

WP(C)s: 38265, 38375 &
38389 of 2022

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 8TH DAY OF DECEMBER 2022 / 17TH AGRAHAYANA, 1944

WP(C) NO. 38265 OF 2022

PETITIONER:

DR. DILEEP KUMAR S.R., AGED 42 YEARS
FORMER GENERAL MANAGER, KMSCL,
NOW WORKING AS DEPUTY DISTRICT MEDICAL OFFICER,
GENERAL HOSPITAL ROAD, COMPOUND CHUNGAM,
ALAPPUZHA, PIN - 688011.

BY ADV. SRI. ANEESH JAMES

RESPONDENTS:

- 1 VEENA S. NAIR, AGED 32 YEARS
D/O SOMASEKHARAN NAIR,
RESIDING AT CHITHIRA, U-28, MARUTHANKUZHI,
KANJIRAPARA P.O., THIRUVANANTHAPURAM, PIN - 695030.
- 2 K.K.SHAILAJA, PRESENTLY MLA, MATTANNUR CONSTITUENCY,
(FORMER MINISTER FOR HEALTH & FAMILY WELFARE),
HAVING OFFICE AT CHANDRAGIRI 401, MLA QUARTERS,
THIRUVANANTHAPURAM, PIN - 695033.
- 3 DR.RAJAN N. KHOBRAGRADE I.A.S.
THE PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVT. OF KERALA, 6TH FLOOR, SECRETARIAT ANNEXE - II,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM , PIN - 695001.
- 4 BALAMURALI D., I.A.S.
FORMER MANAGING DIRECTOR, KMSCL,
NOW WORKING AS THE PRINCIPAL DIRECTOR,
LOCAL SELF GOVT. DEPARTMENT, SWARAJ BHAVAN, NANTHENCODE,
5TH FLOOR, KOWDIAR P.O., THIRUVANANTHAPURAM, PIN - 695003.

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:-2:-

- 5 DR.K.ELANGOVA I.A.S., PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
GOVT. OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 6 SANTHOSH LOKARE, OWNER, M/S. SAN PHARMA,
NEAR RURAL HOSPITAL, KURUDUWADI, SOLAPUR,
MAHARASHTRA, PIN - 413208.
- 7 MANSOOR ALI, MANAGING PARTNER,
M/S. TRICHUR SURGICALS, CORPORATE ADDRESS AT PARIJATH BUILDINGS,
PATTURAIKAL, THRISSUR, PIN - 680002.
- 8 PRAVIN PRAKASAN, PROPRIETOR,
M/S. AGRATA AVON EXIM, ASRA 50,
NEAR ATTINPARA GOVT. AYURDEVA HOSPITAL, ATTINKUZZHI,
KAZHAKUTTOM, THIRUVANANTHAPURAM , PIN - 695582.
- 9 P.A.ANAYIL VARGHESE POULOSE
PROPRIETOR, M/S. ANDRIYA TRADERS,
DOOR NO.181/12, MANJAKUNNU, PATTIKKAD P.O.,
THRISSUR, PIN - 680652.
- 10 DR.RATHAN U. KELKAR I.A.S., THE DIRECTOR,
NATIONAL HEALTH MISSION, OFFICE OF THE DIRECTOR,
NATIONAL HEALTH MISSION, NRHM BUILDING, GENERAL HOSPITAL
JUNCTION, THIRUVANANTHAPURAM , PIN - 695035.
- 11 TOM JOSE I.A.S., FORMER CHIEF SECRETARY,
GOVT. OF KERALA, NOW THE CHAIRMAN,
KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
63/3466, UDAYA NAGAR ROAD, GANDHI NAGAR, KOCHI,
ERNAKULAM , PIN - 682020.
- 12 DR. NAVJOT KHOSA I.A.S.
FORMER MANAGING DIRECTOR, KMSCL,
NOW WORKING AS DISTRICT COLLECTOR,
COLLECTORATE, 2ND FLOOR CIVIL STATION BUILDING,
CIVIL STATION ROAD, THIRUVANANTHAPURAM , PIN - 695043.
- 13 A.R. AJAYAKUMAR I.A.S.
FORMER MANAGING DIRECTOR, KMSCL,
S/O M.REGHUVARAN NAIR,
PERMANENTLY RESIDING AT AISWARYA PAKALOOR, NEMOM,
THIRUVANANTHAPURAM , PIN - 695020.

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:-3:-

- 14 THE MANAGING DIRECTOR, KMSCL,
NEAR W & C HOSPITAL, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695014.
- 15 THE KERALA LOK AYUKTA,
VIKAS BHAVAN, LEGISLATURE COMPLEX,
THIRUVANANTHAPURAM-PIN - 695033.
REPRESENTED BY ITS REGISTRAR.
- 16 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 17 UNION OF INDIA,
REPRESENTED BY THE HOME SECRETARY,
NORTH BLOCK, NEW DELHI, PIN - 110001.

