

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 1ST DAY OF AUGUST 2023 / 10TH SRAVANA, 1945

WP(C) NO. 17083 OF 2023

PETITIONER/S:

R.S. SASIKUMAR
AGED 74 YEARS
S/O. LATE K. RAMAKRISHNA PILLA, KRA 7, 'NIRMALYAM',
J.P. LANE, NEMOM THIRUVANANTHAPURAM, PIN - 695020
BY ADVS.
NISHA GEORGE
A.L.NAVANEETH KRISHNAN
GEORGE POONTHOTTAM (SR.)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 SRI PINARAYI VIJAYAN
CHIEF MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 SRI A.K. BALAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001, NOW RESIDING AT
JANANI, PARAKKUNNAM, PALAKKAD DISTRICT, PIN - 678001
- 4 SRI E. CHANDRASEKHARAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW RESIDING AT
PARVATHY, PARUMBALA P.O., KASARGOD, PIN - 671317
- 5 DR. K.T. JALEEL
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW RESIDING AT
GAZAL, THOZHUVANNOOR, VALANCHERY, MALAPPURAM DISTRICT,
PIN - 676557
- 6 SRI KADAKAMPALLY SURENDRAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW RESIDING AT
LAKSHMI, TC 3/2069, LIC LANE, PATTOM P.O.,
THIRUVANANTHAPURAM, PIN - 695004
- 7 SRI M.M. MANI
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT

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- SECRETARIAT, THIRUVANANTHAPURAM-695001, NOW
RESIDING AT MUNDAKKAL HOUSE, POTTANKADU P.O.,
IDUKKI, PIN - 685569
- 8 ADVOCATE MATHEW T. THOMAS
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW
RESIDING AT THUMBUMPATTU, KUTTAPPUZHA P.O.,
THIRUVALLA, PATHANAMTHITTA DISTRICT, PIN - 689103
- 9 SMT. J. MERCYKUTTY AMMA
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW
RESIDING AT ASWATHY, KERALAPURAM, VELLIMAN P.O.,
KOLLAM, PIN - 691511
- 10 SRI A.C. MOIDEEN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW
RESIDING AT AKKAPPARAMBIL HOUSE, PANANKATTUKARA
P.O., THRISSUR, PIN - 680623
- 11 ADV. K. RAJU
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 RESIDING AT
PUTHENPURA HOUSE, NEDIYADA P.O., ANCHAL, KOLLAM
DISTRICT, PIN - 691306
- 12 SRI RAMACHANDRAN KADANNAPPALLY
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 RESIDING AT
NO.5, MANIKYA, JAWAHAR NAGAR HOUSING COLONY,
THOTTADA, KANNUR, PIN - 670007
- 13 SRI T.P. RAMAKRISHNAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 RESIDING AT
KOTTARAKKAL HOUSE, VELIY00R, NOCHAD P.O.,
KOZHIKKODE, PIN - 673614
- 14 PROF. C. RAVEENDRANATH
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 LAKSHMI
BHAVAN, PANTHALATH LANE, KANATTUKARA P.O.,
THRISSUR, PIN - 680011
- 15 SMT. K.K. SHAILAJA TEACHER
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001. ARATHY,

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- PAZHASSI, URUVACHAL P.O., MATTANNUR, KANNUR
DISTRICT, PIN - 670702
- 16 SRI G. SUDHAKARAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 RESIDING AT
NAVANEETHAM, SANATHANAPURAM, ALAPPUZHA DISTRICT,
PIN - 688003
- 17 SRI. P. THILOTHAMAN
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 RESIDING AT
USHASS, KURUPPAMKULANGARA P.O., CHERTHALA,
ALAPPUZHA DISTRICT, PIN - 688551
- 18 DR. T.M. THOMAS ISAAC
FORMER MINISTER, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001 NOW
RESIDING AT M.L.A OFFICE, KIDANGAN PARAMBU,
THATHAMPALLY P.O., ALAPPUZHA, PIN - 688513
- 19 THE KERALA LOK AYUKTA
VIKAS BHAVAN, LEGISLATURE COMPLEX,
THIRUVANANTHAPURAM, REPRESENTED BY ITS REGISTRAR,
PIN - 695033
BY ADGP T.A.SHAJI
DIRECTOR GENERAL OF PROSECUTION(AG-10)
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR()
SHRI.SAJJU.S., SENIOR G.P.()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

A.J.DESAI, C.J.

