

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945

WP(C) NO. 8925 OF 2021

PETITIONERS:

- 1 THE ADDITIONAL CHIEF SECRETARY (REVENUE)
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE ADDITIONAL CHIEF SECRETARY (TAXES),
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT, TAX TOWERS,
KARAMANA, THIRUVANANTHAPURAM-695 002.
- 4 THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM COLLECTORATE, KUDAPPANAKKUNNU,
THIRUVANANTHAPURAM-695 043.
- 5 THE STATE TAX OFFICER,
FIRST CIRCLE, SGST DEPARTMENT, 4TH FLOOR, TAX
TOWERS, KARAMANA, THIRUVANANTHAPURAM-695 002.
- 6 THE TAHSILDAR (RR), THIRUVANANTHAPURAM TALUK OFFICE,
FORT P.O., THIRUVANANTHAPURAM-695 023.

BY SRI.MOHAMMED RAFIQ, SPL.GOVERNMENT PLEADER
SMT.RESMITHA R CHANDRAN, GOVERNMENT PLEADER

RESPONDENTS:

- 1 KERALA LOK AYUKTA
REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM.
- 2 SRI. K.P VARGHESE,
MANAGING DIRECTOR, WELGATE VIDEO PVT. LTD, PATTOM-
KOWDIAR ROAD, KOWDIAR P.O. THIRUVANANTHAPURAM-695
003 (EXPIRED)
- 3 SMT. DEEPA VARGHESE,

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W/O DECEASED K.P. VARGHESE, DIRECTOR, WELGATE VIDEO
PVT LTD, PATTOM-KOWDIAR ROAD, KOWIDIAR
P.O., THIRUVANANTHAPURAM-695 003.

4 SRI. NITHIN VARGHESE,
S/O LATE K.P.VARGHESE, WELGATE GARDENS, TC 4/2563-
2, KOWIDIAR P.O. THIRUVANANTHAPURAM-695 003.

5 SRI. NIKHIL VARGHESE,
S/O LATE K.P.VARGHESE, WELGATE GARDENS, TC 4/2563-
2, KOWIDIAR P.O., THIRUVANANTHAPURAM-695 003.

6 THE CHIEF MANAGER,
UNION BANK OF INDIA, CHALAI BAZAR BRANCH,
CHALAI P.O., THIRUVANANTHAPURAM-695 036.

BY ADVS.
SRI.D.SAJEEV -R3 TO R5
ASP.KURUP
LIGY ANTONY
SADCHITH.P.KURUP
C.P.ANIL RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

MURALI PURUSHOTHAMAN, J.

Whether the Lok Ayukta can adjudicate the correctness of the order passed by the assessing authority rejecting the option for settling arrears of sales tax under the Amnesty Scheme, is the moot question for consideration in this writ petition.

2. The Revenue and Sales Tax authorities of the State have filed this writ petition challenging Ext.P3 report passed by the Kerala Lok Ayukta in Complaint No.117/2020(D), setting aside the order of the assessing authority rejecting the option exercised by the complainants for settling the arrears of sales tax under the Amnesty Scheme-2020 and declaring that the complainants are entitled to opt for the Amnesty Scheme.

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

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The complainants before the Lok Ayukta, who are husband and wife, are the Directors of M/s. Welgate Video Private Limited. The 1st complainant, the Managing Director, submitted an option for payment of arrears of sales tax under the Amnesty Scheme-2020; but the same was rejected by the Sales Tax Officer on the ground that the Tahsildar (RR) has collected and remitted Rs.1,23,71,421/- through auction and that auction of another property was under processing and hence, the complainants are not entitled to opt for settling the arrears of sales tax under the Amnesty Scheme-2020. Challenging the said order, Ext.P1 complaint was filed before the Lok Ayukta wherein the complainants, *inter alia*, sought for declaration that they are entitled to the benefit of the Amnesty Scheme-2020 and that the amount of Rs.1.33 crores obtained by way of auction sale of their properties is liable to be apportioned according to the Scheme and the balance amount available with the

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Revenue/Sales Tax authorities is liable to be remitted with the Union Bank of India towards their dues.

