

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 833 of 2022

1. Shri N. Sarat Singh, aged about 64 years, S/o (L) N. Modhumangol Singh, a resident of Thangmeiband Yumnam Leikai, P.O. Lamphelpat & P.S. Imphal, Imphal West District, Manipur.
2. Shri Th. Bimol Singh, aged about 55 years, S/o 9l) Th. Dwijamani Singh of Ward No. 3, Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District, Manipur.

... PETITIONERS

-VERSUS-

1. The State of Manipur through the Chief Secretary, Government of Manipur, Secretariat South Block, Babupara, P.O. & P.S. Imphal – 795001.
2. The Manipur Lokayukta through its Secretary, 3rd Floor Directorate Complex, 2nd M.R. North AOC, P.O. & P.S. Imphal, Imphal West District – 795001.
3. Shri Ngangom Ibotombi Singh, S/O (L) Ng. Parijat Singh of Oinam Bazar Makha, P.O. & P.S. Nambol, Bishnupur District, Manipur.

... RESPONDENTS

WP(C) No. 828 of 2022

Shri A. Rajendra Sharma, aged about 64 years, S/o (L) A. Gourahari Sharma, a resident of Sagolband Mantri Lekai, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

... **PETITIONER**

-VERSUS-

1. The Manipur Lokayukta through its Secretary, having its office at the Manipur Lokayukta, 3rd Floor, Directorate Complex, 2nd M.R. North A.O.C., Imphal, P.O. & P.S. Imphal, Imphal East, Manipur – 795001.

... **OFFICIAL RESPONDENTS**

2. Shri Ngangom Ibotombi Singh, S/o. (L) Ngangom Parijat Singh of Oinam Bazar Makha, P.O. & P.S. Nambol, Bishnupur District, Manipur- 795134,

... **PRIVATE RESPONDENTS**

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Petitioners	::	Mr. HS Paonam, Sr. Adv. in WP(C) No. 833 of 2022
		Mr. N. Jotendro, Sr. Adv. in WP(C) No. 828 of 2022/.
For the Respondents	::	Mr. M. Rarry, Advocate Mr. H. Debendra, Dy. AG
Date of Hearing and reserving Judgment & Order	::	15.09.2023
Date of Judgment & Order	::	11.10.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. HS Paonam, learned senior counsel for the petitioners in WP(C) No. 833 of 2022 and Mr. N. Jotendro, learned senior counsel for the petitioners in WP(C) No. 828 of 2022; Mr. H. Debendra, learned Deputy AG assisted by Mr. I. Amri, learned counsel for the respondent State and Mr. M. Rarry, the learned counsel for the respondent Manipur Lokayukta in both the Respondents. In spite of notice none appeared for the respondent No. 2 and 3/complainant.

2. W.P.(C) No.833 of 2022 has been filed by the petitioners for issuance of a writ of mandamus to close the Complaint Case No.5 of 2022 pending on the file of the Manipur Lokayukta as not maintainable being hit by limitation.

3. W.P.(C) No.828 of 2022 has been filed by the petitioner to set aside the Complaint Case No.5 of 2022 along with its order dated 8.9.2022 and its subsequent orders passed in the said complaint case pending on the file of the Manipur Lokayukta in view of Section 53 of the Manipur Lokayukta Act, 2014, as the complaint with regard to the alleged offence in connection with the construction of associated 33 KV transmission line for the project had been made after the expiry of a period of seven years from the

date on which the construction of associated 33 KV transmission line for the project had been completed and commissioned after successfully tested on 14.8.2015 and taken over by the petitioner on the same day.

4. Since the relief sought in these writ petitions is one and the same, both the writ petitions were taken up together and disposed of by this common order.

