

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 20TH DAY OF APRIL 2021 / 30TH CHAITHRA, 1943

WP(C).No.9742 OF 2021(P)

PETITIONER:

DR. K.T.JALEEL,
AGED 53 YEARS, S/O. KUNJAHAMED HAJI,
RESIDING AT 'GAZAL', THOZHUVANOR P.O,
VALANCHERY, MALAPPURAM, MINISTER FOR HIGHER
EDUCATION, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

BY ADVS.
SRI.P.C.SASIDHARAN
SHRI.AKSHAY VENU

RESPONDENTS:

- 1 SRI. V.K MUHAMMED SHAFI,
S/O. HASSAN, KUTTIKATTIL HOUSE, THALAMUNDA,
EDAPPAL P.O, MALAPPURAM DISTRICT 679 576.
- 2 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 3 PROF. A.P ABDUL VAHAB,
CHAIRMAN, KERALA STATE MINORITY DEVELOPMENT
FINANCE CORPORATION, CHAKKAROTH KALAM,
WEST HILL, CALICUT 673 005.
- 4 SRI.A.AKBAR,
MANAGING DIRECTOR, KERALA STATE MINORITY
DEVELOPMENT FINANCE CORPORATION, CHAKKAROTH
KALAM, WEST HILL, CALICUT 673 005.

5 SRI. K.T ADEEB,
KOORI MAHAL, VALANCHERY P.O,
MALAPPURAM DISTRICT 676 552.

6 KERALA LOK AYUKTA,
REPRESENTED BY ITS REGISTRAR,
LEGISLATURE COMPLEX, VIKAS BHAVAN P.O,
THIRUVANANTHAPURAM 695 033

R1 BY ADV. SRI.GEORGE POONTHOTTAM (SR.)

R1 BY ADV. SHRI.S.KABEER

R1 BY ADV. SRI.P.E.SAJAL

R2 BY SRI.K.V.SOHAN, STATE ATTORNEY

R2 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER

R2 BY SRI.V.MANU, SENIOR GOVT. PLEADER

R2 BY SRI.SUMAN CHAKRAVARTHY, SENIOR
GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMIS-
SION ON 20.04.2021, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

C.R.

P.B.SURESH KUMAR & K.BABU, JJ.

W.P.(C) No.9742 of 2021

Dated this the 20th day of April, 2021.

J U D G M E N T

P.B.Suresh Kumar, J.

Ext.P8 report submitted by the Kerala Lok Ayukta to the Chief Minister of the State under Section 12(3) of the Kerala Lok Ayukta Act, 1999 (the Act) in a complaint lodged by the first respondent against the petitioner and others, is under challenge in this proceedings under Article 226 of the Constitution.

2. The relevant facts are the following; The petitioner was elected to the Kerala Legislative Assembly in the election held on 16.05.2016 and has been a member of the Council of Ministers of the State since 25.05.2016. The case of the first respondent in the complaint is that the petitioner has violated the oath of office by abusing his position as a Minister and indulging in favouritism and nepotism in appointing the fifth respondent as the General Manager of the Kerala State Minorities Development Finance Corporation (the Corporation). The prayer in the complaint was therefore, for an

investigation into the matter and to submit a report to the competent authority with its recommendations as provided for under Section 12(3) of the Act. There was also a prayer for a declaration under Section 14 of the Act that the petitioner is not entitled to continue as a Minister.

3. It is alleged by the first respondent in the complaint that the Corporation is one constituted by the Government of Kerala for the welfare of the minorities; that the academic qualification prescribed by the Government for appointment to the post of General Manager was Graduation with MBA or CS/CA/ICWAI; that the said qualification was prescribed after thorough deliberation and with the approval of the Council of Ministers; that persons possessing the said qualification were holding the office of the General Manager ever since its establishment; that immediately on assumption of office by the petitioner as the Minister in charge of the Minority Development Department, which is the administrative department of the Corporation, the Government issued an order on 18.08.2016 modifying the educational qualification prescribed for appointment to the post of General Manager by adding B.Tech with PGDBA (Post Graduate Diploma in Business Administration) as an alternative educational qualification based on a note issued by the petitioner directing such a modification. It is also alleged in the complaint that

though a query was raised by the General Administration Department of the State Government on the said note of the petitioner that the concurrence of the Finance Department is required for modifying the qualification for the post since the original qualification was prescribed with the concurrence of the Finance Department, the petitioner intervened and directed the file to be placed before the Chief Minister so as to get over the query, and the Government Order dated 18.08.2016 was issued thereafter with the orders of the Chief Minister. It is further alleged in the complaint that there was no proposal from the Corporation to the Government for modifying the educational qualification for the post; that educational qualifications for the post was modified by the petitioner with a view to facilitate the appointment of the fifth respondent, a cousin of the petitioner who possess only the additional qualification added by the Government in terms of the order dated 18.08.2016; that immediately thereupon, on 25.08.2016, the Corporation issued a notification inviting applications for appointment to the post of General Manager; that the fifth respondent has though applied for selection pursuant to the said invitation, he did not turn up for the interview and no one was appointed pursuant to the said invitation and the said selection process was later cancelled. It is further alleged in the complaint that after sometime, the fifth respondent submitted a request to the Managing Director of the Corporation for

appointment as General Manager on deputation basis; that the Managing Director of the Corporation forwarded the said request to the Government even before the fifth respondent has made available the No-objection Certificate of his employer and that though there was an objection raised on the said request by the General Administration Department that the fifth respondent who was then working in a Private Bank cannot be appointed as the General Manager of the Corporation on deputation basis, the petitioner overruled the said objection on 28.09.2018 and directed to issue orders to appoint the fifth respondent as the General Manager of the Corporation on deputation basis. It is further alleged by the first respondent in the complaint that appointment of the fifth respondent as General Manager of the Corporation on deputation basis is impermissible since he was only an employee in a private bank; that vigilance clearance is required in respect of persons to be appointed as General Manager in all public sector undertakings and that vigilance clearance was not obtained in the case of the fifth respondent. It is further alleged in the complaint that the educational qualification for the post was modified by the petitioner solely for the purpose of facilitating the appointment of the fifth respondent who possesses only the alternative academic qualification prescribed for the post at the instance of the petitioner; that appointment of the fifth respondent as General Manager of the

