

SUPREME COURT OF INDIA

Rang Nath Mishra

Vs.

State of U.P.

C.A.No.3581 of 2015

(Ranjan Gogoi and N.V.Ramana JJ.)

10.04.2015

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. The challenge in this appeal is to the order dated 11th November, 2011 passed by the High Court of Judicature at Allahabad in Writ- C No.62471 of 2011 by which the writ petition filed by the appellant has been dismissed.

3. The challenge in the writ petition, inter alia, was against the report dated 4th October, 2011 of the Lokayukta, U.P. containing the following recommendations:

"(1) The Charged Public Servant, Minister of Secondary Education, Shri Ranga Nath Mishra, as the sources of income of the properties earned by him from 2007 onwards are not known, therefore, for prosecution under section 13(1)(e) of the Prevention of Corruption Act, 1988, criminal investigation be got done by an independent agency like C.B.C.I.D. or Uttar Pradesh Vigilance Commission, and his prosecution be considered to be initiated. (2) On the basis of the illegal possession of the Gram Sabha land of Gat No.666 Mi/O.106 Hect. in Village Aurai, Bhadohi, District Sant Ravi Das Nagar, the proceedings be initiated against the charged Public Servant Shri Ranga Nath Mishra, under Section 122 of the Abolition of Zamindari Act, and the concerned Dy. District Collector should register the case and the aforesaid land of the Gram Sabha be ordered to be released from his

possession. |(3) |During the aforesaid criminal || proceedings and release of the land || from his possession, for taking || independent action as per the || |Investigation Unit and as per the || rules of the competent authority, || |the Charged Public Servant, Minister| || of Secondary Education, be removed || |from the portfolio of the Minister || so that the aforesaid legal || |proceedings could be carried out || independently. |(4) |The Criminal Investigation be done || |through such an agency which can || |also investigate into the || investments of such properties made || |in the State and outside the State. |(5) |The compliance report in respect of || |the aforesaid recommendations be || made available within a month." |

4. As the aforesaid recommendations of the Lokayukta, U.P. have been implemented and necessary action in terms thereof has been taken, the relief prayed for in this appeal has been truncated to a declaration that the aforesaid report dated 4th October, 2011 of the Lokayukta, U.P. is contrary to the mandatory procedure prescribed under the U.P. Lokayukta & Up-Lokayuktas Act, 1975 (for the sake of convenience hereinafter referred to as "the Act") and that the said report suffers from vice of non- application of mind.

5. The brief facts antecedent to the report dated 4th October, 2011 of the Lokayukta, U.P. may now be conveniently taken note of at the outset.

It appears that the respondent No.4 in the present appeal, Swami Nath Misra, had submitted an undated complaint to the Hon'ble President of India, Prime Minister of India, Governor of U.P., Lucknow and Chairman, Central Board of Direct Taxes, Income Tax Department, New Delhi demanding an enquiry in to the alleged acquisition of huge assets by the appellant who was then serving as a Cabinet Minister in the State of Uttar Pradesh. The said complaint was reiterated by a reminder dated 27th August, 2010 which was, inter alia, addressed to the Lokayukta, U.P. A communication dated 18th October, 2010 was addressed to the appellant by the Secretary of the Lokayukta, U.P. intimating him that the Lokayukta, U.P. has decided to hold a preliminary enquiry into the complaint, a copy of which was forwarded to the appellant. The said letter dated 18th October, 2010 was followed by another letter dated 18th November, 2010. It appears that the 2nd communication (reminder) dated 27th August, 2010 sent by the complainant, inter alia, to the Lokayukta, U.P. was not accompanied by an affidavit of the complainant which apparently was filed later i.e. on 22nd December, 2010. This was done apparently when the appellant had demanded that a copy of such affidavit be made available to him. Thereafter, a letter dated 14th

February, 2011 was sent by the office of the Lokayukta, U.P. to the appellant intimating him that the complaint filed against the appellant has been accepted for investigation. The appellant raised an objection dated 10th April, 2011 with regard to the maintainability of the complaint on the ground of its improper presentation and also on the ground that the complaint was not supported by an affidavit of the complainant, as required. No specific order was passed on the said objection raised by the appellant. Instead, correspondences were exchanged by and between the office of the Lokayukta, U.P. and the appellant seeking and submitting the replies of the appellant and the documents in support of the stand taken by the appellant in the said replies. Eventually, the report dated 4th October, 2011 was submitted, the contents of which have already been noted. It is the legality and the legitimacy of the said report rendered in the aforesaid circumstances that was challenged before the High Court resulting in the decision dated 11th November, 2011 which has been impugned in the present appeal before us.

