

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 656 of 2013

Satyadeo Roy, son of late Munijee Roy, resident of Gaurishankar Nagar
Doranda, P.S. Doranda, P.O. Hinoo, District-Ranchi

..... .. Petitioner

Versus

1.The State of Jharkhand

2. Hon'ble Mr. Justice Amreshwar Sahay (Retd), son of Sri Devi Prasad,
resident of 52 Circular Road presently Lokayukta, Jharkhand P.O., P.S. Lalpur,
District-Ranchi

3. Sri Jyoti Kumar, son of Sri Devi Prasad, resident of Tharpakhna, Lower
Bazar, presently resident of 52 Circular Road, P.O. and P.S. Lalpur, District-
Ranchi

..... .. Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:Mr. Rajeev Kumar, Advocate : Mr. Niraj Kr. Singh, Advocate
For the Resp. No. 2	: Mr. Rajendra Krishna, Advocate : Mr. Pratyush Shounikya, Advocate : Mr. Manish Kumar, Advocate : Mr. Shubham Mayank, Advocate
For the Resp. No. 3	: Mr. A.K. Mehta, Advocate : Mr. Saurabh Swarup, Advocate : Mr. Shubham Malviya, Advocate : Mr. Amit Kr. Sinha, Advocate
For the Lokayukta Office	: Mr. Rajesh Kumar, Advocate

19/ 09.06.2026: Heard Mr. Rajeev Kumar, learned counsel for the petitioner, Mr. Rajendra Krishna, learned counsel for the respondent no.2, Mr. A.K. Mehta, learned counsel for the respondent no.3 and Mr. Rajesh Kumar, learned counsel representing the office of the Lokayukta, Jharkhand, who has been allowed to assist the Court by order dated 05.08.2022.

2. This writ petition has been filed under Article 226 of the Constitution of India for a declaration that order dated 30.04.2012 (Annexure-6) passed by respondent no.2 was contrary to Section 19 of the Jharkhand Lokayukta Act, 2001 read with section 13 (3) (ii) of the Jharkhand Lokayukta Act, 2001 (hereinafter referred to as "Act") and consequently prayer has been made for quashing of the said order. Further

prayer has been made for further declaration that the respondent no. 2 has violated the oath of office as required under section 3(2) read with Schedule 1 of the Act, by having decided complaint (qua lack of integrity) in discharge of official function by the respondent no.3 who is his own brother, instead of delegation of the power to any other officer under section 19 of the Act.

3. Mr. Rajeev Kumar, learned counsel for the petitioner submits that after his retirement the petitioner was appointed as an Audit Officer by Orders of the Hon'ble Chancellor of University vide order no. 1575/GS dt. 1.8.2003. The petitioner continued the said post for certain period but resigned being disgruntled by the hindrances caused and humiliations made by the then Pro Vice Chancellor on 1-12-08 stating facts in the resignation. Learned counsel for the petitioner further submits that petitioner arrears for the service period with the University was not paid and for that purpose he filed a Writ Petition being W.P (C) no. 972/2010 which was disposed off by a Bench of this Court on 5.1.2011 directing the University to settle his claims within a fixed period. He further submits that however no action was taken because the bills were not traceable on the ground that the same were kept under lock and key, was not traceable, because there was an FIR against then Finance Officer Ranchi University and was paid only 25% of the admissible bill. He next submits that the petitioner filed another writ petition being WP(S) No. 5044 of 2011 in which this Court had directed filing of Counter Affidavit on 24-9-2012. On query made by the Court, the learned counsel for the petitioner fairly submits that he is not aware of the fate of that writ petition. He further submits that the petitioner was pursuing the matter with the Ranchi University for payment of his arrears and some News reports had come to the effect that an FIR has been lodged for qua

