at the bottom of the 1st Page of the application, it is indicated that the amount sanctioned Rs.1,80,000/-. Significantly, the space earmarked to mention the number and date of resolution of the Board of the Society sanctioning the loan is conspicuously left blank. Similarly, the space for the signature of the President and Secretary in the 1st Page is empty. Page No.2 is the Loan Bond to be executed jointly by the loanee and the two sureties. Loan Bond Number is absent. More importantly, the date of the Bond to be indicated at the top is left blank. Curiously, the signature of the principal debtor viz. Smt.Ambika Devi is absent, though the two sureties have signed. Still further, there are two spaces for the signature of attestors. Surprisingly Smt.Jayanthi, the complainant in Complaint No.1062/16 has signed as an attestor. The next page is the Form of Undertaking. In this, the loanee has of course signed. But most importantly none of these three documents, the date is mentioned.

12. Coming to the application form for the loan of Rs.3 lakhs (Ext.X2), the basic salary of the loanee is shown as Rs.5,475/-. Though the column to indicate the loan

amount is kept blank, at the bottom of the page, the amount sanctioned is indicated as Rs.3 lakhs. Number and date of Resolution are mentioned as "item no.1/30 dated 20.2.2012". The Secretary is seen to have signed in the 1st Page. But the signature column of the President is kept blank. In this application form, the loanee as well as the two sureties have put their signature. Coming to the Loan Bond, the loanee and the two sureties have of course signed. Though the names of these three individuals have been mentioned in the Bond, all other columns are left blank. Attestors have also not signed. In the Form of Undertaking, the loanee has of course put her signature. Significantly, in the loan application, Loan Bond and the Form of Undertaking, there is no mention about the date at all. All such columns are left blank.

13. I have dealt with the above two original loan applications at great length only to point out that a statutory body like respondent no.1 and the then officials in authority had shown utter carelessness and disregard in their statutory functions and responsibilities, if not clear manipulations.

14. Coming to the two Loan Registers also, there are a lot more things to say. Page No.118 and 119 are relating to the loan of Rs.1,80,000/- availed of by Smt.Ambika Devi. It may at once be noticed that, as against the column of the loan amount, some figure written earlier was apparently erased with whitener and Rs.1,80,000/- was inserted. The date of release of the loan is shown as April 23, 2011. It is seen from the entries in the register that the loanee had made remittances to the loan accounts at the rate of Rs.3000/- up to March 5, 2012, and on March 12, 2013 the

next entry is Rs.1,48,000/- and there is an endorsement in that page as "loan closed."

15. Coming to the next loan register (Loan No.1386), the loan amount is shown as Rs.3 lakhs. Here, the name of the loanee is seen erased and Ambika Devi's name is mentioned. The loan is seen to have been disbursed to the loanee on March 12, 2012. Of course, the names of the complainants are indicated as sureties. The various payments made by the loanee to the above two loan account are shown on the succeeding pages of the relevant register. Significantly, the amount of Rs.2000/- each recovered from the two complainants starting from January 2015 till September 2016 are also indicated in pencil. [Further recovery from the two complainants was stayed by an interim order passed by this Forum, which is still continuing). It has been noticed already that in the version filed by respondent no.1, it is stated that Rs.42000/- each had already been recovered from the monthly salary of the two complainants.

16. In this context reference has to be made to two other documents produced by respondent no.1. These are two cash vouchers issued by the Society to the loanee, Smt.Ambika Devi. In the first original cash voucher bearing No.270 dated April 23, 2011 a Cheque bearing no.182612 for Rs.1,78,200/- is seen to have been received by the loanee. Curiously, the column for revenue stamp is left blank and the recipient has not put her signature on the stamp, as it ought to have been. In the other cash voucher bearing no.3567 dated March 12,2012 a sum of Rs.3 lakhs is seen to have been received by the loanee, Smt.Ambika Devi in cash. In this voucher also there is no revenue

stamp. The loanee has not signed on the same. Overleaf the above voucher, it is seen that a sum of Rs.1,49,400/- is deducted from Rs. 3 lakhs and Rs.1,50,600/- is indicated therein. Yet again I have taken pains to refer to these aspects only to show the casual and indifferent manner in which these transactions had been carried out by respondent no.1 Society.

