SUPREME COURT OF INDIA

Joint Secretary, Political Department, Government of Meghalaya

Vs.

High Court of Meghalaya

C.A.No.2987 of 2016

(Dipak Misra and Shiva Kirti Singh,JJ.)

18.03.2016

JUDGMENT

Dipak Misra, J.

(@ Special Leave Petition (Civil) No. 6825 of 2016)

1. New York Times, in the Editorial, "The Frankfurter Legacy," on September 2, 1962, while stating about the greatness of Felix Frankfurter, chose the following expression:-

> "History will find greatness in Felix Frankfurter as a justice, not because of the results he reached but because of his attitude toward the process of decision. His guiding lights were detachment, rigorous integrity in dealing with the facts of a case, refusal to resort to unworthy means, no matter how noble the end, and dedication to the Court as an institution. Because he was human, Justice Frankfurter did not always live up to his own ideal. But he taught us the lesson that there is importance in the process."

2. Almost two decades and two years back, the Court in *Tata Cellular v. Union of India*[1] referred, with approval, the following passage from Neely, C.J[2] :-

> "82. ... 'I have very few illusions about my own limitations as a Judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1262 cases a year with five Judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.' "

3. Regard being had to the directions issued by the High Court, this Court in *Census*

[2]Bernard Schwartz in *Administrative Law*, 2nd Edn., p. 584

Commissioner and others v. R. Krishnamurthy [3] commenced the judgment in the following manner:-

> "The present appeal depicts and, in a way, sculpts the non-acceptance of conceptual limitation in every human sphere including that of adjudication. No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as sentinel so that virtuousness is constantly sustained. Not for nothing, centuries back Francis Bacon[4] had to say thus:
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> "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. Let the Judges also remember that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne."

4. The necessity has arisen again for reiteration of the fundamental principle to be adhered to by a Judge. It is because the order impugned herein presents a sad scenario, definitely and absolutely an impermissible and unacceptable one.

5. Presently, to the facts of the case. A writ petition forming the subject matter of Writ Petition (Civil) No. 319 of 2015 was registered under the caption "Suo motu cognizance of appointment of Lokayukta and failure to constitute Meghalaya State Human Rights Commission". By the impugned order dated 14.12.2015, the High Court referred to clause (a) of sub-section (2) of Section 3 of the Meghalaya Lokayukta Act, 2014 (for brevity, "the Act") and proceeded to deal with the same. In that context, it has passed the following order:- "The provision providing such eligibility criterion requires judicial scrutiny; for: the same eligibility cannot be provided for the Chairperson and for a Member other than the Judicial Member of the Lokayukta. Besides, the Central Lokpal and Lokayukta Act of 2013 does not prescribe any eligibility criteria for Lokayukta and Up- Lokayukta. That apart, other States including State of Karnataka and State of Madhya Pradesh, looking to adjudicatory nature of work, has provided the eligibility criteria like a former Judge of Supreme Court; a Chief Justice of High Court or a Judge of High Court, whereas, the eligibility criteria provided in the Meghalaya Lokayukta Act, 2014, inter alia includes a criterion whereby an eligible non-Judicial person can also be appointed as the Chairperson. Hence, issue notice. During the pendency of this writ petition, the portion of clause (a) of sub-section (2) of Section 3, which reads as ". or an eminent person who fulfills the eligibility specified in clause (b) of sub-section (3)"; and consequently, "Sub-clause (b) of Sub-section (3) of Section 3" insofar as it provides for the offending criterion for the appointment of the Chairperson is hereby stayed."

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[4]Bacon, "Essays: Of Judicature in I The Works of Francis Bacon" (Montague, Basil, Esq ed., Philadelphia: A Hart, late Carey & Hart, 1852), pp. 58-59.