Corporation was solely on account of the intervention of the petitioner and that, but for the modification of the educational qualification made at the instance of the petitioner, the appointment of the fifth respondent in the service of the Corporation as General Manager would not have been possible. It is further alleged in the complaint that the petitioner has abused his position as a public servant to favour the fifth respondent who is his close relative; that the action of the petitioner in modifying the qualification and appointing the fifth respondent as General Manager of the Corporation was actuated by personal interest and the said conduct would amount to favouritism, nepotism and lack of integrity in the discharge of the functions of the petitioner as a Minister of the State.

4. It is seen that on 08.02.2019, after hearing the counsel for the first respondent and the learned Special Attorney for the Government, the Lok Ayukta decided to conduct a preliminary enquiry in the complaint, and directed the Government to produce the relevant files. It appears that later on 05.02.2020, it was felt that the respondents in the complaint shall also be given an opportunity of hearing in the preliminary enquiry and consequently, the Lok Ayukta issued notice before admission to the respondents in the complaint including the petitioner. Pursuant to the said notice, the petitioner entered appearance in the proceedings before the Loke Ayukta and filed a written statement denying the allegations

against him in the complaint.

5. It was contended by the petitioner in the written statement that the additional alternative qualification was prescribed for the post of General Manager in order to attract technically skilled persons to the post and that the fifth respondent was appointed as General Manager on deputation basis since the Corporation was not able to find a suitable person possessing the qualification prescribed for the post, despite the invitation made in that behalf. It was also contended in the written statement that the application of the fifth respondent for appointment on deputation basis was in fact forwarded to the Government by the Corporation and the Government has only given effect to the proposal made by the Corporation. It was, however, admitted by the petitioner in the written statement that though the original prescription of the qualification was made by the Council of Ministers of the State, the same was modified without the concurrence of the cabinet. Similarly, it is admitted by the petitioner in the written statement that the fifth respondent is his cousin.

6. Having regard to the allegations in the complaint and the stand taken by the respondents in the proceedings including the petitioner in the written statements filed by them, and on a perusal of the relevant files which were called for in the meanwhile, the Lok Ayukta admitted the complaint formally on 26.03.2021. It is

seen that since the parties to the proceedings have already been given an opportunity to file their respective pleadings and in the absence of any further requests for filing additional pleadings or giving evidence, the Lok Ayukta proceeded to hear the parties finally on the complaint.

7. Thereupon, on a consideration of the arguments advanced by the parties to the proceedings and on an evaluation of the materials on record, the Lok Ayukta found that the action taken by the petitioner to modify the qualification for appointment to the post of General Manager of the Corporation was without there being any proposal or suggestion from the Corporation; that the same was with a view to make the fifth respondent who is his cousin eligible for appointment to the said post and that, but for the said modification in the qualification, the fifth respondent would not have been eligible for appointment as General Manager in the Corporation. It was also found by the Lok Ayukta that the action on the part of the petitioner in directing appointment of the fifth respondent on deputation basis on the basis of the application of the fifth respondent which was forwarded to the Government by the Managing Director of the Corporation without inviting any application and without providing any opportunity to other eligible persons to apply for the post is an action actuated by personal interest in the discharge of the function of the petitioner as a Minister to favour his cousin. It was further

found by the Lok Ayukta that the said actions would amount to favouritism, nepotism and also lack of integrity on the part of the petitioner in his capacity as a Minister of the State. It was further found by the Lok Ayukta that the conduct of the petitioner would also amount to violation of the oath of office taken by him as a Minister to discharge his duties without fear or favour, affection or ill-will. The Lok Ayukta, in the circumstances, held that the allegation of abuse of power, favouritism, nepotism and violation of oath of office have been substantiated against the petitioner and consequently, it was declared that the petitioner is not entitled to continue as a member of the Council of Ministers. A report was accordingly submitted in terms of Section 12(3) of the Act by the Lok Ayukta to the Chief Minister, the competent authority of the public servant involved. As noted, the said report is under challenge in the writ petition.

8. Heard the learned counsel for the petitioner, the learned State Attorney as also the learned Senior Counsel appearing for the first respondent.

9. Placing reliance on Section 9(2) of the Act, it was contended by the learned counsel for the petitioner that every complaint shall be made in such form and in such manner as may be prescribed and shall be supported by an affidavit, and the affidavit filed by the first respondent in support of the complaint was not in

accordance with the Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999 in as much the same was not one drawn up and authenticated in the manner provided in the Civil Rules of Practice, Kerala. The learned counsel has relied on the decision of this Court in **K.Chandrasekharan v. C.Sasidharan Pillai and another**, 1994 KHC 6, in support of the said argument. It was also contended by the learned counsel that the complaint being one pertaining to the appointment of the fifth respondent in the service of the Corporation, the same is not maintainable in the light of Section 8(1) of the Act. In support of the said plea, the learned counsel has relied on the decision of this Court in **University of Kerala v. N.R.Anil Kumar**, 2020 KHC 111. It was also pointed out by the learned counsel that there has to be a preliminary enquiry into every complaint and after preliminary enquiry, if the Lok Ayukta proposes to conduct any investigation into the same, it shall forward a copy of the complaint to the public servant and also to the competent authority of the public servant concerned and shall afford to the public servant, an opportunity to offer his comments on the complaint in terms of Sub-section (3) of Section 9 of the Act. It was contended by the learned counsel that the impugned report has been submitted without compliance of the provisions contained in Sub-section (3) of Section 9 of the Act. Placing reliance on Section 12(3) of the Act, the learned counsel for the petitioner forcefully

