



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 13213/2022 & CM APPLs. 39980/2022, 43537/2022**

SHIBU SOREN

..... Petitioner

Through: Mr. Kapil Sibal, Senior Advocate and
Mr. Arunabh Chowdhury, Senior
Advocate with Mr. Krishnaraj
Thaker, Ms. Pragya Baghel, Mr.
Vaibhav Tomar and Ms. Aparajita
Jamwal, Advocates.

versus

LOKPAL OF INDIA & ANR.

..... Respondents

Through: Mr. Tushar Mehta, SGI with
Mr. Apoorv Kurup, CGSC, Mr. Akhil
Hasija, Ms. Gauri, Mr. Shivash
Dwivedi and Ms. Kirti Dadeech, Mr.
Ojaswa Pathak and Ms. Apoorv Jha,
Advs. for R-1/LOI.
Mr. Atmaram NS Nadkarni, Sr.
Advocate with Mr. Rishi K. Awasthi,
Mr. Piyush Vatsa and Mr. Shubham
Saxena, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for quashing the complaint bearing Complaint No. C-38/2020-Lokpal pending before Respondent No.1/Lokpal of India. The Petitioner has also prayed for quashing Orders dated 05.08.2020, 15.09.2020 and 04.08.2022 passed by Respondent No.1 in the said Complaint.



2. The Petitioner herein is a sitting Member of the Parliament in Rajya Sabha nominated from the State of Jharkhand. The Petitioner is also the President of the Jharkhand Mukti Morcha, a State Political party in the State of Jharkhand. The complainant (Respondent No.2 herein) is also a Member of Parliament in Lok Sabha from Godda, Jharkhand.

3. It is stated that Respondent No.2, filed a complaint which was registered as Complaint No. C-38/2020-Lokpal with Respondent No.1 herein. It is alleged in the said complaint that the Petitioner in his name and in the name of his family members including sons, daughters, daughters-in-law, friends, associates and various companies etc. has acquired several immoveable properties including plots of lands (residential, commercial and built up properties) in various districts of Jharkhand such as Ranchi, Dhanbad, Dumka etc.

4. It is also alleged that the Petitioner and his family members including his son have invested in various companies owned by one Amit Agarwal and his family members. It is stated that the said Amit Agarwal is a very close friend of the Petitioner's family. The complaint states that all the companies owned by Amit Agarwal despite having shown consistent losses in their books of accounts, have been purchasing large properties in and around Ranchi and Kolkata.

5. It is stated that the Petitioner has acquired properties completely disproportionate to his known sources of income. It is also stated in the complaint that the Petitioner has been indulging in corrupt practices for many years and has illegally usurped huge portions of the lands belonging to poor tribals of the Santhal tribe at throwaway prices much below the prevailing circle rates. It is also alleged that these properties have been



purchased by the Petitioner abusing/misusing his official position and obtaining undue advantage from third parties. It is also alleged in the complaint that the Petitioner and his family members have falsely declared themselves as residents of various districts of the State of Jharkhand and have violated the provisions of Chotanagpur Tenancy Act, 1908 while acquiring properties situated in these districts. The complaint also states that the family members of the Petitioner have bought lands admeasuring 30 khatas situated at Harmu, Ranchi in Jharkhand which is worth about Rs.3 crores as per the two sale deeds dated 06.02.2009 and 04.03.2009. The complaint contains a list of the properties, which have been allegedly acquired illegally by the Petitioner and his relatives. The complaint also makes allegations that the Petitioner and his family members have violated various provisions of the Prevention of Corruption Act and Benami Properties Act inasmuch as properties have been bought in the name of the companies of Amit Agarwal and his family members.

6. It is also stated that Amit Agarwal had constructed a 22 storey building in Salt Lake, Kolkata in which the Petitioner and his family members have invested huge amounts of money. It is stated that various shell companies have been incorporated for giving donations to the Jharkhand Mukti Morcha which is a Political Party and the Petitioner is the President of that Party.