6. The facts and events that have occurred after submission of the report dated 4th October, 2011 of the Lokayukta, U.P. may now be taken note of.

On the basis of the said report of the Lokayukta, U.P. the then Chief Minister of the State of Uttar Pradesh had dropped the appellant from the Council of Ministers on the very next day i.e. 5th October, 2011. Thereafter, an Open Vigilance Enquiry against the appellant was ordered and on the basis of the report of the said enquiry a decision was taken that a criminal case under the Prevention of Corruption Act, 1988 be instituted against the appellant by the Vigilance Department of the State. Accordingly, a FIR was filed against the appellant which was duly investigated and charge-sheet dated 30th July, 2013 was filed in the court of competent jurisdiction. Cognizance of the offences alleged was taken and subsequently on 19th August, 2013 charges have been framed against the appellant in the Court of the learned Special Judge (Prevention of Corruption Act), Varanasi under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988. The appellant is presently facing trial in the said case.

7. Insofar as the recommendations of the Lokayukta, U.P. with regard to the Gram Sabha land allegedly in the possession of the appellant is concerned, the enquiries held had exonerated the appellant.

8. We have heard Dr. Rajeev Dhawan, learned Senior Counsel appearing for the appellant and Mr. Ravi Prakash Mehrotra, learned counsel for the State of Uttar Pradesh. We have also considered the written arguments submitted for and on behalf of the parties.

9. The challenge made by the appellant primarily revolves around the maintainability of the complaint filed by the 4th respondent and the legality and legitimacy of the procedure adopted by the Lokayukta, U.P. in making the recommendations set out in the report dated 4th October, 2011.

10. To appreciate the arguments advanced by the rival parties it will be necessary to take note of the relevant provisions of the Act which are extracted below:

7. Matters which may be investigated by Lokayukta or Up-Lokayukta.-
(1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf the Lokayukta may investigate any action which is taken by, or with the general or specific approval of - (i) a Minister or a Secretary; and (ii) any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of section 2; or (iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta, in this behalf. (2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Up-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1). (3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Up-Lokayukta under that sub-section. (4) Where two or more Up-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them, matters which may be investigated by them under this Act: Provided that no investigation made by an Up-Lokayukta under this Act, and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order. 8. Matters not subject to investigation.- (1) Except as hereinafter provided, the Lokayukta or an Up-Lokayukta shall not conduct any investigation under this Act- (a) except on a complaint made under and in accordance with section 9; or

(b) in the case of a complaint involving a grievance in respect of any action,- (i) if such action relates to any matter specified in the Third Schedule; or (ii) if the complainant has or had any remedy by way of proceeding before any Tribunal or Court of law: Provided that nothing in sub-clause (ii) shall prevent the Lokayukta or an Up-Lokayukta from conducting an investigation if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to a remedy referred to in that sub-clause. (2) The Lokayukta or an Up-Lokayukta shall not investigate any action,- (a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850), by the Government of India or by the State Government; or (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), by the Government of India or by the State Government. (3) The Lokayukta or an Up-Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 19. (4) The Lokayukta or an Up-Lokayukta shall not investigate,- (a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant; (b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place: Provided that the Lokayukta or an Up-Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause. (5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Up-Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised. (6) The Lokayukta or an Up-Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) or sub-clause (v) of clause (j) of section 2. 9. Provisions relating to complaints- (1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokayukta or an Up-Lokayukta- (a) in the case of a grievance, by the person aggrieved; (b) in the case

of an allegation, by any person other than a sitting public servant: Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorized by him in this behalf. Provided further that in the case of a grievance involving a complaint referred to in sub-clause (ii) of clause (d) of section 2, the complaint may be made also by an organization recognized in that behalf by the State Government. (2) Every complaint shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary together with all documents in his possession or power pertaining to the accusation and a sum of Two thousand rupees shall be paid as security along with the complaint, in respect to complaint involving allegation, filed under the Uttar Pradesh Lokayukta and Up-Lokayuktas (Complaint) Rules, 1977. (3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings and affidavits respectively. (4) Not less than three copies of the complaint as well as of each of its annexures shall be submitted by the complainant. (5) A complaint which does not comply with any of the foregoing provisions shall not be entertained. (6) Notwithstanding anything, contained in sub-sections (1) to (5), or in any other enactment, any letter written to the Lokayukta or Up-Lokayukta by a person in police custody, or in gaol or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other persons in charge of such gaol, asylum, or other place, and the Lokayukta or Up-Lokayukta, as the case may be, may entertain it and treat it as a complaint, but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under sub-section (2).