5. Mr. HS Paonam, the learned senior counsel for the petitioners submitted that a Complaint Case No.2 of 2020 was registered by the Manipur Lokayukta and, on 7.2.2022, an order was passed in the said complaint case directing for investigation into the matter by registration of an FIR against some officials including the petitioners and also a direction was given to remove the petitioner Sarat Singh from his post pending investigation. Challenging the order dated 7.2.2022, W.P.(C) No.168 of 2022 and other connected writ petitions are filed. Pending W.P.(C) No.168 of 2022 and other connected writ petitions, one Meghachandra Singh had filed PIL No.10 of 2022 for implementation of the recommendation made by the Manipur Lokayukta in its judgment dated 7.2.2022 and by the judgment and order dated 25.7.2022, the said PIL No.10 of 2022 was dismissed as withdrawn. Another

W.P.(C) No.660 of 2022 has been filed by one Mutum Waiojit Meitei against the State and the petitioner Sarat Singh for issuance of *quo warranto* contending that the extension of the service of the petitioner Sarat Singh, after retirement in the post of MD, MSPCL, is against the provisions of the recruitment rules coupled with a prayer for removal from the post. The petitioner Sarat Singh and the State took a stand in the said writ petition that the continuation of the petitioner Sarat Singh in the post of MD, MSPCL was not by way of extension of service after retirement, but by way of appointment on contract basis pursuant to the public advertisement at national level which was resorted to by the authorities as per the rules.

6. The learned senior counsel further submitted that one such complaint seems to have been filed before the Manipur Lokayukta by the respondent Ngangom Ibotombi Singh in Complaint Case No.5 of 2022. Without ascertaining the veracity and the documents for substantiating the allegation in the complaint, the Manipur Lokayukta initiated action even to the extent of invoking power under Section 22 of the said Act demanding information from the Power Department as enumerated in its order dated 8.9.2022. Vide letter dated 14.9.2022, the Power Department

directed the office of the petitioner Sarat Singh to make available the documents.

7. The learned senior counsel submitted that during examination, it has come to know that the alleged complaint relating to construction of associated 33 KV line for the turn-key project was completed on 14.8.2015 and as 7 years have lapsed, it has become an issue which cannot be looked into by the Manipur Lokayukta and accordingly, the Power Department was apprised and subsequently, it seems that the Power Department has been pleased to inform the Manipur Lokayukta that the complaint is time barred in view of Section 53 of the said Act and a request has been made not to proceed with the proposed enquiry. However, without appreciating the stand of the Power Department, the Manipur Lokayukta has passed an order on 23.9.2022 directing to make available all the documents by 10.10.2022.

8. The learned senior counsel next submitted that the complaint case was filed before the Manipur Lokayukta not on the basis of the authenticated documents and information, but by some summary information provided by some individual working in the Department for meeting his vested interest. In order to bring such nefarious activities of some employees working in the Department

sponsoring unfounded complaint, an application has been made by the petitioner Bimol Singh, who was the then DGM, Sub-station Division No.III stating that the alleged complaint relating to the construction of associated 33KV line was already completed as far back as 14.8.2015 and the non-execution of sending end bay for the project as alleged in the complaint is irrelevant since in the work order for the project, there is no provision for execution of sending end bay at New Chayang. When the counsel went to the Manipur Lokayukta for filing such application, it was informed by the official of the Manipur Lokayukta that the application filed is returned on the instruction of the Chairperson for the reason that even the preliminary enquiry has not been commenced and being premature. According to the learned senior counsel, returning the said application is against the accepted norms.

9. The learned senior counsel further submitted that despite the fact that the work was completed in August, 2015, the Manipur Lokayukta not appreciating the stand of the Government, has been insisting on making enquiry which otherwise is outside its jurisdiction, thereby making it clear that it has become an instrument at the hands of persons who indulged in making complaints on surmises and information provided against the official documents and records. Hence, the petitioners have approached

this Court for interference stating that the systematic harassment in the name of investigation/enquiry at the behest of the some vested interested individual is to be prevented.

10. The learned senior counsel urged that the petitioner Sarat Singh whose contract appointment to the post of MD, MSPCL has been over by March, 2023, however, he has become a victim of unfounded allegation initiated by the staged complaint before different forums by vested interested officials.