7. The complaint has been filed in the format as prescribed under the Lokpal and Lokayuktas Act, 2013 read with Lokpal (Complaint) Rules, 2020. On receipt of the complaint, on 15.09.2020, Respondent No.1 passed an order in terms of Section 20(1) (a) of the Lokpal and Lokayuktas Act, 2013, (*hereinafter referred to as the 'Act'*) directing the Central Bureau of



Investigation (CBI) to conduct a preliminary inquiry against the Petitioner to ascertain whether there exists a *prima facie* case for proceeding in the matter.

8. Vide Order dated 21.01.2021, a period of 30 days was granted by Respondent No.1 to the CBI to file a preliminary report. The time was further extended *vide* Order dated 31.05.2021.

9. On 01.07.2021, comments were sought from the Petitioner as required under Section 20(2) of the Act, on the nature of acquisition, cost of construction and source of funds for the 82 properties annexed to the said notice on or before 15.07.2021. A reply was given by the Petitioner on 10.07.2021 informing that he was not the owner of the said properties. The Petitioner sought additional time of 60 days to submit his comments. The Petitioner *vide* letters dated 17.08.2021 and 08.09.2021 requested for a copy of the complaint to be served to him. Meanwhile letters dated 14.10.2021, 17.11.2021 and 06.12.2021 were also sent to the Petitioner by the CBI, calling upon the Petitioner to submit his comments on information regarding the alleged assets as sought *vide* letter dated 01.07.2021.

10. A copy of the complaint was finally served upon the Petitioner on 17.02.2022. The Respondent *vide* letter dated 15.03.2022 also granted a final opportunity to the Petitioner to submit his comments on or before 01.04.2022. The Petitioner on 01.04.2022 addressed a letter to the Respondent No. 1 submitting a detailed response regarding the properties alleged to have been owned by him in addition to raising certain preliminary objections of Lokpal's jurisdiction to inquire into the matter.

11. After concluding its preliminary investigation, the CBI submitted its report on 29.06.2022.



12. The Petitioner has filed the instant writ petition challenging the complaint and various orders passed therein primarily contending that the complaint itself ought not to have been entertained by Respondent No.1 since it is hit by Section 53 of the Lokpal and Lokayuktas Act, 2013. He also contends that the time limit mentioned in the Act has not been complied with in the enquiry process.

13. It is further stated in the writ petition that the report dated 01.07.2021 was not a final report. Replies have been sought from the Petitioner and a final report was given only on 29.06.2022, which is way beyond time limit prescribed under section 20(4) of the Act, and cannot be taken into account at all.

14. Notice in the writ petition was issued by this Court on 12.09.2022. Replies have been filed.

15. The primary contention raised by the learned Senior Counsel for the Petitioner is that the impugned complaint is *ex-facie* barred by limitation and Respondent No.1 could not have proceeded at all in the complaint. It is contended that since the complaint has been made after 7 years after the alleged acquisition of properties as mentioned in the Annexure to the complaint, which constituted the subject matter of the allegations in the complaint, the Lokpal under Section 53 of the Act is barred from initiating any investigation or inquiry on the same. It is contended that Part-A of the complaint requires a certification from the complainants that the alleged offence in which the present complaint is made within seven years (limitation as laid down under Section 53 of the Lokpal and Lokayuktas Act, 2013). It is stated that the certificate is, therefore, wrong and not only should the complaint be dismissed but proceedings must be initiated against the



complainant under Section 46 & 47 of the Act for making false, frivolous and vexatious complaint for which the complainant is liable to imprisonment which may extend to one year and with a fine of Rs. 1 lakh. It is further contended that Lokpal was obligated to examine whether the impugned complaint was admissible and not barred under Section 53 of the Act before taking cognizance under Section 20(1) of the Act and directing a preliminary enquiry be conducted, which was not done in the present case.

16. It is also submitted that the Petitioner had no knowledge nor any notice was provided to the Petitioner of the Order dated 15.09.2020 wherein the CBI was directed to commence with the preliminary inquiry as under Section 20(1) of the Act.

17. it is further argued that the hearing under Section 20(3) of the Act which took place *vide* Order dated 04.08.2022, is a step towards ascertainment of a *prima facie* case. This is also without jurisdiction if the bar of limitation is made clear at the stage of consideration of the preliminary report itself. It is contended that the language of Section 53 of the Act makes is mandatory in nature as the Statute is couched in prohibitive language, where the provisions are unequivocal and unqualified. Reliance is placed on Lachmi Narain v Union of India (1976) 2 SCC 953 and Fairgrowth Investments Limited v Custodian (2004) 11 SCC 472.

