

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 47 of 2020

Date of Decision: 15.03.2023

State of Meghalaya

Vs.

Abhijit Basumatary

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Sen, Sr. GA with
Mr. A. Kharwanlang, GA.

For the Respondent(s) :

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The State of Meghalaya as petitioner by way of the instant petition is before this Court, challenging the order dated 09.01.2020 (published on 10.01.2020), passed by the Chairman, Meghalaya Lokayukta in Complaint Case No. 1 of 2020, and also order dated

03.02.2020, passed in Misc. Application arising out of Complaint Case No. 1 of 2020. The ground of challenge is that, the said orders were passed in patent violation of the statutory provisions of the Meghalaya Lokayukta Act, 2014, the Delhi Special Police Establishment Act, 1946, various Supreme Court orders and against the Principles of Natural Justice.

2. This petition as per the Cause Title has been preferred under Article 226 read with Article 227 of the Constitution. However, at the stage of arguments, on queries from the Court and as the Chairman, Meghalaya Lokayukta has not been impleaded as a party respondent, the petitioner has elected to maintain the petition only under Article 227 of the Constitution, to question the impugned orders on excess of jurisdiction and assumption of powers of a constitutional Court by the Lokayukta Meghalaya.

3. Though appearance has been made on behalf of the respondents, after 25.04.2022, the respondents were not represented and the counsel appearing for them, subsequently withdrew from the case. It has also been further reported that the respondent No. 2, who was impleaded by order dated 02.03.2020, has also died. Accordingly, as several dates have passed, and the respondent No. 1, seeming not interested in appearing in the case, the matter is being heard ex-parte.

4. Mr. S. Sen, learned Senior GA assisted by Mr. A. Kharwanlang, learned GA for the petitioner submits that the respondent No. 1, had filed a complaint before the Chairman, Meghalaya Lokayukta containing vague, omnibus and general allegations of illegal transportation of coal and betel nuts from Meghalaya to Assam, and that the complaint was bereft of any material particulars or supporting evidence. He submits that, without causing any notice to the petitioner, or any of the officers/persons name in the complaint, the Lokayukta passed the impugned order dated 09.01.2020, directing the Superintendent Police, CBI, Shillong, to cause a preliminary inquiry into the alleged extortion by officials on duty, from loaded trucks. By the said order he submits, the Chief Secretary was also directed to take appropriate measures to root out the alleged racket, and to effect immediate transfer of the officers whose names were found in the list. Though a Misc. Application was filed by the petitioner for modification of the order dated 09.01.2020, the learned Senior GA submits that the same was dismissed vide order dated 03.02.2022, wherein several unfounded aspersions were also made.

5. The challenge to the impugned orders as submitted by the learned Senior GA, is on the non-compliance of the procedure laid down under Section 20 of the Meghalaya Lokayukta Act, 2014 (herein referred to as the Act), apart from violation of Sections 28 and 32. Further

grounds taken is the non-adherence to the provisions of Section 15 of the Act, and also the lack of jurisdiction of the CBI to inquire or investigate. The learned counsel has elaborated his contentions as follows;

(i) On **Non-compliance of Sections 20 and 28:-** it is submitted that, on receipt of a complaint, the Lokayukta in the event he decides to proceed, shall order a preliminary inquiry by its Inquiry Wing or any agency (including any Special Investigation Agency), and that till such time any Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such officers as may be required. However, he submits the Lokayukta acted in excess of jurisdiction, by directing the CBI to conduct an inquiry, when such power is not vested by the Act, unlike the Lokpal Act, 2013, which specifically includes this agency.

(ii) On the **Violation of Section 32 of the Act:-** it is submitted that Section 32 of the Act provides that, if the Lokayukta is prima facie satisfied on the basis of evidence that, the continuation of a public servant in his post will adversely affect such preliminary inquiry, he may recommend the transfer or suspension of such public servant, which is ordinarily accepted by the State Government, but which is however, also empowered to disregard such recommendations by recording reasons in writing. In the present case he submits, the

respondent No. 1, had made allegations against 71 entities without any specific allegations, wherein only 8 were serving under the Government of Meghalaya, the entertainment of complaints against officials who are not under the State of Meghalaya and the directions of transfer are therefore, without jurisdiction and unsustainable as per the Act.

