

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.6393 of 2013

Jai Prakash Narayan Sinha Petitioner

Versus

1. The State of Jharkhand through the Principal Secretary, Department of Forest and Environment, Government of Jharkhand, District-Ranchi, Jharkhand
 2. The Secretary, Lokayukta, having its office at-Old Jail Road, P.O.-G.P.O., P.S.-Lalpur, District-Ranchi, Jharkhand
 3. A.M. Sharma, son of-not known to the petitioner, Conservator of Forest, Territorial Circle Dumka, P.O. and P.S.-Dumka, District-Dumka
 4. Kamrool Haque, son of Late Abdul Aziz Ali, Resident of- Village and P.O.-Barhat, P.S.-Barhat, District-Sahebganj
- Respondents

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioners : Ms. Shilpi Sandil, Advocate
For the State : Mr. P.A.S. Pati, Advocate
For the Resp. No.2 : Mr. Rajesh Kumar, Advocate

14/10.02.2022 The matter has been taken up through video conferencing with the consent of learned counsel for the parties.

2. This writ petition is under Article 226 of the Constitution of India, whereby and whereunder, the order dated 30.09.2013 passed by the respondent no.2 in Case No.1/Lok(Forest)/06/12 has been assailed, primarily on the ground that under the provision of Section 12(3) and Section 12(5)(A), the Lokayukta has got no power to direct the disciplinary authority to take action on the basis of the fact finding report.

3. Ms. Shilpi Sandil, learned counsel appearing for the petitioner submits, by taking aid of the order passed by this Court in W.P.(C) No.263 of 2019 which was disposed of vide order dated 22.04.2019, wherein, the similar issue fell for consideration about the power as has been conferred under the Lokayukta Act, 2001 that the writ petition may be disposed of.

4. This Court, after taking into consideration the import of the statutory provision specifically as provided under Section 12(3)

and 12(5)(k) of the Jharkhand Lokayukta Act, 2001 has come to the conclusive finding that the statute does not provide power for issuance of direction upon the disciplinary authority to take action against the erring officials.

It has been held, therein, that the statute provides power upon the Lokayukta to make recommendation on the basis of the fact finding if any irregularities have been surfaced in course thereof.

The relevant paragraph of the impugned order is being referred as under:-

“14. अतः मैं लोकायुक्त अधिनियम की धारा 12 (3) एवं 12(5)(क) में प्रदत्त शक्तियों के अंतर्गत इस आदेश की प्रति, परिवाद पत्र, जाँच प्रतिवेदन, साक्ष्य एवं लोकायुक्त अधिनियम की धारा 10(1)(क) अंतर्गत निर्गत नोटिस की प्रति सचिव, वन एवं पर्यावरण विभाग, झारखण्ड, राँची को भेजते हुए सभी पाँचों आरोपित लोक सेवकों (1) श्री जे०पी०एन० सिन्हा, भा०व०से०, तत्कालीन वन प्रमंडल पदाधिकारी, साहेबगंज, वर्तमान वन संरक्षक, प्रादेशिक अंचल, देवघर (2) श्री सुशील सोरेन, वन प्रमंडल पदाधिकारी, साहेबगंज वन प्रमण्डल, साहेबगंज, (3) श्री सुशील कुमार प्रसाद, तत्कालीन वन क्षेत्र पदाधिकारी, सकरोगढ़, दामिन वन प्रक्षेत्र, साहेबगंज, वर्तमान वन क्षेत्र पदाधिकारी, सामाजिक वानिकी क्षेत्र, काठीकुण्ड (4) श्री जॉन केरकेट्टा, वन क्षेत्र पदाधिकारी, बड़हरवा, साहेबगंज तथा (5) श्री सुरेश रविदास, तत्कालीन वनपाल, सकरोगढ़, साहेबगंज, वर्तमान वनपाल, बरहेट बीट, साहेबगंज को तत्काल प्रभाव से अपने कार्यों से निलंबित करने, इनके विरुद्ध प्राथमिकी दर्ज करने एवं विभागीय कारवाई प्रारंभ करने की अनुशंसा करता हूँ ताकि भविष्य में इस तरह की घटनाओं की पुनरावृत्ति रोकी जा सके तथा यह आदेशित किया जाता है कि यथा विहित तीन महीनों के अन्दर आरोपित लोक सेवकों के विरुद्ध की गई कारवाई की सूचना दें।”