18. It is also submitted that Respondent No. 1 failed to consider the contention on a bar by limitation which was earlier raised by the Petitioner *vide* his response dated 01.04.2022. It is further submitted that from the list of alleged properties in question, only one property is owned personally by the Petitioner and that too was acquired prior to the period of seven years before filing of the complaint. Moreover, the two properties acquired within



the said period, as per the preliminary report submitted by the CBI, were acquired by the political party Jharkhan Mukti Morcha and cannot be personally attributable to the Petitioner.

19. It is further contended that the maximum statutory limit of 180 days for the completion of a preliminary inquiry as prescribed under Section 20(4) of the Act expired in the present case on 01.02.2021, therefore, the grant of a further extension of 1 month for completion of the preliminary inquiry vide Order dated 31.05.2021 is illegal, void and ought not to be considered by the Respondent No. 1. It is submitted that the Act does not provide jurisdiction to Respondent No. 1 to grant any further extension above and beyond 180 days and such a grant herein goes beyond the powers conferred under Statutory Authority. It is also contended that no action could be taken on the basis of a report which has been given after the time prescribed under the Act.

20. In any event it is contended by the petitioner that the issues raised in the complaint have already been considered by the Apex Court in PIL filed before it in State of Jharkhand v Shiv Shankar Sharma SLP © No. 10622/2022 and Hemani Soren v Shiv Shankar Sharma SLP© No. 11364-11365/2022. The SLPs were filed against the orders passed by the Jharkhand High Court in W.P. No. (PIL) 4290 of 2021 and W.P. No. (PIL) 727 of 2022 entertaining the PILs filed before it with allegations against the then Chief Minister of Jharkhand, being Mr. Shibu Soren, for having amassed huge wealth by corrupt means and by abusing the office of the Chief Minister and investment of money in about 32 companies with the prayers as to enquire into the same and direct investigation. The Supreme Court by its judgements allowed the appeal and set aside the order dated 03.06.22 of the Jharkhand



High Court. Therefore, it is submitted that the issue stands fully covered by the Apex Courts judgement which ought to be considered in the present case.

21. *Per contra*, the learned Solicitor General of India appearing for the Respondents submitted that the objective of enacting the Lokpal and Lokayuktas Act was to provide a framework for establishment of bodies at the National and State level to inquire into allegations of corruption against certain public functionaries and its purpose had to be read and applied in conjunction with the Prevention of Corruption Act, 1988.

22. It is contended that on receipt of a complaint bearing Complaint No.C-38/2020 dated 05.08.2020 which has allegations of amassing huge wealth, properties and assets by unscrupulous means, abuse of position as a public servant by obtaining pecuniary benefits from various persons, development of properties such a 'Sohari Bhavan' and 'Eden Girls Hostel' and huge investments in various companies, a Full Bench of Lokpal after careful scrutiny and regard as to the nature of the allegations decided to further proceed by directing that the CBI carry forth a preliminary inquiry under Section 20(1) of the Act, in order to ascertain the existence of a '*prima facie*' case. It is therefore submitted that at this stage, there need not be any further obligation towards determination of the merits of a complaint and that such complaints needs not be rejected at the threshold merely on the basis of certain alleged dated and events, the veracity of which is not adequately scrutinised at this stage.

23. It is also contended that the relevance of the date on which offence mentioned is alleged to be committed, cannot be seen at the stage of preliminary enquiry since there may be instances where the



disproportionality of the property may set in at a later date from the date of acquisition as possession of disproportionate properties are in the nature of a continuing offence. Moreover, with reference to Section 13(1)(b) Explanation 1 of the Prevention of Corruption Act, 1988, the case of disproportionate assets can also be extended to properties possessed by others on behalf of the public servant and need not only be attributable to him. Therefore, the feasibility of applying Section 53 of the Act is not correct and by doing so it may defeat the purpose of the Act.