11. Mr. N. Jotendro, the learned senior counsel for the petitioner in W.P.(C) No.828 of 2022 submitted that taking cognizance of the Complaint Case No.5 of 2022 for the alleged offence after seven years is illegal, malafide and arbitrary in nature in view of Section 53 of the said Act. As such, the complaint case along with its order dated 8.9.2022 and the subsequent orders passed thereon are liable to be quashed.

12. Adding further, the learned senior counsel submitted that the petitioner was working and discharging his duty as Deputy General Manager (DGM), Transmission Division-III at the time of taking over the project on 14.8.2015 and that the completed transmission line facility has also taken over by the petitioner Rajendra Sharma, DGM, TD-III, Manipur State Power Company

Limited on the same day on 14.8.2015. Without looking into the provision of the said Act, the Manipur Lokayukta has taken cognizance of the Complaint Case No.5 of 2022 on 8.9.2022 and, therefore, the same is liable to be quashed.

13. Mr. M. Rarry, the learned counsel for the respondent Manipur Lokayukta submitted that no cause of action have arisen for filing the writ petitions and the writ petitioners are premature. The impugned orders are not adverse to the interest of any person, as the decision as to who are to be arrayed as respondents in the preliminary enquiry is yet to be decided. In other words, the writ petitions have been filed based on the pre-conceived presumption to illegally and malafidely to stop the quasi-judicial authority from discharging its function, though Lokayukta functioning being directly investigative in nature as declared by the Constitution Bench of the Hon'ble Apex Court in the case of *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals*. The petitioners have no locus standi to challenge the impugned orders or the complaint case, as the case may be. They cannot step into the shoes of other State Government officers' who were called to produce documents as per the provisions of the said Act. The petitioners are not aggrieved parties in law, as the impugned orders do not in any manner affect the fundamental rights of the petitioners to invoke the

writ jurisdiction. The petitioners have not approached this Court with clean hands and are guilty of concealing material facts and documents. Thus, a prayer has been made to dismiss the writ petitions.

14. Heard the learned Government Advocate for the respondent State.

15. This Court considered the rival submissions and also perused the materials available on record.

16. As could be seen from the records, before filing the present writ petitions, challenging the order dated 7.2.2022 passed by the Manipur Lokayukta in Complaint Case No.2 of 2020, the petitioner Sarat Singh filed W.P.(C) No.168 of 2022 to set aside the order dated 7.2.2022. Similar writ petition, being W.P.(C) No.161 of 2022, has been filed by Th. Kamiinimohan Singh challenging the order dated 7.2.2022. Th. Bimol Singh also filed W.P.(C) No.171 of 2022 assailing the said order. In addition, the petitioner Sarat Singh filed W.P.(C) No.255 of 2022 restraining the Manipur Lokayukta from taking any action for implementation of its recommendation at para 25(D) made in the order dated 7.2.2022. Though the petitioners in the said writ petitions insisted for an

interim order, by the common order dated 4.7.2022, the learned Single Judge of this Court has not granted any interim order.

17. W.P.(C) Nos.833 and 828 of 2022 have been filed by petitioners for issuance of direction to close the Complaint Case No.5 of 2022 on the ground that the same is barred by limitation. In the said writ petitions, the petitioners have also sought for an order restraining the Manipur Lokayukta from proceeding with the Complaint Case No.5 of 2022 pending disposal of the writ petitions.

18. On 29.9.2022, when W.P.(C) No.833 of 2022 was taken up for hearing, this Court passed the following order:

“[1] Heard Mr. HS Paonam, learned senior counsel for the petitioner and perused the record.

[2] Mr. HS Paonam, learned senior counsel for the petitioner argued the case that prima facie the compliant taken by the Manipur Lokayukta in complaint case No. 5 of 2022 is not at all maintainable only on the ground that as per the Section 53 of Manipur Lokayukta Act if the alleged occurrence was lapsed for 7(seven) years, the complaint should not be taken by the Lokayukta. Mr. H.S Paonam, learned senior counsel for the petitioner further raised another ground that in order dated 23.09.2022, the Manipur Lokayukta

has passed an order in which in para No.9 of order dated 23.09.2022 which read as follows:

