

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 23<sup>RD</sup> DAY OF MARCH 2023 / 2ND CHAITHRA, 1945

WP(C) NO. 34224 OF 2014

**PETITIONER/S:**

PANNYAN RAVEENDRAN  
AGED 69 YEARS  
S/O.RAMAN, SECRETARY,  
COMMUNIST PARTY OF INDIA STATE COUNCIL,  
M.N.SMARAM, THIRUVANANTHAPURAM.  
BY ADVS.  
SRI.RENJITH THAMPAN (SR.)  
SMT.P.R.REENA

**RESPONDENT/S:**

- 1 SHAMNAD A  
S/O.ABDUL RAHIMAN, VILAYIL HOUSE,  
EDAVILAKAM, MURUKKUMPUZHA P.O.,  
THIRUVANANTHAPURAM, PIN - 695 014.
- 2 KERALA LOKAYUKTA  
O/O KERALA LOKAYUKTA,  
THIRUVANANTHAPURAM, PIN - 695 001.  
BY ADVS.  
SRI.GEORGE POONTHOTTAM  
SRI.J.HARIKUMAR  
SRI.J.HARIKUMAR

**OTHER PRESENT:**

NISHA GEORGE for petitioner

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
23.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'CR'

## JUDGMENT

MURALI PURUSHOTHAMAN, J.

The question we are called upon to consider in this writ petition is as to whether the Kerala Lok Ayukta can investigate into matters relating to selection of candidates by political parties for contesting election.

2. The 1<sup>st</sup> respondent, who claims to be a social and political worker, filed Ext.P2 complaint before the Kerala Lok Ayukta (hereinafter referred to as 'Lok Ayukta', for short) contending that, on receiving illegal gratification from Dr.Bennet Abraham, the 4<sup>th</sup> respondent in the complaint, respondents 1 to 3 therein, who are office bearers of Communist Party of India (CPI), hatched a conspiracy between them and gave candidature to the 4<sup>th</sup> respondent to contest as Left Democratic Front (LDF) candidate for election to the 16<sup>th</sup> Lok Sabha from

Thiruvananthapuram constituency.

3. While considering the complaint for preliminary enquiry and admission, the Lok Ayukta observed that, if the allegations levelled by the complainant against the respondents therein are proved, their actions would amount not only to corruption but also to maladministration. Holding that Ext. P2 complaint is maintainable before that forum, the Lok Ayukta passed Ext.P3 order deciding to conduct an investigation into the allegations in the complaint and, invoking the powers under Section 16(3) of the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as the 'Lok Ayukta Act'), entrusted a senior police officer of the State to conduct the enquiry.

4. On coming to know about Ext. P3 order, the petitioner herein, who is the State Secretary of CPI and the 1<sup>st</sup> respondent in Ext.P2 complaint, filed I.A. Nos.1283/2014 and 1284/2014 before the Lok Ayukta requesting to hear the

question of maintainability of Ext.P2 complaint and to recall Ext. P3 order. It was contended, *inter alia* that, respondents 2 and 3 in the complaint being National Executive and State Executive members of the political party would not come within the ambit of public servant under Section 2 (o) (ix) of the Lok Ayukta Act, and the selection of candidates for election is an internal private matter of the political party and the decision to confer candidature is a policy decision of the party which cannot be investigated by the Lok Ayukta.

5. The Lok Ayukta heard the question regarding maintainability of Ext.P2 complaint and by Ext.P4 order, found that the complaint is maintainable before the said forum. The Lok Ayukta observed that, by virtue of Section 2(o)(ix) of the Lok Ayukta Act, the State Secretary of the political party, the petitioner herein, is a public servant and he performs public duty in selecting candidates and that when the reputation of the party has been tarnished on

account of the allegations involved in the complaint, the Lok Ayukta is statutorily bound to enquire into the truth or otherwise of the allegations of corruption and maladministration against the State and District level office bearers of political parties and they cannot avoid the complaint taking shelter under the indoor management of its own affairs as a political party. Challenging Exts. P3 and P4 orders of the Lok Ayukta, this writ petition is filed. The petitioner has also sought for a declaration that Ext. P2 complaint is not maintainable before the Lok Ayukta.