BY ADV SRI. M.AJAY

BY LEARNED SENIOR GOVERNMENT PLEADER SRI. V. TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.12.2022,
ALONG WITH WP(C). NOS.38375/2022 & 38389/2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C)s: 38265, 38375 &
38389 of 2022

-:4:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 8TH DAY OF DECEMBER 2022 / 17TH AGRAHAYANA, 1944

WP(C) NO. 38375 OF 2022

PETITIONERS:

- 1 BALAMURALI D., AGED 37 YEARS
FORMER MANAGING DIRECTOR, KMSCL,
REGIONAL OFFICER, CENTRAL BOARD OF FILM CERTIFICATION,
B WING, 5TH FLOOR, SHASTRI BHAWAN, 26 HADDOWS ROAD,
CHENNAI,, PIN - 600006.
- 2 DR. NAVJOT KHOSA I.A.S, AGED 39 YEARS
FORMER MANAGING DIRECTOR, KMSCL,
NOW WORKING AS LABOUR COMMISSIONER,
THOZHIL BHAVAN, VIKAS BHAVAN,
THIRUVANANTHAPURAM , PIN - 695033.

BY ADVS. SRI. S.SREEKUMAR (SR.)
SMT. SAYUJYA
SRI. K.R.RAJEEV KRISHNAN

RESPONDENTS:

- 1 VEENA S. NAIR, AGED 32 YEARS
D/O SOMASEKHARAN NAIR,
RESIDING AT CHITHIRA, U-28, MARUTHANKUZHI, KANJIRAPARA P.O.,
THIRUVANANTHAPURAM , PIN - 695030.
- 2 K.K. SHAILAJA,
PRESENTLY MLA, MATTANNUR CONSTITUENCY,
(FORMER MINISTER FOR HEALTH & FAMILY WELFARE),
HAVING OFFICE AT CHANDRAGIRI 401, MLA QUARTERS,
THIRUVANANTHAPURAM , PIN - 695033.
- 3 DR. RAJAN N. KHOBRAGRADE I.A.S.
THE PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVT. OF KERALA, 6TH FLOOR, SECRETARIAT ANNEXE - II,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.

WP(C)s: 38265, 38375 &
38389 of 2022

-:5:-

- 4 DR. DILEEP KUMAR S.R., FORMER GENERAL MANAGER, KMSCL,
NOW WORKING AS DEPUTY DISTRICT MEDICAL OFFICER,
GENERAL HOSPITAL ROAD, COMPOUND CHUNGAM,
ALAPPUZHA, PIN - 688011.
- 5 DR.K.ELANGO VAN I.A.S., PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
GOVT. OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 6 SANTHOSH LOKARE, OWNER
M/S. SAN PHARMA, NEAR RURAL HOSPITAL,
KURUDUWADI, SOLAPUR, MAHARASHTRA, PIN - 413208.
- 7 MANSOOR ALI, MANAGING PARTNER,
M/S. TRICHUR SURGICALS,
CORPORATE ADDRESS AT PARIJATH BUILDINGS,
PATTURAIKAL, THRISSUR, PIN - 680002.
- 8 PRAVIN PRAKASAN, PROPRIETOR,
M/S. AGRATA AVON EXIM, ASRA 50,
NEAR ATTINPARA GOVT. AYURDEVA HOSPITAL,
ATTINKUZHI, KAZHAKUTTOM, THIRUVANANTHAPURAM, PIN - 695582.
- 9 P.A.ANAYIL VARGHESE POULOSE
PROPRIETOR, M/S. ANDRIYA TRADERS,
DOOR NO.181/12, MANJAKUNNU, PATTIKKAD P.O.,
THRISSUR, PIN - 680652.
- 10 DR.RATHAN U. KELKAR I.A.S.,
THE DIRECTOR, NATIONAL HEALTH MISSION,
OFFICE OF THE DIRECTOR, NATIONAL HEALTH MISSION,
NRHM BUILDING, GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM , PIN - 695035.
- 11 TOM JOSE I.A.S., FORMER CHIEF SECRETARY,
GOVT. OF KERALA, NOW THE CHAIRMAN,
KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
63/3466, UDAYA NAGAR ROAD, GANDHI NAGAR, KOCHI
ERNAKULAM , PIN - 682020.
- 12 A.R. AJAYAKUMAR I.A.S.
FORMER MANAGING DIRECTOR, KMSCL,
S/O M.REGHUVARAN NAIR,
PERMANENTLY RESIDING AT AISWARYA PAKALOOR, NEMOM,
THIRUVANANTHAPURAM, PIN - 695020.

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38389 of 2022

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- 13 THE MANAGING DIRECTOR, KMSCL,
NEAR W & C HOSPITAL, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695014.
- 14 THE KERALA LOK AYUKTA
VIKAS BHAVAN, LEGISLATURE COMPLEX,
THIRUVANANTHAPURAM. PIN - 695033
REPRESENTED BY ITS REGISTRAR.
- 15 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 16 UNION OF INDIA
MINISTRY OF HOME AFFAIRS, REPRESENTED BY THE HOME SECRETARY,
NORTH BLOCK, NEW DELHI, PIN - 110001.

BY ADVS. SRI. M.AJAY, SC, KERALA MEDICAL SERVICES CORPORATION LTD.
SHRI.B.RAMACHANDRAN, CGC
BY ADV. SRI. V. TEK CHAND, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.12.2022,
ALONG WITH WP(C).38265/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C)s: 38265, 38375 &
38389 of 2022

-:7:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 8TH DAY OF DECEMBER 2022 / 17TH AGRAHAYANA, 1944

WP(C) NO. 38389 OF 2022

PETITIONER:

DR. RAJAN N. KHOBRAGRADE I.A.S.
AGED 54 YEARS, CHAIRMAN KSEB,
VIDYUT BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 003.
FORMER PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, PIN - 695003.]