contended that a report under that provision is contemplated and could be submitted only after an investigation into the complaint involving an allegation and in the case on hand, the report under that provision has been submitted to the competent authority of the public servant without conducting the investigation. Similarly, placing reliance on Section 14 of the Act, the learned counsel has contended that the declaration under that provision is contemplated and could be made only after an investigation into the complaint and in the case on hand, the declaration has been made without conducting the investigation. According to the learned counsel, the report submitted by the Lok Ayukta under Section 12(3) of the Act and the declaration made therein under Section 14 of the Act are therefore, unsustainable in law. It was also pointed out by the learned counsel that going by the scheme of the Act, the investigation on complaints contemplated and provided under the Act is a process of letting the parties to adduce evidence in support of their respective cases and also by gathering materials through the mechanism provided for under Section 16(3) of the Act. It was pointed out that the Lok Ayukta neither afforded to the parties an opportunity to let in evidence nor collected any materials invoking the mechanism provided under Section 16(3) of the Act. According to the learned counsel, the impugned report of the Lok Ayukta is therefore, vitiated by non-compliance of the principles of natural

justice. It was also contended by the learned counsel that the factual findings rendered by the Lok Ayukta are solely based on the chronology of events inferred based on the oral arguments advanced by the learned counsel for the parties and the statute does not contemplate such a procedure for drawing a report under Section 12(3) of the Act. As regards the merits of the matter, it was contended by the learned counsel that merely for the reason that the fifth respondent possessed only the additional alternative qualification ordered to be incorporated by the petitioner for appointment to the post, it cannot be inferred that the action taken by the petitioner almost two years before the appointment was vitiated by favouritism or nepotism. It was also contended by the learned counsel that the appointment of the fifth respondent as General Manager of the Corporation on deputation basis was at the instance of the Corporation and merely for the reason that the Government accepted the proposal made by the Corporation, it cannot be said that the action taken by the petitioner in this regard is actuated by personal interest.

10. The learned State Attorney endorsed the arguments advanced by the learned counsel for the petitioner. In addition, placing reliance on the cause list published by the Lok Ayukta on various dates which were handed over to the court, the learned State Attorney submitted that there was no investigation at

all in the complaint in as much as the complaint was listed upto 26.3.2021 only for preliminary enquiry. It was pointed out that the final hearing was on the day on which the case stood posted for preliminary enquiry and the final report was drawn immediately thereafter on 09.04.2021. The learned State Attorney has also passed on to the Court the communication issued by the office of the Lok Ayuta to the Chief Minister as provided for under Section 9(3)(a) of the Act, and contended based on the said communication that compliance of the said provision which should have been done before submitting the report under Section 12(3) of the Act has in fact been done only after submitting the report. It was, therefore, argued by the learned State Attorney that the impugned report can only be treated as one drawn against all the principles of natural justice as also the constitutional safeguards available to the petitioner.

11. Learned Senior Counsel who appeared for the first respondent supported the impugned report pointing out that the Lok Ayukta has absolute freedom to decide the manner in which the investigation in a given case is to be conducted and merely for the reason that the Lok Ayukta has disposed of a complaint based on the oral arguments advanced by the learned counsel for the parties, it cannot be said that there was no investigation. It was also argued by the learned senior counsel that the complaint in the case on hand

being one involving an allegation, the bar under Section 8(1) of the Act does not apply. It was also argued that it cannot be said that the affidavit filed by the first respondent is not in accordance with the Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999. In reply to the arguments made by the learned counsel for the petitioner on the merits of the matter, it was pointed out by the learned Senior Counsel that the factual conclusions arrived at by the Lok Ayukta are solely based on the admitted facts and the same cannot be said to be unsustainable on any grounds whatsoever.

12. We have given a thoughtful consideration to the various contentions raised by the learned counsel for the parties.

13. In spite of a vigilant media, it is a fact that abuse of public resources and position in public life for private gain are rampant in our State. Abuse of public resources or position in public life for private gain would certainly amount to corruption. The scope of corruption would increase when control on the public administrators is weak. The Act is one introduced to make provisions for the appointment and functions of certain authorities for making enquiries into any action relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto. All public servants from the Chief

Minister to the members of the Panchayats are brought under the Act. The object of the legislation is to eliminate corruption in public service. The Act was introduced as it was felt that the mechanism provided for in the Kerala Public Men's Corruption (Investigation and Inquiries) Act, 1987 which was in force then was not sufficient to prevent effectively, the corruption among public servants. The Act confers on the Lok Ayukta and the Upa Lok Ayuktas appointed under the Act with solemn functions of investigating into the various acts of omissions and commissions of public servants. In terms of the Act, the institution of Lok Ayukta is headed by the Lok Ayukta, who shall be either a person who held the office of the Judge of the Supreme Court of India or that of the Chief Justice of the High Court. There are two Upa Lok Ayuktas who held the office of the Judge of the High Court. The Lok Ayukta and Upa Lok Ayuktas are appointed on the advice of the Chief Minister in consultation with the Speaker of the Legislative Assembly and the Leader of Opposition. Going by the scheme of the Act, especially the provisions therein as regards the stature of the persons to be appointed as Lok Ayukta and Upa Lok Ayuktas and the manner of their selection, it is evident that the intention of the legislature is that the decisions of the Lok Ayukta and Upa Lok Ayuktas shall be final. The said intention is explicit from the fact that no appeal is provided for under the Act against their decisions. True, the power of judicial review conferred on this

court under Article 226 of the Constitution being a basic feature of the Constitution, a person aggrieved by the decision of the Lok Ayukta is certainly entitled to challenge the same invoking the said jurisdiction.