“Put up the case on 10.10.2022 for the personal appearance of (i) Administrative Secretary, Department of Power, Government of Manipur and (ii) Mrs. OrjubalaHaorongbam, Deputy Secretary (power) Government of Manipur on 10.10.2022 at 11:00 am,

However of the Manipur Lokayukta Act, the learned Lukayukta have no power to issue any notice for personal appearance of the Administrative office concerned. But by the order dated 23.09.2022 of the learned Manipur Lokayukta directly issued order for personal appearance of the Administrative officer. Therefore, once the complaint itself is not maintainable one before the Lokayukta and order dated 23.09.2022 is also not maintainable one.

[3] Mr. Mr. Rarry, learned Standing counsel represented the petitioner has not served case papers to him before taking up the matter for admission since he is the standing counsel for the Manipur Lokayukta. Anyhow, Mr. H. S Paoanam , learned senior counsel for the petitioner has given all the paper to Mr. M. Rarry, learned standing counsel in the open Court.

[4] After gone through the writ petition and documents, Mr. M. Rarry, learned Standing counsel for the Manipur Lokayukta represented the compliant case is not taken for registration as on date by the Manipur Lokayukta and the very file of the writ petition is premature one. Therefore, for proper instruction from the Manipur Lokayukta and for filing counter affidavit, he seeks time.

[5] Mr. HS Paonam learned senior counsel for the petitioner has produced certificate dated 14.08.2015 which read as follows:

Handing over/Taking Over (Certificate)

Date 14/08/2015

Project: Installation of 2x5 MVA, 33/11 kV Sub-Station along with the associated 33 KV line and related Civil works at Sugnu in Thoubal District on turn-key basis.

*Ref.: LOA No. 4/109/33KV/SUG/13-ED(PURCH)/706-17, dated 02/07/2014.
Name of Line: Associated 33 kV transmission line.*

With reference to the above mentioned LOA/Work Order, the construction activities of the associated 33 kV transmission line of the above project has been completed by tapping from existing 33 kV transmission line from New Chayang to Joupi in looping in — looping out (LILO) configuration by M/s Shyama Power India Limited, Gurgaon, and the line has been successfully tested and commissioned on 14/08/2015 in presence of MSPCL officials. The completed transmission line facility is taken over by the

Dy. General Manager, TD-III, Manipur State Power Company Limited (MSPCL) on this day i.e., 14/08/2015.

*'For and behalf of
Manipur State Power
Company Limited*

*For and Behalf of
Shyama Power
India Limited.*

*DGM, TD-III
(taken over)*

*Project manager
(handing over)*

[6] As per the above certificate dated 14.08.2015 issued by Shyama Power India Limited which was handing over/taking over on 14.08.2015, it is made clear that as per the Section 53 of the Manipur Lokayukta Act, 2014, the complaint is time barred one. Apart from this the learned Lokayukta has no right to pass any order for the personal appearance officers concerned as ordered 23.09.2022.

[7] Therefore, prima facie of the petitioner is made out the case before this Court.

[8] Accordingly, this writ petition is admitted.

[9] Notice to the respondents. Since Mr. Rarry, learned counsel takes notice for the Lokayukta, no formal notice is required.

[10] Post this matter on 20.10.2022.

[11] Till such time, there shall be an order of interim stay of the order dated 23.09.2022 passed by learned Manipur Lokayukta.

[12] Print the name of Mr. Rarry in the cause list.”

19. The Manipur Lokayukta filed MC (WP) No.346 of 2022 to vacate the said interim order dated 29.09.2022. After hearing the respective learned counsel, this Court, by the order dated 19.12.2022, dismissed MC (WP) No.346 of 2022. Paragraphs 28 and 29 of the said order are relevant and the same are quoted hereunder:

“28. Nothing has been produced by the petitioners to show that as against the interim order date 22.12.2022 passed in W.P.(C) No.938 of 2022, an appeal has been preferred. In view of the said interim order passed in W.P.(C) No.938 of 2022 thereby restraining the enquiry officer from taking further proceedings and consequential action in respect of Complaint Case No.5 of 2022, no contra view is possible in this case, as no appeal has been preferred against the interim order dated 22.11.2022 passed in W.P.(C) No.938 of 2022.

