

SUPREME COURT OF INDIA

Jagdish Narain Shukla

Vs.

State of U.P. & Ors.

C.A.No.9442 / 2016

(T.S.Thakur,CJI., and A.M.Khanwilkar,JJ.,)

26.09.2016

JUDGMENT

A.M.Khanwilkar,J.,

SLP (Civil) No.31025/2013

1. Leave granted.
2. This appeal challenges the decision of the Division Bench of the High Court of Judicature at Allahabad, Lucknow dated 16th July, 2012 in Writ Petition No.5744 of 2012.
3. The appellant had filed writ petition under Article 226 of the Constitution of India as Public Interest Litigation praying for implementation of the recommendation/report of the Lokayukta Uttar Pradesh, dated 22nd February, 2012. Following reliefs were prayed in the said writ petition:

“Wherefore, it is most respectfully prayed that the Hon’ble Court may kindly be pleased, in the interest of justice, to

- i) Issue a writ, order or direction in the nature of mandamus, directing the Opposite Parties Nos.1, 2 and 3 to implement the recommendations/report of the Opposite Parties No.4 by getting the issue enquired by the opposite party Nos.7 and 8.
- ii) To issue a writ, order or direction in the nature of mandamus directing the Opposite Parties No.7 and 8 to carry out an enquiry into the misdeeds of the Opposite Parties Nos. 5 and 6, in terms of the recommendation of the Opposite Party No.4.
- iii) Issue any other writ, order or direction as may be deem fit and proper by this Hon’ble Court for giving just, proper and effective relief to the petitioner.

iv) Award the costs of the writ petition to the petitioner.”

4. The Lokayukta had submitted the said report under the Provisions of Section 12 (3) of the U.P. Lokayukta and Up-Lokayuktas Act, 1975 to the Competent Authority for taking necessary action. The report was the outcome of the complaint made by one Shri Jagdish Narain Shukla against Smt. Husna Siddiqui, Member of Legislative Council and Sri Naseemuddin Siddiqui, the then Cabinet Minister in U.P., respondent no.6 and 5 respectively. After due enquiry the Lokayukta arrived at the following conclusion as noted in the aforesaid report:

“On the basis of the prima facie evidences collected in the course of investigation, I reach the conclusion that the delinquent public servants had purchased land worth Rs.16,39,99,227/- (as per the market value) for a meager price of Rs.46,32,600/- for their Private Society. They had also purchased agriculture land worth Rs. One crore situated in Tindwari, Dist. Banda for a meager price of Rs.4,50,000/-. They purchased Bungalow no.B-3, Timaiya Road, Cantonment, Lucknow worth crores of rupees for just Rs.50,00,000/-. They also purchased land worth Rs.3,60,00,000/- in village Ladakapurwa, Dist. Banda for a meager price of Rs.5,50,000/- by way of involving name of Smt. Upma Gupta, Smt. Akrami Begum and Smt. Arshi Siddiqui. The Delinquent public servant also purchased 1.2370 hectare land in the name of his son Sri Afzal Siddiqui in district Jyotibaphule Nagar for setting up an industry A.Q. Frozen Food Pvt. Ltd. and investigation to find out the exact cost of the land and the sources of income for purchase the land is still in progress. It seems that the delinquent public servants have purchased all the aforementioned assets through their income which they earned from unknown sources because as per the income tax return of both the delinquents, their taxable income for the last financial years comes to Rs.1,93,85,196/-.

69. In view of the foregoing discussion, I am of the considered view that this task should be entrusted to a specialized investigating agency with the following tasks:

1. The agency should investigate the correctness/genuineness of the donations/funds given by persons (whose names are indicated in the enclosed list provided by the delinquents) by cheque, by demand drafts and by cash to the Registered Society, namely, Q.F. Shikshan Sansthan, 49, Shyam Nagar (Khurram Nagar) Lucknow and also to investigate the sources of income of these individuals.