17. The contention raised by the complainants and respondent no.2 as regards the loan transaction, particularly by the complainants as regards the alleged liability that is sought to be fastened on them, will have to be considered in the backdrop of the above documentary evidence available on record. At the risk of repetition, it may yet again be mentioned that the complainants have got a specific case that they had stood as surety to the loanee in 2011 only. It has to be remembered that they had been working as cleaners at the lowest rung of the categories of employees in the Regional Cancer Centre. They had obviously been asked to sign in some papers which they obligingly did. They were not capable of putting any questions to their masters who asked them to do so. Similarly respondent no.2, the loanee also was at a great disadvantage as regards the sanctioning of the loan and the release of the funds."

8. The Society has challenged Ext.P5 order mainly contending that the Lok Ayukta has no jurisdiction to conduct any investigation into the complaints in view of Section 8 (1) read with Clause (c) of the Second Schedule to the Kerala Lok

Ayukta Act (for short, 'the Act') which provides that the Lok Ayukta shall not conduct any investigation under the Act in the case of a complaint involving a grievance in respect of any action relating to administrative action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation. According to the petitioner-Society, the complaints arise out of the terms of contract between the Society and the loanee with respect to a loan transaction, wherein the complainants stood as surety for the transaction. The petitioner-Society contends that the same pertains to the commercial relation of the Society with the loanee and the sureties and therefore, there cannot be any interference by the Lok Ayukta with the contractual obligations of loanee and the sureties with the Society. It is contended that demanding the loan amount from the sureties of a loan transaction cannot, in any manner, be termed as mal-administration and it cannot tantamount to a grievance to the sureties so as to invoke Section 7 of the Act.

9. Section 8 and the 2nd schedule of the Act read as under:-

“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 Upa-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.

SECOND SCHEDULE
[See section 8 (i) (a)]

(a) Action taken for the purpose of investigating crime relating to the security of the State.

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not.

(c) Administrative action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation.

(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service.

(e) Grant of honors and awards.”

10. We have no doubt that the transaction between the Society and the loanees/sureties arises out of contract having commercial relations and there is contractual obligation on the part of the loanees/sureties with the Society and vice versa. Section 8(1) read with clause (c) to the 2nd schedule excludes from the jurisdiction of the Lok Ayukta, cases of contracts having commercial relations. However, an exemption is carved out in clause (c) whereby, even in cases of contracts having

commercial relations, the Lok Ayukta can have jurisdiction if the complainant alleges harassment in meeting contractual obligation. The specific case of the complainants before the Lok Ayukta was regarding the harassment meted out to them by the Society by ordering recovery from their salary, in the name of a liability to which they are not liable. The Lok Ayukta found that the complainants, who were working as cleaners in the lowest rung of categories of employees in the RCC, had been subjected to undue hardships by the Society and the complainants had been made scapegoats of the machinations of the Society, its Board members and employees.

Clause (c) of Section 8(1) of the 2nd schedule to the Act excludes from the jurisdiction of the Lok Ayukta, cases of contracts having commercial relations. However, where the complainant alleges harassment or gross delay in meeting the contractual obligation, the Act confers jurisdiction to the Lok Ayukta to conduct investigation in case of grievance in respect of administrative action taken in matters which arise out of contracts having commercial relations. Accordingly, we hold that the Lok Ayukta has jurisdiction to entertain Ext.P1 complaint (in both writ

petitions) and we do not want to interfere with the factual findings of the Lok Ayukta in Ext.P5.

The writ petitions are dismissed.