14. Now, let us understand the scope of judicial review under Article 226 of the Constitution. The justification for the exercise of judicial review over orders of statutory bodies is to ensure that the statutory bodies act within the confines of their allocated powers, for they do not possess inherent jurisdiction. The power of judicial review is therefore not directed against the decision, but is confined to the decision making process. It is not an appeal from a decision, but a review of the manner in which the decision is made and the court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision. It is now settled that in exercise of the said power, the court would confine itself to the questions namely, whether the decision making authority exceeded its power, committed an error of law, committed breach of the rules of natural justice, reached an unreasonable decision or abused its powers [See **Bhubaneswar Development Authority v. Adikanda Biswal**, (2012) 11 SCC 731]. The court would examine an error of fact touching the merits of the decision only when it has a direct nexus to the decision making process [See **Uttamrao Shivdas Jankar v.**

Ranjitsinh Vijaysinh Mohite Patil, (2009) 13 SCC 131].

15. The various contentions raised by the learned counsel for the petitioner are to be considered in the light of the object and the background of the Act as also the various principles governing the exercise of judicial review under Article 226 of the Constitution.

The contention that the affidavit filed in support of the complaint is defective

16. Section 9 of the Act deals with the provisions relating to complaints and investigations. Sub-section (2) of Section 9 provides that every complaint shall be made in such form and in such manner, as may be prescribed, and shall be supported by an affidavit. The Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999 provides that every affidavit filed before the Lok Ayukta shall be drawn up and authenticated in the manner provided in the Civil Rules of Practice, Kerala. Rule 52 of the Civil Rules of Practice, Kerala dealing with affidavit reads thus:

“52. Affidavit on information or belief.- Every affidavit shall clearly express how much is a statement of the deponent's knowledge and how much is a statement on his belief, as in Form No.17. The grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief.”

The contention of the petitioner is that the affidavit filed by the first respondent in support of the complaint is not in accordance with the Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999 in as much as there is no verification or authentication of facts therein in accordance with Rule 52 of the Civil Rules of Practice, Kerala.

17. First of all, as noted, it is a case where the Lok Ayukta has issued notice of the complaint to the petitioner before the complaint is admitted to file. The petitioner who entered appearance and filed written statement in the proceedings pursuant to the said notice has not raised any objection in the written statement filed by him as to the defect, if any, in the affidavit filed by the first respondent. The materials on record do not indicate that the petitioner has raised the objection aforesaid at any time later in the proceedings also. The petitioner has no case that any prejudice has been caused to him in the proceedings for want of a proper affidavit. In such circumstances, the procedural defects of the instant nature cannot be raised even in an appeal or revision statutorily provided against the decisions of the statutory authorities/Tribunals. Needless to say that the ground aforesaid is not one available to the petitioner to impugn a decision of the statutory authority in a proceedings for judicial review [See **Rang Nath Mishra v. State of Uttar Pradesh and Others**, (2015) 8 SCC 117]. That apart, the complaint preferred by the first

respondent against the petitioner which is part of the records contains only 11 paragraphs. The affidavit filed by the first respondent in support of the complaint which is part of the records reads thus:

AFFIDAVIT

I, V.K.Muhammed Shafi, S/o.Hassan, aged 36 years, Kuttikkattil House, Thalamunda, Edappal P.O., Malappuram District – 679576, do hereby solemnly affirm and state on oath as follows:

1. I am the complainant in this application making allegations of corruption and nepotism and acts which are covered under the provisions of the Kerala Lok Ayuktha Act. The averments as regards the jurisdiction of the Lok Ayuktha are in terms of the provisions of the Act. The averments as regards the actions of the respondents 2, 3 and 4 are based on the records and the personal knowledge of the deponent. It accordingly constitutes maladministration attracting the provisions of Kerala Lok Ayuktha Act. The allegations are based on documents and the personal knowledge of the deponent in so far as the relation between the 2nd respondent and the 5th respondent. Other averments are as believed by the deponent to be true and correct.

All what is stated in paragraph 1 to 11 are facts which are within the knowledge of the deponent as disclosed from records, which are taken from the original and produced along with the complaint constituting the basis of the allegations and the deponent affirm that what is stated above are true and correct.

Dated this the 26th day of January, 2019.

Deponent

Solemnly affirmed and sworn before me by the deponent on this the 26th day of January, 2019 at my office in Ernakulam.

P.E.Sajal
Advocate

As evident from the extracted affidavit, the first respondent has stated categorically in the affidavit that the entire statements in paragraphs 1 to 11 of the complaint are facts which are within his knowledge. Had there been a case for the first respondent that any part of the statement in the complaint has been made on his belief, he should have disclosed the grounds of belief with sufficient particularity to enable the Court to judge whether it would be safe to act on the belief of the first respondent. In the absence of any case for the first respondent that any part of the statements in the complaint has been made on his belief, according to us, the affidavit aforesaid is perfectly in order. In **K.Chandrasekharan**, unlike the case on hand, the allegation of corruption attributed against the public servant involved was made solely on the belief of the complainant and the grounds of belief were not stated with sufficient particularity as required under Rule 52 of the Civil Rules of Practice, Kerala. The decision in **K.Chandrasekharan**, cannot, therefore, have any application to the facts of the present case. The contention of the petitioner that the affidavit filed by the first respondent in the complaint was not in accordance with sub-section (2) of Section 9 of

the Act is therefore rejected.