embezzlement of crores of rupees of U.G.C Fund. Even the role of Registrar Ranchi University was doubted but nothing was done against him. There were lot of rumors. Out of curiosity the petitioner also read the news. He next submits that thereafter the petitioner obtained the certified copy of FIR and seizure list of PS Case No. 364/2010 dated 01-6-2010 and found that it was not at all related to non payment of his bill. He submits that after going through the F.I.R. the petitioner came to know that respondent no.3 was almost everywhere in the entire chain of crime and the investigation towards him was because he was signatory to all advice note but was inconclusive for the reasons best known and probably on that pretext the investigation was kept pending. He next submits that therefore the petitioner approached the office of the Hon'ble Lokayukta, Jharkhand with a request to make investigation/getting investigation be made against respondent no. 3 in view of procrastination of the investigating agency in making investigation on the complicity of respondent no. 3. He refers to said application dated 19.04.2012 contained in annexure-5 of the writ petition. He next submits that the petitioner was expecting investigation and was anticipating to assist the Hon'ble Lokayukta in the matter, but when no information was made to the petitioner, the petitioner went to the office of the learned Lokayukta and thereafter came to know that said petition was dismissed by the order dated 30.04.2012 contained in Annexure-6 to this writ petition. Mr. Rajeev Kumar, learned counsel for the petitioner submits that in the said petition prayer was made for direction to investigate the matter by the Central Bureau of Investigation or Accountant General however, the learned Lokayukta has wrongly rejected the said petition saying that it is not within the purview of Lokayukta as both the agencies are of the central Government. According to

him in the light of Section 19 read with section 13 (3) (ii) of the Act the Lokayukta is competent to pass such order however, he has wrongly stated that is not within the domain of Lokayukta. In course of the argument, he refers to Section 19 as well as section 13 (3) (ii) of the Act and submits that reading both the sections simultaneously, it is crystal clear that Lokayukta has power, as such the impugned order may kindly be quashed and proper direction may kindly be issued. Mr. Rajeev Kumar, learned counsel for the petitioner further submits that the Lokayukta has decided the case of the respondent no.3 who happens to be own brother of Lokayukta and in view of that he has violated the oath of the office in terms of section 3(2) read with schedule 1 of the Act.

4. On the above ground, Mr. Rajeev Kumar, learned counsel for the petitioner submits that declaratory writ can be issued by this Court and to buttress this argument, he relied in the case of "***Shanti Bhushan Vs. Supreme Court of India and Another***" reported in **(2018) 8 SCC 396**.

5. On the point of violating the oath in terms of section 3(2) read with schedule 1 of the Act, learned counsel for the petitioner relied in the case of "***P.D. Dinakaran(1) Vs. Judges Inquiry Committee and others***" reported in **(2011) 8 SCC 380**. He refers to para 41 of the said judgment which is quoted hereinbelow:-

"41. In this case, we are concerned with the application of first of the two principles of natural justice recognized by the traditional English Law, i.e., Nemo debet esse judex in propria causa. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and

undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially."

6. Relying on the above judgment, he submits that if the apprehension of the biasness are there, he was not required to decide the said case.

7. In the above background, learned counsel for the petitioner submits that the writ petition may kindly be allowed.

8. Mr. Rajesh Kumar, learned counsel representing the office of the Lokayukta submits that the learned Lokayukta has rightly passed the order and there is no illegality in the said order and there is no biasness reflected as the order has been passed in correct perspective. He draws the attention of the Court to page 39 of the writ petition and submits that by way of the application the prayer is made for direction to investigate the matter by the Central Bureau of Investigation and Accountant General and both agencies are central agencies. He next submits that if the central agencies are there Lokayukta has no power to direct and that power is based only to the Hon'ble High Court and Hon'ble Supreme Court. According to him for the central agencies the Lokpal can pass appropriate order. He also submits that the Government of Jharkhand has come out with a notification dated 16.02.2006 whereby it has been decided that for the purpose of enquiry the machinery of the State Government like the vigilance and Anti Corruption Bureau can be directed by the Lokayukta for the investigation. He next submits that in view of the said notification it is crystal clear that Lokayukta has no power to pass order to the central agency to make investigation. He

draws the attention of the Court to Section 8 of the Act and submits that by way of the said section certain restriction has been made on the Lokayukta to the effect not to conduct of investigation by the Lokayukta to the conditions disclosed in para 8 of the said Act. He also refers to Section 10(4) of the Act particularly section 4(c) and submits that in view of said provision if the other remedies are there to the complainant the petitioner was required to move before the competent Court of Law. On these grounds, he submits that learned Lokayukta has rightly passed the impugned order and there is no illegality and in view of that the writ petition is fit to be dismissed. He further adds that since there is no illegality in the order and order is not in favour of the respondent no.3 in that view of the matter also the second prayer of the petitioner is also fit to be rejected.

