

Ch. Rama Rao

Vs

Lokayukta and Others

Special Leave Petn. (C) Nos. 10754-55 of 1996

(K. Ramaswamy, Faizanuddin, G. B. Pattanaik JJ)

09.05.1996

ORDER

1. These special leave petitions arise from the judgment of the Andhra Pradesh High Court made on 23-4-1996 in W.P. Nos. 8274 and 8715/96. An order was made by the Government on April 2, 1996 in GOMS No.62 granting certain amount to the Director of Medical Education for expansion of the works in the Osmania General Hospital, Hyderabad. Two generators were to be erected in the hospital. The petitioner was required to submit the report on the estimates. In furtherance thereof, the petitioner submitted the report to the Superintendent Engineer and tenders were called for. It would appear that several people had submitted their tenders and the initial estimate was of Rs.15 lakhs and odd for one set of the generator. Subsequently, it would appear that the estimate was increased to Rs.21 lakhs per set. In that behalf, an anonymous complaint came to be made before the Lokayukta of A.P. constituted under S.3 of the A.P. Lokayukta & Up Lokayukta Act, 1983, (Act No.II of 1983) (for short, the 'Act'). After conducting preliminary investigation, the Lokayukta came to submit his interim order dated March 29, 1996 prohibiting purchase of the two sets and also by interim report dated April 6, 1996 directed the Government either to suspend the petitioner or to transfer him and to take similar action on the Superintendent Engineer as well. The petitioner came to challenge the two orders in the above writ petitions. In the writ petitions, the petitioner challenged the constitutionality of Ss.3, 4, 7 and 12 of the Act as ultra vires Arts. 14, 16, 19, 21, 226 and 311 of the Constitution of India. He also challenged the validity of the interim report. The High Court dismissed the writ petitions upholding their validity. On the question of interim report, the High Court declined to interfere with it holding that the High Court declined to interfere with it holding that the High Court is devoid of jurisdiction to go into the merits of the interim report. Thus, the petitioner has filed these SLPs.

2. As regards the constitutionality of the above provisions, in fairness, Mr. A. Subba Rao, learned counsel appearing for the petitioner, had not pressed the same in these SLPs stating that the matters are pending adjudication in another appeal. But he seriously objected to the procedure adopted by the Lokayukta in submitting the report for taking action against the petitioner for suspension of him or to transfer him to any other place. According to the learned counsel, the Lokayukta has no jurisdiction to take action and Up-Lokayukta came to be appointed under the Act. We find no force in the contention.

3. Sub-section (1) and (2) of S.7 give power to Lokayukta and Up-Lokayukta respectively to investigate into any action concerning persons respectively mentioned therein. Sub-sec. (3) of S.7 enables Lokayukta, notwithstanding the power conferred under sub-sec. (2) thereof on the Up-

Lokayukta to take suo motu action in respect of any action contemplated under the Act. Therefore, the only condition precedent required thereunder is to record reasons for initiating suo motu enquiry divesting the power of the Up-Lokayukta and taking action under sub-sec. (3) of S.7 of the Act. It is next contended that the petitioner has not been given any opportunity before submitting the report to the Government and the action is contrary to S.10 read with S.12 of the Act. We find no force in the contention.

4. The Lokayukta is empowered under the Act to conduct such preliminary verification as he deems fit or proposes to conduct any investigation under the Act to find whether the allegation in the complaint prima facie justify for conducting regular investigation. Sub-sec. (2)(a) of S.10 postulates that every preliminary verification referred to in sub-sec. (1) shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the said preliminary verification shall not be disclosed to the public or the press whether before or during the preliminary verification, but every investigation referred to in sub-sec. (1) shall be conducted in public. In other words, the statutory provisions contemplates that while conducting preliminary verification of the complaint under sub-sec. (1) of S.12, the investigation is required to be made in confidentiality and on satisfying from the investigation of the alleged misconduct, etc. He is empowered to take further action under the Act. He is also empowered under S.11 to collect evidence or have the investigation done as a Civil Court by operation of sub-sec. (2) of S.11 of the Act only when he satisfies that there is an evidence to proceed further under S.10(1)(b). At that stage, he shall afford an opportunity to the aggrieved person to comment on such complaint or the statement and conduct the investigation or enquiry. He is enjoined to give reasonable opportunity to the public servant. After conducting the said enquiry, if he finds that the public servant or the person referred committed misconduct, then he is required to submit the report to the Government as enjoined under S.12 of the Act. On receipt thereof, under sub-sec. (3), it shall be lawful for the Government to take action as recommended by the Lokayukta.

5. Considered from the operational conspectus of the above provisions, it would not be necessary to issue any notice or give opportunity to a public servant at preliminary verification or investigation. When the Lokayukta or Up-lokayukta, as the case may be, conducts a regular investigation into the complaint, it would be necessary to give prior opportunity to the public servant etc. By implication, such an opportunity stands excluded when preliminary verification or investigation is conducted. The object appears to be that the preliminary investigation or verification is required to be done in confidentiality to get a prima facie evidence so that the needed evidence or material may not be got suppressed or destroyed. It is seen from the report submitted by the Lokayukta, that he has prima facie found that there are some allegations against the petitioner. We are not dealing with the nature of the allegations since the matters are yet to be investigated. Suffice it to state that the Lokayukta has power to submit a preliminary report to take further action so as to enable the Lokayukta to conduct further investigation. The power to submit final report with recommendation to take punitive or penal action includes power to submit interim report with recommendation to suspend an officer or to transfer him pending further investigation or the preliminary verification itself. The object of the recommendation is only to enable smooth enquiry or the investigation conducted without being hampered with by the persons concerned or to prevent an opportunity to tamper with the record or to destroy the record. Under these circumstances, we think that the Lokayukta was well justified in not issuing any notice or giving any opportunity to the petitioner at preliminary verification.

6. The special leave petitions are accordingly dismissed. Petitions dismissed.