6. According to the petitioner, the Lok Ayukta has no jurisdiction to investigate into the internal affairs of a political party. It is contended that selection of candidates at election is not an administrative function and would not amount to 'maladministration' and that the complainant has not sustained injustice or undue hardship in consequence of maladministration and there is no scope for investigation

under Section 7 of the Lok Ayukta Act. Referring to the preamble of the Lok Ayukta Act, it is contended that the action complained of should be action taken by public servants relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India and the action complained of before Lok Ayukta viz; the selection of a candidate for contesting in an election is not an action relatable to matters specified in the State List or the Concurrent List and the Lok Ayukta has no jurisdiction to conduct investigation into the complaint. It is also contended that any 'allegation' that the respondents in the complaint are guilty of corruption cannot stand, since, going by the definition of 'corruption' under the Lok Ayukta Act, office bearer of a political party will not come under the definition of public servant under Section 21 of the Indian Penal Code or Section 2 (c) of the Prevention of Corruption Act, 1988.

7. Heard Sri. Ranjith Thampan learned senior counsel for the petitioner and Smt. Nisha George, the learned counsel for the 1<sup>st</sup> respondent.

8. Section 2 (m) of the Lok Ayukta Act defines a 'political party' as follows:-

“Section 2(m)-Political party” means a political party or group which has representation in Parliament or in the Kerala Legislative Assembly; or a political party which is treated as a recognized political party in accordance with paragraph 6 of the Election Symbols (Reservation and Allotment) Order, 1968 or a political party registered under section 29 A of the Representation of People’s Act, 1951; (Central Act 43 of 1951);”

9. Communist Party of India is a political party registered under Section 29A of the Representation of the People Act, 1951 and is a recognised national party in terms of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'Symbols Order').

10. Section 2(o) of the Lok Ayukta Act defines 'public servant'. Section 2 (o) (ix) reads as follows;

“Section 2(o): 'public servant' means a person who is or was at any time,-

(ix)the Chairman or Vice-Chairman or President or Vice President or Secretary or Treasurer or any other office bearer of a political party, at the District or State level;

Going by section 2(o) (ix) of the Lok Ayukta Act, any office bearer of a political party, at the District or State level will fall within the definition of 'public servant'. It would mean that an office bearer of the political party at the National level falls outside the definition of 'public servant'.

11. Section 7(1) of the Lok Ayukta Act provides for matters which may be investigated by the Lok Ayukta and reads as under:

**"Section 7 - Matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas--**

(1) Subject to the provisions of this Act, the Lok Ayukta and one of the Upa-Lok Ayuktas, as may be nominated by the Lok Ayukta for the purpose, may investigate any action which is taken by or with the general or specific approval of-

- (i) the Chief Minister; or
- (ii) a Minister; or
- (iii) a Member of the State Legislature; or
- (iv) a Secretary; or
- (v) an office bearer of a political party at the State Level; or
- (vi) an officer referred to in sub-clause (iii) of clause (d) of section 2,

in any case where a complaint involving a grievance or an allegation is made in respect of such action and where there is difference of opinion between the Lok Ayukta and the Upa-Lok Ayukta as so



nominated, the action shall be investigated by the Lok Ayukta and both the Upa-Lok Ayuktas together and the decision of the majority therein shall prevail.”

When a complaint involving a 'grievance' or an 'allegation' is made in respect of any 'action' which is taken by or with the general or specific approval of an office bearer of a political party at the State Level, such 'action' can be investigated by the Lok Ayukta in terms of the provisions under Section 7 (1) of the Lok Ayukta Act.

12. The Lok Ayukta Act defines 'action', 'allegation' and 'grievance' as follows:

“Section 2(a)- "action" means any action including administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly:

“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;"

Section 2(h)- "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;"

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

"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;"

14. Whether selection of a candidate for contesting an election to parliamentary constituency amounts to an 'action' taken by an office bearer of a political party at the State Level, warranting investigation by the Lok Ayukta under Section 7 of the Lok Ayukta Act? "Action" means, any action including administrative action taken by way of decision, recommendation or finding or in any other

manner. Under the 'Constitution of the Communist Party of India', which has been produced in the writ petition, there are no specific provisions pertaining to selection of candidates for contesting elections to the Parliament, State Legislative Assemblies or to the Local Self Government Institutions. However, Paragraph 7 of Article XXXI of the Constitution of the CPI provides that, all nominations of party candidates for election to Parliament shall be subject to approval by the National Executive and nomination of party candidates to the State Legislatures shall be finalised and announced by the State Executive Committee. Paragraph 7 of Article XXXI of the Constitution of the Communist Party of India reads as under:

“Article XXXI

7. All nominations of party candidates for election to parliament shall be subject to approval by the national executive.