24. It is further submitted that the complaint and the Petitioner's response on examination of the final preliminary report submitted by the CBI to the Lokpal on 29.06.2022, Respondent No. 1 deemed it necessary to provide a hearing to the petitioner as per Section 20(3) of the Act before a decision is to be made on the existence of a *prima facie* case. It is submitted that even at this stage, the matter that the complaint is barred by limitation very much stands open to adjudication and no final view has been formed, including on the issue of limitation. It is therefore submitted that the Lokpal may always consider applying Section 53 of the Act after hearing the public servant concerned under Section 20(3), the said writ petition filed by the Petitioner is premature. It is also submitted that Section 20(1) does not envisage a hearing to the persons being proceeded against at this stage of ordering of a preliminary inquiry and as per the scheme of the Act, comments are sought under section 20(2) only after directions are passed to the effect that a preliminary inquiry be commenced with and a hearing may be granted as under Section 20(3).

25. It is further contended that the time limit prescribed under Section 20(2) and Section 20(4) of the Act to submit a report and complete the



preliminary investigation as provided for under Section 20(1) of the Act, from the date of reference made to the Lokpal, is not immutable and a strict application of the same is prone to being misused by public servants. It is further contended that in cases where consequences flowing from non-compliance are not statutorily provided for, the statutory time lines are to be read as directory in nature. Reliance is placed on the Apex Court's decisions in Kailaksh v. Nankhu (2005) 4 SCC 480 and Inspector General of Registration v. K. Baskaran (2020) 14 SCC 345 in this regard.

26. It is submitted that the CBI on 01.07.2021 submitted a report to the Lokpal intimating that comments were sought from the Petitioner as required under Section 20(2) of the Act, which was duly considered by Lokpal which directed the CBI to obtain comments and documents of the Petitioner's family vide Order dated 29.07.2021. It is submitted that due to not receipt of the comments and documents on time, the matter was again placed before the Lokpal on 31.08.2021 wherein an extension of 30 day was given for the same. It is additionally submitted that the Petitioner vide letter dated 10.07.2021 sought a period of 60 days to submit their comments on the matter and a subsequent letter dated 08.09.2021 seeking a copy of the complaint on which the order directing the preliminary enquiry was passed by the Lokpal on 15.09.2020. The Petitioner further made requests to the Respondent for a copy of the complaint and Order dated 15.09.2020 which was considered by a Full Bench of the Lokpal and Order dated 27.01.2022 was passed and directions were given to provide the same to the Petitioner along with a direction to the Petitioner and his family members to submit their comments and responses within 4 weeks i.e. by 07.03.2022. The Petitioner sought a further extension till 01.04.22 for the same vide letter



dated 11.03.2022 and the same was granted to the Petitioner. The Petitioner thereafter submitted his reply through a letter dated 01.04.2022, which was received and the Lokpal vide Order dated 06.05.2022 directed that the said comments be sent to the CBI for examination and furnishing of the inquiry report. In view of the said order, the CBI after due consideration submitted a final preliminary report dated 29.06.2022.

27. It is therefore submitted that the process of enquiry in cases of such nature involve collection and verification of information and documents from multiple locations and different authorities coupled with the petitioner and family members themselves seeking more time to submit their responses and comments, which were granted in the interest of justice. It is therefore contended that the purpose of such an inquiry would be defeated if the preliminary enquiry process is held to be strictly limited to the periods stipulated in Sections 20(2) and 20(4) of the Act.

28. Heard learned Counsels for the parties and perused the material on record.

29. The Apex Court in State of Madhya Pradesh. vs. Ram Singh, (2000) 5 SCC 88 has defined that corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and



destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

30. It has also been held by the Apex Court that the efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. [Refer to:- Swatantar Singh v. State of Haryana and Others, (1997) 4 SCC 14; K.C. Sareen v. CBI, (2001) 6 SCC 584; Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64; State of Gujarat and Anr. v. Justice R.A. Mehta(Retd.) and Ors., (2013) 3 SCC 1].