BY ADV. SRI. AJIT JOY

RESPONDENTS:

- 1 VEENA S. NAIR, AGED 32 YEARS
D/O SOMASEKHARAN NAIR,
RESIDING AT CHITHIRA, U-28, MARUTHANKUZHI, KANJIRAPARA P.O.,
THIRUVANANTHAPURAM, PIN - 695030.
- 2 K.K. SHAILAJA, PRESENTLY MLA,
MATTANNUR CONSTITUENCY, (FORMER MINISTER FOR HEALTH & FAMILY
WELFARE),
HAVING OFFICE AT CHANDRAGIRI 401, MLA QUARTERS,
THIRUVANANTHAPURAM, PIN - 695033.
- 3 BALAMURALI D., I.A.S
FORMER MANAGING DIRECTOR, KMSCL,
REGIONAL OFFICER, CENTRAL BOARD OF FILM CERTIFICATION,
B WING, 5TH FLOOR, SHASTRI BHAWAN, 26 HADDOWS ROAD,
CHENNAI, PIN - 600006.
- 4 DR. DILEEP KUMAR S.R
FORMER GENERAL MANAGER, KMSCL,
NOW WORKING AS DEPUTY DISTRICT MEDICAL OFFICER,
GENERAL HOSPITAL ROAD, COMPOUND CHUNGAM,
ALAPPUZHA, PIN - 688011.

WP(C)s: 38265, 38375 &
38389 of 2022

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- 5 DR. K. ELANGO VAN I.A.S.
PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
GOVT. OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM , PIN - 695001.
- 6 SANTHOSH LOKARE
OWNER M/S. SAN PHARMA, NEAR RURAL HOSPITAL,
KURUDUWADI, SOLAPUR, MAHARASHTRA, PIN - 413208.
- 7 MANSOOR ALI, MANAGING PARTNER
M/S. TRICHUR SURGICALS,
CORPORATE ADDRESS AT PARIJATH BUILDINGS,
PATTURAIKAL, THRISSUR, PIN - 680002.
- 8 PRAVIN PRAKASAN, PROPRIETOR, M/S. AGRATA AVON EXIM,
ASRA 50, NEAR ATTINPARA GOVT. AYURDEVA HOSPITAL,
ATTINKUZHI KAZHAKUTTOM, THIRUVANANTHAPURAM , PIN - 695582.
- 9 P.A. ANAYIL VARGHESE POULOSE
PROPRIETOR M/S. ANDRIYA TRADERS,
DOOR NO.181/12, MANJAKUNNU, PATTIKKAD P.O.,
THRISSUR, PIN - 680652.
- 10 DR. RATHAN U. KELKAR I.A.S
THE DIRECTOR, NATIONAL HEALTH MISSION,
OFFICE OF THE DIRECTOR, NATIONAL HEALTH MISSION,
NRHM BUILDING, GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN - 695035.
- 11 TOM JOSE I.A.S, FORMER CHIEF SECRETARY,
GOVT. OF KERALA, NOW THE CHAIRMAN,
KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
63/3466, UDAYA NAGAR ROAD, GANDHI NAGAR, KOCHI
ERNAKULAM, PIN - 682020.
- 12 DR. NAVJOT KHOSA I.A.S.,
FORMER MANAGING DIRECTOR, KMSCL,
NOW WORKING AS LABOUR COMMISSIONER,
THOZHIL BHAVAN, VIKAS BHAVAN,
THIRUVANANTHAPURAM, PIN - 695033.
- 13 A.R. AJAYAKUMAR I.A.S.
FORMER MANAGING DIRECTOR, KMSCL,
S/O M.REGHUVARAN NAIR, PERMANENTLY RESIDING AT AISWARYA
PAKALOOR, NEMOM, THIRUVANANTHAPURAM, PIN - 695020.

WP(C)s: 38265, 38375 &
38389 of 2022

:-9:-

- 14 THE MANAGING DIRECTOR, KMSCL,
NEAR W & C HOSPITAL, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695014.
- 15 THE KERALA LOK AYUKTA
VIKAS BHAVAN, LEGISLATURE COMPLEX,
THIRUVANANTHAPURAM, , PIN - 695033
REPRESENTED BY ITS REGISTRAR
- 16 STATE OF KERALA
REPRESENTED BY GOVERNMENT PLEADER,
HIGH COURT OF KERALA, PIN - 682031.
- 17 MINISTRY OF HOME AFFAIRS
REPRESENTED BY THE HOME SECRETARY,
MINISTRY OF HOME, NORTH BLOCK,
NEW DELHI , PIN - 110001.

BY ADV SRI. M.AJAY

BY ADV. SRI. V. TEK CHAND, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.12.2022,
ALONG WITH WP(C).38265/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ

Instant writ petitions are filed by respondents, 4, 3 and 2 respectively, in Complaint No.41/2022, on the files of Kerala Lok Ayukta, challenging the order dated 14.10.2022, by which, the complaint filed by the 1st respondent herein is held to be maintainable and consequently, directed the writ petitioners, as well as other respondents in the complainant, to file written statements, if any, within one month from the date of the said order.