6. After passing the said order, the High Court has proceeded to deal with the appointment of the Chairperson and Members of the Meghalaya State Human Rights Commission. Dealing with the said facet, it had directed as follows:-

> "Now, coming to the appointment of the Chairperson and Members of the Meghalaya State Human Rights Commission, Hon'ble the Apex Court has, vide order dated 24.7.2015 in Crl.M.P. No. 16086 of 1997 in Crl.M.P.No.4201 of 1997 (Shri Dilip K. Basu v. State of West Bengal and Ors) has directed various States including the State of Meghalaya to set up the State Human Rights Commission within six months and to fill up the vacancy of Chairperson and Members of State Human Rights Commission within 3 (three) months from the date of order. As towards compliance of the aforesaid directions of Hon'ble the Apex Court, the State of Meghalaya has not initiated the process of appointment of the Chairperson and Members of the State Human Rights Commission, we direct the Chief Secretary, State of Meghalaya, to file affidavit showing the status of processing of the file for the appointment of the Chairperson and other Members of the State Human Rights Commission on the next date of hearing. Besides, we also make it clear, that the State shall specify the name of Hon'ble former Judge of Supreme Court and Hon'ble former Chief Justice of High Court, who have been offered the appointment as Chairperson. The State shall also clearly indicate as to who are the Judges of High Court and other non-Judicial persons who have been offered the appointment as the Chairperson/Members of the Commission. This information is required to maintain transparency in the process of appointment on the posts as aforesaid."

7. Be it noted, the Division Bench has appointed two counsel as Amicus Curiae and directed the Registrar General to settle their professional fee to be paid by the Department of Law, Government of Meghalaya.

8. Mr. Ranjan Mukherjee learned counsel appearing for the appellant has submitted that the State has no cavil over the directions relating to constitution of the State Human Rights Commission by appointment of Chairperson and Members. In course of hearing, the learned counsel has submitted that the State shall appoint the Chairperson and Members of the State Human Rights Commission as per law by end of June, 2016. That being the concession by Mr. Mukherjee on behalf of the State which, we think, is absolutely fair, there is no need to advert to the said aspect. It is also urged by Mr. Mukherjee that the State would not have challenged the said part of the order as it understands its responsibility and further when the High Court has issued the direction, the State is obliged to respect the same as it is in consonance with the legal position. The cavil, Mr. Mukherjee would put it, pertains to the observations made by the High Court and the stay order passed in respect of the provision relating to eligibility prescribed under the Act. It is urged by him that there had been no assail to the constitutional validity of the said provision and, therefore, the High Court could not have suo motu taken up the same, especially when the language employed is also similar to the Lokpal and Lokayuktas Act, 2013 passed by the Parliament.

9. To appreciate the submission, it is necessary to note that Chapter II of the Act deals with Establishment of Lokayukta. Sections 3 reads as follows:-

> "Section 3. Establishment of Lokayukta.—(1) As soon as after the commencement of this Act, there shall be established, by notification in the Official Gazette, a body to be called the "Lokayukta".
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> (2) The Lokayukta shall consist of-
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> (a) a Chairperson, who is or has been a Chief Justice of the High Court or a Judge of the High Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and
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> (b) such number of members, not exceeding four out of whom fifty percent shall be Judicial Members.
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> (3) A person shall be eligible to be appointed,-
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> (a) as a Judicial Member if he is or has been a Judge of the High Court or is eligible to be a Judge of the High Court;
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> (b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, 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.
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> (4) The Chairperson or a Member shall not be —
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> (i) a member of Parliament or a member of the Legislature of any State or Union territory;
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> (ii) a person convicted of any offence involving moral turpitude;
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> (iii) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;
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> (iv) a member of any Panchayat or Municipality or District Council;
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> (v) a person who has been removed or dismissed from 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 connected with any political party or carry on any business or practice 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 –
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> (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 practicing any profession, cease to practice such profession."

10. Section 4 deals with appointment of Chairperson or Members on recommendation of Selection Committee; and other provisions of the Act dwell upon various other facets which we need not refer to. Submission of Mr. Mukherjee is that the High Court could not have suo motu proceeded to deal with the appointment of Lokayukta and, in any case, could not have directed stay of the provision.

11. There can be no doubt, the court can initiate suo motu proceedings in respect of certain issues which come within the domain of public interest. In *Budhadev Karmaskar (1) v. State of W.B.*[5] the Court, while dismissing an appeal, observed thus:-

"14. Although we have dismissed this appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as the 'prostitutes' as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

15. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

16. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself."

The purpose of the initiation in the aforesaid case is self-evident.