The contention that the complaint is not maintainable

18. As noted, the contention raised by the petitioner as regards the maintainability of the complaint is that the complaint being one in respect of the actions taken by the petitioner for prescribing an additional qualification for the post of General Manager of the Corporation and for directing appointment of the fifth respondent as General Manager of the Corporation, the Lok Ayukta is precluded from conducting any investigation into such a complaint under sub-section (1) of Section 8 of the Act. Sub-section (1) of Section 8 of the Act reads 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. “

No doubt, action taken for prescribing qualification for a post and action taken for effecting appointment to a post would certainly fall within the scope of Clause (d) of the Second Schedule to the Act. But, as explicit from sub-section (1) of Section 8 of the Act, the bar under that provision would apply only in the case of a complaint involving any grievance in respect of any action relating to any

matter specified in the Second Schedule. Section 2(h) of the Act defines 'grievance' to mean a claim by a person that he sustained injustice or undue hardship in consequence of maladministration. Section 2(h) reads thus:

“(h) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration;”

An 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 wilful negligence or undue delay in taking such action or the administrative procedure or practice adopted in such action involves undue delay would amount to maladministration in terms of Section 2(k) of the Act. Section 2(k) of the Act reads thus:

“(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 wilful negligence or undue delay in taking such action or the administrative

procedure or practice adopted in such action involves undue delay;”

Section 2(b) of the Act which defines ‘allegation in relation to a public servant’ reads thus:

(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;”

The distinction between ‘grievance’ and ‘allegation’ falling within the scope of the Act is that the grievance should be contained in a claim by a person that he has sustained an injustice or undue hardship due to the maladministration, whereas the allegation in relation to the public servant can be raised by any person, who may not have any grievance to be redressed, *qua* the maladministration concerned. It is so held by this Court in **Ramachandran Nair M.K. (Dr.) and Others v. State of Kerala and Others**, 2009 (3) KHC 919. The relevant portion of the judgment reads thus:

“Crucial distinction which separates a 'grievance' from an allegation as the two terms have been defined in the Lok

Ayukta Act have to be kept in mind. An 'allegation' is defined in S.2(b) of the Act. A 'grievance', on the other hand, is separately defined in S.2(h) of the Act. What distinguishes a 'grievance' from an 'allegation' is that the former should be contained in a claim by a person, that he has sustained an injustice or undue hardship due to the mal administration. The latter viz., 'allegation' in relation to a public servant can be raised by any person, who may not have any 'grievance' to be redressed, qua the mal administration concerned. But the complainant, who raises an 'allegation', irrespective of whether he has suffered a personal injury from such mal administration would nevertheless be entitled to affirm that the public servant has indulged in favouritism and nepotism and lack of integrity. In such circumstances, he would be entitled to file a complaint before the Lok Ayukta. In filing such a complaint, he does not seek the redressal of any 'grievance' as such, but only makes an 'allegation' against the public servant, as the term is defined under the Act. He does not seek any relief for himself. He is only interested in bringing to light acts of mal administration and he acts in general public interest."

As noted, the first respondent has neither any claim to the post of General Manager of the Corporation nor a case that he sustained injustice or undue hardship due to the maladministration. He does not also seek redressal of any grievance in the proceedings before the Lok Ayukta. Instead, in the complaint, he only made an allegation against the public servant in terms of the Act in general in public interest. Such a complaint cannot be regarded as one involving grievance in respect of any action relating to any matter

specified in the Second Schedule. In other words, the bar under Section 8(1) of the Act does not apply to such a case. It is seen that the Lok Ayukta has dealt with and rejected the contention raised by the petitioner as regards the maintainability of the complaint in the aforesaid lines and the view taken by the Lok Ayukta in this regard is perfectly in order. **N.R.Anil Kumar** is not a case relating to a complaint involving allegation. Instead, it was a case relating to a complaint involving grievance. The contention raised by the petitioner as regards the maintainability of the complaint is also therefore rejected.

The contention that Section 9(3) of the Act has not been complied with

19. The contention raised by the petitioner in this regard is that there has to be a preliminary enquiry into every complaint and after the preliminary enquiry, if the Lok Ayukta proposes to conduct any investigation into the same, in terms of sub-section (3) of Section 9 of the Act, it shall forward a copy of the complaint to the public servant and also to the competent authority of the public servant concerned and shall afford to the public servant thereafter, an opportunity to offer his comments on the complaint in the matter of conducting the investigation into the complaint and the impugned report has been submitted without complying with the

said provision. The materials on record indicate that on 08.02.2019, after hearing the counsel for the first respondent and the learned Special Attorney for the Government, the Lok Ayukta decided to conduct a preliminary enquiry in the complaint and directed the Government to produce the relevant files. Similarly, the materials indicate that later on 05.02.2020, it was felt that the respondents in the complaint shall also be given an opportunity of hearing in the preliminary enquiry and consequently, the Lok Ayukta has issued notice before admission to the respondents in the complaint including the petitioner and pursuant to the said notice, the petitioner entered appearance in the proceedings and filed a written statement offering his comments on the complaint. The fact that Lok Ayukta has forwarded a copy of the complaint to the public servant even before the complaint is admitted to file is not disputed by the petitioner. Similarly, the fact that the Lok Ayukta has afforded the petitioner an opportunity to offer his comments on the complaint is also not disputed by the petitioner. Insofar as the requirements in sub-section (3) of Section 9 of the Act have been complied with by the Lok Ayukta even before the admission of the complaint and in the absence of any prejudice caused to the petitioner for not repeating the same process after the complaint is admitted, according to us, the omission on the part of the Lok Ayukta in not complying with the provisions contained in sub-section(3) of Section

9 of the Act after the admission of the complaint is not a ground to impugn the report in this proceedings, for every error committed in the decision making process will not have the effect of vitiating the decision and for the decision to be vitiated, it shall be demonstrated that the error in the making of the decision has affected the decision. In the case on hand, the petitioner has no case that the decision of the Lok Ayukta is affected in any manner on account of the omission on the part of the Lok Ayukta in forwarding a copy of the complaint to the petitioner and affording him an opportunity to offer his comments on the complaint again after the admission of the complaint. The contention aforesaid is also therefore rejected.