2. Reliefs sought for by the writ petitioners are as under:

- (i) *Issue a writ in the nature of Certiorari or such other writ, direction or order calling for the records leading to Exhibit-P5 order passed by Kerala Lok Ayukta, Thiruvananthapuram; represented by its Registrar, dated 14.10.2022 and quash the same;*
- (ii) *Issue a writ in the nature of Prohibition or any other appropriate Writ, order or direction to the Kerala Lok Ayukta, Thiruvananthapuram represented by its Registrar, to cese the investigation of Exhibit-P1 complaint dated 21.01.2022;*
- (iii) *To award to the petitioners the cost of these proceedings;*

2. Brief facts leading to the filing of the writ petitions are that; petitioner in W.P.(C) No.38265 of 2022, is a Doctor, employed in the Health Services of the State. He was the General Manager of Kerala Medical Services Corporation Ltd. (KMSCL, for short) throughout

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:-11:-

COVID-19 Pandemic period. Whereas, petitioners in W.P.(C) No.38375 of 2022 are senior IAS Officers, who were posted as the Managing Director of KMSCL, during different periods of COVID-19 Pandemic.

3. Petitioner in W.P.(C) No.38389/2022 is also a senior IAS Officer and was the Principal Secretary, Health and Family Welfare, Government of Kerala, throughout the COVID-19 Pandemic period. Currently, he holds the post of Chairman, Kerala State Electricity Board.

4. The subject issue relates to the complaint filed by the 1st respondent - Smt. Veena S. Nair, before the Lok Ayukta, who claims herself as a social worker, alleging large scale corruption and embezzlement in the procurement of PPE Kits and other Surgical equipment during the COVID-19 Pandemic period. According to the 1st respondent, the alleged tainted procurement was carried out by the KMSCL, with the knowledge, and collusion with the writ petitioners and respondents 2 to 14.

5. It is further alleged in the complaint that writ petitioners being Government officials, are associated with the KMSCL belonging to the State Government; through which only medicines were procured

by the State Government. Various pinpointed allegations are raised in the complaint by the 1st respondent, including that the purchases made by the KMSCL through its officials were at an exorbitant price than the market price of the product during the COVID-19 Pandemic period, taking advantage of the situations. It is also pointed out that 10000 numbers of disposable PPE kits were bought at a higher price than the maximum retail price of Rs.3,000/-. It is also stated in the complaint that all the purchases were made in violation of the provisions of the Store Purchase Manual.

6. Therefore, the contention advanced by the 1st respondent in the complaint is that all the incidents would go to show that corruption and irregularities were justified and it was carried out without any limit, in the name of emergency purchase of products and equipment meant to tackle COVID-19 Pandemic.

7. It is further stated in the complaint that 100% advance payments were made to inexperienced and non-existing companies as well as proprietorships for procuring low quality medical equipment at exorbitant price, with the public exchequer's money and most definitely, for the own profit of respondents in the complaint.

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:-13:-

8. Before the Kerala Lok Ayukta, the 1st respondent/complainant sought for the following reliefs:

- (i) An investigation may be conducted by the enquiry wing of this Hon'ble Lok Ayukta against the respondents 1 to 5 and 10 to 13, in the matter in detail and necessary actions may be taken against the respondents, in accordance with law;
- (ii) On investigation, if the allegations of the complainant are found true, to declare that respondents 1 to 5 and 10 to 13 are unfit for holding public office and thereafter to recommend the prosecution of the respondents;
- (iii) An investigation may be conducted by the enquiry wing of the Hon'ble Lok Ayukta against the respondents 6 to 9 in the matter in detail and necessary actions may be taken against them, in accordance with law and declare that the firms and proprietorship conducted by respondents 6 to 9 are unfit to function in any manner in the State in future and direct them not to participate in any of the tender/quotation for supply of items invited by the State.

9. Based on the above complaint, Kerala Lok Ayukta proceeded to initiate preliminary enquiry in the matter and as a part of the enquiry, notice was issued to the petitioners as well as Dr. K. Elangovan, IAS, Principal Secretary, Department of Industries and Commerce, Government of Kerala, Thiruvananthapuram; Dr. Navjot Khosa IAS, Former Managing Director, KMSCL, now working as the District Collector, Thiruvananthapuram and the Managing Director, KMSCL, Thiruvananthapuram respectively.

10. Before the Lok Ayukta, writ petitioners have raised a preliminary objection as regards the maintainability of the complaint filed by the 1st respondent, basically relying upon Sections 50, 60, 72, and 73 of the Disaster Management Act, 2005 and Section 9(1) of the Kerala Lok Ayukta Act, 1999. The main contention was that the entire complaint and the allegations therein are in relation to the actions carried out during Covid-19 Pandemic, a declared disaster under the Disaster Management Act, 2005.

11. According to the petitioners, the Disaster Management Act, 2005, is a complete code, and the actions and allegations raised in the complaint relating to Covid-19 disaster period, ought not to have been entertained by the Kerala Lok Ayukta under the Lok Ayukta Act, 1999; and that every action complained of could have been addressed through the Disaster Management Act itself.