Sd/-

S.MANIKUMAR
CHIEF JUSTICE

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

spc/

APPENDIX OF WP(C) 1948/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE COMPLAINT NO.1062/2016 FILED BY THE 1ST RESPONDENT BEFORE THE KERALA LOK AYUKTA.
- EXHIBIT P2 TRUE COPY OF THE STATEMENT OF FACTS FILED BY THE PETITIONER HEREIN TO EXHIBIT P1.
- EXHIBIT P3 TRUE COPY OF THE STATEMENT FILED BY THE 2ND RESPONDENT TO EXHIBIT P1.
- EXHIBIT P3 A THE ENGLISH TRANSLATION OF EXHIBIT P3.
- EXHIBIT P4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 3RD RESPONDENT IN COMPLAINT NO.1062/2016.
- EXHIBIT P4 A TRUE COPY OF THE REPLICATION FILED BY THE 1ST RESPONDENT IN COMPLAINT NO.1062/2016.
- EXHIBIT P5 TRUE COPY OF THE COMMON ORDER DATED 04.01.2021 IN COMPLAINT NOS.1060/2016 B AND 1062/2016 C OF THE KERALA LOK AYUKTA ALONG WITH THE COVERING LETTER DATED 11.01.2021 ISSUED BY THE 5TH RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.R2(A) TRUE COPY OF ARGUMENT NOTES DATED 22.12.2020 SUBMITTED BY AMICUS CURIAE IN C NO.1060/2016.
- EXT.R2(B) TRUE COPY OF COMPLAINT NO.34/2019 FILED BEFORE LOK AYUKTHA.
- EXT.R2(C) TRUE COPY OF ORDER DATED 04.01.2021 IN COMPLAINT NO.34/2019 OF LOK AYUKTHA.

APPENDIX OF WP(C) 2008/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE COMPLAINT NO.1060/2016 BY THE 1ST RESPONDENT BEFORE THE KERALA LOK AYUKTHA.
- EXHIBIT P2 TRUE COPY OF THE STATEMENT OF FACTS FILED BY THE PETITIONER HEREIN TO EXHIBIT P1.
- EXHIBIT P3 TRUE COPY OF THE STATEMENT FILED BY THE 2ND RESPONDENT TO EXHIBIT P1.
- EXHIBIT P3 (A) THE ENGLISH TRANSLATION OF EXHIBIT P3.
- EXHIBIT P4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 3RD RESPONDENT IN COMPLAINT NO.1062/2016.
- EXHIBIT P5 TRUE COPY OF THE COMMON ORDER DATED 4.1.2021 IN COMPLAINT NOS.1060/2016 B AND 1062/2016C OF THE KERALA LOK AYUKTA ALONG WITH THE COVERING LETTER DATED 11.1.2021 ISSUED BY THE 5TH RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.R1(1) TRUE COPY OF THE CASH VOUCHER OF REGIONAL CANCER CENTRE EMPLOYEES COOPERATIVE SOCIETY NO.270 DATED 23.4.2011 FOR RS.1,80,000/- .
- EXT.R1(2) THE TRUE COPY OF THE CASH VOUCHER OF REGIONAL CANCER CENTRE EMPLOYEES COOPERATIVE SOCIETY NO.3567 DATED 12/03/2012 FOR RS.3,00,000/- .
- EXT.R1(3) THE TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BEFORE THE HON'BLE LOK AYUKTA.
- EXT.R1(4) THE TRUE COPY OF THE REPLICATION SUBMITTED BEFORE THE HON'BLE LOK AYUKTA.
- EXT.R2(A) TRUE COPY OF ARGUMENT NOTES DATED 22.12.2020 SUBMITTED BY AMICUS CURIAE IN C NO.1060/2016.
- EXT.R2(B) TRUE COPY OF COMPLAINT NO.34/2019 FILED BEFORE LOK AYUKTA.
- EXT.R2(c) TRUE COPY OF ORDER DATED 04.01.2021 IN COMPLAINT NO.34/2019 OF LOK AYUKTA.