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(2015) 33 LCD 1853

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

ARUN KUMAR SHUKLA — Appellant

Vs.

STATE OF U.P — Respondent

(Before : Narayan Shukla and Pratyush Kumar, JJ.)

Special Appeal No. 234 of 2015.

Decided on : 15-06-2015

A. Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975 — Section 9 — Complaint validity — A complaint made before the Lokayukta is not valid if it is not accompanied by an affidavit, and consequently, any summoning order based on such a defective complaint is not enforceable. (Para 5)

B. Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975 — Section 2(j), Section 7 — Public servant — Jurisdiction of Lokayukta — An employee of the District Rural Development Agency (DRDA) is considered an officer/employee in connection with the affairs of the State Government and is, therefore, amenable to inquiry by the Lokayukta under the Act, even if not formally classified as a "public servant" under all definitions. (Paras 7, 9)

C. Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975 — Section 2(j) (V)(d) — Public servant — Notification requirement — For an employee of a society registered under the Societies Registration Act, 1860, to be considered a "public servant" under the Lokayukta Act, the society must be both owned or controlled by the State Government and specifically notified by that Government in the Gazette. If the society (DRDA) is not officially notified, its employees cannot be subjected to inquiry under the Lokayukta Act on this ground. (Paras 16, 17)

D. Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975 — Section 12(3) — Powers of Lokayukta — Recommendations — Where serious allegations of financial irregularities, disproportionate assets, and concealment of income are found based on evidence during an inquiry, the Lokayukta, as a quasi-judicial authority, has the power to communicate findings and recommendations to competent authorities for necessary action, regardless of technical objections regarding the initial complaint's maintainability. Courts should not interfere with such recommendations on hyper-technical grounds when grave charges are prima facie established. (Paras 8, 10, 18, 19)

Counsel for Appearing Parties

C.B. Pandey, Advocate, for the Appellant; C.S.C, Anupam Mehrotra, Illigible, Sameer Kalia, Advocates, for the Respondents

JUDGMENT

1. Heard Mr. C.B. Pandey, learned counsel for appellant, Mr. Anupam Mehrotra, learned Advocate appears for respondent No. 3 and perused the record.
2. Appearance of Mr. Samir Kalia, Advocate is recorded for O.P. No. 7.
3. This is an intra court appeal directed against the judgment and order dated 5th June, 2015 passed by learned Single Judge in **Writ Petition No. 7218 (MS) of 2013 (Arun Kumar Shukla v. State of U.P. and others)**.
4. The appellant had filed a **writ petition No. 7218 (MS) of 2013 (Arun Kumar Shukla v. State of U.P. and others)** before the learned Single Judge with the following reliefs:-
 - i) Issue a writ, order or direction including a writ in the nature of Certiorari thereby quashing the impugned summoning order dated 27.05.2013 passed by opposite party No. 3, which is quasi judicial order in nature, as contained in Annexure No. 1 to the writ petition.
 - ii) Issue a writ, order or direction including a writ in the nature of Cetiariari thereby quashing the decision/recommendation of the opposite party No. 3 published in the daily newspaper 'Amar Ujala' dated 20.07.2013, after summoning its original from the opposite parties and further be pleased to quash the orders, if any, passed by opposite parties Nos. 1, 2, 4, & 5 in pursuance of orders impugned passed by opposite party No. 3.
 - iii) Issue a writ, order or directing including a writ of mandamus thereby commanding the opposite party Nos. 1 to 5 not to take any action against the petitioner on the basis of the order/recommendation made by Hon'ble Lokayukta as published in the newspaper 'Amar Ujala'.
5. The appellant had challenged the order dated 27th May, 2013 before the learned Single

Judge, which was a summoning order whereby the petitioner was summoned to face the proceeding before the Lokayukta and also the recommendations of Lokayukta dated 19th July, 2013 whereby Lokayukta had recommended several actions to be taken up against the petitioner. The appellant had challenged the recommendations of Lokayukta inter alia on the grounds that the complaint dated 15.04.2013 was defective as it had not followed with the affidavit, therefore, in view of Section 9 of Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975, it was not a valid complaint in the eyes of law, consequently, the summoning order was not enforceable.

6. The appellant further took a ground that since he was not a public servant, therefore, Lokayukta had no jurisdiction to entertain the complaint dated 15.04.2013 against him, thus, the recommendations made by him on the basis of a complaint was alleged to be without jurisdiction.

7. The learned Single Judge after discussing the judgment of the Division Bench of this Court in **Writ Petition No. 458 (SB) of 2000 (Anoop Rai Jain and others v. State of U.P. And others)**, held that "the DRDA is an instrumentality of the State Government on which, the State Government exercises deep and pervasive control and as such, the petitioner though may not be a public servant, he is certainly an officer/employee appointed to a post in connection with the affairs of the State Government and is as such, amenable to any enquiry by the Lokayukta under the 'Act, 1975'."