31. The Lokpal and Lokayuktas Act, 2013 has been brought for establishment of a body of Lokpal for the Union and Lokayukta for the States to inquire into allegations of corruption against public functionaries. A perusal of the Statement of Objects and Reasons of the Lokpal and Lokayuktas Act indicates that the Administrative Reforms Commission way back in the year 1966 gave a report "Terms of Redressal of Citizens Grievances" recommending setting up of an institution of Lokpal at the Centre. The introduction to the Act reveals that the Lokpal and Lokayuktas Act is an anti-corruption law in India which has been established and the office of the Lokpal and Lokayukta has been established to inquire into corruption against public functionaries and for matters connecting them. The Act creates a mechanism for receiving and initiating complaints against public functionaries including the Prime Minister, Ministers etc. and prosecute them in a time bound manner.

32. Section 3 of the Lokpal and Lokayuktas Act, 2013, deals with



establishment of Lokpal. Section 3 of the Act reads as under:-

"3. Establishment of Lokpal.—

(1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—



(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession."

33. A perusal of the above Section indicates the establishment of a Lokpal consisting of a Chairperson who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfills the eligibility specified in Section 3(3)(b) and the Members have to be judicial members, i.e., the Person must be either a sitting or a retired



Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court. The Chairperson of the Lokpal has to be a sitting or retired Chief Justice of India or a sitting or a retired Judge of the Supreme Court or a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than 25 years in the matters of anti-corruption policy, public administration, vigilance, finance including insurance, banking, law and management.

34. The Act also provides that the Chairperson or a Member of the Lokpal shall not be Member of Parliament or a Member of the Legislature of any State or Union Territory and shall not be a person convicted of any offence involving moral turpitude and any person who is appointed as a Member of the Panchayat or Municipality or a person who has been removed or dismissed from service of the Union or the State or any person who is affiliated with the political party or carries on business or practice any profession is ineligible to be appointed as Lokpal unless the person resigns from the said practice or profession.

35. A perusal of the above Section shows that the institution of Lokpal is insulated from any outside pressure and it is a completely independent body and acts uninfluenced by any kind of pressure. A reading of the Act shows that the Act has been primarily brought in to instill confidence in the public regarding the integrity of persons holding high offices in the country including the Prime Minister. The Act provides for checks and balances also to ensure that persons holding high offices are not unnecessarily harassed by making stale complaints. Chapter VII of the Act deals with the procedure in respect of the preliminary inquiry and investigation.

36. Section 20 of the Act reads as under:-



"20. Provisions relating to complaints and preliminary inquiry and investigation.-

(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003:

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003:

Provided also that before ordering an investigation



under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation: Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;



(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may—

(a) grant sanction to its Prosecution Wing or



investigating agency to file chargesheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations."

37. A perusal of Section 20 of the Act shows that the Lokpal on the



receipt of the complaint does not immediately order for investigation by an agency including CBI unless there exists a *prima facie* case. A perusal of Section 20 of the Act also indicates that instead of ordering the investigation, the Lokpal first orders for a preliminary inquiry to ascertain whether there exists a *prima facie* case or not.

38. On receipt of the direction to conduct a preliminary inquiry, the agency appointed conducts preliminary inquiry on the basis of the material information and documents which it can collect. The agency also can seek comments on the allegations made against the public servant. The agency has to give a report within a period of 90 days and can seek for further time of 90 days. Section 20(1)(a) and Section 20 (3)(a) of the Act both mandates that before directing investigation to be done by any agency or the Delhi Special Police Establishment, the Lokpal has to call for explanation from the public servants so as to determine whether there exists a *prima facie* case for investigation. After hearing the public servant it is always open for the Lokpal to direct closure of the proceedings against the public servant and proceed against the complainant under Section 46(1) of the Act against the complainant for filing a false complaint. The facts of the present case reveal that a notice has been given to the Petitioner under Section 20(3) of the Act when the Petitioner chose to approach this Court by filing the instant writ petition. The contention of the Petitioner primarily is that the complaint on the face of it does not disclose any offence which can be prosecuted under the Act.

39. A perusal of the complaint shows that the complaint lists 57 properties standing in the name of the Petitioner, his sons, his wife, his brothers-in-law and other family members in the complaint regarding



purchase of the properties through one Amit Agarwal, who is also facing investigation under the Income Tax Act. The complaint also made allegations that properties have been purchased in the name of shell companies through Amit Agarwal.