The contention that there was no investigation into the complaint

20. The main contention raised by the petitioner placing reliance on the opening words in sub-section (3) of Section 12 of the Act and sub-section (1) of Section 14 of the Act is that a report under sub-section (3) of Section 12 containing a declaration under sub-section (1) of Section 14 could be submitted only after an investigation into the complaint and in the case on hand, there was no investigation at all into the complaint. The petitioner would also argue that going by the scheme of the Act, the investigation on complaints contemplated and provided under the Act is a process of letting the parties to adduce evidence in support of their respective

cases and also by gathering materials through the mechanism provided for under Section 16(3) of the Act and if the parties are not given an opportunity to let in evidence and if materials are not collected through the mechanism provided for under Section 16(3) of the Act, it cannot be said that there was an investigation at all into the complaint. Section 11 of the Act provides that subject to the provisions of the said section, for the purpose of any investigation including the preliminary inquiry, if any, before such investigation under the Act, the Lok Ayukta or Upa Lok Ayukta may require any public servant or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document. The provision aforesaid is only a provision conferring power on the Lok Ayukta or Upa-Lok Ayukta to require any public servant or any other person who, in its opinion, is able to furnish information or produce any document relevant for the investigation in the case either at the stage of preliminary enquiry or at the stage of investigation in a proceedings before it. The said provision cannot be interpreted to hold that the Lok Ayukta is bound to afford to public servant an opportunity to let in evidence once the complaint is admitted, irrespective of the fact as to whether or not the public servant seeks to adduce evidence in the matter. Sub-section(3) of Section 16 of the Act reads thus:

“16. Staff of Lok Ayukta, etc.

(3) Without prejudice to the provisions of sub-section (1), the Lok Ayukta or an Upa-Lok Ayukta may, for the purpose of conducting investigations under this Act, utilise the services of-

(a) any officer or investigating agency of the State Government; or

(b) any officer or investigating agency of the Central Government, with the prior concurrence of that Government; or

(c) any other agency.”

The mechanism provided under sub-section (3) of Section 16 of the Act is also only a mechanism that enables the Lok Ayukta to collect materials in a given case, if it finds it necessary to do so. The said provision also cannot be interpreted to hold that the Lok Ayukta is bound to collect materials once the complaint is admitted, making use of the mechanism provided under that provision, irrespective of the fact as to whether or not the Lok Ayukta needs any additional materials. Coming to the case on hand, as noted, even before the complaint was admitted to file, a copy of the complaint was forwarded to the petitioner and he was given an opportunity to offer his comments on the same. Pursuant to the same, the petitioner entered appearance in the proceedings and filed a detailed written statement. Having regard to the allegation in the complaint and the contentions raised by the petitioner, the Lok Ayukta called for the

relevant files from the Government and the Government has made available the files called for. The materials indicate that thereupon, the Lok Ayukta afforded the parties to the proceedings including the petitioner an opportunity to make oral submissions and the parties including the petitioner have made oral submissions in the matter. The petitioner has no case in the long writ petition running to 42 pages that he wanted to adduce evidence in the matter and that the Lok Ayukta did not permit him to adduce evidence in the matter. The materials also indicate that on the facts of the present case, the Lok Ayukta did not find it necessary to require the petitioner to adduce evidence or to collect additional materials through the mechanism provided under Section 16(3) of the Act. In a case of this nature, according to us, the argument that the Lok Ayukta should have afforded the petitioner an opportunity to adduce evidence and should have collected additional materials making use of the mechanism provided under Section 16(3) of the Act is misconceived.

21. Section 12 of the Act deals with the reports of the Lok Ayukta. Sub-section (3) of Section 12 reads thus:

“12. Reports of Lok Ayukta etc.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such allegation is substantiated, either wholly or partly, he shall, by report in writing, communicate his findings and

recommendations along with the relevant documents, materials and other evidence to the competent authority and also intimate the complainant about its having made the report.”

Section 14 of the Act deals with the power of the Lok Ayukta to direct the public servants involved in the complaints to vacate office. Sub-section(1) of Section 14 reads thus:

“14. Public Servant to vacate office if directed by Lok Ayukta etc.-

(1) Where, after investigation into a complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration. In other cases, the competent authority concerned shall send a copy of such report to the Government, which shall accept the declaration.”

The petitioner is right in contending that a report under sub-section (3) of Section 12 of the Act containing a declaration under sub-section (1) of Section 14 of the Act could be submitted only after an investigation into the complaint involving an allegation. Sub-section (4) of Section 9 of the Act provides that the procedure for conducting investigation on a complaint shall be as the Lok Ayukta or the Upa Lok Ayukta, as the case may be, considers appropriate in the

circumstances of the case. In other words, as rightly contended by the learned Senior Counsel for the first respondent, the procedure for conducting the investigation in a given case is a matter for the Lok Ayukta or Upa Lok Ayukta, as the case may be, to decide having regard to the circumstances of the case. Having regard to the scheme of the statute, according to us, the investigation contemplated under the Act is only a formal inquiry to discover the truth of the allegation and it is on account of this reason that the Act has given absolute discretion to the Lok Ayukta or Upa Lok Ayukta, as the case may be, to decide the procedure for conducting the investigation. Coming to the case on hand, as noted, the Lok Ayukta has forwarded the copies of the complaint to all the respondents even before the complaint was admitted to file, permitting them to file written statements offering their comments in the matter and availing the said opportunity, the petitioner as also the State Government filed detailed written statements. The State Government filed an additional statement also. In the meanwhile, the Lok Ayukta also called for the files of the Government relating to the case. It is seen that it is having regard to the said materials that the Lok Ayukta has decided on 26.03.2021 to proceed with the complaint and chose to hear the matter finally. The materials indicate that there was no request from any parties on 26.03.2021 for filing any further statement or for adducing evidence and the

parties have addressed final arguments accordingly on 26.03.2021 and 30.03.2021. The materials indicate that it is based on the facts disclosed in the written statements filed by the State Government as also the petitioner and based on the facts disclosed in the files produced by the Government, that the factual conclusions in the report under Section 12(3) of the Act have been arrived at. The procedure adopted by the Lok Ayukta, according to us, does not contravene any of the provisions of the Act. In other words, the contention that there was no investigation into the complaint by the Lok Ayukta is liable to be rejected and we do so.