By way of the present writ petition filed under Article 226 of the Constitution of India, the original complainant has challenged the order dated 31.03.2023 of the Kerala Lok Ayukta, by which the bench consisting of Lok Ayukta and UpaLok Ayukta differed on the basic issue as to whether the action of respondents 2 to 18, who are the Chief Minister and Ministers of Government of Kerala, in taking decision of Council of Ministers to the Cabinet, can be subject to investigation under the provisions of the Kerala Lok Ayukta Act, 1999, and ordered the bench of three members, i.e., the Lok Ayukta and two UpaLok Ayuktas to be constituted. When the present petitioner filed a complaint No.899/2018 against the respondents alleging corruption, favoritism and nepotism in taking three different decisions, initially, the issue with regard to entertaining the complaint under the provisions of Lok Ayukta Act is maintainable or not was considered by three members, i.e., Lok Ayukta and two UpaLok Ayuktas. By order dated 14.01.2019, the Lok Ayukta held that, such complaint is

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maintainable and investigation ought to be conducted. The opinion was concurred by one UpaLok Ayukta by order dated 14.01.2019, whereas, the 3rd member, i.e., another UpaLok Ayukta, did not agree with the majority view.

2. Thereafter, on completion of investigation, the matter was heard and arguments concluded on 18.03.2022, and the complaint reserved for orders, as evident from Ext.P8. Subsequently, after hearing the matter, certain issues arose for consideration and ultimately, as stated herein above, by order dated 31.03.2023, it was decided that the issue can be remitted back to three members, i.e., the Lok Ayukta and two UpaLok Ayuktas. The present petitioner filed an application to recall the order on certain grounds, which came to be dismissed by order dated 12.04.2023. At this stage, we would like to observe that, the order of rejecting the application for recalling the order dated 31.03.2023 is not under challenge before this Court.

3. Being aggrieved by the order dated 31.03.2023, Sri. George Poonthottam, learned Senior Counsel appearing for the petitioner would submit that, there was no need to pass the order since the issue

was placed before the bench of three members by order dated 14.01.2019. By taking us through the observations in the order passed on 14.01.2019, the learned Senior Counsel would submit that the said complaint was found to be maintainable and therefore, the bench ought not to have referred the matter for consideration by the bench of three members again. He would further submit that, by deciding the issue in the complaint, the Lok Ayukta as well as the UpaLok Ayukta could have delivered their orders or could have referred the matter to the 3rd member, and need not have constituted the bench of three members. In support to the above submission, he relied upon the Division Bench decision of this Court in **State of Kerala and Another v. K.K.Mathai 2017 (3) KHC 892** and submitted that the petition be allowed and the impugned order be quashed and set aside and the Lok Ayukta and UpaLok Ayukta be directed to deliver its order on the complaint filed by the petitioner.

4. On the other hand, the learned Senior Counsel appearing for the respondents would submit that, as per Section 7 of the Kerala Lok Ayukta Act and particularly, Sub section 1 of Section 7, if any

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difference of opinion arose between the Lok Ayukta and the UpaLok Ayukta, the same is required to be dealt with by the Lok Ayukta as well as two UpaLok Ayuktas and the decision of the majority shall prevail. He would further submit that, earlier, when the issue about the admissibility of the complaint was raised in the year 2019, it was observed that the complaint can be investigated and accordingly, investigation was carried out as per Sections 8 and 9 of the Kerala Lok Ayukta Act. After receiving the investigation report, decision is required to be taken under Section 12 of the Kerala Lok Ayukta Act by the Lok Ayukta and the UpaLok Ayuktas and at that stage also, if there is difference of opinion, decision has to be taken under Sub Section 1 of Section 7 of the Act, and therefore, the impugned order does not call for a review.