12. After considering the rival submissions, and appreciating the relevant provisions of the Disaster Management Act, 2005 and Kerala Lok Ayukta Act, 1999, vide Exhibit-P5 order dated 14.10.2022, Lok Ayukta held that the complaint filed by the 1st respondent herein has to be admitted and investigation should be commenced under Section

9(3) of the Kerala Lok Ayukta Act, 1999, without prejudice to the right of the respondents i.e., writ petitioners and other respondents, to raise their contentions, including the question of maintainability of the complaint during the course of investigation.

13. Relevant portion of the said order reads as under:

“8. We have considered the averments in the complaint and the documents produced along with the complaint; the averments in the reply filed on behalf of respondents 2, 3, 4 and 12 and the documents produced along with the reply; the averments contained in the written statement filed by the 14th respondent and the documents produced along with it and the submissions made by the learned counsel for the parties. In the light of the provisions contained in the Kerala Lok Ayukta Act, we are satisfied that the complainant has made out a prima facie case warranting an investigation under Section 9(3) of the Kerala Lok Ayukta Act. Even though Sri. Ajit Joy, learned counsel for respondents 2, 3, 4 and 12 questioned the maintainability of the complaint, prima facie we are not inclined to uphold the objections raised by him at this stage of admitting the complaint for investigation.

9. The first objection raised by Sri. Ajit Joy is based on Sections 50, 60, 72, 73 and 74 of the Disaster Management Act, 2005. Section 50 deals with emergency procurement and accounting. It does not prevent a person from affirming that a public servant 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 or he was actuated in the discharge of his function as such public servant by personal interest or improper or corrupt motives or is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant. If such an allegation is made in a complaint filed under

Section 9(1) of the Kerala Lok Ayukta Act and if the Lok Ayukta is satisfied that an investigation under Section 9(3) of the Act is necessary, Lok Ayukta is competent and obliged to investigate the complaint under Section 9 (3) of the Kerala Lok Ayukta Act. During such investigation the public servant concerned will get full opportunity to deny the allegation and prove his innocence.

10. Section 60 of the Disaster Management Act deals with cognizance of offences. The said section relates to cognizance of an offence under the Disaster Management Act, 2005. In this complaint the complainant has not sought cognizance of an offence under the said Act. Section 60 of the Disaster Management Act does not prohibit or prevent an investigation under Section 9(3) of the Kerala Lok Ayukta Act.

11. Section 72 of the Disaster Management Act provides that the provisions of the said Act, shall have effect, notwithstanding anything inconsistent therewith COURT OF in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Prima facie, there is no provision in the Kerala Lok Ayukta Act which is inconsistent with the provisions in the Disaster Management Act, 2005. There is nothing in the Disaster Management Act preventing an investigation under Section 9 of the Kerala Lok Ayukta Act, 1999.

12. Section 73 of the Disaster Management Act provides that no suit or prosecution or other proceeding shall lie in any court against the Central Government or the National Authority or the State Government or the State Authority or the District Authority or local authority or any officer or employee of the Central Government or the National Authority or the State Government or the State Authority or the District Authority or local authority or any person working for on behalf of such Government or authority in respect of any work done or purported to have been done or intended to be done in good faith by such authority or Government or such officer or employee or such person

under the provisions of the Disaster Management Act or the rules regulations made thereunder. The protection under Section 73 is in respect of a suit or prosecution or other proceeding in any court. Even otherwise the protection under Section 73 of the Disaster Management Act can be claimed by a public servant as and when an investigation is conducted by this Forum and the public servant satisfies this Forum that the action was taken by him in good faith. The stage of claiming the protection under Section 73 of the Disaster Management Act arises only after the complaint is admitted and an investigation under Section 9(3) has commenced.

13. Section 74 deals with immunity from legal process. Prima facie this section is not applicable to the facts of this case and at any rate the public servant concerned can claim immunity from legal process when the complaint is admitted and the investigation is commenced.

14. Sri. Ajit Joy, learned counsel for respondents 2, 3, 4 and 12 contended that the complainant is actually a political worker, but she has not disclosed it and that she has filed this complaint with political motives. The complainant has stated in the complaint that she is a social worker. Even if she is a political worker, it is for her to decide how she should be described. Any how a political worker is not disqualified or disabled from filing a complaint under Section 7 of the Kerala Lok Ayukta Act.

15. Sri. Ajit Joy submitted that the objection to the maintainability of the complaint based on Section 8(1) of the Kerala Lok Ayukta Act read with clause (d) of the Second Schedule is not pressed by him.

16. Though Sri. Ajit Joy contended that the complaint was not filed in accordance with Sub-section (2) of Section 9 of the Kerala Lok Ayukta Act, prima facie we do not find any merit in the objection.

17. In the above circumstances, we are satisfied that this complaint has to be admitted and an investigation should be commenced under Section 9 (3)

of the Kerala Lok Ayukta Act without prejudice to the right of the respondents to raise all contentions, including the question of maintainability of the complaint, during the course of investigation. The view taken by us today regarding the maintainability of the complaint is in the context of admitting the complaint and commencing an HIGH investigation.

18. Hence, the complaint is admitted. Issue notice to respondents 1, 5, 6, 7, 8, 9, 10, 11 and 13. Notice need not be issued to the other respondents, as they have received the notice before admission and have entered appearance through counsel.