10. Procedure in respect of investigations.-(1) Whether the Lokayukta or an Up-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he- (a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned; (b) shall afford to the public servant concerned an opportunity to offer his comments on such complaints; and (c) may make such orders as to the safe custody of

documents relevant to the investigation, as he deems fit. (2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation: Provided that, the Lokayukta or an Up-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so. (3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Up-Lokayukta considers appropriate in the circumstances of the case. (4) The Lokayukta or an Up-Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or, an allegation, if in his opinion-

- (a) the complaint is frivolous or vexatious, or is not made in good faith; or
- (b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or
- (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta or an Up-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned. (6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

THE THIRD SCHEDULE

[See SECTION 8 (1) (b) (i)]

- (a) Action taken for the purpose of investigating crime or protecting the security of the State.
- (b) Action taken in the exercise of powers in relation to determining whether a matter shall go to, or shall continue to be prosecuted in a court or not.
- (c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration of the Government or of the local authority or other corporation, company or society, as the case may be, with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligations.
- (d) Action taken in respect of appointments other than an appointment referred to in clause (ii) of clause (d) of section 2, removals, pay, discipline, superannuation or other matters

relating to conditions of || |service of public servants but not || |including action relating to claims, for || |pension, gratuity, provident fund or to any|| |claims which arise on retirement, removal || |or termination of service. || || || |(e) Grant of honours and awards." |

11. Dr. Rajeev Dhawan, learned Senior Counsel appearing for the appellant has very strenuously urged that the investigation/enquiry undertaken by the Lokayukta, U.P. in the present case being in respect of a matter covered by the Third Schedule is barred under the provisions of Section 8(1)(b)(i) of the Act read with the Third Schedule. It is further argued that there was no complaint to the Lokayukta, U.P. as mandatorily required under Section 9 and assuming that the reminder dated 27th August, 2010 can be treated as a complaint it was not supported by an affidavit of the complainant. Dr. Dhawan has further argued that under Rule 5 of the Uttar Pradesh Lokayukta and Up-Lokayukta Complaint Rules, 1977 (hereinafter referred to as "the Rules") framed under the Act, a complainant can be granted an opportunity to make up the deficiencies in the complaint within a fixed period. The provisions of the said Rules, however, cannot override the requirement of filing an affidavit which is mandated by Section 9(2) of the Act. Alternatively, it is urged that even if the said deficiency i.e. absence of the affidavit of the complainant can be cured what had happened in the present case is that the said affidavit of the complainant was filed on 22nd December, 2010 whereas notice of preliminary enquiry was issued to the appellant on 18th October, 2010. Dr. Dhawan has further argued that in the present case no preliminary enquiry was held inasmuch as no decision on such preliminary enquiry was communicated to the appellant as required under the Act. Furthermore, it is urged that the Lokayukta, U.P. in the present case had acted in undue haste inasmuch as though the appellant on 29th September, 2011 had prayed for 15 days' time to furnish the requisite documents, the report was published on 4th October, 2011 without reference to and due consideration of the request made by the appellant. Lastly, it is urged that there was no investigation in the case as mandated by the Act and no opportunity of personal hearing was afforded to the appellant.

12. Controverting the aforesaid submissions made on behalf of the appellant, Shri Ravi Prakash Mehrotra, learned counsel for the State of Uttar Pradesh has urged that the objections raised by the appellant before this Court are mere reiterations of what has been urged before the High Court. All such pleas were adequately considered by the High Court in the impugned order dated 11th November, 2011 and there is no basis to reopen the said findings and conclusions of the High Court. Pointing out the provisions of Section 10(3) of the Act, Shri Mehrotra has urged that the procedure for conducting a proceeding under the Act would be as may be

considered appropriate by the Lokayukta in the facts of any given case. Shri Mehrotra has further urged that in the present case on receipt of the report of the Lokayukta necessary action has been taken and presently a criminal trial is pending against the appellant. There will, therefore, be no basis for this Court to interdict the report of the Lokayukta.

13. We have considered the submissions made on behalf of the parties.

14. It is correct that on 18th October, 2010 when the appellant was intimated by the office of the Lokayukta that a decision has been taken to hold a preliminary enquiry into the complaint filed by the respondent No.4 and a copy of the complaint along with the enclosures thereto were forwarded to the appellant, the complaint filed was not supported by an affidavit of the complainant - respondent No.4. The said fact was pointed out by the appellant in his letter dated 20th December, 2010 addressed to the Secretary, Lokayukta, U.P. Thereafter, it appears that the complainant had filed an affidavit on 22nd December, 2010 in support of the complaint. The said affidavit was taken on record and thereafter a letter dated 14th February, 2011 was sent by the Under Secretary of the Lokayukta, U.P. informing the appellant that the complaint filed by the 4th respondent has been accepted for investigation. Though not expressly mentioned the reception/acceptance of the affidavit of the complainant filed belatedly was permissible in view of the provisions of Rule 5 of the Rules. Thereafter, the appellant raised his objections regarding the maintainability of the complaint and the affidavit filed. Instead of passing a specific order on the aforesaid issue of maintainability raised by the appellant it appears that communications were addressed by the office of the Lokayukta, U.P. to the appellant asking for submission of replies and documents which communications were duly responded to by the appellant from time to time i.e. 5th July, 2011, 5th August, 2011 and 24th August, 2011. The said facts would indicate that the preliminary objection raised by the appellant did not find favour of the Lokayukta. The same was not expressly recorded but clearly evident from the steps taken in continuance of the proceeding which was not objected to by the appellant.

15. On receipt of the documents submitted by the appellant on the various dates mentioned above, the office of the Lokayukta, U.P. by letter dated 20th September, 2011 asked for further documents from the appellant i.e. consolidated audited balance sheet of last three years of Keshav Prasad Indravati Devi Smriti Seva Samiti, Modern Girls Inter College, Abhaypur, Keshav Prasad Indravati Devi Balika Inter College Sahsepur, the Registration Certificate of Income Tax made in Form 12-A in respect of Keshav Prasad Indravati Devi Smriti Seva Samiti and

copies of Income Tax Return filed in Form 7 in last three years in respect of Keshav Prasad Indravati Devi Smriti Seva Samiti. The appellant by letter dated 29th September, 2011 asked for 15 days' time. Instead on 4th October, 2011 the report of the Lokayukta, U.P. was submitted.

16. Though the first complaint (undated) submitted by the respondent No.4 was not addressed to the Lokayukta, U.P., the reminder dated 27th August, 2010 was addressed, inter alia, to the Lokayukta, U.P. If that is so, there is no reason why the same cannot be understood to be a complaint to the Lokayukta, U.P. for further action on the basis thereof. If reception/acceptance of a subsequent affidavit of the complainant in support of a complaint filed earlier is contemplated by Rule 5 of the Rules, we do not see why any fault can be found in the action of the Lokayukta, U.P. in accepting the affidavit dated 22nd December, 2010 submitted by the complainant. Though the notice dated 18th October, 2010 for preliminary enquiry was issued at an earlier stage, it is by the communication dated 14th February, 2011, (after receipt of the affidavit dated 22nd December, 2010) that the appellant was informed that the complaint of the respondent No.4 has been accepted for investigation under Section 10(1)(a) of the Act. If, in the light of the aforesaid facts, the Lokayukta, U.P. had decided to proceed further in the matter and had issued communications to the appellant asking for his reply and documents in defence which were adequately responded to by the appellant on several dates, as noticed earlier, we do not see how the appellant can be understood to be justified in raising the issue of defect of procedure before the High Court and before this Court. The capitulation of the relevant dates and events leave no room for doubt that all requirements under the Act have been complied with in the instant case.

17. While it is correct that the report of the Lokayukta was submitted without affording any opportunity of personal hearing to the appellant and the request for time for submission of the documents made by the appellant on 29th September, 2011 was refused by the Lokayukta, the said facts cannot constitute good and sufficient basis for this Court to find fault with the conduct of the proceedings by the Lokayukta, U.P. in view of the provisions of Section 10(3) of the Act which, as already noticed, leaves to the Lokayukta the discretion to adopt such procedure as may be considered appropriate in the given facts of the case. No prejudice also has been caused to the appellant who had taken part in the proceedings at every stage. The refusal to grant further time to the appellant, an issue over which some grievance has been raised, is a matter of discretion vested in the Lokayukta and any decision thereon either way cannot be a legitimate basis for interference.

18. Before parting, the issue with regard to the jurisdiction of the Lokayukta to proceed in the instant matter in view of the provisions of the Third Schedule to the Act must be answered. What the Third Schedule to the Act contemplates is that the Lokayukta in the course of an investigation under the Act will not investigate a crime or determine the question as to whether the matter "shall go to, or shall continue to be prosecuted in a court or not". In the present case, the recommendations of the Lokayukta were merely for an investigation as to whether a case for prosecution of the appellant is made out or not. Accordingly, the matter was investigated and presently is under trial in a court of competent jurisdiction. All the said subsequent facts as noted in details at the very outset make it clear that even if the contentions of the appellant with regard to the Third Schedule to the Act are to be accepted, (we make it clear that we do not accept the same), the question that would arise has become wholly academic.

19. In the light of the above, we find no merit in this appeal. It is accordingly dismissed, however, without any order as to costs.