Nomination of party candidates to the state legislatures or the councils of centrally administered areas shall be finalised and announced by the state executive committee concerned.

Rules, governing the nomination of party candidates for corporations, municipalities, district boards, local boards and panchayats shall be drawn up by state council, or in their

absence by the state executive.”

*(underlining supplied by us)*

All nominations of party candidates for election to Parliament shall be subject to approval by the National Executive. Assuming for a moment that the selection of candidates for election to Parliamentary constituencies is an 'action', the Lok Ayukta can initiate investigation under Section 7 only if the 'action' is taken by or with the approval of an office bearer of the political party at the State Level and not at the National level. When the constitution of the party provides that nominations of party candidates for election to Parliament shall be subject to approval by the National Executive at the National level, the Lok Ayukta cannot investigate any action taken with the approval of the political party at the National Level.

15. Here, it is apposite to refer to paragraph 13 of the Symbols Order, which provides as to when a candidate shall

be deemed to be set up by a political party. It reads as under:

**“13. When a candidate shall be deemed to be set up by a political party.-** For the purposes of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if,-

(a) the candidate has made the prescribed declaration to this effect in his nomination paper; (aa) the candidate is a member of that political party and his name is borne on the rolls of members of the party;

(b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the constituency;

(c) the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party, and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send such notice;

(d) the name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the constituency and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

(e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party:

Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted.”

Under the Symbols Order, a candidate becomes a candidate set up by a political party only when the party intimates his

name as its approved candidate in the prescribed form to the returning officer of the concerned constituency.

16. According to Sri. Ranjith Thampan, the learned senior counsel for the petitioner, the action complained of should be action taken by public servants relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India and the action complained of before Lok Ayukta, namely, the selection of candidate for contesting in an election is not an action relatable to matters specified in the State List or the Concurrent List and the Lok Ayukta has no jurisdiction to conduct investigation into the complaint. Sri. Ranjith submits that the Lok Ayukta Act is intended to apply only as regards the governmental functions and not the internal functions of political parties.

17. To consider the issue as to whether the Lok Ayukta can investigate into the selection of candidates for election

by political parties, we have to consider the Lok Ayukta Act in the context of its statement of objects and reasons and the preamble. The statement of objects and reasons of the Lok Ayukta Act provides that it is a comprehensive new legislation for the effective enquiry and investigation of complaints against public servants and matters connected therewith or ancillary thereto. The preamble of the Lok Ayukta Act reads as follows:

“Preamble.- WHEREAS it is expedient to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India, taken by or on behalf of the Government of Kerala or certain public servants in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto.”

The Lok Ayukta Act is enacted to make provision for the appointment and functions of certain authorities for making enquiries into any action taken by or on behalf of the Government of Kerala or certain public servants in the State relatable to matters specified in the State List or

Concurrent List of the Seventh Schedule to the Constitution of India. Section 3 of the Lok Ayukta Act deals with the appointment of the Lok Ayukta and Upa-Lok Ayuktas for the purpose of conducting investigations and enquiries in accordance with the provisions of the said Act. Section 7 deals with matters which may be investigated by the Lok Ayukta and Section 8 deals with matters not subject to investigation by Lok Ayukta. Entry 72 of List I of the Seventh Schedule to the Constitution of India confers upon the Parliament the competence to legislate on elections to Parliament, to the Legislatures of the States and to the offices of the President and Vice-President. Entry 37 of List II of the Seventh Schedule confers upon the State Legislature the competence to legislate on elections to the Legislature of the State subject to the provisions of any law made by the Parliament. Selection of candidates by political party for election to Parliament or to Legislature of the



State does not fall in Lists I, II or III of the Seventh Schedule to the Constitution of India. Selection of candidate at election is not an action relatable to matters specified in the State List or the Concurrent List, or matter connected therewith or ancillary thereto. Selection of candidates by political party or its office bearers for election to Parliament is therefore not a matter subject to investigation by Lok Ayukta.

18. A political party has the discretion to choose a candidate of its choice subject to the requirement of providing necessary information regarding criminal antecedents *etc*; of the candidate so that the voter can exercise his right to franchise in an effective manner. There are various factors which a political party may take into consideration while selecting a candidate. When the political party selects a candidate for election, such selection of candidate cannot be construed as 'action' taken

or purporting to be taken by the office bearers of the political party in exercise of any administrative functions. Therefore, the Lok Ayukta cannot investigate into matters relating to the selection of candidates by political party. 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 allegations levelled by the complainant against the respondents in Ext. P2 would not amount to maladministration and the complaint in respect of selection of candidate for election to parliamentary constituency is not maintainable.

