

Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.172/2023

Date of Order: 10.07.2023

Hewingson A. Sangma Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Ms. S. Alam, Adv (VC) with
Ms. S. Marpna, Adv

For the Respondents : Mr. N.D. Chullai, AAG with
Mr. A.H. Kharwanlang, Addl.Sr.GA
Ms. A. Thungwa, GA
Mr. S. Jindal, Adv for R/2-4
Mr. P.T. Sangma, Adv for R/5

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

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

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This petition is in desperation and is somewhat akin to the devil citing the scriptures.

2. A frivolous challenge has been made to the amending Acts of 2019 and 2021 by which the original provisions of the Meghalaya Lokayukta Act, 2014 have been substantially altered. In essence, what has been done by the impugned part of the amending Acts is to have the body called Lokayukta, originally intended to be headed by a Chairperson and

consisting of several other members, to be complete upon the Chairperson being appointed. The grievance of the petitioner is that the two amendments are completely arbitrary, ultra vires Article 14 of the Constitution and they have taken away rights that may have accrued to the petitioner in the interregnum. None of the contentions holds any water.

3. The Act of 2014 was not passed under any constitutional provision nor does it refer to any other statute or material in such regard. Lokayukta Acts have been enacted in several States to check the functioning of public servants and take speedy action where some form of wrongdoing is discovered. A preliminary investigation is conducted to look into the credibility of the charges brought and, if the preliminary investigation reveals some prima facie basis, a regular investigation is required to be conducted, whether by a special investigation team or by the regular machinery. In terms of the Act, opportunities are afforded to an accused or against any other person that the Lokayukta may decide to proceed at several stages, particularly at the time of adjudication.

4. There is also a provision in Section 50 of the Act that protects a public servant against complaints brought against him when he has acted in good faith in discharging the duties of his office.

5. The petitioner claims that the original complaint was not directed against the petitioner but, following a preliminary inquiry, a

notice was issued to the petitioner on March 14, 2023 to which the petitioner responded orally.

6. The immediate challenge herein is to the propriety of an order dated May 18, 2023 by which the Lokayukta has required charge-sheets to be filed under Sections 7 and 12 of the Prevention of Corruption Act, 1988, inter alia, against the petitioner. The matter is at such preliminary stage. Following the May 18, 2023 order of the Lokayukta passed by only its Chairperson and not as a part of any bench, a special court in Tura has taken cognizance of the matter by an order dated May 23, 2023 required summons to be issued against all the persons named in the order dated May 18, 2023, including the petitioner herein.

7. At the time that this petition was received in this Court, the petitioner questioned the validity of the amending Acts and claimed that the principles of natural justice had been completely violated. On June 12, 2023, this Court received the petition and provided in its order of such date as follows:

“The investigation will continue in terms of the order impugned, without prejudice to the rights and contentions of the petitioner herein. However, if the need arises to arrest the petitioner, such arrest may not be made without leave of this Court”.

8. According to the petitioner, the entire scheme of the original Act has been turned on its head and though the State Legislature initially intended a serious matter as a complaint against a public servant

discharging his official duty to be considered by a body which was to be called the Lokayukta, the amendment has stripped the body down to a solitary person. This, according to the petitioner, is completely arbitrary and apparently not in consonance with Article 14 of the Constitution. Several provisions of the original statute have been placed, including those pertaining to the constitution of the body known as the Lokayukta, the procedure for appointment of the Chairperson and members of such body and the selection committee which would recommend the names for the appointments to be made therefrom.

9. On merits, Section 21 of the Act has been copiously placed to submit that before proceeding against any person other than an accused, notice has to be issued to such person and such person's views obtained.

10. Section 20 of the original Act has also been placed to emphasise that upon receipt of a complaint it was the body of the Lokayukta which had to call for a preliminary inquiry and by the amendments, particularly the amendment contained in Section 2 of the amending Act of 2019, Section 5 of the Act may have been altered but Section 20 of the statute remains unaffected.

11. Particular objection has been taken to Section 2 of the amending Act of 2021 both in its first and the fifth sub-sections. In effect, the amendment provides for the Lokayukta to be run singly by its

Chairperson, even without the assistance of any member if no member has been appointed.

12. There is no dispute that it was the State Legislature which enacted the original statute in 2014 and such Legislature had due authority to alter or amend the provisions thereof. Just as the State Assembly deemed it fit originally for the Lokayukta to be a body of several persons, it could have, provided for a Lokayukta to be a single-person authority. There was neither any impediment at the initial stage nor at any subsequent stage on the State Assembly to decide on the constitution and composition of the Lokayukta and merely because it had once indicated that the Lokayukta would be a body of persons would not stand in the way of the State Assembly altering its original position to provide for a one-member Lokayukta.

13. Further, since the State Legislature had due authority to amend its own Act in such manner as it thought fit, the introduction of the proviso to Section 5 by the 2019 amendment would be all pervasive and cannot said to be confined to Section 5 alone.

14. Section 5 of the Act in its original form requires appointments to vacant posts to be made. By adding the proviso, the Legislature clarified that if the body that was contemplated to be the Lokayukta was not complete upon vacancies not being filled up, that would not stand in the way of the available persons in the organisation continuing with the

activities as empowered. As a consequence, the proviso would have an effect on all the other provisions of the original statute, including Section 20 which provides for members sitting along with the Chairperson to require a preliminary investigation or inquiry to be made.

15. There does not appear to be any arbitrariness in the State Legislature having amended the Act that was of the same Legislature's doing. No prejudice on the ground of Article 14 has been demonstrated except by referring to such constitutional provision.

16. In this case, a complaint was made in respect of certain matters involving the use of public funds. A preliminary inquiry was called for by the Lokayukta which resulted in several other names coming up apart from the person or persons originally complained against. At the time of preparing the preliminary report, due notice was issued, in compliance with the principles of natural justice, to the petitioner herein whereupon, the petitioner claims to have made an oral representation after receiving the notice of March 14, 2023 by presenting himself before the body charged with the task of making the preliminary investigation.

17. At the highest, the best arguable case of the petitioner is that the order dated May 18, 2023 passed by the Lokayukta may have been without notice to the petitioner and without affording the petitioner an opportunity of being heard. However, such notice causes no prejudice to the petitioner since the matter has been referred to the special court for the

special court to file charge-sheets under certain provisions. There is no doubt that the petitioner will be heard as summons have already been issued. At any rate, if there is any grievance in such regard or any infraction that the petitioner can rightfully complain of, this is not the forum for such purpose.

18. It appears that a sham challenge to the amending Acts was made out for the purpose of stalling the proceedings initiated by the impugned order dated May 18, 2023. Since there is no basis to the challenge to the amendments, WP (C) No.172 of 2023 is dismissed with full prejudice to the petitioner for its consequences.

19. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya

10.07.2023

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