The contention that the factual findings arrived at by the Lok Ayukta are perverse

22. The petitioner would contend that merely for the reason that the fifth respondent possessed only the additional alternative qualification ordered to be incorporated by the petitioner for appointment to the post, it cannot be inferred that the action taken by the petitioner almost two years before the appointment was vitiated by favouritism or nepotism. Similarly, he would contend that the appointment of the fifth respondent as General Manager of the Corporation on deputation basis was at the instance of the Corporation and merely for the reason that the Government accepted the proposal made by the Corporation, it cannot be said

that the action taken by the petitioner in this regard is actuated by personal interest. The chronology of events culled out by the Lok Ayukta from the pleadings of the parties as also the files have been stated by the Lok Ayukta in paragraph 46 of the report. Paragraph 46 of the report reads thus:

46. For a proper appreciation of the allegations in the complaint, it is necessary to take note of the following chronology of events:

24.8.2011:KSMFDC (for short the Corporation) was constituted as a Private Limited Company registered under the Indian Companies Act, 1956 where the Government of Kerala held major share capital.

6.8.2012: Government of Kerala approved the Memorandum of Association and Articles of Association of the Corporation.

29.6.2013:Government issued G.O. (MS) No.194/2013/GAD dated 29.6.2013 (Ext.P1) according sanction for creation of the post of General Manager and prescribing the educational qualification for the post, after obtaining the approval of the State Cabinet.

29.1.2014:After considering the request of the Managing Director of the Corporation, Government issued G.O. (Rt)No.857/2014/GAD dated 29.1.2014 (Ext.P-3) according sanction for appointing Sri.B.Sherafudeen as General Manager of the Corporation on deputation basis.

5.5.2015:Based on the request of the Managing Director,

Government issued G.O. (Rt) No.3338/2015/GAD dated 5.5.2015(Ext.P-4) according sanction for appointing Sri.Faisal Muneer as General Manager on deputation basis.

25.5.2016:Second Respondent Dr.K.T.Jaleel took charge as Minister for Higher Education and Minority Welfare, Government of Kerala.

28.7.2016:Second Respondent Minister sent a Note (Ext.P7) to the Secretary, GAD (MW) Department directing to issue an order changing the educational qualifications for the post of General Manager by adding B.Tech. with PGDBA also as a qualification.

18.8.2016:Government issued G.O.(Rt) No.5369/2016/GAD dated 18.8.2016 (Ext.P6) changing the educational qualifications for the post of General Manager to add B.Tech with PGDBA also as one of the qualifications.

It is to be noted that the 5th respondent Sri.K.T.Adeeb who is admittedly the second cousin of the 2nd respondent- Minister possessed the qualification 'B.Tech. with PGDBA'. Without the above mentioned change, the 5th respondent would not have been qualified for the post. The modified qualification was tailor made for him.

It is also to be noted that the idea of changing the educational qualifications originated from the 2nd respondent- Minister and that there was no such proposal from the Corporation. The matter was not placed before the Cabinet and

even the suggestion to consult Finance Department was rejected.

The direction of the 2nd respondent- Minister was carried out by issuing the Govt. Order dated 18.8.2016 (Ext.P-6).

25.8.2016: Within a week, the Corporation issued notification dated 25.8.2016 (Ext.P-5) inviting applications for various posts including that of General Manager.

4.9.2016: In response to the said Notification, the 5th respondent submitted his application for the post of General Manager.

10.10.2016: The 5th respondent received call letter to appear for the interview to be held on 26.10.2016.

26.10.2016: The 5th respondent did not turn up for the interview "due to some unavoidable reasons".

Those who turned up were found to be not qualified. No Selection or appointment was made for the post of General Manager.

22.9.2017: Director Board of the Corporation passed a resolution to the effect that the existing rank lists of various posts shall be treated as expired after 30.9.2017 and that all proceedings on the interview of Deputy Manager and General Manager shall be treated as expired.

1.9.2018: Without any further notification inviting applications, the 5th respondent on his own submitted an application to the Managing Director requesting for appointment as General Manager.

11.9.2018: Along with his letter dated 11.9.2018 Edt.R2(8) the Managing Director forwarded the application to the Govt. for favour of perusal and action. In the letter of the Managing Director there was no reference to the 5th respondent's application submitted in 2016 or his failure to turn up for the interview or the expiry of the earlier proceedings on 30.9.2017.

There was also no indication that the application submitted on 1.9.2018 was placed before the Director Board or that it was recommended by the Director Board which is the appointing authority.

28.9.2018: While considering Ext.R2(8) letter of the Managing Director the Additional Secretary noted in the file that as per the existing conditions Sri. K.T.Adeeb, being a Private Bank Employee, cannot be posted as General Manager and submitted the file to the Secretary for circulation to the Minister.

28.9.2018: The 2nd Respondent Minister overruled the objection that an officer from a Private Bank cannot be appointed and passed an order directing to appoint the 5th respondent as General Manager on deputation basis (Ext.P11).

8.10.2018: Government issued G.O.(Rt) No.6581/2018/GAD dated 8.10.2018 (Ext. P-13) appointing the 5th respondent as General Manager on

deputation.