2. Q. F. Shikshan Sansthan, 49, Shyam Nagar (khurram Nagar) Lucknow had acquired immovable property in Tehsil Fatehpur, Dist. Bararanki through sale deeds. The agency should make inquiry about the persons who sold land admeasuring 57 Bigha 18 Biswa 3 Biswansi to Smt. Husna Siddiqui, Secretary, Q. F. Shikshan Sansthan.

3. All sale deeds of Village Nindora, Tehsil Fatehpur, Dist. Barabanki executed during the last five years should be examined in order to ascertain the fact as to who had sold their lands in village Nindora and what was the actual sale considerations involved in these transactions and from where the funds had come to these individuals.

4. 2.00 Hectare land in Gata no.3235 in village Ladkapurwa, Pargana-Tehsil-Dist. Banda was purchased by Smt. Akrami Begum wife of Sri Jamiruddin Siddiqui, Smt. Arshi Siddiqui, daughter-in-law of Sri Jamiruddin Siddiqui, Smt. Arshi Siddiqui, daughter-in-law of Sri Jamiruddin Siddiqui and Smt. Upma Gupta wife of Sri Krishna Chandra Gupta, an Engineer in Nirman Nigam in the year 2008. The investigating agency should make inquiries to find out the actual sale consideration involved in the aforesaid transaction and what was the source of income for payment of the said cost.

5. Investigation should be conducted to find out the source of income which was used for buying the entire land in village Bachhrau, Tehsil Dhanaura, Dist. Jyotibaphule Nagar for setting up A.Q. Frozen Food Private Limited and raising building, etc. for the unit. It is also to be investigated as to who all have invested their money in the land and building of the Unit and what is their source of income.

70. In view of the foregoing analysis, I recommend that:-

1. The task of conducting investigation on the aforementioned points should be entrusted to a Central Investigating Agency viz. Central Bureau of Investigation or the Enforcement Directorate and further action be taken in accordance with the result of the investigation.

2. Compliance report may be made available within one month.

Sd/- illegible
(Justice N.K. Mehrotra)
Lok Ayukt, U.P.

On the basis of the above conclusions, the Lokayukta made following recommendations:

70. In view of the foregoing analysis, I recommend that:-

1. The task of conducting investigation on the aforementioned points should be entrusted to a Central Investigating Agency viz. Central Bureau of Investigation or the Enforcement Directorate and further action be taken in accordance with the result of the investigation.

2. Compliance report may be made available within one month

Sd/- illegible

(Justice N.K. Mehrotra)
Lok Ayukt, U.P.

5. The appellant verily believed that the Competent Authority was not taking any steps to comply with the said recommendations of the Lokayukta, for which, filed Writ Petition No.5744 of 2012 on 12th July, 2012 for the reliefs as reproduced above.

6. The Division Bench of the High Court, however, held that the opinion of the Lokayukta in the report cannot be construed to be final or conclusive as it was a fact finding enquiry and a detailed enquiry is yet to be made after affording opportunity of hearing to the person against whom complaint is made. It further observed that the High Court ought not to entertain petition for implementation of recommendations/orders of the Lokayukta - as there is sufficient provision under the Act itself to get the same implemented. The Court also opined that there was no element of public interest in the grievances made by the appellant. On that finding the writ petition filed by the appellant was dismissed in limine on 16th July, 2012.

7. This decision has been challenged in the present petition filed under Article 136 of the Constitution of India. This Court issued notice to the respondents including the State Authorities. The respondent nos. 1 to 3 caused to file affidavit of Yatindra Kumar, Under Secretary in the Vigilance Department of the State Government on 9th October, 2014. Besides raising preliminary objection, it has been mentioned in this affidavit that the Competent Authority has already taken a decision to enquire into the aspects noted in the report of the Lokayukta through the State Vigilance Establishment by way of an open vigilance enquiry, vide Government Order dated 10 th July, 2013.