9. Mr. A.K. Mehta, learned counsel for the respondent no.3 draws the attention of the Court to the impugned order and by way of placing the said order he submits that learned Lokayukta has given a reasoned order and has rightly held that the Lokayukta has no power to direct the office of the Accountant General or Central Bureau of Investigation who are the central agencies to conduct investigation. He draws the attention of the Court to section 13 (3) (ii) of the Act and submits that for the purpose of investigation the Lokayukta shall utilize the services of any officer or investigation agency of the State Government only that too with the consent of the State Government. So far next (ii) is with regard to any person or agency are concerned that are also with regard to State agencies. He next submits that in view of this provision it is crystal clear that Lokayukta has rightly passed the order and in view of that this writ petition may kindly be dismissed.

10. He next submits that the petitioner herein has preferred W.P. (PIL) No. 5409 of 2012 before this Court wherein prayer was made of direction to the authorities to make investigation against the respondent no.3. He further submits that however the said PIL has been disposed of by order dated 12.07.2016 on the submission of the learned counsel for the State that investigation was almost complete and a report in terms of section 173(2) of Cr.P.C. shall be filed against the accused without any further waste of time. He next submits that the said F.I.R was tried by the learned court and has already been disposed of by judgment dated 05.10.2024. On these grounds, Mr. Mehta submits that by the efflux of time criminal case has also been tried and disposed of. According to him there is nothing remains in the present writ petition to further investigate against the respondent no.3. He next submits that in view of that the writ petition may kindly be dismissed.

11. Mr. Rajendra Krishna, learned counsel for the respondent no.2 adopted the argument of Mr. Rajesh Kumar and Mr. Mehta and further adds that in the light of section 8(1)(a) read with Third Schedule and submits that if any criminal investigation is pending the Lokayukta is restrained to pass further order of investigation. He also draws the attention of Court to Section 13 (3) of the Act and submits that in view of this Provision the Lokayukta is competent to pass order of investigation to the State agency only. He submits that F.I.R was also registered against Dr. S.K. Prasad, who was the Finance Officer of Ranchi University however, the said Dr. S.K. Prasad has not been made party in the present writ petition.

12. On the point of biasness, Mr. Rajendra Krishna, learned counsel for the respondent no.2 submits that since the order is not passed

in favour of respondent no.3 and applying the provision of law learned Lokayukta has simply dismissed the petition by saying that Lokayukta is not having power to direct the central agency to take up investigation. He submits that in that view of the matter the rule of biasness is not attracted against the respondent no.2 and in view of that this writ petition may kindly be dismissed.

13. In view of above submissions of the learned counsel for the parties the Court has gone through the relevant documents on record as well as provisions of the Act pointed out by the learned counsel for the parties. From the writ petition it is crystal clear that petitioner was himself agitating before the University for payment of his arrears and when it was delayed the petitioner has filed writ petition as noted in the argument of the learned counsel for the petitioner. The petitioner has already filed W.P. (PIL) No. 5409 of 2012 in which prayer was for investigation against respondent no.3. In the said WP (PIL) certain order has been passed and finally investigation was completed and submission was made by the learned counsel for the State that investigation is almost completed and final form will be submitted under section 173(2) of Cr.P.C and in view of that the said WP(PIL) was disposed of by the Division Bench by order dated 12.07.2016. Thus, it is crystal clear that for the alleged fraud the investigation was already done by the State Police. However, the application was filed before the Lokayukta on 17.10.2011 which was decided by the learned Lokayukta by order dated 30.04.2012. The learned Lokayukta has noted in the order that F.I.R has already been registered on 01.6.2010 in Kotwali Police Station against Dr. S.K. Prasad, Ex-Finance Officer and the proprietor of the M/s ESOFNET, Ranchi by the Registrar of the Ranchi University however, prayer

was made by the petitioner which was noted by the learned Lokayukta that thorough investigation by the Central Bureau of Investigation or the Accountant General in order to unearth the irregularities led to the embezzlement. The learned Lokayukta has held that the police has already registered FIR and police is investigating the case and held that the matter is being investigated by the police and there is no parallel investigation is desirable in the said Act. He further held that direction cannot be issued by the Lokayukta upon Central Bureau of Investigation and Accountant General to investigate since Lokayuta has got no jurisdiction on said agencies. The Lokayukta can only direct the State Government agency to investigate. On these grounds, impugned order has been passed and the petition filed by the petitioner was dismissed.

14. In the light of argument of the learned counsel for the parties, the Court is required to answer the point as to whether the learned Lokayukta has rightly passed the order or not, and further bias allegation made against him is correct or not?

15. Section 19 of the Act stipulates the power to delegate by the Lokayukta and Section 13 of the Act speaks of staff of Lokayukta wherein sub-section 3 of the said Act speaks that Lokayukta can direct the State Officer or State Agency to conduct investigation that too with the consent of the State Government and (ii) of the sub-section 3 speaks of any other person or agency which clearly stipulates that other person or agency of the State Government which has been clearly clarified in sub-section 3 of Section 13 of the Act. On clear standing Section 13(3) of the Act is quoted hereinbelow:-

Section 13(3). Without prejudice to the provisions of sub-section (1), the Lokayukta may for the purpose of conducting investigation

under this Act, utilize the services of (i) any officer or investigation agency of the State Government with the concurrence of the State Government, or (ii) any other person or agency.

16. The argument has been advanced by Mr. Rajeev Kumar, learned counsel for the petitioner that that in the light of Section 19 of the Act, the Lokayukta was required to delegate his power. This argument, the Court will answer when the matter of biasness shall be discussed by this Court in the later part of this judgment.

17. Section 8 (1) (a) read with Third Schedule (b) of the Act is quoted hereinbelow:-

8 (1) (a):-If such action relate to any matter specified in the Third Schedule.

Third Schedule (b):- Action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports and travel documents.

18. Section 8 of the Act stipulates that matters not subject to investigation and Section 8(1) (a) stipulates that if such action relate to any matter specified in the Third Schedule and in Third Schedule it is clearly stipulated that action taken for the purpose of investigation crime. In view of section 8 (1) (a) read with Third Schedule (b) of the Act, it is clear that if investigation of crime is already being made, the Lokayukta shall not investigate.

19. Admittedly, the police has already investigated the matter when the impugned order was passed by the learned Lokayukta. In view of the aforesaid provisions, the learned Lokayukta has rightly passed the said order.

20. Further, the prayer of the investigation was made by the Central Bureau of Investigation and the office of Accountant General which

are central agencies. In view of Section 13(3) of the Act, the Lokayukta was only required to take assistance of the State Officials and agencies that too with the consent of the State Government.

21. In view of this provision of law, the learned Loakyukta was not competent to issue direction to take up the investigation by the central agencies. As such it is answered that there is no illegality in the impugned order.

22. So far argument of biasness advanced by the learned counsel for the petitioner is concerned, it is examined in the light of the provision of the Act as biasness against the respondent no.2 is proved or not. Mr. Rajeev Kumar, learned counsel for the petitioner emphasized upon Section 19 of the Act and submits that in the light of said provision, learned Lokayukta was required to delegate his power to other staff in the light of Section 13 of the Act and he has failed to do so and as such biasness is reflected.

23. Now question remains as to whether the power authorize to a body on the basis of the statute that power itself can be delegated to other person or not. The Section 19 of the Act stipulates as under:-

"19.Power to delegate:- The Lokayukta may, by a general or special order in writing, direct that any powers conferred or duties imposed on him by or under this Act (except the power to make reports to the Governor under Section 12) may also be exercised or discharged by such of the officers, employees or agencies referred to in Section 3 as may be specified in the order."

24. The aforesaid section specially deals with the power to delegate and minutely looking into the said Section, it transpires that this provision play vital administrative role by allowing the Lokayukta to manage operational workload, optimize human resources and without streamline investigations without creating an institutional or decision making bottleneck

at the apex level.

25. In view of Section 19 of the Act, Lokayukta is statutory empowered to direct that any of their administrative, verification or investigative function subject to explicit core exceptions can also be exercised, discharged, or performed by specific officers, staff, or agencies subordinate to them.

26. Thus, it is only restricted to the delegation for the purpose of administrative and reducing the work load of the Lokayukta. The main power of the Lokayukta of giving any finding or final evaluation and application of mind on a completed inquiry or investigation report cannot be delegated by the Lokayukta in the light of provision of Section 19 of the Act. The compilation and submission of the Annual or Special Reports to the Governor cannot be delegated in the light of Section 19 of the Act by the Lokayukta.

27. As a general proposition, it is well-settled beyond any controversy, that the maxim "delegatus non-potest delegare", makes sub-delegation unauthorised unless the person on whom the power is conferred is permitted to delegate, expressly or by necessary intendment. This maxim is of general applicability and is not merely confined to a particular sphere of activity, whether granted by an individual to another or conferred by a statute on some person or authority or on the executive. In each case, the nature of the terms of the power must be looked into in order to determine whether any sub-delegation was conferred or intended. The general rule of sub-delegation of statutory, powers has to be looked from the point of view whether the Legislature has conferred a mere administrative power, which generally is exercised by officials sub-ordinate to it, in its name, or whether it is legislative or a quasi-judicial power. In any case, unless the legislature

permits sub-delegation in cases even where it is an administrative power, no sub-delegation can be inferred. The principle no doubt extends to legislative sphere and once this is accepted it will apply equally to administrative and legislative powers.

28. Thus, argument of Mr. Rajeev Kumar learned counsel for the petitioner that Lokayukta was required to delegate his power to the other officer in the light of section 19 read with section 13(3) of the Act, is not tenable.

29. Admittedly, the Lokayukta office is being held by a single person. Article 124(1) of the Constitution of India provides that there shall be a Supreme Court of India consisting of the Chief Justice of India and as such number of other judges as may from time to time prescribed. Article 214 of the Constitution of India provides that every State shall have a High Court and as provided by Article 216 of the Constitution of India every High Court consists of a Chief Justice and as such other judges as may be considered necessary to appoint. If the office of Lokayukta is a multi member body, the matter would have been otherwise.

30. However, the above two articles provide the constitution of Supreme Court and High Court. In the case of Supreme Court and High Court it is well settled that they need not sit *en banc* and can transact business in benches. If any doubt arose before the Judge of the Hon'ble Supreme Court or the High Court in view of the availability of other judges, orders are being passed if any such question has arisen to place the matter before the another Bench with the permission of the Hon'ble the Chief Justice. However, if single body institution is there main power cannot be delegated as this option is not present there as in the case of Hon'ble Supreme Court and the High Court.

31. In this background the doctrine of necessity allowed to be played. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. The doctrine of necessity has been considered by the Hon'ble Supreme Court in the case of **"Election Commission of India and Another Vs. Dr. Subramaniam Swamy and Another"** reported in **(1996) 4 SCC 104** wherein para 16 it has been held as under"-

"16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief. Election Commissioner to participate, if not the doctrine of necessity may have to be he invoked."

32. In view of above judgment if such argument is there, the doctrine of necessity has been allowed to be played and identical is the situation of the office of the Lokayukta as single member institution. When such petition was filed by the petitioner before the learned Lokayukta and there is no other member to take final decision on the said petition applying the doctrine of necessity the learned Lokayukta has got no option to refuse and he was well under his duty to pass appropriate order and accordingly, the learned Lokayukta has passed the order as there was no option to him to delegate his main power in the light of Section 19 read with section 13 of the Act.

33. Further Section 16 of the Jharkhand Lokayukta Act stipulates as

under:-

16. Protection (1). No suit, prosecution, or other legal proceeding shall lie against the Lokayukta or against any officer, employee, agency or persons referred to in Section 13 in respect of anything which is in good faith done or intended to be done under this Act.

(2). No proceedings of the Lokayukta shall be held bad for want of form and except on the ground of jurisdiction to be proceedings or decision of the Lokayukta confer on the Lokayukta such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification."

34. In view of above sub-section 2 of Section 16 of the Act no proceeding of the Lokayukta shall be held bad for want of form except on the ground of jurisdiction and further reading of this section and applying the doctrine of necessity biasness is not proved.

35. In view of this principle and further the reason provided in the impugned order, no biasness is reflected from the said order. The learned Lokayukta has rightly passed the order as per the statute. Further the impugned order is not in favour of the respondent no.3 and only applying the law in the light of the Act, said order has been passed. Further the F.I.R has already been registered and investigation has been done and it has been pointed out that even the trial is also concluded.

36. So far judgment relied by the Mr. Rajeev Kumar, in the case of **"Shanti Bhushan" (supra)** is concerned, the Court is having no doubt that the High Court is competent to issue declaratory writ.

37. In the case of **"P.D. Dinakaran(1) (supra)** this was not the situation and the question of doctrine of necessity has not arisen in that case. The facts and circumstances of that case is otherwise and in view of that said, judgment is not applicable in the facts and circumstances of the present case and further in view of above the biasness against respondent no.2 is not proved.

38. In view of above facts, reasons and analysis the Court comes to the conclusion that there is no illegality in the impugned order. The biasness is not proved against the learned Lokayukta. As such no declaratory writ can be issued in the light of prayer made by the petitioner in the present writ petition. As such this writ petition is dismissed. Pending I.A, if any, stands disposed of.

Dt.09.06.2026

(Sanjay Kumar Dwivedi, J.)

Satyarthi/A.F.R