12. Suo motu public interest litigation can be initiated to ameliorate the conditions of a class of persons whose constitutional or otherwise lawful rights are affected or not adequately looked into. The Court has adopted the said tool so that persons in disadvantaged situation because of certain reasons - social, economic or socio-economic - are in a position to have access to the Court. The Court appoints Amicus Curiae to assist the Court and also expects the executive to respond keeping in view the laudable exercise.

13. In *Ramlila Maidan Incident, In Re*[6] , suo motu probe of incident was ordered by the Court against imposition of prohibitory order at night and hasty and forcible evacuation of public on the basis of media reports and CCTV camera footage. In *Nirmal Singh Kahlon v. State of Punjab & others*[7], the Court has held:-

> "The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time. (See *Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.& another*[8] *and Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*[9].)"

14. In Raju Ramsing Vasave (supra), the Court has observed that when a question is raised, this Court can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the Court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the Court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society the Court will not shirk its responsibilities from doing so.

15. Be it noted, the constitutional courts can entertain letter petitions and deal with them as writ petitions. But it will depend upon the nature of the issue sought to be advanced. There cannot be uncontrolled or unguided exercise of epistolary jurisdiction.

16. In the instant case, as is evident, the High Court has compared the provisions pertaining to appointment of Chairperson and Members under the Act with the provisions of other Acts enacted by different legislatures. The legislature has passed the legislation in its wisdom. There was no challenge to the constitutional validity of the provisions of the Act. The suo motu petition was registered for giving effect to the Act by bringing the institutions into existence. This may be thought of in very rare circumstances depending on the nature of legislation and the collective benefit but in that arena also the Court cannot raise the issue relating to any particular provision and seek explanation in exercise of jurisdiction under Article 226 of the Constitution. In the case at hand, as is manifest, the Division Bench of the High Court has, with an erroneous understanding of fundamental principle of law, scanned the anatomy of the provision and passed an order in relation to it as if it is obnoxious or falls foul of any constitutional provision. The same is clearly impermissible. A person aggrieved or with expanded concept of locus standi some one could have assailed the provisions. But in

that event there are certain requirements and need for certain compliances.

17.In *State of Uttar Pradesh v. Kartar Singh*[10], while dealing with the constitutional validity of Rule 5 of the Food Adulteration Rules, 1955, it has been opined as follows:-

> " if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art. 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration."

18. In *State of Andhra Pradesh and another v. K. Jaya.raman and others*[11], it has been ruled thus:-

> "It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out."

19. In *Union of India v. E.I.D. Parry (India) Ltd.*[12] , a two-Judge Bench of this Court has expressed thus:-

> "There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law."

20. In *State of Haryana v. State of Punjab & another*[13], the Court emphasizing on the facet of pleading, has opined that:-

> " It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in subparagraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge

to the constitutional validity of a statute or statutory provision is liable to be rejected in limine."

21. This being the position in law, the High Court could not have proceeded as if it was testing the validity of the provision and granted stay. The approach is totally fallacious. Having opined aforesaid, we have no option but to set aside that part of the order which deals with the provisions of the Act. We do not intend to express any opinion with regard to validity of any provision contained in the Act. We also do not think it condign to direct that the establishment under the said Act should become operational within any fixed time. Suffice to say at present that when the State Legislature has introduced the legislation to take steps as regards the institution, it shall be the endeavour of the executive to see that the office of the Lokayukta is in place. We say no more for the present.

22. In view of the aforesaid analysis, the appeal is partly allowed and the direction pertaining to the stay of the provisions of the Meghalaya Lokayukta Act, 2014 is set aside. It is directed that State Human Rights Commission shall become functional by end of June, 2016. As we have completely dealt with the matter, the writ petition initiated by the High Court shall be deemed to have been disposed of. There shall be no order as to costs.

Judgment Referred.

[1]*(1994) 6 SCC 0651*
[3]*(2014) 12 SCALE 0549*
[5]*(2011) 11 SCC 0538*
[6]*(2012) 5 SCC 0001*
[7]*(2009) 1 SCC 0441*
[8]*(2008) 12 SCC 0541*
[9]*(2008) 9 SCC 0054*
[10]*AIR 1964 SC 1135*
[11]*(1974) 2 SCC 0738: AIR 1975 SC 0633*
[12]*(2000) 2 SCC 0223: AIR 2000 SC 0831*
[13]*(2004) 12 SCC 0673*