



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 11<sup>TH</sup> DAY OF JUNE 2024 / 21ST JYAISHTA, 1946

WP(C) NO. 37185 OF 2023

PETITIONER:

REMYA HARIDAS  
AGED 38 YEARS  
D/O. HARIDAS, MEMBER OF PARLIAMENT, MEMBER OF  
LEGISLATIVE COUNCIL KILA, RESIDINGS AT PALAT MEETHAL,  
KUTTIKKATTOOR, KOZHIKODE DISTRICT, PIN - 673008  
BY ADVS.  
ABRAHAM P.GEORGE  
M.RAJENDRAN NAIR  
M.SANTHY

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT LOCAL SELF-  
GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIATE, -  
ANNEXURE 1- THIRUVANANDAPURAM, PIN - 695001
- 2 KERALA INSTITUTE OF LOCAL ADMINISTRATION (KILA)  
MULAMKUNNATHKAVU, THRISSUR, REPRESENTED BY ITS  
CHAIRMAN, EXECUTIVE COMMITTEE OF KERALA INSTITUTE OF  
LOCAL ADMINISTRATION, MULAMKUNNATHKAVU, PIN - 680581
- 3 DIRECTOR GENERAL  
KERALA INSTITUTE OF LOCAL  
ADMINISTRATION (KILA), MULAMKUNNATHKAVU, THRISSUR,  
PIN - 680581
- 4 JOY ELAMON  
AGED 60 YEARS  
S/O V.P.P NAMPOOTHIRI, HAPPY HOME, KARA151, NANDANAM,  
ARAPPURA, VATTIYOORKAVU, THIRUVANANDAPURAM.  
PIN- 695 013, NOW WORKING AS DIRECTOR GENERAL, KILA,  
MULAMKUNNATHKAVU PO, THRISSUR, PIN - 680581  
BY ADV V.A MUHAMMED

OTHER PRESENT:

SR GP SMT MARY BEENA JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
11.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **JUDGMENT**

(Dated this the 11<sup>th</sup> day of June, 2024)

The writ petition is filed for the following reliefs;

"a) Call for the entire records leading to the issuance of Exhibit P3 order extending the tenure of the 4th Respondent in the post of Director General to the 2nd Respondent Institute illegally, quash the same by the issuance of a Writ in the nature of certiorari or such other appropriate writ or direction in the interest of justice.

b) Issue a writ of Quo Warranto or other appropriate writ directing removal of the 4th respondent from his office as Director General of KILA and also direct the 1st respondent to initiate steps for appointment of a qualified person as Director General within a time frame to be fixed by this Hon'ble Court.

c) Declare that the decisions if any taken by the 4th Respondent on the strength of Exhibit P3 order extending his tenure in his capacity as Academic head and Chief Executive of the Institute are illegal and Void Ab initio and not binding upon the Institute.

d) Declare that the 4th Respondent shall not be eligible for salary or other service benefits during the period he continue as Director General on the strength of Exhibit P3 order.

e) Dispense with production of translation of the documents in vernacular produced along with the memorandum of Writ Petition till it is ordered by this Honourable Court.

f) Grant such other reliefs which are prayed for and deems fit to be granted by this Honourable Court".

2. The 2<sup>nd</sup> respondent, Kerala Institute of Local Administration (KILA), is an institution under the local self Government Department of the Government of Kerala and is a registered Society under the provisions of the Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955. The 2<sup>nd</sup> respondent is governed by the approved bye-law, service bye-law



and the recruitment Rules framed there under, which are approved by the Government of Kerala. The general supervision of the affairs of the Institute is vested with the Governing Council of the 2<sup>nd</sup> respondent. The executive committee is empowered with management, administration and control of the Institute which meets regularly. The Minister for the Local Self-Government Department of the State of Kerala is the ex-officio Chairman of the Governing Council, and the Additional Chief Secretary of the Local Self-Government Department is the ex-officio Chairman of the Executive Committee.