4. The petitioners, who are respondents 1 to 6 in the complaint, filed their version and the Lok Ayukta considered the issues as to whether the complainants are entitled to the benefits under the Amnesty Scheme-2020 and whether the Government is liable to apportion the amount of Rs.1.33 crores received by way of auctioning the property, and held that the order of the Sales Tax officer rejecting the application of the complainants for the benefit of Amnesty Scheme is discriminatory violating their fundamental right under Article 14 of the Constitution of India. The Lok Ayukta also found that the order rejecting of the option of the complainants for settling the sales tax arrears under the Amnesty Scheme-2020 is illegal and set aside the same and declared that the Sales Tax authorities concerned are bound to consider the option exercised by the complainants in the light of Amnesty Scheme-2020 and recommended to the

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competent authority to consider the option under the Amnesty Scheme-2020 and to apportion the amount of Rs.1.33 crores within a period of two months from the date of receipt of the report of the Lok Ayukta.

5. The petitioners assail the order of the Lok Ayukta on merits and on the ground of jurisdictional infirmity. According to the petitioners, the revenue recovery proceedings are initiated against the complainants to recover the amounts legally due to the Revenue and after having recovered the said amounts through the machinery under the Kerala Revenue Recovery Act, 1968 ('Revenue Recovery Act' for short), the complainants cannot be granted the benefit of Amnesty Scheme-2020 for the same amount, since such payment cannot be considered as payment of outstanding arrears either fully or partially. As regards the jurisdiction of the Lok Ayukta to entertain Ext. P1 complaint, it is contended that action impugned is not a complaint involving a 'grievance' or an 'allegation' as

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defined under the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as 'the Lok Ayukta Act' for short) so as to bring it within the ambit of investigation under Section 7(1) of the Lok Ayukta Act. It is contended that the action of the petitioners who are officers under the Kerala General Sales Tax Act, 1963 (KGST Act) and the Revenue Recovery Act in discharging their function under the said Acts cannot be taken as 'maladministration' as defined under Section 2(k) of the Lok Ayukta Act. It is also contended that Section 51 of the KGST Act bars proceedings against officers for any act done or purporting to be done under the Act in good faith and that the provisions of the aforesaid Acts have been overlooked by the Lok Ayukta while passing Ext.P3. Accordingly, the petitioners have prayed for direction to quash Ext.P3 order passed by the Lok Ayukta and to declare that Ext.P1 complaint is not maintainable and that the Lok Ayukta has no jurisdiction to entertain Ext.P1 complaint.

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6. After the passing of Ext.P3 report, the 2nd respondent herein, the 1st complainant before the Lok Ayukta, expired. His legal heirs are arrayed as respondents 4 and 5 in the writ petition.

7. Heard Sri. Mohammed Rafiq, learned Special Government Pleader (Taxes) for the petitioners and Sri.D.Sajeev, the learned counsel for respondents 3 to 5 and Sri.Sadchit P. Kurup, the learned Counsel for the 6th respondent.

8. According to Sri.Rafiq, Ext.P1 complaint is not maintainable before the Lok Ayukta and the Lok Ayukta has no jurisdiction to pass Ext.P3 report. It is contended that the action of the petitioners while discharging the functions under the KGST Act and the Revenue Recovery Act could not have been taken as 'maladministration' under Section 2(k) of the Lok Ayukta Act as 'maladministration' can apply only to administrative functions and not in respect of judicial or quasi judicial functions. It is contended that the Lok

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Ayukta has no jurisdiction to set aside the order of the Sales Tax Officer passed in an adjudicatory process and that a hierarchy of remedies is available against the order of the Sales Tax Officer rejecting the option to settle the arrears under the Amnesty Scheme. Sri.Rafiq refers to Section 23B of the KGST Act as amended by the Kerala Finance Act, 2020 which provides for reduction of arrears in certain cases and submits that the complainants can avail the benefit of the said provision only subject to the conditions mentioned thereunder and that once a sale is made under Section 49 of the Revenue Recovery Act, and the sale is confirmed, the same cannot be interfered with by executive orders issued by the Government under the Amnesty Scheme. Sri. Rafiq contends that since the application of the complainants under the Amnesty Scheme-2020 is after the confirmation of sale and recovery of the amounts through revenue recovery proceedings, the benefits of Amnesty Scheme-2020 cannot be extended to the complainants and