(iii) **Non-adherence to Section 15:-** it is submitted that, as the respondent had claimed to have filed a writ petition before the Hon'ble Supreme Court being WP(C) No. 1289 of 2019 and also lodged complaints with the CBI containing the same allegations of corruption, as when the complaint was filed before the Lokayukta, the mandate of Section 15 of the Act disables the Lokayukta, from considering the matter which is pending consideration before the Hon'ble Supreme Court and other authorities.

(iv) **Directions of CBI:-** it has been submitted that, the Lokayukta failed to consider that the direction for the CBI inquiry can only be issued in rare and exceptional cases, inspite of the submissions of the counsel for the CBI before the Lokayukta, that there are no specific guidelines with regard to action to be taken by the CBI branches, with regard to registration of cases for inquiry and corruption cases in the State. It has been further submitted that, the Lokayukta failed to

consider that, under Section 6 of the Delhi Special Police Establishment Act, 1946, no member could exercise powers and jurisdiction in any area of a State without the consent of the concerned State Government.

6. The learned counsel has also impressed upon the fact that, the impugned order dated 09.01.2020 (10.01.2020) was passed ex-parte in complete violation of the Principles of Natural Justice, and that the impugned orders passed by the Chairman, Meghalaya Lokayukta apart from being bad in law are beyond jurisdiction, contrary to statutory provisions of the Act, as also the Delhi Special Police Establishment Act, 1946, and as such suffers from severe jurisdictional errors which has caused grave miscarriage of justice.

7. Having heard learned counsel for the petitioner, it is seen that the grievance centers around the manner in which the Chairman of the Meghalaya Lokayukta, has exercised its powers, and as contended by the petitioner, is allegedly in violation of the Act itself, and without jurisdiction. A perusal of the complaint dated 13.12.2019, which has occasioned the proceedings, does not reveal any specific information or materials, but, broad allegations have been made therein, about illegalities from the year 2015 onwards, in the transportation of coal and trade of betel nuts, apart from the enumeration of 71 persons, some by

name, who were not public officials and the rest without names but by designation. The Lokayukta by the first impugned order it is noted, summarily registered a case and issued directions for a preliminary inquiry by the CBI, and also for immediate transfer of officials. The impugned order dated 09.01.2020 (10.01.2020) is reproduced hereinbelow;

Meghalaya Lokayukta

No. MEGHLok.18/2020/65

Dated Shillong, the 10th January, 2020

ORDER
(09/01/2020)

Complainant : Mr. Abhijit Basumatary

Vrs

Respondent : Superintendent of Police, Khliehriat District & others.

This petition filed by a resident of Meghalaya speaks about the racket in the export and import of goods, particularly coal, betel nut, boulders etc., which are being transported in violation of existing Central and State law, mostly from East Jaintia Hills through different points and Check Gates across the Indo-Bangladesh Border covering the district of Borak Valley in Assam and Khliehriat district in the State of Meghalaya by a network being set up by some dishonest businessmen in collusion with some unscrupulous civil and police officials belonging to Geology and Mining, Transport, Supply, Sale Tax departments of the State and Central and custom department.

The petitioner dares to disclose names of the officials and individuals allegedly involved in the racket vide a list enclosed with the complaint petition.

The petitioner also dares to give details of Modus Operandi adopted by the racketeers.

It is alleged that some officials on duty of the aforesaid departments demand and take bribe for allowing the loaded trucks without necessary papers plying in those areas, even without challans, across the Check gates and thereby causing huge loss of revenue which is estimated approximately at Rs.1000 Crores to the State. Further, it is alleged that the said officials running since 2015, could not be stopped and the authorities concerned have taken no step to stop the racket despite repeated representations made from time to time.

Having considered the alleged involvement of some high ranking civil and police officials and also taking into account the fact that this Lokayukta at present is not having an Enquiry Wing of its own, I deem it fit and proper to get the matter enquired by an Independent Agency like the CBI and get the Preliminary Report at the earliest to proceed further. Accordingly, I direct the SP, CBI, Shillong, to cause an Inquiry into the matter and submit the preliminary report within a period of 15 days from the date of receipt of necessary papers from the Secretary of this Commission.

In the meantime, I direct the Chief Secretary to the Government of Meghalaya to look into the matter and take appropriate measures to root out the alleged racket.

I also direct the Chief Secretary to effect immediate transfer of the officials under the establishment of different departments of Meghalaya whose names find places in the list furnished by the petitioner within 10 days to facilitate uninterrupted Enquiry by the CBI.