Registry may comply with the provisions of Section 9(3)(a) of the Kerala Lok Ayukta Act.

Respondents shall file written statements, if any, within one month from today.

Post on 8.12.2022.”

14. It is thus challenging the legality and correctness of the above said order passed by the Lok Ayukta, the writ petitions are filed.

15. The paramount contention advanced by the petitioners in the writ petitioners are common in nature, and therefore, separate narration of facts and grounds raised are not required.

16. Writ petitioners contend that the Lok Ayukta has failed to find that it was a fit case to refuse investigation under Section (5) (c) of the Lok Ayukta Act, 1999. It is also contended that the complaint put forth by the 1st respondent would show that effective remedies are available to the complainant under the Disaster Management Act, 2005,

and therefore, she was not entitled to invoke the jurisdiction of the Lok Ayukta, in order to ventilate her grievances.

17. Writ petitioners further contend that the Disaster Management Act, 2005 is intended to be an exhaustive code on the subject governing disasters and its management, and therefore, the Act occupies the field. The Act, 2005 is exhaustive and unqualified on all administrative acts related to the management of disasters and that it is a self contained code anticipating various violations and prescribing punishments, is the further contention..

18. The sum and substance of the contention put forth by the writ petitioners is that the a complaint mechanism and identification of forum is integral to the Act, 2005, and therefore, the preliminary decision of the Lok Ayukta to proceed with the complaint under the provisions of Kerala Lok Ayukta Act, 1999 is *ultra vires* the Disaster Management Act, 2005, which is a Central legislation.

19. Relying upon the various provisions of Disaster Management Act, 2005 and Kerala Lok Ayukta Act, 1999 contentions were advanced by learned Senior Counsel for the writ petitioners, which would be dealt with hereafter.

20. It is the contention of the petitioners that the Hon'ble Apex Court has found time and again that when a specific legislation covers a subject, no other general legislation can be used to claim reliefs. Similar is the case, in the instant matter, where the exclusive law is the Disaster Management Act, 2005, and if at all the complainant wanted to make any complaint, clear provision is provided under the Act, 2005 and the complainant ought to have resorted to the provisions of the said Act, is the implicit contention.

21. It is further contended that even though contentions were advanced by the writ petitioners that the Disaster Management Act, 2005 had its own provisions for cognizance of offence under Section 60, the Lok Ayukta brushed them aside and has rendered the findings, without understanding the true implications of the provisions of Act, 2005. That apart, it is contended that the findings rendered by the Lok Ayukta in the impugned order that the Disaster Management Act, 2005 does not prohibit or prevent an investigation to be conducted under Section 9(3) of the Lok Ayukta Act, 1999, are erroneous, since the investigation conducted by the Lok Ayukta would go against the overriding effect of Section 78 of Act, 2005.

22. Various other contentions are also raised by the writ petitioners as to the fallacy in the factual narratives contained in the complaint, which we do not intend to consider at this stage since we are of the clear opinion that the Lok Ayukta has passed only a preliminary order concerning the maintainability of the complaint. It is in the said background, writ petitioners have challenged the order passed by the Lok Ayukta in Complaint No.41/2022.

23. We have heard Mr. S. Sreekumar, learned Senior Counsel appearing for the writ petitioners, assisted by Adv. Mr. Aneesh James and Adv. Mr. Ajit Joy; Mr. M. Ajay, learned counsel for the Kerala Medical Services Corporation Ltd.; and Mr. V. Tek Chand, learned Senior Government Pleader for the State officials, and perused the material available on record.

24. The basic contention advanced by the writ petitioners is on the provisions contained in the Disaster Management Act, 2005. According to them, purchases were made by the KMSCL during COVID-19 Pandemic situation, invoking Section 50 of the Act, 2005.

25. Section 50 of the Disaster Management Act, 2005 deals with emergency procurement and accounting, which specifies that where by

reason of any threatening disaster situation or disaster, the National Authority or the State Authority or the District Authority is satisfied that immediate procurement of provisions or materials or the immediate application of resources are necessary for rescue or relief,- (a) it may authorise the concerned department or authority to make the emergency procurement and in such case, the standard procedure requiring inviting of tenders shall be deemed to be waived; (b)

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26. Reading of the above provision would make it clear that writ petitioners as well as the authorities concerned were duty bound to procure medicine by resorting to the emergency provisions contained under the Act, 2005, in order to tackle the situations that have arisen during COVID-19 Pandemic period.

27. It is further submitted that Section 52 dealing with punishment for false claim, makes it clear that whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State

Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

28. It is also submitted that Section 53 dealing with punishment for misappropriation of money or material etc., makes it clear that whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or willfully compels any other person so to do, is liable to be proceeded with imprisonment for a term which may extend to two years, and also with fine.

29. Learned Senior Counsel for the petitioners has also invited our attention to Sections 55 of the Disaster Management Act, 2005, which deals with offences by Departments of the Government, wherein also the punishment method is prescribed for violation of any provisions of the Act, 2005 and shall be liable to be proceeded and punished accordingly, unless the person involved proves that the offence was committed without his knowledge or that he has exercised

all due diligence to prevent the commission of such offence.

30. Apart from the above, Sections 56, 57 and 58 of the Disaster Management Act, 2005, which deals with prosecution in case of violation of the provisions of Act, 2005, were also pressed into service by the learned Senior Counsel for the writ petitioners to substantiate his contentions.

31. It is also the contention of the petitioners that Section 59 of Act, 2005 specifies that in order to prosecute for offences punishable Sections 55 and 56, previous sanction is required from the Central or the State Government, as the case may be, or of any officer authorised in this behalf, by general or special order, by such Government. Section 60 of the Act, 2005 is also pressed into service by the writ petitioners, which deals with cognizance of offences.

32. Section 60 states that no court shall take cognizance of an offence under this Act except on a complaint made by,- (a) a National Authority, the State Authority, the Central Government, the State Government, the District Authority or any authority or officer authorised in this behalf by that Authority or Government, as the case may be; or (b) any person who has given notice of not less than thirty

days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

33. On a perusal of the complaint, we are of the clear opinion that the complainant/1st respondent herein has not challenged the manner in which contract was provided, by invoking Section 50 of the Act, 2005; the allegations made in the complainant is with respect to the alleged corruption or maladministration that has taken place in the purchase of materials by making exorbitant and huge amount to the products than the maximum retail price.

34. Reading of the provisions discussed above makes it clear that they are penal provisions by which, the authorities or a third person, are given the right to prosecute the officers or any person, who violates the provisions of the Act, 2005. In our considered opinion, the said provisions of Act, 2005 have nothing to do with the investigation conducted by Kerala Lok Ayukta, because the provisions of Lok Ayukta Act, 1999 makes it clear the manner in which the Lok Ayukta has to conduct investigation and make recommendations to the Government.

35. Learned Senior Counsel appearing for the writ petitioners has invited our attention to Sections 71 and 72 of the Act, 2005 and has tried to impress upon us that there is a bar of jurisdiction on Courts and that the Act 2005 has an overriding effect over other laws.

36. For brevity, Sections 71 and 72 of the Disaster Management Act, 2005, are extracted hereunder:

“71. Bar of jurisdiction of court.— No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act. “

“72. Act to have overriding effect.— The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

37. In our considered opinion, Section 71 of the Disaster Management Act, 2005, creates a bar of jurisdiction of Courts other than Hon’ble Supreme Court or a High Court, in respect of anything

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done, action taken, orders made, etc, in pursuance of any power conferred by or in relation to its functions by the Act.

38. As we have pointed out above, respondent No.1 has not made any allegations with respect to the emergency powers exercised by the petitioners or other authorities under the Disaster Management Act, 2005. But, her contention is that under the guise of exercising that power, corruption is practiced by the authorities.

39. It is true that Section 72 of the Disaster Management Act, 2005 has an overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect, by virtue of any law other than the Act, 2005. As we have pointed out above, perusal of the provisions of Act, 2005 and the Disaster Management (Notice of Alleged Offence) Rules, 2007, we cannot locate any provision as that of the one conferred on the Lok Ayukta, under the Kerala Lok Ayukta Act, 1999.

40. To put it otherwise, there are no provisions under the Kerala Lok Ayukta Act, 1999 in conflict with the provisions of the Disaster Management Act, 2005 insofar as investigation is concerned.

41. The Disaster Management (Notice of Alleged Offence) Rules, 2007 also deals with the manner in which complaints are to be made for prosecution of the authorities under the Act, 2005 and as to the contents of such complaints, which have no bearing to the issue dealt with by the Kerala Lok Ayukta.

42. Even though contentions were advanced by learned Senior Counsel appearing for the petitioners, relying on the provisions of Kerala Lok Ayukta Act, 1999, that the subject matter would not come under the purview of Act, 1999, we are unable to agree with the same. Section 2(b) of the Act, 1999 defines allegation in relation to a public servant, to mean 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.

43. On an appreciation of the contentions advanced in Exhibit-P1 complaint dated 21.02.2022, we are of the view that the truth of the

allegations made, with respect to abuse of financial position and corruption etc., are matters which require enquiry by the Lok Ayukta, in accordance with law. Moreover, Section 2(h) of Act, 1999 defines grievance to mean, a claim by a person that he sustained injustice or undue hardship, in consequence of mal-administration.

44. The grievance raised by the 1st respondent in the complaint is that public money was misused by the authorities concerned while procuring medicines during COVID-19 Pandemic period. 'Mal-administration' is defined under Section 2(k) of the Act, 1999, to mean, action taken or purporting to have been taken in exercise of administrative functions in any case where, such action or the administrative procedure or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory.

45. From the above, it could be deduced that the allegations made in Exhibit-P1 complaint would take in such aspects, which is ultimately the subject matter to be considered by the Lok Ayukta on its merits.

46. That apart, Section 8 of the Lok Ayukta Act, 1999 deals with matters not subject to investigation. Section 8 reads as under:

“8. Matters not subject to investigation.- (1) Except as hereinafter provided, the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule.

(2) The Lok Ayukta or an Upa-Lok Ayukta shall not investigate,-

- (a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lok Ayukta or an Upa-Lok Ayukta, as the case may be;
- (b) any action in respect of a matter which has been referred to inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952);
- (c) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that a complaint referred to in clause(c) may be entertained by the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, after the expiry of the period referred to in the said clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in that clause.

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lok Ayukta or an Upa-Lok Ayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima-facie be regarded as having been improperly exercised.”

47. Section 9 of the Act, 1999 deals with the provisions relating to complaints and investigation, by which, opportunity is given to any

person, to make a complaint under the Act, to the Lok Ayukta and Upa Lok Ayukta in the manner prescribed therein. It is equally important to note that Section 9(5) of the Act, 1999 empowers the Lok Ayukta to refuse investigation of to discontinue with the investigation of any complaint involving a grievance or an allegation, if in his opinion, the complaint is frivolous or vexatious or is not made in good faith; that there are no sufficient grounds for investigating or; as the case may be, for continuing the investigation, or; other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

48. Therefore the provisions discussed above would exemplify that the Lok Ayukta is having sufficient discretion and mechanism to identify as to whether the complaint is frivolous, and refuse to investigate or discontinue with the investigation.

49. Considering the facts and circumstances as above, we do not think that the petitioners have made out any case of illegality, irregularity, arbitrariness or other legal infirmities, justifying us to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India, to interfere with the preliminary order

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passed by the Kerala Lok Ayukta, in Complaint No.41/2022 dated 14.10.2022, as regards the maintainability of the said complaint before the Lok Ayukta.

In the result, the writ petitions fail and accordingly, they are dismissed. However, since the matter was pending before this Court, the time granted to the writ petitioners for filing written statement is over. Therefore, we extend the time for filing the written statement, by a period of two weeks from today.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

Krj

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P.A. TO C.J.

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APPENDIX OF WP(C) 38375/2022

PETITIONER'S EXHIBITS:-

- Exhibit P1 COPY OF COMPLAINT NO.41 OF 2022 DT.21.02.2022 WITHOUT EXHIBITS, PREFERRED BY THE 1ST RESPONDENT BEFORE THE 14TH RESPONDENT LOK AYUKTA, THIRUVANANTHAPURAM.
- Exhibit P2 COPY OF THE NOTICE DT.05.03.2022 ISSUED TO THE PETITIONER UNDER SECTION 9 (3) OF THE KERALA LOK AYUKTA ACT, 1999 BY THE 14TH RESPONDENT LOK AYUKTA, THIRUVANANTHAPURAM.
- Exhibit P3 COPY OF PRELIMINARY REPLY DT.01.04.2022 FILED BY THE PETITIONER ALONG WITH EXHIBITS BEFORE THE 14TH RESPONDENT LOK AYUKTA, THIRUVANANTHAPURAM.
- Exhibit P4 COPY OF WHOS GUIDANCE DATED 19.03.2020 ON THE "RATIONAL USE OF PPE FOR CORONA VIRUS DISEASE,".
- Exhibit P5 PHOTOCOPY OF THE ORDER OF THE 14TH RESPONDENT LOK AYUKTA DT.14.10.2022.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO C.J.

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APPENDIX OF WP(C) 38389/2022

PETITIONERS' EXHIBITS:-

- Exhibit P1 TRUE COPY OF COMPLAINT NO. 41 OF 2022 WITHOUT EXHIBITS, PREFERRED BEFORE THE HON'BLE LOK AYUKTA, THIRUVANANTHAPURAM.
- Exhibit P 2 TRUE COPY OF THE NOTICE DT. 05.03.2022 ISSUED TO THE PETITIONER UNDER SECTION 9 (3) OF THE KERALA LOK AYUKTA ACT, 1999.
- Exhibit P3 TRUE COPY OF PRELIMINARY REPLY DT. 01.04.2022 FILED BY THE PETITIONER ALONG WITH EXHIBITS.
- Exhibit P4 TRUE COPY OF WHOS GUIDANCE DATED 19.03.2020 ON THE "RATIONAL USE OF PPE FOR CORONA VIRUS DISEASE,"
- Exhibit P5 TRUE PHOTOCOPY OF THE CERTIFIED ORDER OF THE 15TH RESPONDENT LOK AYUKTA DT.14.10.2022 .

RESPONDENTS' EXHIBITS:- NIL

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APPENDIX OF WP(C) 38265/2022

PETITIONER'S EXHIBITS:

- Exhibit P1 A TRUE PHOTOCOPY OF THE COMPLAINT NO. 41 OF 2022 WITHOUT EXHIBITS, PREFERRED BEFORE THE HON'BLE LOK AYUKTA, THIRUVANANTHAPURAM .
- Exhibit P2 A TRUE PHOTOCOPY OF THE NOTICE DT. 05.03.2022 ISSUED TO THE PETITIONER UNDER SECTION 9(3) OF THE KERALA LOK AYUKTA ACT, 1999.
- Exhibit P3 A TRUE PHOTOCOPY OF THE PRELIMINARY REPLY DT.01.04.2022 FILED BY THE PETITIONER ALONG WITH EXHIBITS.
- Exhibit P4 A TRUE PHOTOCOPY OF THE GUIDANCE BY WHO DT.19.03.2020 ON THE "RATIONAL USE OF PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR CORONAVIRUS DISEASE (COVID-19)".
- Exhibit P5 A TRUE PHOTOCOPY OF THE ORDER OF THE 15TH RESPONDENT DT.14.10.2022.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO C.J.