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the application opting the Amnesty Scheme has been rightly rejected by the Sales Tax Officer. Sri.Rafiq invites our attention to Sections 34, 36, 38 and 39 of the KGST Act and submits that the KGST Act provides for hierarchy of remedies against the order of the Sales Tax Officer rejecting the application for opting the Amnesty Scheme and it is not open for the Lok Ayukta to override those procedures and forums to pass an order in the nature of Ext.P3. Referring to Sections 52, 54, 72 and 83 of the Revenue Recovery Act, Sri.Rafiq contends that the Revenue Recovery Act provides for hierarchy of forums before whom the complainants could challenge the sale. Sri.Rafiq relied on the judgment of the Hon'ble Supreme Court in **Titaghur Paper Mills Co.Ltd. and Another v. State of Orissa and Others** [(1983)2 SCC 433] and contends that when the statute provides for a complete machinery to challenge an order, the impugned order can be challenged only by the mode prescribed by the statute. To distinguish between an administrative, judicial

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and quasi-judicial order, Sri.Rafiq relied on the decision of the Hon'ble Supreme Court in **SBP & CO v. Patel Engineering Ltd. and Another** [(2005) 8 SCC 618] and contended that the order of the Sales Tax Officer rejecting the application for opting the Amnesty Scheme is a quasi-judicial order and cannot be called in question before the Lok Ayukta. Sri.Rafiq also relied on the Division Bench decision of this Court in **State of Kerala v. Bernard** [2002 (3) KLT 254] to contend on the limits of jurisdiction of the Lok Ayukta. The decision of the Division Bench of this Court in **Sunayana v. Tahsildar** [2013 (2) KLT SN 3] was also relied on, to contend that, when a proper regulated procedure is contemplated under a special enactment for redressal of grievance, the aggrieved person ought to have approached the authorities under the special enactment and cannot bypass the procedure and approach the Lok Ayukta.

9. Sri.Sajeev, the learned Counsel for the complainants, who supported the findings of the Lok Ayukta in Ext. P3

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report, contended that the application for option under the Amnesty Scheme-2020 was rejected by the Sales Tax officer arbitrarily and the Lok Ayukta has jurisdiction to entertain Ext.P1 complaint when the action of the Revenue/Sales Tax authorities has resulted in injustice and hardships to the complainants.

10. As stated, the question before us is whether the Lok Ayukta has jurisdiction to entertain Ext.P1 complaint and decide the correctness of the order passed by the Sales Tax Officer in rejecting the application of the complainants for option under the Amnesty Scheme-2020.

11. Section 7 of the Lok Ayukta Act provides for matters which may be investigated by the Lok Ayukta and provides that, subject to the provisions of the Act, the Lok Ayukta may investigate any action which is taken by or with the general or specific approval of the persons specified therein, in any case where a complaint involving a

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"grievance" or an "allegation" is made in respect of such action.

12. Section 2(b) of the Lok Ayukta Act defines 'allegation' as follows:-

“Section 2(b). “allegation”, in relation to a public servant, means any affirmation that such public servant,-

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;”

13. Section 2(h) of the Lok Ayukta Act defines 'grievance' to mean a claim by a person that he sustained injustice or undue hardship in consequence of maladministration.