29. For the foregoing discussions, this Court is of the view that there is no merit in MC (W) No.346 of 2022 and accordingly dismissed and thus, the interim order dated 29.9.2022 passed in W.P.(C) no.833 of 2022 is made absolute till the disposal of the writ petition.”

20. Aggrieved by the dismissal of MC (WP) No.346 of 2022, Manipur Lokayukta had preferred S.L.P.(C) No.2069 of 2023 before the Hon'ble Apex Court and the Hon'ble Apex Court, vide order dated 3.2.2023, disposed of the SLP. The order of the Apex Court reads thus:

“Noticing that by the impugned order that the High Court has made the interim order absolute, we are not inclined to interfere with the impugned order. Without expressing any view on the merits of the contentions of the parties, we only request the High Court to dispose of the writ petition itself within a period of three months from the date of production of the copy of this order before the High Court.

The Special Leave Petition is disposed of accordingly.

Pending applications, if any, also stand disposed of.”

21. According to the petitioners, the execution of associated 33 KV transmission line pursuant to the letter of award dated 2.7.2014 which is the prime focus of allegation of the complainant in the complaint has been successfully completed and after following the due process as per the procedure, including

testing and commissioning in the presence of MSPCL official, handing over and taking over of the completed work was done on 14.8.2015 between the executing agency, namely M/s. Shyama Power (India) Private Limited and the MSPCL, represented by its DGM, Transmission Division-III (petitioner in W.P.(C) No.828 of 2022). Thus, it is the specific case of the petitioners that the complaint filed before the Manipur Lokayukta in respect of associated 33 KV transmission line of the project was only on 31.08.2022. Therefore, the Manipur Lokayukta has no authority to enquire into the matter based on the said complaint. Reliance is placed on Section 53 of the said Act.

22. Section 53 of the said Act reads thus:

“53. The Lokayukta shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.”

23. On the other hand, it is the say of the Manipur Lokayukta that if the completion of the project as per the document dated 14.8.2015 is accepted to be correct, it would certainly justify the allegation that the project for laying 33 KV transmission line of

20 kms. from 33/11/KV substation New Chayang to Sugnu had been commissioned by tapping only 3 km. from the existing 33 KV new Chayang-Joupi line at Khongnang Paishabi and there was embezzlement of funds and materials for the remaining 17 kms. Thus as per the available record, the complaint case is not barred by limitation. According to the learned counsel for the Manipur Lokayukta, disputed question of facts ought not to be decided in the writ petition.

24. In reply, the learned senior counsel for the petitioners submitted that the project has three components, namely (a) line portion – string of a new 33 KV associated transmission line; (b) sub-station portion – installation of a new 2x5 MVA 33/11 sub-station; and (c) civil works. The allegation in the complaint case is misappropriation of public fund due to non-execution of 17 km of 33 KV transmission line.

25. In the briefing report filed along with the complaint, the complainant has stated as under:

“The project “Installation of 2x5 MVA 33/11 KV substation at Sugnu along with associated 33 KV line and related works in Thoubal, district was taken up by MSPCL during the period 2014 to 2017 under NLCPR and state fund. /the approved

project cost is Rs.5.39 cr. Minister of Doner accorded sanction of the fund for the project on 28.02.2014 as revealed in the report "24x7 POWER FOR All- Manipur" A joint initiative of Government Of India and Government Of Manipur". The statement in the report was jointly signed by the then commissioner (Power), Manipur and the then Joint Secretary (Power), GOI.

The project was executed by M/S Shyama Power India Pvt. Ltd. On turnkey basis. The length of the associated 33 kv Transmission line from 33/11 KV substation New chayang to Sugunu as per the approved scheme is 20 twenty Km. However, the substation has been commissioned by erecting a line of 3 km, tapping from the existing 33 KV New chayang-Joupi line at KhongnangPaishabi. Embezzlement of the fund released from Doner Ministry and the state government for supply and erection of the balance 17 Km long 33 KV Transmission line and one 33 KV sending end bay along with the equipments at 33 KV Substation, New chayang is evident. Many mandatory equipments and elements for a power substation like Lightning arrestors, Circuit Breakers and Isolators are also missing in the field. The civil works like cable trench and the fencing etc are also not as per standards.