8. The learned Single Judge has discussed the validity of complaint in a manner that "petitioner was summoned as a witness before the Lokayukta though the complaint was against him also, however, the respondent no.3 in his own wisdom, summoned the petitioner only as a witness and proceeded as such only, however, during the enquiry it was found that the petitioner himself was involved in commission of the acts which constituted an offence under the provisions of Indian Penal Code and that he had also misconducted himself in discharge of his duties as a servant of the DRDA. Respondent No. 3, being a constitutional authority who could not shut its eyes on discovery of commission of a cognisable offence made, recommendations which are the main cause of concern for the petitioner."

9. Lastly, learned Single Judge opined that "thus, it is clear that DRDA, for all practical purposes, is a 'State' and it cannot be said that petitioner is not a public servant and not amenable to the jurisdiction of the Lokayukta."

10. In view of the aforesaid findings, learned Single judge concluded the matter with the following observations: "prima facie grave charges exist against the petitioner. A Government Order has been forged, assets of the petitioner are disproportionate to the known sources of his income and huge public money has been misappropriated. These are all essential ingredients for criminal Trial. They need to be investigated by the respective investigating agencies. Courts cannot come to help of such people only on the ground of hyper-technicalities, if any. This petition does not have any merit and it is also not

maintainable. The petition is accordingly dismissed."

11. Mr. C.B. Pandey, learned counsel for appellant has submitted that the findings of the learned Single Judge itself discloses that the grounds taken by the appellant/petitioner to challenge the summoning order as well as recommendations of Lokayukta has not been dealt with properly.

12. He further pointed out that the Division Bench of this Court in **Special Appeal (Defective) No. 687 of 2010 (State of U.P. v. Pitamber)** has discussed the same; "whether the employees of DRDA are Government employees and are holding posts in the civil services of the State to make applicable Rule 56 of the Fundamental Rules.

13. The Division Bench finally answered this question in the manner that they are employees of DRDA but they are not holding civil post in the service of the State, therefore, Rule 56 of the Fundamental Rules could not apply to them. The question before the Division Bench for consideration was with respect to extension of the provisions of Rule 56 of the Fundamental Rules in regard to enhancement of age of DRDA employees.

14. Mr. C.B. Pandey, learned counsel for appellant further submitted that once it is a settled view of the Division Bench that the appellant being an employee of DRDA does not hold the civil post the appellant could not be subjected for inquiry by the Lokayukta.

15. Section 7 of the Act, 1975 deals with the matters which may be investigated by Lokayukta or UP-Lokayukta Sub-Clause 1(II) reads that "subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, the Lokayukta may investigate any action which is taken by or with the general or specific approval or any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of Section 2."

16. Section 2(j) of the Act defines "public servant", it reads that "public servant" denotes a person falling under any of the following descriptions, and includes, subject to the provisions of sub-section (4) of Section 8, a person who at any time in the past fell under any of the following description:-

Sub-clause V(d) of Section 2(j) reads that "every person in the service or pay of-any society registered under the Societies Registration Act, 1860, which is owned or controlled by the State Government and which is notified by that Government in this behalf in the Gazette.

17. Mr. C.B. Pandey, learned counsel for appellant has submitted that society in question as DRDA is not notified to the State Government to be covered under the Lokayukta Act, 1975, therefore, its employees cannot be subjected for inquiry under the Act, thus, the learned counsel for petitioner has taken all these technical pleas to defend himself from being subjected under the inquiry of Lokayukta.

18. The recommendations made by the Lokayukta is before us. After careful consideration of the recommendations, we find that the Lokayukta has considered the several materials placed before him through witness, which have established the disproportionate assets earned by the petitioner, therefore, on this point, the Lokayukta has recommended the case to deal with under the Prevention of Corruption Act. The appellant has also been found to have filed Income Tax Return based on concealment of facts of the several assessment years before the Income Tax Department. On account of which, apart from all the technicalities, Lokayukta had no option but to refer the matter to the competent authority who is the Hon'ble the Chief Minister and Chief Secretary to take necessary action in the matter. We are of the view that once the serious allegations about the financial irregularities have been established on the basis of evidences, it would not be appropriate for the court to ignore the same only due to technical objections raised by the petitioner against the maintainability of the complaint made before the Lokayukta. We also observe that the Lokayukta acts in the capacity of quasi judicial authority and under Section 12(3) of the 1975 Act, he has been empowered upon his satisfaction to communicate his findings and recommendations along with the relevant documents, materials and evidences to the competent authority to examine the report for necessary action in the matter.

19. Even otherwise, on being reported such financial irregularities committed by the petitioner, there is no reason for this Court to interfere in the order dated 5th June, 2015 passed by learned Single Judge.

20. In the result, special appeal stands dismissed.