14. Section 2(k) of the Lok Ayukta Act defines 'maladministration' as follows:-

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“Section 2(k). Maladministration means action taken or purporting to have been taken in the exercise of administrative functions in any case 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 willful negligence or undue delay in taking such action or the administrative procedure or practice adopted in such action involves undue delay;”

Going by the definition of 'maladministration', only unreasonable, unjust, oppressive or improperly discriminating action taken or purporting to have been taken in exercise of administrative functions would amount to maladministration. The power exercised by the Sales Tax Officer in rejecting the application of the complainants opting for the Amnesty Scheme-2020 is a quasi judicial function and a hierarchy of remedies is provided against the said order under Chapter-VII of the KGST Act apart from the remedy available before this Court under Article 226 of the Constitution in appropriate cases. If the complainants are

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aggrieved by the order of the Sales Tax Officer rejecting the application opting for the Amnesty Scheme 2020, they ought to have invoked the aforesaid remedies. A Division Bench of this Court, in **Sudha Devi K. v. District Collector, Thiruvananthapuram and Others** [2017 (2) KHC 850], held that Lok Ayukta and Upa Lok Ayukta are not appellate or supervisory authorities over other competent forums created under different Statutes, because each of those Statutes provides its own remedial steps like appeal, revision or otherwise. Parties have to follow those procedures and their remedies are to be worked out on the basis of those statutory provisions. There is nothing in the Lok Ayukta Act which would override those procedures or forums giving Lok Ayukta the right to override orders passed by the statutory authorities. Another Division Bench of this Court in **State of Kerala and Others v. John Joseph and Another** [2011 KHC 801: 2011 (3) KLT 23] held that, even acts of erroneous exercise of an authority

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purportedly conferred by a statute cannot be classified as maladministration within the meaning of Lok Ayukta Act. If orders passed by quasi-judicial functionaries exercising powers under a statute are for any reason untenable in law, resort must be had to the remedies under the statute and the complainants cannot bypass the procedure and approach the Lok Ayukta. The Lok Ayukta is a creation of the statute and has no inherent jurisdiction. It cannot assume any jurisdiction otherwise confirmed by the Lok Ayukta Act. This Court, in **John Joseph** (supra), observed that, if the authority does not have the requisite jurisdiction to adjudicate the dispute brought before it, permitting such an examination would only create chaos in the administration. Ext. P1 complaint before the Lok Ayukta does not reveal any allegation or grievance in consequence of maladministration. Therefore, Ext. P1 complaint, in our view, is not maintainable before the Lok Ayukta and the Lok Ayukta has no jurisdiction to decide the correctness of the

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order rejecting the option for settling the arrears under the Amnesty Scheme-2020. Accordingly, Ext.P3 report of the Lok Ayukta is set aside.

The writ petition is allowed. This Court has not adjudicated the correctness or otherwise of the order of the assessing authority rejecting the application opting for Amnesty Scheme- 2020, but only the jurisdiction of the Lok Ayukta in entertaining Ext. P1 complaint.

Sd/-

**S.MANIKUMAR
CHIEF JUSTICE**

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

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APPENDIX OF WP (C) 8925/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE MEMORANDUM OF COMPLAINT NO 117/2020 FILED BEFORE THE KERALA LOK AYUKTA.
- EXHIBIT P2 TRUE COPY OF THE CLARIFICATION STATEMENT FILED ON BEHALF OF THE FIRST RESPONDENT DATED 13.10.2020.
- EXHIBIT P3 A TRUE COPY OF THE REPORT OF THE HON'BLE KERALA LOK AYUKTA IN COMPLAINT NO 117/2020 DATED 16.12.2020.
- EXHIBIT P4 TRUE COPY OF THE REQUISITION NO 2018/1984/01 DATED 15.2.2018.
- EXHIBIT P5 TRUE COPY OF THE RRC NO 2018/1984/2001 ISSUED IN FORM NO 25 UNDER SECTION 69 (3) OF THE KERALA REVENUE RECOVERY ACT DATED 21.3.2018.
- EXHIBIT P6 TRUE COPY OF THE LETTER OF STATE GOODS AND SERVICES OFFICER 1ST CIRCLE THIRUVANANTHAPURAM TO THE TAHSILDAR (RR) THIRUVANANTHAPURAM.
- EXHIBIT P7 TRUE COPY OF THE LETTER ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES TO THE DEPUTY COMMISSIONER OF SALES TAX THIRUVANANTHAPURAM DATED 23.9.2016.
- EXHIBIT P8 TRUE COPY OF THE DETAILS OF SALES TAX ARREARS OF THE 2ND AND 3RD RESPONDENTS FOR DIFFERENT YEARS FROM 2000-2005.