It has to be noted that:

(i) In the case of his predecessors Sri.B.Sherafudeen and Sri. Faisal Muneer, appointment was made by the Director Board which is the appointing authority.

But in the case of the 5th respondent, Govt. itself issued the appointment order.

(ii) The statement in Ext.P-13 Government Order that the Managing Director of the Corporation had in his letter dated 11.9.2018 recommended to appoint the 5th respondent as General Manager of the Corporation is wrong and misleading. In his letter dated 11.9.2018 (Ext.R2(8) there is no such recommendation. He only stated as follows:

"The applicant is learned to be a fit candidate for the post of General Manager on Deputation as he has (sic) having the required qualification i.e.,B.Tech with PGDBA and 10 years experience in Banking service. The application and Government Order are enclosed with for favour of perusal. Kind action may be initiated."

(iii) Significantly there was no statement anywhere that the Director Board, being the Appointing Authority, had considered or recommended the application or that Ext.R2(8) letter of the Managing Director was based on any decision of the Director Board.

(iv) It is clear from Ext.P-13 Government Order that 'No Objection' from the parent organization was given only on 26.9.2018 and that the Managing Director forwarded the application to Government hurriedly on 11.9.2018 even before producing the "No Objection' from the parent organization i.e., the South Indian Bank.

11.10.2018: The 5th respondent took charge as General Manager of the Corporation.

11.11.2018: The 5th respondent submitted an application (Ext.R5(6)) seeking permission to return to his parent organisation.

Obviously it was in the context of the controversy surrounding his appointment as General Manager in the Corporation.

13.11.2018: Director Board recommended the application of the 5th respondent.

16.11.2018: Government issued G.O. (Rt) No.7481/2018/GAD dated 16.11.2018 terminating the deputation of the 5th respondent and granting him-permission to return to his parent organisation.

5.2.2019: This complaint as per Sec.9(2) of the Kerala Lok Ayukta Act, 1999 was presented in the Registry on 5.2.2019.

As evident from the extracted paragraph, the Lok Ayukta found from the files that there was no proposal from the Corporation to modify the qualification for the post of General Manager and the idea of modifying the qualification originated from the petitioner himself.

Similarly, the Lok Ayukta found from the files that the fifth respondent who applied for selection to the post of General Manager and who did not turn up for the interview pursuant to the invitation made by the Corporation, submitted an application later before the Managing Director of the Corporation, seeking orders appointing him as General Manager on deputation basis and the Managing Director has forwarded the said request to the Government without placing the request before the Board of the Corporation and the petitioner has issued orders directing the appointment of the fifth respondent on the said reference made by the Managing Director. The petitioner does not dispute the facts narrated by the Lok Ayukta in paragraph 46 of the report. The final opinion has been formed by the Lok Ayukta based on the facts narrated in paragraph 46 of the report. As indicated above, this being a proceedings for judicial review, the court could examine an error of fact touching the merit of decision only if it has a direct nexus to the decision making process. Be that as it may, the formation of an opinion on the facts is a subjective matter and if an opinion is formed based on the relevant materials, so long as the authority was acting within the scope of its powers, however meagre the materials be, the courts should not and will not interfere with the opinion formed in exercise of judicial review. The aforesaid proposition has been reiterated by the Apex Court in **Narayan Govind Gavate and Others v. State of Maharashtra**

and Others, (1977) 1 SCC 133. The relevant portion of the said judgment reads thus:

It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider.

We have already found that the Lok Ayukta was acting within the scope of its powers while arriving at its conclusion. In the circumstances, we are of the view that the petitioner has not made

out any ground for interference in the final opinion formulated by the Lok Ayukta in this proceedings under Article 226 of the Constitution.

The writ petition, in the circumstances, is without any merit and the same is accordingly dismissed *in limine*.

Sd/-

P.B.SURESH KUMAR, JUDGE

Sd/-

K.BABU, JUDGE.

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE COMPLAINT NO. 57/19 DATED 26-1-2019 ALONG WITH EXHIBITS FILED BY THE 1ST RESPONDENT BEFORE THE 6TH RESPONDENT
- EXHIBIT P2 THE TRUE COPY OF THE ORDER DATED 5-2-2020 IN COMPLAINT NO. 57/2019-B ISSUED BY THE 6TH RESPONDENT
- EXHIBIT P3 THE TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT
- EXHIBIT P4 THE TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT DATED 3-7-2019 EXCLUDING THE EXHIBITS
- EXHIBIT P5 THE TRUE COPY OF THE ADDITIONAL STATEMENT SUBMITTED ON BEHALF OF THE 1ST RESPONDENT DATED 14-08-2019
- EXHIBIT P6 THE TRUE COPY OF THE WRITTEN STATEMENT FILED ON BEHALF OF THE 3RD RESPONDENT DATED 9-3-2020 EXCLUDING THE EXHIBITS.
- EXHIBIT P7 THE TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE 5TH RESPONDENT BEFORE THE 6TH RESPONDENT.
- EXHIBIT P8 THE TRUE COPY OF THE REPORT DATED 9-4-2021 ISSUED BY THE 6TH RESPONDENT IN COMPLAINT NO. 57/2019
- EXHIBIT P9 THE TRUE COPY OF THE RELEVANT PAGES OF FILE NOTE DATED 4-08-2016 OF THE PETITIONER.
- EXHIBIT P10 THE TRUE COPY OF THE INTERIM ORDER IN W.P.(C) NO 10262/2019 DATED 2-4-2019
- EXHIBIT P11 THE TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 10262/2019 DATED 11-07-2019

EXHIBIT P12

THE TRUE COPY OF THE ORDER OF THE
GOVERNOR OF KERALA DATED 8-08-2019.

RESPONDENT'S/S EXHIBITS:

NIL

//TRUE COPY//

PA TO JUDGE