40. The last report filed by the CBI lists 82 properties two of which are in the name of the Petitioner and others in the name of the Petitioner's other family members including his wife, sons and daughters-in-law. Barring first two properties which are acquired in the name of the Party, all other properties have been purchased prior to seven years from the date of the complaint. However, there are two properties which have been purchased within the period prescribed under Section 53 of the Act which has been purchased in the name of the Party. It is alleged that the said properties were purchased through the Petitioner. Therefore, the complaint cannot be dismissed at the threshold itself.

41. The preliminary report contains details of one Amit Agarwal who is the Director of M/s Rajesh Auto Merchandise Private Limited and Tamanna Commosales Private Limited having financial transactions with Jharkhand Mukti Morcha. The report also reveals that Amit Agarwal is facing investigation from Income Tax Department. The report also reveals that the CBI is awaiting details regarding the accounts and investigations of Amit Agarwal.

42. The short question which arises in this case is whether this Court, while exercising its discretion under Article 226 of the Constitution of India before the report is considered by the Lokpal, should dismiss the complaint on the ground that it is hit by Section 53 of the Act or not, or whether all the contentions raised before this Court should be advanced before the Lokpal in



the inquiry to be held under Section 20(3) of the Act or not.

43. The whole purpose of the Act is to ensure purity in public service. In the process of statutory construction, the court must construe the Act before it and the attempt should always be to further the approach of the Act and to make it workable. It is trite law that if the choice is between two interpretations, the narrower of which will fail to achieve the purpose of Legislation then such construction or interpretation of the Act must be avoided as it will reduce the Legislation to futility. The Statute is designed to be workable and the interpretation thereof of a Court should be to secure that object unless crucial omission or clear direction makes that end untenable. [Refer to:- Whitney v. Inland Revenue Commissioner, 1926 AC 37].

44. In State of Gujarat v. Hon'ble Mr. Justice R. A. Mehta (Retd) & Ors. (2013) 3 SCC 1, the Apex Court observed as under:-

"93. The adverse impact of lack of probity in public life leads to a high degree of corruption. Corruption often results from patronage of statutory/higher authorities and it erodes quality of life, and it has links with organised crimes, economic crimes like money laundering, etc., terrorism and serious threats to human security to flourish. Its impact is disastrous in the developing world as it hurts the poor disproportionately by diverting funds intended for development. Corruption generates injustice as it breeds inequality and become major obstacle to poverty alleviation and development. The United Nation Convention Against Corruption, 2003 envisages the seriousness and magnitude of the problem. December 9 has been designated as International Anti-Corruption Day. India is a party to the said Convention with certain reservation.



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95. Corruption in a society is required to be detected and eradicated at the earliest as it shakes “the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society”. Liberty cannot last long unless the State is able to eradicate corruption from public life. Corruption is a bigger threat than external threat to the civil society as it corrodes the vitals of our polity and society. Corruption is instrumental in not proper implementation and enforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a subject-matter of grave concern and requires to be decisively dealt with.

*96. In the process of statutory construction, the court must construe the Act before it bearing in mind the legal maxim *ut res magis valeat quam pereat* which means it is better for a thing to have effect than for it to be made void i.e. a statute must be construed in such a manner so as to make it workable. Viscount Simon, L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* [1940 AC 1014 : (1940) 3 All ER 549 (HL)] stated as follows : (AC p. 1022)*

“... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.”

*97. Similarly in *Whitney v. IRC* [1926 AC 37 (HL)] it was observed as under : (AC p. 52)*

“... A statute is designed to be workable, and the



interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.”

98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. “The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.” The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and “to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico”. The court must give effect to



the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide M. Pentiah v. Muddala Veeramallappa [AIR 1961 SC 1107] , S.P. Jain v. Krishna Mohan Gupta [(1987) 1 SCC 191 : AIR 1987 SC 222] , RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424 : AIR 1987 SC 1023] , Tinsukhia Electric Supply Co. Ltd. v. State of Assam [(1989) 3 SCC 709 : AIR 1990 SC 123] , SCC p. 754, para 118, UCO Bank v. Rajinder Lal Capoor [(2008) 5 SCC 257 : (2008) 2 SCC (L&S) 263] and Grid Corpn. of Orissa Ltd. v. Eastern Metals and Ferro Alloys [(2011) 11 SCC 334] .)"