The Chief Secretary to the Government of Meghalaya is further directed to take effective measures to protect the bonafide businessmen and run their business without harassment from the unscrupulous officials and racketeers. The Chief Secretary shall submit an action taken report within 15 days from today.

Let a case be registered and proceed in accordance with the provisions under the Meghalaya Lokayukta Act, 2014.

Show cause notice shall be served upon all concerned parties after receipt of the Preliminary Inquiry Report.

Sd/-

*(P.K. Musahary,
Chairperson, Meghalaya Lokayukta*

Copy to:-

- 1. The P.S to the Chief Secretary to the Government of Meghalaya, for kind information of the Chief Secretary.**
- 2. The S.P CBI Shillong, for information and necessary action.**
- 3. The Superintendent of Police, Khliehriat District, Respondent, for information.**
- 4. Mr. Abhijit Basumatary, Complainant, for information.**

(R. Rapthap, IAS)

Secretary, Meghalaya Lokayukta”

8. As contended by the counsel for the petitioner, it is also noted that inspite of the application of the petitioner for recall of modification of the order dated 10.01.2020, the Chairman, Meghalaya Lokayukta rejected the same and maintained the same stand. At this juncture, it would be apposite to refer to the relevant provisions of the Meghalaya Lokayukta Act, to examine as to whether the Chairman had indeed exceeded his jurisdiction, as vested by law in issuing the impugned orders. Sections 11, 15, 20, 28 and 32 which are relevant, are reproduced hereinbelow.

“11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to

have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Departments, as may be required by the Lokayukta, for conducting preliminary inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of Under Secretary to that Government, shall have the same powers as are conferred upon the Lokayukta under section 88.

15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of the State Legislature or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

20. (1) *The Lokayukta shall, on receipt of a complaint, first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exist a prima facie case for proceeding in the matter.*

(2)

(3)

(a)

(b)

(c)

(4)

(5)

(6)

(7)

(a)

(b)

(8)

(a)

(b)

(9)

(10)

(11)

(12)

28. (1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the State Government.

(2)

(a)

(b)

(c)

(3)

32. (1) *Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available, that –*

(a) the continuance of the public servant referred to in clause (d) or clause (e) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(b) the public servant referred to in clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokayukta may recommend to the State Government for transfer or suspension of such

public servant from the post held by him till such period as may be specified in the order.

(2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

[Emphasis supplied]

9. Section 11 as quoted above, speaks of the Inquiry Wing for the purposes of conducting preliminary inquiries into any offence alleged to have been committed by a public servant, with the proviso that, till such time the Inquiry Wing is constituted, the State Government shall make available of such officers as may be required for conducting the preliminary investigation. In the instant case, it is noted the Chairman, Meghalaya Lokayukta without resorting to this proviso had immediately directed the CBI to conduct the preliminary investigation.

10. Sections 20 and 28 read together which provides the procedure, should the Lokayukta decide to proceed on a complaint, also seems to have not been adhered to, inasmuch as, recourse has not been taken to the use of officers of the State for inquiry and though the Delhi Special Police Establishment Act, 1946 is not mentioned in Section 20, as has

been done specifically in the Lokpal Act, the direction for preliminary inquiry by the CBI was issued, which appears to be misplaced.

11. The direction of the mass transfer of officers, as ordered by the impugned orders also runs contrary to the provisions of Section 32(2) of the Act, inasmuch as, allegations have been made against 71 entities including complaints against officials of the Assam Government, over which the Meghalaya Lokayukta lacks jurisdiction and further in so far, as the officers of the State of Meghalaya were concerned, no reasons were recorded or any material referred to, before directing the en masse transfer of all the officials mentioned in the complaint.

12. Apart from the impugned orders being beyond the scope of the provisions of the Act, the impugned order dated 10.01.2020, was also passed ex parte, without hearing the concerned respondents.

13. The proceedings before the Meghalaya Lokayukta therefore, which were initiated by the impugned orders dated 10.01.2020 and 03.02.2020, being without jurisdiction and contrary to the statutory provisions of the Meghalaya Lokayukta Act, 2014, are therefore liable to be interfered with in exercise of supervisory powers under Article 227 of the Constitution.

14. Accordingly, the impugned orders dated 09.01.2020 (10.01.2020) and 03.02.2020, are quashed and set aside.

15. The instant petition is allowed and disposed of.

Judge

Meghalaya
15.03.2023
"D.Thabab-PS"