8. The respondent no.8 Directorate of Enforcement caused to file affidavit of Gurinder Singh Chawla, Deputy Director, Directorate of Enforcement, Department of Revenue, Ministry of Finance Government of India, New Delhi dated 4th March, 2015, stating that the Director of Enforcement has been mandated to investigate contraventions relating to Foreign Exchange Management Act, 1999 and offences of money laundering under Prevention of Money Laundering Act, 2002. Further, it had no authority whatsoever, to cause investigation in respect of offences under the Prevention of Corruption Act, 1988 which ought to be investigated by the appropriate enforcement agency, namely, Central Bureau of Investigation or by State police. This affidavit also mentions that FIR No.385 of 2013 dated 6th July, 2013 registered at Police Station Kotwali Nagar, Banda, U.P., for offences punishable under Section 13 (1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988 against respondent no.5 and an ECIR/LKZO/03/2014 has been registered Lucknow Zonal Office for offence of money laundering under the Prevention of Money Laundering Act, 2002. The affidavit also mentions that an action of provisional attachment of proceeds of crime or property involved in money laundering shall be undertaken upon filing of a police report under Section 173 (2) of the Code of Criminal Procedure 1973, by the law enforcement agency. The other action taken for collection of Bank statements, income tax returns and property details of respondent no. 5 and his relatives by the respective law enforcement agency has been requisitioned and the document so received are being scrutinized.

9. Respondent no.7 C.B.I. has caused to file affidavit of Rajiv Kumar, Deputy S.P., CBI, ACB, Lucknow, in February, 2014. It is stated in this affidavit there is full-fledged State Vigilance Department under the State Government to take follow up action on the basis of recommendations made by the Lokayukta. Moreover, factual matrix of the present case does not involve any complexity or interstate ramification which may require a specialized investigation by the C.B.I., to be treated as rare and exceptional case.

10. The respondent no.6 has filed reply affidavit on 23rd July, 2015, to oppose this appeal. In that reply affidavit, it is stated that on a complaint by one Mr. Ashish Sagar a vigilance investigation has been commenced in respect of which FIR No.385/2013 has been registered and that she has participated and fully cooperated in the said investigation. It is prayed by the said respondent that the appeal does not merit interference. The respondent no.5 has also filed an affidavit on same lines as respondent no.6 dated 23 rd July, 2015.

11. When this matter was heard on 22nd July, 2016 this Court passed the following order:

“Heard.

Mr. Ravi Prakash Mehrotra, learned counsel for the 2 respondent-State of Uttar Pradesh, submits that taking cognizance of the report submitted by the Lokayukta, the State Government had referred the matter for investigation by the State Vigilance establishment on 10th July, 2013. The progress made in that regard is however not immediately known to him. He seeks time to take instructions if any action has been taken pursuant to the reference made by the Government to the Vigilance establishment. Our attention is also drawn to the affidavit filed by respondent no.5, para (7) whereof it is inter alia mentioned that FIR No.385/2013 dated 6th July, 2013 has been registered at the Police Station Kotwali Na,gar, Banda, U.P., by the Vigilance establishment on the complaint of one-Mr. Ashish Sa,gar. It is submitted that the allegations contained in the said complaint are similar to the ones made in the report submitted by the Lokayukta. Mr. Mehrotra does not have any instruction as to the progress made in connection with the said FIR also. He may, therefore, file a status report not only in regard to the reference made by the State Government to the Vigilance establishment, pursuant to the Lokayukta report, but also as regards the progress made in FIR No.385/2013 by the police station concerned. Mr. Mehrotra also to take instruction whether any FIR has been registered against respondents No.5 and 6 in any other police station and if so the progress made in those FIRs. In addition, Mr. Mehrotra will take instruction and state whether the State Government proposes to make a reference to the 3 enforcement directorate as recommended by the Lokayukta in his report, in case such a reference is not already made. Mr. P.K. Mullick, learned counsel for the Enforcement Directorate, submits that Enforcement Directorate has registered ECIR on the basis of FIR No.385/2013 but no enquiry has been instituted nor any reference made to the Enforcement Directorate by the State Government pursuant to the report of the Lokayukta. Mr. Mehrotra shall do the needful within two weeks from today. Post after two weeks.”