19. In Ext. P4 order, the Lok Ayukta has taken the view that the selection of candidate by a political party is a matter in which the public or the community at large has an interest and therefore it comes within the ambit of 'public

duty' as defined in Section 2 (b) of the Prevention of Corruption Act,1988. The electorate in India has no role in the selection of candidates or setting up of candidates at elections to either House of Parliament or of a State Legislature under the laws made by Parliament under Article 327 of the Constitution of India. It is an internal affair of the political party and the party selects its candidates as per the constitution of the party, political principles, policies, winnability *etc.* Once the candidate is set up by the political party, then, on the date of poll, the public exercise their electoral right for any of the candidates in the fray. Therefore, we are unable to subscribe to the view of the Lok Ayukta that selection of candidate by a political party is a matter in which the public or the community at large has an interest.

20. A learned single Judge of this Court, in **Anil Thomas v. Indian National Congress and others (ILR**

**2018(2) Kerala 36**), while considering the question of maintainability of writ petition filed for direction to conduct organizational elections in a political party as mandated in its constitution, held that organizational elections in party have no public element and do not fall under the ambit of a public duty and disputes are to be raised within its organizational structure. Paragraphs 21 and 22 of the decision are extracted hereunder:

“21. None of these decisions help the petitioner in seeking invocation of the writ jurisdiction against a political party. A political party essentially is an association of individuals and the registration under the RP Act enables the political party to contest the elections to the various governing and law making bodies; at the Panchayat level, the State Assemblies and the Union Parliament. There are no public functions the political party is obliged to perform when not in power. Whatever activities a political party or its members carry out amongst the public and in the public domain, are voluntary activities, borne out of a desire to do public service or as found by the Hon'ble Supreme Court, in their endeavour to capture State power. There is absolutely no public duty enjoined upon a political party when they are out of power. Their actions collectively and individually are always under public scrutiny, which regulates their electoral destinies too. But, that alone does not make it an obligatory public function; as in the case of a Deemed University or College imparting education, or in the case of BCCI which selects the team of the Nation and shapes or puts to peril, the career of individuals in the National and International arena.

22. Even when in power, it is not the political party which exercises the power of the State, though the party's policies and philosophies would have its influence generally in the laws enacted as also the act of governing in particular. It is not the political party which governs. When in a majority, the executive Government comprised of elected members of the political party and in law making the Legislature; are the two collectives who wield the power and authority. Even then it cannot be said that there is a public function mandated on the political party in power. The obligation if any is moral and entwined with electoral destinies. The public duties legally enjoined on them does not constitute an internal organisational election."

21. We are in complete agreement with the view taken by the learned single Judge in **Anil Thomas** (supra). The political party is not required to perform any public duty in the selection of candidates to contest election. We have already found that selection of candidates by political party or its office bearers for election to Parliament is not a matter subject to investigation by Lok Ayukta. Ext. P2 complaint before the Lok Ayukta does not reveal any allegation or grievance in consequence of maladministration. The Lok Ayukta has no jurisdiction to entertain Ext. P2 complaint. It is declared so. Exts P3 and

P4 orders are set aside.

The writ petition is allowed. There will be no order as to costs.

Sd/-

**S. MANIKUMAR  
CHIEF JUSTICE**

Sd/-

**MURALI PURUSHOTHAMAN  
JUDGE**

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**APPENDIX OF WP(C) 34224/2014**

**PETITIONER EXHIBITS**

EXHIBIT P1: TRUE COPY OF LIST 2 AND E OF THE 7TH SCHEDULE OF THE CONSTITUTION OF INDIA.

EXHIBIT P2: TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE THE KERALA LOK AYUKTA DATED 17/10/2014 WITHOUT EXHIBITS.

EXHIBIT P3: TRUE COPY OF THE ORDER DATED 20/10/2014 OF LOK AYUKTA.

EXHIBIT P4: TRUE COPY OF THE ORDER DATED 08/12/2014 OF THE LOKAYUKTA.

EXHIBIT P5: TRUE TEXT OF CONSTITUTION OF THE COMMUNIST PARTY OF INDIA

EXHIBIT P6: TRUE COPY OF THE REPORT OF THE STUDY TEAM ON STATE LEVEL ADMINISTRATION, 1966

EXHIBIT P7: TRUE COPY OF THE REPORT OF THE STUDY TEAM ON REDRESS OF CITIZENS GRIEVANCES, 1966.