45. Similarly, the Apex Court in the Grid Corporation of Orissa Limited & Ors. v. Eastern Metals and Ferro Alloys & Ors., (2011) 11 SCC 334, has observed as under:-

" 25. This takes us to the correct interpretation of Clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where



the language of the provision is capable of more than one construction. (See Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1995) 2 SCR 603] and Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907 : 1958 SCR 360] and generally Justice G.P. Singh's Principles of Statutory Interpretation, 12th Edn., published by Lexis Nexis, pp. 124 to 131, dealing with the rule in Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] .)"

46. The Lokpal is yet to apply its mind on the material provided by the CBI as to whether an investigation is necessary or not. It is well settled that while conducting an inquiry, the material that can be unearthed is limited compared to the material that is unearthed when an investigation is conducted by a competent authority.

47. It is well settled that writ courts while exercising jurisdiction under Article 226 of the Constitution of India do not interfere if the matter is pending adjudication before an authority unless it is a case of patent lack of jurisdiction or where the nature of inquiry is for allegations which are so absurd and inherently improbable on the basis of which no prudent person can reach a just conclusion or where the proceedings have been initiated are so manifestly attended with malice or the proceedings are initiated with the intention of wrecking vengeance on a person with a view to spite him due to any political or oblique motives.

48. It is also well settled that the writ courts while exercising jurisdiction under Article 226 of the Constitution of India should not impinge on the mechanism provided under the Act unless as stated earlier when there is a patent lack of jurisdiction or that the complaint is vexatious which requires interference. Writ Courts cannot substitute themselves as an authority which



has been vested with a duty under the Statute to consider as to whether there is material in it or not for ordering investigation. The writ petition, therefore, is premature in nature.

49. The contention of learned Senior Counsel for the Petitioner that the entire complaint is completely motivated and Lokpal would invariably order for investigation cannot be accepted. As stated earlier, the Office of Lokpal is completely independent and an argument that the Lokpal would be influenced by political consideration cannot be countenanced. This allegation that the proceedings before the Lokpal is vitiated and can be politically motivated, cannot be accepted.

50. The Lokpal will examine the entire matter independently and shall take a decision as to whether an investigation has to be ordered or not which order is always amenable for challenge under Article 226 of the Constitution of India. The CBI has submitted a preliminary inquiry and the Lokpal has to take a decision as to whether to proceed further in the case or not.

51. The argument of the Petitioner that Section 20(4) of the Act is mandatory and the enquiry report which has been submitted as per the Act cannot be accepted. The said Section does not contemplate any adverse consequence if the procedure is not adhered to. The Apex Court in Serious Fraud Investigation Office v. Rahul Modi & Anr., **2019 (5) SCC 266**, while dealing with the time limit prescribed under Section 212 of the Companies Act which gives time limit for conducting an investigation within the time limit, has observed as under:-

"34. It is well settled that while laying down a particular procedure if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not



taken to be mandatory and is considered to be purely directory. Furthermore, the provision has to be seen in the context in which it occurs in the statute. There are three basic features which are present in this matter:

1. Absolute transfer of investigation in terms of Section 212(2) of the 2013 Act in favour of SFIO and upon such transfer all documents and records are required to be transferred to SFIO by every other investigating agency.

2. For completion of investigation, sub-section (12) of Section 212 does not contemplate any period.

3. Under sub-section (11) of Section 212 there could be interim reports as and when directed.

In the face of these three salient features it cannot be said that the prescription of period within which a report is to be submitted by SFIO under sub-section (3) of Section 212 is for completion of period of investigation and on the expiry of that period the mandate in favour of SFIO must come to an end. If it was to come to an end, the legislation would have contemplated certain results including retransfer of investigation back to the original investigating agencies which were directed to transfer the entire record under sub-section (2) of Section 212. In the absence of any clear stipulation, in our view, an interpretation that with the expiry of the period, the mandate in favour of SFIO must come to an end, will cause great violence to the scheme of legislation. If such interpretation is accepted, with the transfer of investigation in terms of sub-section (2) of Section 212 the original investigating agencies would be denuded of the power to investigate and with the expiry of mandate SFIO would also be powerless which would lead to an incongruous situation that serious frauds would remain beyond investigation. That could never have been the idea. The only construction which is possible, therefore, is that the prescription of period within which a report has to be submitted to the