12. Pursuant to the aforesaid order the Under Secretary in the Vigilance Department at Lucknow Sri Yatindra Kumar, has filed affidavit sworn on 9th August, 2016, disclosing the progress of the respective case initiated against respondent nos.5 and 6. The said affidavit reads thus:

“3. That, in respectful compliance of the said order dated 22.07.2016 passed by this Hon’ble Court, the status of various proceedings against respondent Nos.5 and 6 in the present petition, is as under:

I. Progress regarding reference to the State Vigilance Establishment

4. That, in this regard it is stated that a complaint was filed before the Lokayukta Establishment Uttar Pradesh by Sri Jagdish Narain Shukla of Lucknow against Smt. Husna Siddiqui, Member of U.P. Legislative Council and Sri Naseemuddin Siddiqui, ex-Cabinet Minister of Uttar Pradesh, in respect of which after conducting an enquiry, the Hon’ble Lokayukta vide letter dated 22.02.2012, submitted Report no.03-2012 to the Competent Authority, Government of U.P. After due consideration of the said report and recommendations of the Hon’ble Lokayukta, vide order dated 10.07.2013, it was directed by the State Government that open enquiry be conducted against the said Smt. Husna Siddiqui and Sri Naseemuddin Siddiqui by the U.P. Vigilance Establishment, following the said report by the Hon’ble Lokayukta. In compliance with the said order dated 10.07.2013 by the State Government, whereby open enquiry was directed to be conducted, the Vigilance Establishment completed the enquiry and report was submitted to the State Government vide letter dated 29.07.2015. In the meanwhile, various representations/affidavits were submitted to the State Government by Smt. Husna Siddiqui and her family members in respect of said open enquiry on 04.08.2015, 6.8.2015, 17.8.2015, 18.8.2015, 19.8.2015, 20.8.2015, 21.8.2015, 28.8.2015, 4.9.2015, 10.9.2015 and 14.9.2015, wherein several important issues were sought to be raised in relation to the open enquiry.

The open enquiry report submitted by the Vigilance Establishment, and the Representations / affidavits by Smt. Husna Siddiqui and her relations, were comprehensively considered by the State Government, and after comprehensive consideration, after taking cognizance of all the facts mentioned in the aforesaid representations/affidavits in relation to the open enquiry conducted by the Vigilance Establishment, it was found justifiable to get a factual report in regard thereto, after carefully examining/scrutinizing the documents enclosed with the said representations/affidavits. In this view of the matter as aforesaid, the State Government vide D.O. letter no. VIP/36/39-4-15-50H (2)/2013 dated 26.2.2016, has directed the Vigilance Establishment to submit a factual report in regard thereto after enquiring into the matter in detail.

Current status of the enquiry

5. That, it has been informed by the U.P. Vigilance Establishment that for the purpose of verification of documents in the enquiry, the revenue records in the districts of Lucknow, Barabanki, Banda and Jyotiba Phule Nagar and records of related offices as well as records of different banks, and verification/examination of the concerned bank accounts, has to be done. Moreover, the 11 representations and 8 affidavits (totaling 55 pages) submitted by Smt. Husna Siddiqui and members of her family, as well as documents enclosed with the said representations (approx. 1068 pages), have to be verified. Additionally, enquiry/statements of persons giving money and other persons, has to be done, owing to which the enquiry is taking time. At the present time, supplementary enquiry is in progress, which shall be completed at the earliest and report submitted to the State Government.

II. Progress in F.I.R. no. 385/13 dt. 6.7.2013 at P.S. Kotwali, Banda

6. In regard to above, the factual position is that a complaint was filed against Sri Na.seemud.din Siddiqui, former Minister, Government of U.P. by Sri Ashish Sagar Dixit, District Banda, before the Lokayukta Establishment, Uttar Pra.d.esh. Following the same, the Hon'ble Lokayukta after conducting his enquiry, submitted Report no.05-2012 vide letter dated 24.8.2012 to the Competent Authority of the U.P. Government. After due consideration of the said report dated 24.8.2012 of the Hon'ble Lokayukta, the State Government vide order dated 4.10.2012 directed the U.P. Vigilance Establishment to conduct open enquiry against Sri Naseemuddin Siddiqui, in regard to recommendation no.1 of the report of the Hon'ble Lokayukta.