The company failed to produce the relevant records and information for the said project when asked for by one RTI activist Joykumar Singh as published in Local media. Shri N.Sarat Singh, Managing Director, MSPCL, has utilised all the funds including the sum sanctioned for the works and supply for the 17 Kms of 33 KV line and the sending End Bay which had not been constructed. The Managing Director, MSPCL, being the executive head and drawing and disbursing officer of the company in collusion with the consignee of the project, the concern field Engineers and the Turn Key agency has intentionally made room for short supply of materials, skip erection works and misappropriated the public fund for their personal gains. The unauthorised change in the scope of work and supply, non execution of 17 kms of the 33 KV line and the sending end bay but incurred expenditure of the said works and supply implies that embezzlement and misappropriation of public fund has been committed.”

26. According to the petitioners, the work schedule of the work order specifies different timelines for completion of the work for line portion and substation portion. The completion of line portion is independent of the other two components and the associated 33 KV line was completed and test charged by 14.8.2015. According to the petitioners, the completion of the sub-

station portion is dependent on the completion of the associated transmission line and the substation was subsequently completed on a later date. The petitioners stated that the line component i.e. the associated 33 KV line was completed on 14.8.2015 and has never claimed that the whole project was completed by 14.8.2015.

27. It is not necessary that all the components have to be completed at the same point of time, as each component will have different completion schedule specified in the work order as well. Since the work schedule for the line portion where the allegation of misappropriation of fund is already barred by limitation under Section 53 of the said Act, the respondent Manipur Lokayukta deliberately misled by trying to broaden the ambit of the complaint in order to suit convenience. The respondent cannot misconstrue a complaint alleging an offence of embezzlement and misappropriation of public fund due to non-execution of 17 km of 33 KV transmission line and sending end bay of New Chayang as the complaint against the project Installation of 2x5 MVA, 33/11 KV substation along with associated 33 KV line and related civil works at Sugnu in Thoubal District on turn-key basis in a manner to suit without any basis.

28. The learned counsel for the Manipur Lokayukta submitted that even if the line portion of new 33 KV line of 20 kms. is shortened to only 3 kms., the line portion of 20 kms. was not completed on the date mentioned by the petitioners on 14.8.2015 as the handing over/taking over certificate is not available in the Government record and this shows that the said alleged handing over/taking over certificate is a manufactured and doctored one.

29. In reply, the learned senior counsel for the petitioners submitted that the handing over/taking over certification is a document executed between the implementing agency i.e. MSPCL and the turn-key firm as per the agreement entered between the two parties. This document certifies the completion of a portion of the work executed by the turn-key firm and that the turn-key firm has executed the portion of the work as per the technical specification and certifies healthiness of the completed portion of the work. However, the NLCPR guideline mandates submission of documents like utilization certificates, quarterly progress report, inspection reports through the planning department at the time of seeking funds for the subsequent instalments from the Ministry.

30. Drawing this Court's attention to the inspection report of the General Manager, Sub-station Circle, who is the Nodal

Officer, the learned senior counsel submitted that in the said report the Nodal Officer furnished the overall progress of the project in general which does not particularly specify the completion of each component. Since sub-station and related civil works were not completed during the time of inspection, the Nodal Officer had furnished a general status of the project even though the line portion was completed quite beforehand. This Court finds some merit in the submission made by the learned senior counsel for the petitioners.

31. The handing over/taking over certificate dated 14.8.2015 filed along with the writ petition reads thus:

Handing Over/Taking Over (Certificate)

Date: 14/08/2015

Project: Installation of 2x5 MVA, 33/11 kV Sub-station along with the associated 33 kV line and related Civil Works at SugnuThoubal District on turn-key basis.