5. We have heard the learned Advocates appearing for the respective parties.

6. We have gone through the order dated 14.01.2019 by the Lok Ayukta and the UpaLok Ayuktas. It appears from the order that the complaint was admitted and an investigation ordered. However, on

completion of investigation and receipt of evidence, the matter was heard and reserved for orders. Having gone through the impugned order dated 31.03.2023, it appears that difference of opinion arose with regard to the powers to initiate proceedings under the Act against a decision taken by the Cabinet. The operative part of the order, particularly, paragraph No.9, reads as under:

“Having considered the pleadings, the materials placed on record and the submissions made by the learned counsel for the parties, we find that the allegations in the complaint are based on the action of respondents 2 to 18 in taken the three decision of the Council of Ministers mentioned in paragraph 5 above. As there is difference of opinion between us on the basic issue whether the action of respondents 2 to 18 in taking the impugned decisions as members of the Cabinet can be subjected to investigation under the provisions of the Kerala Lok Ayukta Act, 1999 and on the merits of the allegations raised by the complainant, we are constrained to place this compliant for investigation by the Lok Ayukta and both the Upa Lok Ayuktas together as required under Section

7(1) of the Kerala Lok Ayukta Act, 1999.”

7. Section 7(1) of the Kerala Lok Ayukta Act, 1999, reads as under:

“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.”

8. We are of the considered opinion that when the issue was initially decided, it was only with regard to the maintainability of the complaint. However, subsequent to investigation, some difference of opinion arose between the Lok Ayukta and the Upa Lok Ayukta and therefore, the only option is to decide the issue by the bench of three members and as per the above said provisions, the decision of the majority shall prevail. We also find that the decision relied upon by the petitioner is not applicable in the facts of the present case.

In view of the above, we do not find any reason to set aside the

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impugned order. The petition is dismissed accordingly.

Sd/-

**A. J. DESAI
CHIEF JUSTICE**

Sd/-

**V. G. ARUN
JUDGE**

uu/01.08.2023

APPENDIX OF WP(C) 17083/2023

PETITIONER EXHIBITS

Exhibit-P1	A TRUE COPY OF THE COMPLAINT NO. 899 OF 2018 FILED BY THE PETITIONER BEFORE THE KERALA LOK AYUKTA THIRUVANANTHAPURAM ON 17.09.2018
Exhibit-P2	COPY OF THE SAID ORDER IN COMPLAINT NO. 899 OF 2018 DATED 31.03.2023 PASSED BY THE KERALA LOK AYUKTA
Exhibit-P3	COPY OF THE ORDER IN COMPLAINT NO. 899 OF 2018 PASSED BY THE KERALA LOK AYUKTA ON 1ST NOVEMBER 2018
Exhibit-P4	TRUE COPY OF THE DEFENCE STATEMENT, EXCLUDING THE DOCUMENTS, FILED ON BEHALF OF THE 1ST RESPONDENT IN COMPLAINT NO. 899 OF 2018 DATED 31.10.2018
Exhibit-P5	A TRUE COPY OF THE ORDER DATED 14.01.2019 PASSED BY THE LOK AYUKTA AND THE UPS LOK AYUKTAS IN COMPLAINT NO. 899 OF 2018
Exhibit-P6	COPY OF THE SAID ORDER DATED 14.01.2019 IN COMPLAINT NO. 899 OF 2018 PASSED BY THE KERALA LOK AYUKTA
Exhibit-P7	TRUE COPY OF THE ADDITIONAL DEFENCE STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT IN COMPLAINT NO. 899 OF 2018 DATED 08.02.2022.
Exhibit-P8	A TRUE COPY OF THE ORDER DATED 18.03.2022 PASSED BY THE LOK AYUKTA IN COMPLAINT NO. 899 OF 2018 RESERVING THE MATTER FOR ORDER
Exhibit-P9	A TRUE COPY OF THE UNNUMBERED I.A. FILED IN COMPLAINT NO. 899 OF 2018 BEFORE THE LOK AYUKTA ON 04.04.2023
Exhibit-P10	COPY OF THE ORDER IN UNNUMBERED I.A. IN COMPLAINT NO. 899 OF 2018 PASSED BY THE LOK AYUKTA DATED 12.04.2023.
Exhibit-P11	COPY OF THE ORDER PASSED ON 12.04.2023

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Exhibit P12

IN COMPLAINT NO. 899 OF 2018 BY THE
KERALA LOK AYUKTA
COPY OF THE MEMO IN COMPLAINT NO. 899 OF
2018 FILED BEFORE THE HON'BLE LOK AYUKTA
ON 06.07.2023.