In compliance with the State Government's order dated 4.10.2012 directing an open enquiry, the Vigilance Establishment has completed the said open enquiry and its report was submitted to the State Government vide letter dated 29.4.2013. On account of the fact that the expenditure was found more than income in the open enquiry, hence it was recommended that a criminal case be registered and the same investigated. After examination of the said open enquiry report, in terms of the recommendation by the Vigilance Establishment, the State Government vide order dated 2.7.2013 directed the U.P. Vigilance Establishment to get a case registered under section 13(1) (e) read with section (13) (2) of the Prevention of Corruption Act 1988 and the same investigated. In continuation with the said direction of the State Government dated 2.7.2013, Case Crime no. 407/13 under section 13 (1) (e) read with section 13 (2) of Prevention of Corruption Act, 1988 was registered on 6.7.2013 by U.P. Vigilance Establishment, Allahabad Sector, at P.S. Kotwali, District banda, against Sri Na.seemud.din Siddiqui, the chick no. of which as 385/2013. It is stated that after completion of investigation in the aforesated Crime no.407/13, the Vigilance Establishment vide letter dated 29.7.2015 submitted its investigation report to the State Government. In the meanwhile, Sri Na.seemud.din Siddiqui and his family members preferred several representations in relation to the said investigation, on 31.7.2015, 6.8.2015, 14.8.2015, 17.8.2015, 18.8.2015, 19.8.2015, 20.8.2015, 21.8.2015, 28.8.2015, 4.9.2015, 10.9.2015, 14.9.2015 and 31.1.2016, to the State

Government, wherein several important issues were raised in regard to the investigation report. It is further stated that the investigation report submitted by the Vigilance Establishment, and the representations/ affidavits preferred by Sri Naseemudin Siddiqui and his family members, were comprehensively examined by the State Government, and after due consideration, it was considered appropriate to get a factual report in relation to the said investigation, in regard almost 14 representations and 8 affidavits (total 80 pages) and its enclosures (total 1371 pages) submitted on different dates by Sri Naseemuddin Siddiqui and his family members. It was directed that factual report be made available after getting examined by the Vigilance Establishment, the fact of income and expenditure from valid sources, by the State Government vide D.O. letter no.VIP-3/39-4-16-50 N(2)/2012 TC dated 26.2.2016,

Current Status of Investigation

7. That, it has been informed by the U.P. Vigilance Establishment that for the purpose of verification of documents in the said enquiry, the revenue records of District Lucknow, Banda, Gautambudh Nagar, Barabanki, and records relating to the offices of various establishments, as well as verification/examination of records relating to different banks and related bank accounts in the concerned districts, have to be examined and verified Moreover, a total of 14 representations and 8 affidavits (total 80 pages) submitted by Sri naseemuddin Siddiqui and his family members as well as documents enclosed therewith (total 1371 pages) have to be verified Additionally, the enquiry/statements of persons who had given money as well as statements of other concerned persons have to be recorded, due to which the enquiry is taking time. Presently, supplementary investigation is being conducted, which is likely to be completed shortly and report submitted to the State Government.

III. Other proceedings against respondent nos.5&6

8. That, it has been intimated by the Vigilance Establishment that in compliance with the State Government's order dated 30.11.2013 relating to investigation of corruption and irregularities committed in the construction of monuments and gardens, as also supply of sand stone in the cities of Lucknow and Noida between 2007 to 2011, Crime No.1/2014 under Sections 409/ 120-B PIC and Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988, has been registered by the Vigilance Establishment at P.S. Gomti Nagar Lucknow, wherein Sri Na,seemuddin Siddiqui is also an a,ccused person. Considerable progress has been made in the investigation and spot inspection of 5 construction sites (1. Ambedkar Samajik Parivartan Sthal, 2. Eco Park, 5. Noida Ambedkar Park) and mining sites, have alrea,dy been conducted. Opinions of various experts is remaining. Statements of a total of 170 witnesses have alrea,dy been recorded in the investigation, and most of the documents have been collected. The work relating to collection of the remaining documents and evidence is being done at a fast speed. The investigation in question is

progressing speedily, which shall be completed at the earliest and report submitted to the State Government.