Ref: LOA No.4/109/33KV/SUG/13-ED(PURCH)706-17, dated 02/07/2014.

Name of Line: Associated 33 kV transmission line.

With reference to the above mentioned LOA/Work Order, the construction activities of the associated 33 kV transmission line of the above project has been completed by tapping from the existing 33 kV

transmission line from New Chayang to Joupi in looping in – looping out (LILO) configuration by M/s.Shyama Power India Limited, Gurgaon, and the line has been successfully tested and commissioned on 14/08/2015 in presence of MSPCL officials. The completed transmission line facility is taken over by the Dy. General Manager, TD-III, Manipur State Power Company Limited (MSPCL) on this day i.e. 14/08/2015.

*For and behalf of
Manipur State Power
Company Limited*

*For and behalf of
Shyama Power
India Limited*

*Sd/-xxx
DGM, TD-III
(Taken Over)*

*Project Manager
(Handing Over)*

32. To controvert the handing over/taking over certificate dated 14/08/2015 produced by the petitioners, the respondent Manipur Lokayukta has not produced any document. Therefore, it is clear that the execution of the associated 33 KV transmission line pursuant to the letter of award dated 2.7.2014 which is the prime focus of allegation of the complainant in the Complaint Case No.5 of 2022 was successfully completed and after following the due process including the testing and commissioning in the presence of the officials of MSPCL, the handing over and taking over of the completed work was done on 14.08.2015 between the executing

agency and the MSPCL. Nobody has questioned the certificate of handing over/taking over till date.

33. As could be seen from the records, irrespective of the actual state of affairs which may not be disputed about the completion of the project in the month of August, 2015, the Manipur Lokayukta without appreciating the stand of the Government, called for personal appearance of the petitioners under the guise of enquiry which *prima facie* is outside its jurisdiction.

34. It is settled law that under the guise of enquiry and/or investigation, the authorities shall not harass the individual at the behest of the vested interested persons.

35. As stated supra, Section 53 of the said Act bars the taking up of the complaint in respect of the allegation of committing offence after the expiry of seven years. The work in question was completed way back on 14.8.2015, however, the Complaint Case No.5 of 2022 based on the complaint lodged by the Shri Ngangom Ibotombi Singh against the petitioners and M/s.Syama Power (India) Private Limited was taken up for adjudication on 8.9.2022 by the Manipur Lokayukta.

36. A perusal of the File produced by the parties in respect of Complaint Case No.5 of 2022, makes it clear that Shri Ngangom Ibotombi Singh has filed the complaint before the Manipur Lokayukta on 31.8.2022. According to the petitioners, the work in question was completed on 14.8.2015 and the complaint as per the File was lodged on 31.8.2022, which is beyond the period of seven years as per Section 53 of the said Act. The complainant Shri Ngangom Ibotombi Singh was impleaded as party respondent in these writ petitions. Despite service, he has not appeared before this Court. Lodging complaint before the Manipur Lokayukta and tracing evidence through the Manipur Lokayukta cannot be permitted. It is the bounden duty of the complainant to produce all the records in support of the complaint while filing the complaint case. However, in the case on hand, the complainant has failed to do so. When the complainant is arrayed as party respondent in the writ petition and notice served on him, it is his bounden duty to appear before the Court and put forth his stand.

37. At this juncture, the learned counsel for the Manipur Lokayukta submitted that the impugned orders passed in the complaint case are not adverse to the interest of any person, as the decision as to who are to be added as respondents in the preliminary enquiry is yet to be decided and that the writ petitions

have been filed based on the pre-conceived presumption. In the given facts and circumstances of the case, it cannot be said that the writ petitions are filed prematurely.

38. It is also the argument of the learned counsel for the Manipur Lokayukta that even a layman or a common man will understand that the case of the complainant that the petitioners and others had embezzled and misappropriated the fund for the project i.e. Installation of 2x5 MVA, 33/11 KV Sub-station along with the associated KV line and related civil works at Sugnu in Thoubal District on turn-key basis by stringing only 3 kms. of line that too by shortening the line portion from original contract of 20 kms. and also not constructed the sub-station of the project has no legs, as either the complainant or the Manipur Lokayukta proved the same.