3. In the early stages of the 2<sup>nd</sup> respondent institute, senior IAS officers or Professors with PhD from reputed institutions were appointed as the Director General of the 2<sup>nd</sup> respondent. However, the practice has been diluted, and the State Government has started appointing politically committed persons, ignoring the interest of the Institute. The mode of appointment of the 3<sup>rd</sup> respondent is prescribed as per Clause No.43 of the Memorandum of Association, which reads as follows:-

“The Director General shall be the Academic Head and Chief Executive of the Institute. The Director General shall be appointed by the State Government. The Director General if appointed from the State Government Service shall hold office for a period of 3 years



or till he attains the age of 55 whichever is earlier. A Director General recruited from open market can be allowed to continue in the post till he attains the age of 60. A Director General whose term of office has expired is eligible for reappointment subject to restrictions regarding age.

The Director shall have all such powers as may be delegated to him by the Governing Council and Executive Committee”.

4. The case of the petitioner is that the 4<sup>th</sup> respondent is known for his political commitment and his allegiance to the left Democratic Front ruling the state, and he was appointed from the open market as permitted under Rule 43 of the Memorandum of Association. He was appointed as the Director and later re-designated as Director General of the 2<sup>nd</sup> respondent institute on 19.05.2017 for a period of 3 years. Later, it was extended for a period of two years from 19.05.2020 and then for a further period of one year from 19.05.2022, which expired on 18.05.2023 since the 4<sup>th</sup> respondent has attained the age of 60 years as on 04.07.2023, as per Rule 43, a further extension of appointment as Director General of the 2<sup>nd</sup> respondent is impossible and is illegal. Ext.P3 order dated 15.05.2023 extending the term of the 4<sup>th</sup> respondent is illegal as the 4<sup>th</sup> respondent has attained the age of 60 years on 04.07.2023, and he cannot occupy the said post beyond 04.07.2023.

5. The State government, in violation of Rule 43, had issued the order extending the tenure of the 4<sup>th</sup> respondent till such time a



new Director General is appointed in KILA, though the said order does not say he is re-appointed. Pointing out the illegality, the petitioner, as well as a few others submitted representations before the Honourable Chief Minister and the Chief Secretary, but no action is taken by them. Therefore, left with no other alternative, the petitioner had approached this Court under Article 226 of the Constitution of India to issue a writ of Quo warranto to remove the 4<sup>th</sup> respondent from his office as Director General of KILA and to direct the 1<sup>st</sup> respondent to initiate steps for the appointment for a qualified person as the Director General within a time frame.

6. A statement has been filed on behalf of the 1<sup>st</sup> respondent. It is stated that one Mr.P.P.Balan was the Director of Kerala Institute of Local Administration from 22.07.2011 till 19.05.2017, and when he attained the age of 60 years, he was allowed to continue in KILA as a Special Officer and the Government constitutes a selection committee for recruitment of the Director and the Committee fixed the qualifications for the post and invited application for the post. After interviewing by the selection committee, sanction was accorded by the government for appointing the 4<sup>th</sup> respondent as director of KILA. Accordingly, he took charge on 19.05.2017. His term was



extended for two years as per G.O(R.t)No.909/2020 LSGD 18.05.2020 and another year as per G.O(R.t) No.1243/2022/LSGD 18.05.2022. Meanwhile, the 4<sup>th</sup> respondent as per letters dated 01.03.2023 and 02.05.2023 had requested to be relieved of his duties on 18.05.2023 and to make necessary arrangements of charge. However, the government, as per an order dated 15.05.2023, directed the 4<sup>th</sup> respondent to continue as Director General of KILA till a new person is posted in that position. It is also submitted that the Local Self Government Commission has drafted the new Human Resource policy of KILA and is placed before the executive committee on 09.11.2021, and it has been approved with modification. The approved human resource policy is now pending approval from the government. The Government has also initiated the process of recruitment of new Director General. It is also submitted that it is the government's discretion regarding appointment of the Director General KILA, and the appointing authority of the Director General is the government. Hence, the government has taken a policy decision in this matter and issued G.O(R.t) 1045/2023/LSGD, by which the 4<sup>th</sup> respondent was allowed to continue as Director General of KILA till a new person is posted.



It is reiterated that steps are being taken up for the appointment of a new Director General and, therefore, prayed for the dismissal of the writ petition.

7. A reply has been filed to the statement filed by the 1<sup>st</sup> respondent wherein the contention raised in the writ petition has been reiterated.

8. Heard Sri. Abraham P. George, the learned Counsel appearing for the petitioner and Smt. Mary Beena Joseph, the learned senior Government Pleader.

9. The short and only question to be decided in the writ petition is whether, in extending the term of the 4<sup>th</sup> respondent by Ext.P3, Clause 43 of the revised Memorandum of Association and Rules of the Kerala Institute of Local Administration has been strictly followed. For a proper understanding of the said Clause. Clause 43 of the revised Memorandum of Association is extracted below.

"43. The Director shall be the Academic Head and Chief Executive of the Institute. The Director shall be appointed by the State Government. The Director if appointed from the State Government Service shall hold office for a period of three years or till he attains the age of 55 whichever is earlier. A Director recruited from open market can be allowed to continue in the post till he attains the age of 60. A Director whose term of office has expired is eligible for reappointment subject to restriction regarding age.



The Director shall have all such power as may be delegated to him by the Governing Council and the Executive Committee.

As the Chief Executive and Academic Head of the Institute the Director shall be responsible for the proper administration and conduct of the academic affairs of the Institute.

He shall prescribe the duties of all other officers and staff of the Institute and shall subject to these rules and bye-laws if any exercise such supervision and disciplinary control as may be necessary".

10. A perusal of the said clause would reveal that if a Director is recruited from the open market, he shall be allowed to continue till 60 years. In case of re appointment, but there is a restriction regarding the age. As contended by the learned counsel for the petitioner, the term of the 4<sup>th</sup> respondent expired on 18.05.2023. He can be allowed to continue in the same post on reappointment but subject to the condition that he cannot cross the age of 60 years. In this case, the 4<sup>th</sup> respondent has attained the age of 60 years on 04.07.2023.

11. Therefore, extending the term of the 4<sup>th</sup> respondent beyond 04.07.2023 violating the age restriction is illegal, and the 4<sup>th</sup> respondent is holding the post without authority and against Clause 43 of the Memorandum of Association; therefore, he seeks Writ of Quo Warranto to remove him from the post from 05.07.2023. The learned Senior Government Pleader Smt.Mary Beena Joseph argued that reading Ext.P3 would show that it is not a reappointment, but it





is only a temporary arrangement to allow the 4<sup>th</sup> respondent to continue in the office till a new suitable person is appointed as Director General. It is only a temporary measure and not reappointment. As it is not reappointment, it does not offend Clause 43 of the Memorandum of Association. It is the policy decision of the government, and it cannot be interfered with by this Court under Article 226 of the Constitution of India.

12. Whether it is reappointment or a temporary measure going by Clause 43 of the Memorandum of Association, a Director General recruited from the open market cannot continue after he has attained 60 years. Admittedly, the 4<sup>th</sup> respondent has attained the age of 60 years on 4.07.2023. Therefore, the continuation of the 4<sup>th</sup> respondent beyond 04.07.2023 is against Clause 43, Hence, it is illegal and improper. It is also contended by the learned Senior Government Pleader that it is only to see that the post of Director General is not kept vacant, that such an order was passed, that the selection process has already started, and that a new incumbent will take charge immediately. Therefore, there is nothing wrong with allowing the 4<sup>th</sup> respondent to continue till such time. The Memorandum of Association of a registered society is a charter of the



company. The Governing Council approved the said Memorandum on 16.01.2018, so all the appointments and the functioning of the society shall only be in tune with the Memorandum of Association. Clause 43 states explicitly that the Director General recruited from the open market can be allowed only until he has attained the age of 60 years, and reappointment is permitted subject to age restriction. Ext.P3 passed by the Government on 15.05.2023 can only be till 04.07.2023 the day on which the 4<sup>th</sup> respondent has attained the age of 60 years. Therefore, I am of the considered opinion that Ext.P3 cannot stand in the eye of law, to the extent it allows the 4<sup>th</sup> respondent to hold the office beyond the age of 60 years and Ext.P3 stands quashed to that extent. The petitioner has also sought the writ of Quo Warranto in this writ petition. When the 4<sup>th</sup> respondent is continuing as Direct General of the 2<sup>nd</sup> respondent beyond 04.07.2023, it is without any authority, and therefore, continuation of the 4<sup>th</sup> respondent beyond 04.07.2023 is illegal and against the Memorandum of Association. Therefore, it is declared that the 4<sup>th</sup> respondent ceased to be the Director General of the 2<sup>nd</sup> respondent from 05.07.2023 onwards.

13. In the result, the Writ Petition is allowed as follows;



- i) Ext.P3 stands quashed to the extent of allowing the 4<sup>th</sup> respondent to hold the office beyond 04.07.2023.
- ii) It is declared that the continuation of the 4<sup>th</sup> respondent as Director General from 05.07.2023 is without authority and against Clause 43 of the Memorandum of Association, and therefore, his continuation is illegal. It is also declared that he ceases to be Director General from 05.07.2023 onwards.
- iii). Since the appointment of the 4<sup>th</sup> respondent from 05.07.2023 is declared illegal, the 1<sup>st</sup> respondent is directed to initiate immediate steps to appoint a qualified person as Director General. Till such time to see that the 2<sup>nd</sup> respondent functions smoothly, any competent officer who is qualified to hold the post of Director General shall be given additional charge till the finalisation of the proceedings.
- iv) When the appointment is nullified by this Court as per the *de facto* doctrine, all orders passed by him are saved.



v). As far as the salary and allowances are concerned, the 4<sup>th</sup> respondent was working as Director General on the basis of appointment order Ext.P3 till the issuance of a writ of quo warranto by this court. Since all acts done by him are saved by de-facto doctrine, the salary and allowances paid to the 4<sup>th</sup> respondent shall not be recovered.

sd/-

**BASANT BALAJI**  
**JUDGE**



APPENDIX OF WP(C) 37185/2023

**PETITIONER EXHIBITS**

- Exhibit P1** THE TRUE PHOTOCOPY OF THE RELEVANT PAGES OF MEMORANDUM OF ASSOCIATION OF THE 2ND RESPONDENT KILA
- Exhibit P2** THE TRUE PHOTOCOPY OF THE RELEVANT PAGES OF MEMORANDUM OF ASSOCIATION CONTAINING THE RESPONSIBILITIES AND THE MODE OF APPOINTMENT OF THE DIRECTOR GENERAL 3RD RESPONDENT
- Exhibit P3** THE TRUE PHOTOCOPY OF THE ORDER-G.O(ORD.) NO. 1045/2023/LSGD DATED 15/05/2023 EXTENDING THE TENURE OF THE 4TH RESPONDENT AS DIRECTOR GENERAL
- Exhibit P4** THE TRUE PHOTOCOPY OF THE REPRESENTATION DATED 04.09.2023 SUBMITTED BY JOHN VENETIUS BEFORE THE CHIEF MINISTER AND OTHERS
- Exhibit P5** THE TRUE PHOTOCOPY OF THE REPRESENTATION DATED 30.09.2023 SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTER AND OTHERS

//True Copy//PA to Judge.