IV. Proceedings before Enforcement directorate.

9. That, in this regard the Vigilance Establishment has informed that with reference to letter dated 29.1.2014 by the Enforcement directorate, Government of India, requiring information and documents, by letter dated 31.1.2014, a copy of the First Information Report (Case Crime no.407/13), has been sent to the Joint Director, Enforcement Directorate, Government of India, 16 Ashok Marg, Lucknow.”

13. Today, when the matter was taken up for further hearing, counsel appearing for the State Authorities as well as Union of India submitted that the enquiries against respondent nos.5 and 6 are in progress and effort is being made to conclude the same in right earnest. A chart of the status of those enquiries against respondent no.5 and 6 has been furnished during the hearing, which reads thus:

	Complaint of JN Shukla	Complaint Ashish Sagar Dixit	FIR regarding Parks/Monuments
Lokayukta Establishment	Report no.03-2012 dt.22.02.2012 againsts & Sri Naseemuddin Siddiqui	Report no.05-2012 dt. 24.8.2012 against Sri Naseemuddin Siddiqui	Government Order on 30.11.2013 for registration of FIR (Sri Naseemuddin Siddiqui is co-accused)
State Vigilance Establishment	Open Enquiry on 10.7.2013 Report to State Government on 29.7.2015	Open Enquiry on 4.10.2012 Report to State Government on 29.4.2013 State Government vide order dated 2.7.2013 directed FIR under s.13(1)(e) &13(2) PC Act, registered on 6.7.2013 in P.S. Kotwali District Banda (CC 407/13) FIR copy given to ED on 31.1.2014	Crime no.1/2014 registered in P.S. Gomtinagar, Lucknow under s. 409/120-B IPC & 13(1)(e) and 13(2) PC Act (corruption & irregularities in supply of sand stone and construction of monuments & parks in Lucknow/Noida (page 131)
Representations & Affidavits	11 representations between 4.8.2015 to 14.9.2015 8 affidavits	14 representations between 31.7.2015 to 31.1.2016 8 affidavits	Considerable progress made (page 132) - Five construction sites inspected collected

			- 170 witnesses examined Most documents
Supplementary Enquiry (Factual Report)	Order for factual report on 26.2.2016 Current status of enquiry (page 127)	Order for factual report on 26.2.2016 Current status of investigation (page130)	

14. It is submitted by the counsel appearing for the concerned State agencies that having regarding to the voluminous documents and more particularly the need to verify the correctness of the information made available during the investigation/enquiry, it would take some more time to complete the investigation/enquiry in the respective cases. The counsel appearing for the appellant, however, submits that the law enforcement agencies have not done enough and are responsible for delaying the investigation/enquiry for reasons best known to them, which inevitably would benefit respondent nos. 5 and 6. The counsel for the respondent nos.5 and 6 has refuted this veiled attack on respondent nos.5 and 6 of being responsible for delay in the enquiry. He submits that these respondents have extended full cooperation to the concerned agencies thus far and would continue to do so even in future. It is unnecessary for us to dilate on this aspect.

15. As aforesaid, the relief in the writ petition was limited to directing the Competent Authority to act upon the recommendations made by the Lokayukta. That relief has worked out in view of the direction issued by the Competent Authority to investigate/enquire into the factual matrix noticed in Lokayukta's report. Further, the law enforcement agencies have moved into action and have collected information and material including with reference to the representations and affidavits received in the course of the said investigation/enquiry. We may, therefore, accede to the request of the law enforcement agencies to give them some more time to complete the investigation/enquiries in relation to the acts of commission and omission of respondent nos.5 and 6 or any other person(s) privy thereto.

16. Considering the fact that the law enforcement agencies are on their job for quite sometime, we express a sanguine hope that they would complete the investigation/enquiry at the earliest and not later than six months from today and take the same to its logical end in accordance with law.

17. We make it clear that we are not expressing any opinion on the merits of the matters under investigation/enquiry or the defence that may be available to respondent nos. 5 and 6 in any proceedings to be instituted against them in relation to the said matters.

18. This appeal is disposed of in the above terms. No costs.