Central Government under sub-section (3) of Section 212 is purely directory. Even after the expiry of such stipulated period, the mandate in favour of SFIO and the assignment of investigation under sub-section (1) would not come to an end. The only logical end as contemplated is after completion of investigation when a final report or “investigation report” is submitted in terms of sub-section (12) of Section 212. It cannot, therefore, be said that in the instant case the mandate came to an end on 19-9-2018 and the arrest effected on 10-12-2018 under the orders passed by the Director, SFIO was in any way illegal or unauthorised by law. In any case, extension was granted in the present case by the Central Government on 14-12-2018. But that is completely beside the point since the original arrest itself was not in any way illegal. In our considered view, the High Court completely erred in proceeding on that premise and in passing the order under appeal.

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42. *One of the questions which fell for consideration in these appeals and was ably argued at length by the learned Senior Counsel for both the parties was in relation to the scope, extent and the purpose of Section 212 of the Companies Act, 2013 (hereinafter referred to as “the Act”) and, in particular, whether the compliance of sub-section (3) of Section 212 of the Act is mandatory or directory and, if so, why.*

43. *As rightly reasoned out by my learned Brother Lalit, J., having regard to the scheme of the Act underlined in Chapter XIV (Sections 206 to 229 of the Act) dealing with the matters relating to inspection, inquiry and investigation of the companies in juxtaposition with Chapter XXIX which prescribes the punishment/penalties for commission of various offences specified under the Act, the compliance of*



sub-section (3) of Section 212 of the Act is essentially directory."

52. A perusal of Section 20 of the Act shows that the intention to provide a timeline to complete the report is to ensure that the public servant against whom the inquiry procedure is completed at the earliest, without subjecting the public servant to any harassment.

53. The ratio of the judgment in Rahul Modi (supra) indicates that when a consequence of not adhering to the procedure is not provided, then such a provision should be treated as directory in nature and not mandatory. Had the Legislature intended so, then the consequence would have been provided and the same would be mandatory for the Lokpal to close the complaint if the preliminary inquiry report is not filed within 180 days. Rather Section 20(3) of the Act shows that on considering the report if the Lokpal is of the opinion that the matter requires investigation, it can order for investigation. The purpose of the Act is to unearth corruption. Though the purpose of Section 53 of the Act and the timeline is only to prevent unnecessary harassment of the public servant but that cannot override the basic purpose for which the Act was brought in which is to prevent corruption in high offices.

54. Furthermore, the contention of the learned Counsel for the Petitioner that the matter stands fully covered via the Apex court's judgments in State of Jharkhand v Shiv Shankar Sharma SLP © No. 10622/2022 and Hemani Soren v Shiv Shankar Sharma SLP© No. 11364-11365/2022c cannot be accepted. The Apex Court set aside the order dated 03.06.22 of the Jharkhand High Court in W.P. No. (PIL) 4290 of 2021 and W.P. No. (PIL) 727 of 2022 on the ground that cognizance of the matter ought not to have



been taken and that it was not proper for the PIL to have been entertained by the Jharkhand High Court based on generalised submissions and allegations which fail to carve out a prima facie case. The issue was ruled on maintainability and the threshold for entertaining a PIL without going into the merits of the allegations. In the case at hand however, investigation forms a part of the Prevention of Money Laundering Act 2022 proceedings where the mandate of section 20 of the Act provides for ascertainment of a 'prime facie' case which is the process of being made out. Therefore, the Apex Courts observations on maintainability of PILs by the High Court of Jharkhand in the present matter will not have any bearing over questions dealing with investigations under section 20(3) of the Act.

55. This Court, therefore, does not want to enter into this realm at this juncture and it is for the Lokpal to take a decision as to whether there is sufficient material to proceed further for investigation or not in order to subserve the purpose for which the Act has been brought out.

56. Resultantly, without making any observation on the merits of the case, the writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 22, 2024

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