5. It also requires to refer the relevant paragraph of the order passed in W.P.(C) No.263 of 2019 which reads as under:-

“19. As has been referred hereinabove by referring to the impugned order, wherein, the recommendation has been made to the Director General, Anti-Corruption Bureau to institute an FIR and submit action 18 taken report and when the recommendation is with the action to be taken it cannot be said to be recommendation in the eye of law and keeping the provision of Section 12 of the Act, 2001 wherein only recommendation is to be made by the Hon'ble Lokayukta leaving it open to the competent authority to take action and to submit action taken report and in case of dissatisfaction the Hon'ble Lokayukta will prepare special report with the finding and again submit it before the Governor and also inform the complainant concerned and as per the provision made under Section 5A whether in a report forwarded by the Hon'ble Lokayukta any recommendation imposing the penalty of removal from the office of the public servant had been made, it shall be lawful for the Governor without any further enquiry to take action on the basis of the said

recommendation for the removal of such public servant from his office and for making him ineligible for being elected to any office, meaning thereby a recommendation imposing the penalty of removal is to be made by the Hon'ble Lokayukta only after exhausting the provision as contained in subsection 3, 4 and 5 of Section 12 but that stage has not yet reached as because at the stage of Section 12(3) the recommendation along with the proposal to institute an FIR has been made which is not to be done in view of the provision of Subsection 3 of Section 12 whereby and whereunder he shall by a report in writing communicate his finding and recommendations along with the relevant documents/materials and other evidence to the competent authority, that provision does not reflect that the recommendation by giving a proposal to institute an FIR or to take any penalty is to be made by the Hon'ble Lokayukta before coming to the stage of subsection 4 of Section 12.

In view of the entirety of the fact and circumstances, the recommendation having been made by the Hon'ble Lokayukta cannot be said to be in consonance with the statutory provision as contained in Act, 2001 and for that the matter could have been remitted before the Hon'ble Lokayukta but considering the nature of allegation if it will be remitted it will time consuming and therefore, this Court being given power conferred under Article 226 deem it fit and proper instead of removing the matter to pass a fresh order to modify the order impugned in terms as indicated hereinbelow the direction part wherey and whereunder the recommendation to institute an FIR has been made the same is held to be not in consonance with subsection 3 of Section 12 of the Act, 2001 and therefore the said part of the order is quashed and the impugned order is modified to the extent to treat the order impugned as recommendation of the Hon'ble Lokayukta in terms of the provision as contained in Section 12(3) of the Act 2001.

Although this Court is interfering with the direction part of the Hon'ble Lokayukta, keeping the provision of law into consideration, as discussed above, that does not be construed to be an interference with the findings of recommendation, as has been recommended/recorded by the Hon'ble Lokayukta for the reason that the High Court sitting under Article 226 of the Constitution of India, cannot exercise the power of appeal, sitting over upon the findings given by the Hon'ble Lokayukta, based upon various evidence came before it by virtue of the enquiry reports.

Therefore, the authority before whom, the finding along with the recommendation has been sent, is directed to act strictly in pursuance to the provision of Section 12 of the Act, 2001, so that the purpose for which, the Lokayukta Act, 2001 as has been enacted, be achieved,

keeping this into consideration the Chief Secretary of the State is directed to ensure compliance of this order.

Further, it is directed that the authority will not be prejudiced in any way while acting as per the recommendation and will take a decision without being prejudiced by this order.

Needless to say that the authority will follow the time schedule, as stipulated in the provision of law.

The writ petition stands disposed of with the observations and direction aforesaid."

6. Learned counsel appearing on behalf of the parties at bar has submitted that the order passed in W.P.(C) No.263 of 2019 has not been assailed before the Higher Forum and as such, the same has attained its finality.

Learned counsel for the respondents has not made opposition to the submissions made on behalf of the petitioner, rather fairly submits that the writ petition may be disposed of in terms of the order dated 22.04.2019 passed in W.P.(C) No.263 of 2019.

7. This Court after taking into consideration the judgment passed in the aforesaid case (W.P.(C) No.263 of 2019) and putting reliance upon the aforesaid paragraph as quoted and referred above, is of the view that the instant writ petition can be disposed of on the basis of the aforesaid order.

8. This Court, has come to the fact of the given case and gone across the order passed by the learned Lokayukta in order to test, as to whether the order passed therein is a recommendation or a direction.

9. Ms. Shilpi Sandil, learned counsel appearing for the petitioner has submitted by referring to paragraph-14 of the aforesaid order, wherein the learned Lokayukta has recommended for suspending the petitioner along with others as also instituting an FIR and to initiate departmental proceeding.

She further submits that if the order would have been up to the stage of recommendation, the matter would have been different, but if the next part of the said direction will be seen

which contains a direction upon the concerned competent authority to whom the recommendation has been made, to inform about the action taken report.

According to her, if the authorities making recommendation, since it is not binding upon the decision taking authority having the competency to take decision to follow the recommendation, is not required to know about its outcome. Since, therein the outcome is to be communicated to the Lokayukta, which suggest that the same is a direction in the garb of recommendation.

10. However, Mr. P.A.S. Pati, learned counsel appearing for the State as also Mr. Rajesh Kumar, learned counsel appearing for the learned Lokayukta have submitted that the contention which has been raised by the learned counsel for the petitioner is not correct in view of the fact that only recommendation has been made by the learned Lokayukta and merely because the outcome of the recommendation has been directed to be communicated to the Office of the learned Lokayukta that cannot be construed to be a direction in the strict sense.

11. This Court, has considered the rival submissions on behalf of the parties and gone across the impugned order more particularly the operative part of the order impugned at paragraph-14 thereof and found therefrom that the order has been passed making the recommendation to the competent authority to suspend the petitioner along with other public servants whose names has been referred at paragraph-14 of the impugned order and to initiate departmental proceeding, apart from that, an FIR has also been recommended to be instituted.

It further appears that after making such recommendation, the stipulation has been made to the effect that such recommendation is being made, so that, in future such occurrence may not be repeated.

Further, the order has been passed upon the concerned authority to communicate the Office of the learned Lokayukta about the action taken report within the period of three months.

Thus, it is evident that the order impugned, initially, contains recommendation of suspending the public servants and initiating the departmental proceeding against them as also instituting an FIR. If the order would have been up to the stage of recommendation, then it would have been said to be in consonance with the provision of Section 12(3) and 12(5)(k) under which the power has been conferred by the Lokayukta to take decision by making recommendation before the competent authority, so that, the recommendation, if required be acted upon.

But the stipulation as has been made to the effect that such recommendation is being made, so that, such occurrence may not be repeated and the action taken report be also furnished within the period of three months, is changing the nature of recommendation making it as a direction.

12. Therefore, according to the considered view of this Court, since the provision of Section 12(3) does not confer power upon the Lokayukta to pass such direction commanding upon the disciplinary authority to take action against whom irregularities have been found to be true in course of inquiry.

13. This Court, relying upon the judgment rendered by this Court in W.P.(C) No.263 of 2019, is of the view that the order passed by the Lokayukta (impugned) is required to be modified to the extent that the aforesaid order will be treated to be recommendation.

14. Therefore, the authority before whom, the finding along with the recommendation has been sent, is directed to act strictly in pursuance to the provision of Section 12 of the Act, 2001, so that the purpose for which, the Lokayukta Act, 2001 as has been

enacted, be achieved, keeping this into consideration the Chief Secretary of the State is directed to ensure compliance of this order.

Further, it is directed that the authority will not be prejudiced in any way while acting as per the recommendation and will take a decision without being prejudiced by this order.

15. In view thereof, the instant writ petition stands disposed of.

16. In consequence thereof, I.A.No.2043 of 2016 and I.A.No.7980 of 2013 stand disposed of.

(Sujit Narayan Prasad, J.)

Rohit/-