39. It is true that the disputed question of fact cannot be decided in the writ petition, however, it is the duty of the parties in the writ petition to *prima facie* prove their case. In the instant case, it is the say of the petitioners that way back in August, 2015, the work was completed. To prove the same, they have produced the handing over/taking over certificate. To disprove the said certificate, no material has been produced by the respondent Manipur Lokayukta. No *prima facie* proof to show the alleged

misappropriation of funds by the petitioners as alleged by the respondent Manipur Lokayukta is placed on record. Under the garb of enquiry/investigation, evidence cannot be traced out to suit a person and that the authority of the Lokayukta cannot be misused.

40. As stated supra, as per Section 53 of the said Act, the Lokayukta shall not inquire into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

41. In the case on hand, the petitioners have established *prima facie* that line component i.e. the associated 33 KV line, was completed on 14.8.2015. Thus, it is clear that the complaint is clearly barred by limitation and in the time barred complaint, the Manipur Lokayukta cannot issue notices under the guise of enquiry or verifying the records. Admittedly, the Manipur Lokayukta ought not to have ordered enquiry, as the work was completed way back on 14.08.2015 and to that effect proof has also been produced before this Court. In view of the above, the petitioners have legal right to maintain the present writ petitions.

42. Section 14 of the Manipur Lokayukta Act, 2014 deals with the enquiry to be conducted into any matter involved in or

arising from or connected with any allegation of corruption made in the complaint by the Lokayukta. Section 14(1) of the Act provides:

“14. (1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following namely:-

- (a) ...*
- (b) ...*
- (c) ...*
- (d) all officers and employees of the State, from amongst the public servants defined in sub-clause (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;*
- (e) all officers and employees referred to in clause (d) or equivalent in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it;*
- (f) ...*
- (g) ...*

(h) ...”

43. Thus, from the above, it is clear that a complaint before the Manipur Lokayukta by the complainant against any authority, including the public office, needs to satisfy the condition mentioned in Section 14(1) of the said Act. In the case on hand, as stated *supra*, the condition stipulated in Section 14(1) of the said Act has not been fulfilled by the complainant and the said fact was not properly analyzed by the Manipur Lokayukta while coming to the conclusion to issue notice to the respondents therein for appearance and the production documents for preliminary enquiry. That apart, expanding the scope of enquiry beyond the allegation made in the complaint is against the objective of the said Act. Such intention to have a roving enquiry cannot be permitted.

44. It is also the submission of the learned senior counsel for the petitioners that with a good intention, the petitioners have discharged their official function and, therefore, the petitioners have to be protected by the provision of Section 50 of the Act.

45. Section 50 of the said Act provides:

“50. No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything

which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.”

46. Taking cognizance by the Manipur Lokayukta of a complaint filed by the complainant, who was a retired IAS officer, against the petitioners beyond the statutory period as provided under Section 53 of the said Act and the non-consideration of the aspect of Section 50 of the said Act has infringed the fundamental rights of the petitioners guaranteed under Articles 14 and 21 of the Constitution of India.

47. A retired high functionary of the State Government cannot be accused by another retired high functionary to meet personal agenda after a long time before the Lokayukta.

48. It is to be noted that the series of actions are undertaken by the Manipur Lokayukta in connection with the Complaint Case No.5 of 2022 even though the aforesaid action purportedly has taken in connection with altogether a different Complaint Case No.2 of 2020 and, as such, the claim of bonafide is highly misplaced for not accepting the stand of the Government. As regards to the issue raised in Complaint Case No.5 of 2022, it is

clear that the same is time barred and it would be out of the purview of the Manipur Lokayukta as per the scheme of the said Act.

49. For all the reasons stated above,

- a) Both the writ petitions WP(C) No. 833 of 2022 and WP(C) No. 828 of 2022 are allowed.
- b) The Complaint Case No.5 of 2022 pending on the file of the Manipur Lokayukta against petitioners is closed.
- c) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil