GAHC030001362022

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
AIZAWL BENCH

WP (C)/39/2022

1. Sh. Bhupesh Chaudhary,
   C-12, Delhi Government,
   Flats, D-2, Vasant Kunj,
   New Delhi

.....Petitioner

-Versus-

1. State of Mizoram
2. The Chief Secretary to the
   Government of Mizoram,
   Aizawl-I Aizawl
3. The Mizoram Lokayukta,
   Represented by its Secretary A/89,
   F. Kapsanga Building,
   Tuikual South Temple Square,
   Aizawl, Mizoram
4. The Anti Corruption Bureau, Mizoram
   Represented by its Director Aizawl Mizoram
5. The Deputy Commissioner
   Siaha District Siah

.....Respondents

For Petitioner	:	Mr. P. N. Goswami, Advocate
For Respondent(s)	:	Mrs. Linda L. Fambawl, Additional AG (R. Nos. 1, 2, 4 and 5) Mr. J. C. Lalnunsanga, Advocate (R. 3)
Date of Hearing	:	28.10.2024
Date of Judgment	:	28.10.2024

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J.)

1. Heard Mr. P. N. Goswami, the learned counsel appearing on behalf of the petitioner. Also heard Mrs. Linda L. Fambawl, the learned Additional Advocate General appearing on behalf of the respondent Nos. 1, 2, 4 and 5 and Mr. J. C. Lalnunsanga, the learned counsel appearing on behalf of the respondent No. 3.

2. The present writ petition has been filed challenging the provisions of Section 3 and 19 of the Mizoram Lokayukta Act, 2014 inserted by Mizoram Lokayukta (Amendment) Act, 2016; for setting aside and quashing the provision of Section 22 of the Mizoram Lokayukta Act, 2014; for setting aside and quashing the proceeding being Case No. MLC No.34/2021 pending before the Mizoram Lokayukta and all the proceedings following therefrom and for writ in the nature of mandamus directing the respondents not to act any further on the basis of the preliminary inquiry, submitted by the Anti Corruption

Bureau. At the outset, it is relevant to take note of that the learned counsel appearing on behalf of the petitioner had submitted that the Mizoram Lokayukta (Amendment) Act, 2016 had not yet been notified as required under Section 1 (3) of the Mizoram Lokayukta (Amendment) Act, 2016. Taking into account that the Mizoram Lokayukta (Amendment) Act, 2016 had not yet been notified, the question of deciding as to whether Section 3 and 19 of the Mizoram Lokayukta Act, 2014 as amended by the Mizoram Lokayukta (Amendment) Act, 2016 do not arise.

3. In the backdrop of the above, let this Court therefore, take note of the brief facts leading to the filing of the instant writ petition.

4. The petitioner herein along with his wife who are both IAS Officers of the AGMUT Cadre 2014 Batch were transferred to Mizoram in the month of February 2018 and for a tenure spanning about three years, the petitioner and his wife served in the State of Mizoram. At the time the petitioner served in the State of Mizoram, he was working as the Deputy Commissioner, Siaha. After the petitioner was transferred back to Delhi, a letter was written on 15.03.2021 by his successor, i.e., Deputy Commissioner, Siaha the to the Chief Secretary to the Government of Mizoram seeking necessary guidance and instructions regarding issuance of utilization certificates on alleged doubtful claims of administrative cost for the purpose of acquisition of land for widening of NH-54 within Siaha District. On the basis of the said letter, the Chief Secretary, State of Mizoram instructed the Anti Corruption Bureau to make an enquiry to ascertain whether there is any prima facie case for referring the matter to the

Mizoram Lokayukta. Subsequent thereto, a Preliminary Enquiry Report was prepared by the Anti Corruption Bureau and the same was submitted to the Mizoram Lokayukta. On receipt of the said Preliminary Enquiry Report, the Mizoram Lokayukta initiated a proceedings which was registered as MLC No.34/2021.

5. On 24.12.2021, the Chairperson, Mizoram Lokayukta had issued an order-cum-notice informing the petitioner about the letter written by the Deputy Commissioner, Siaha and that the Chief Secretary with the due approval of the Chief Minister, Mizoram instructed the Anti Corruption Bureau to make an enquiry to ascertain whether there was a prima facie case for referring the matter to Mizoram Lokayukta. It was also mentioned in the said notice-cum-order that the Anti Corruption Bureau conducted an Enquiry and submitted the Preliminary Report and connected documents to the Mizoram Lokayukta. The Preliminary Report as mentioned in the order-cum-notice substantiated the complaint of irregularities committed by the petitioner, the then Deputy Commissioner, Siaha and as such, a case being Mizoram Lokayukta Case No. MLC No.34/2021was instituted. It is under such circumstances, in exercise of the powers under Section 19 (3) of the Mizoram Lokayukta Act, 2014, the petitioner was informed vide the said Notice-cum-Order and was given the liberty to appear in person or through duly authorized representatives or submit oral or written statement on the date, time and place mentioned therein. It is relevant to mention that in the said order-cum-notice, it was categorically mentioned the date and time of hearing as well as the place.

6. The petitioner on receipt of the notice-cum-order dated 24.12.2021 submitted a request to the Deputy Commissioner, Siaha to provide certain documents so that he would be in a position to file an effective written statement before the Mizoram Lokayukta. Subsequent to that, the petitioner also made similar requests before the Chief Secretary, Government of Mizoram vide the communication dated 17.01.2022 as well as before the Mizoram Lokayukta on the same day, requesting for certain documents.

7. It is the case of the petitioner that he was informed by the Deputy Commissioner, Siaha that the documents, which the petitioner had sought for were transferred to the Mizoram Lokayukta and as such, the said documents which the petitioner sought for were not issued. It is also relevant to take note of that on 25.02.2022, an order was passed by the Mizoram Lokayukta thereby fixing 23.03.2022 for filing of the written statement by the petitioner. However, on 23.03.2022, the petitioner, who was personally present before the Mizoram Lokayukta, requested to provide a copy of the Preliminary Enquiry Report and other connected documents as earlier sought by submitting a petition on 23.03.2022. It is the case of the petitioner that without considering the request of the petitioner, the Mizoram Lokayukta directed the petitioner to submit a reply on 20.04.2022. It is under such circumstances, the petitioner had approached this Court challenging the various provisions of the Mizoram Lokayukta Act, 2014 as well as also setting aside and quashing of the Preliminary Enquiry Report prepared by the Anti Corruption Bureau as

well as the Mizoram Lokayukta Case No. MLC No.34/2021 pending before the Mizoram Lokayukta.

8. As mentioned herein above, the petitioner had challenged Sections 3 and 19 of the Mizoram Lokayukta Act, 2014 as inserted by the Mizoram Lokayukta (Amendment) Act, 2016. However, as admittedly, the Mizoram Lokayukta (Amendment) Act, 2016 have not yet been notified, the question of challenging Sections 3 and 19 of the Mizoram Lokayukta Act, 2014, as amended by the Mizoram Lokayukta (Amendment) Act, 2016 does not arise.

9. The petitioner had also challenged Section 22 of the Mizoram Lokayukta Act, 2014 on the ground that the said provision is contrary to Section 19 of the Prevention of Corruption Act, 1988.

10. We have perused the provision of Section 19 of the Prevention of Corruption Act, 1988 wherein the reference made was only in respect to the Lokpal and Lokayuktas Act, 2013. Taking into account that there was no mention whatsoever made to the State Legislation pertaining to the Mizoram Lokayukta, the question of invoking Section 19 to challenge the provisions of Section 22 of the Mizoram Lokayukta Act, 2014, in our opinion, is totally misconceived. Our opinion is further based on the aspect that Section 63 of the Lokpal and Lokayuktas Act, 2013 categorically reserves the authority only upon the State Legislature to enact legislation as regards functioning of the Lokayukta

11. On merits, the learned counsel appearing on behalf of the petitioner submitted that the Preliminary Report so submitted by the Anti Corruption Bureau as well as the initiation and registration of

proceedings under the Mizoram Lokayukta Act, 2014 being MLC No.34/2021 is contrary to the provisions of Section 19 of the Mizoram Lokayukta Act, 2014.

12. It is the specific case of the petitioner herein as could be seen from the pleadings as well as the submissions made by the learned counsel for the petitioner that in terms of Section 19(1) of the Mizoram Lokayukta Act, 2014, the Lokayukta shall either on its own motion or on receipt of a complaint first decide as to whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the Preliminary Enquiry against a public servant by its Inquiry Wing or any agency (including any special investigating agency) to ascertain whether there exists a prima facie case for proceeding in the matter. It is therefore the submission of the learned counsel appearing on behalf of the petitioner that the Lokayukta could not have acted on the basis of the Preliminary Enquiry Report being submitted by the Anti Corruption Bureau at the dictation of the Chief Secretary of the Government of Mizoram. It is the submission of the learned counsel for the petitioner that it is only when a direction is being issued by the Lokayukta to carry out a preliminary inquiry and on submission of such report as mandated under Section 19(2) of the Mizoram Lokayukta Act, 2014, a proceedings can be initiated and registered against any public servant.

13. The learned counsel appearing on behalf of the petitioner submitted that this aspect having not been done and the Chairperson of the Mizoram Lokayukta having taken action only on the basis of a report

submitted by the Anti Corruption Bureau at the instance of the Chief Secretary, the entire initiation and registration of a proceedings against the petitioner was bad in law and required to be interfered with.

14. In addition to that, the learned counsel for the petitioner submitted that even otherwise also the provisions of Section 19 (3) of the Mizoram Lokayukta Act, 2014 categorically provided giving an opportunity of being heard. The learned counsel appearing on behalf of the petitioner submitted that giving an opportunity of being heard would entail that the Preliminary Enquiry Report which forms the basis on which the proceedings were initiated ought to have been furnished to the petitioner as without the said report, the question of providing an adequate opportunity of hearing does not arise.

15. Per contra, Mr. J. C. Lalnunsanga, learned counsel appearing on behalf of the Mizoram Lokayukta submitted that a reading of Section 19(1) of the Mizoram Lokayukta Act, 2014, would show that the Lokayukta has a jurisdiction to act on its own motion or on receipt of a complaint and thereupon to direct, a preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigating agency) to ascertain as to whether there exists a prima facie case for proceeding in the matter. The learned counsel submitted that if on the basis of a Preliminary Enquiry Report, so submitted, the Lokayukta is satisfied with the materials, the same would not denude the Lokayukta to initiate an action in terms with Section 19(3) of the Mizoram Lokayukta Act, 2014, more particularly, when the special investigating agency whom the Lokayukta could

have directed for a preliminary inquiry, would have been the very Anti Corruption Bureau of the Government of Mizoram, and therefore, the same cannot be said to be infirmity going to the root of the jurisdiction and thereby affecting the entire proceedings. The learned counsel further submitted that no substantive or procedural rights of the petitioner have been affected at the initiation made by the Lokayukta on the basis of the report submitted by the Anti Corruption Bureau.

16. The learned counsel further submitted that the Mizoram Lokayukta is not adverse to furnishing the petitioner the preliminary enquiry report as sought for. However, the other documents, which the petitioner has sought for have no relevance, and as such, there is no requirement to be furnished at this stage.

17. We have heard the learned counsels appearing on behalf of the parties and have also perused the materials on the record.

18. A perusal of Section 19 of the Mizoram Lokayukta Act, 2014 would show that the Mizoram Lokayukta has the jurisdiction either on its own motion or on receipt of a complaint, 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 exists a prima facie case for proceeding in the matter. We are of the opinion that the power conferred upon the Mizoram Lokayukta to order a preliminary enquiry is dependent on arriving at a subjective satisfaction on the basis of the materials placed before it. We are

further of the opinion that if the Mizoram Lokayukta is satisfied on the basis of the complaint as well as any preliminary enquiry report that a prima facie case is made out for initiation of a proceedings, the Mizoram Lokayukta is not precluded from initiation of a proceedings on the basis of the said preliminary enquiry report. We have also taken note of that the Mizoram Lokayukta has the power to call for a preliminary enquiry either through its Inquiry Wing or a specialized investigating agency which would include the Anti Corruption Bureau of the State of Mizoram. The Legislature in our opinion never intended that the Mizoram Lokayukta should again seek a report for the same Agency if it was otherwise satisfied with the preliminary report.

19. In addition to that, the provisions of Section 19(1) and 19(2) of the Mizoram Lokayukta Act, 2014 do not in any manner confer any rights upon the public servant in what manner the preliminary enquiry report is required to be obtained. The right of a public servant accrues in the proceedings when an order and a notice is being issued to the public servant giving him an opportunity to submit that there exists no case to make a recommendation in terms with the sub clause (a) and (b) of Section 19(3) of the Mizoram Lokayukta Act, 2014. Under such circumstance, the challenge to the proceedings being MLC No. 34/2021 is misconceived.

20. We are also of the opinion that a very valuable right is conferred upon a public servant of an opportunity of hearing prior to taking action in terms with Section 19(3) of the Mizoram Lokayukta Act, 2014. This right of being heard can only be valuable right, if the

opportunity of hearing so given is an adequate opportunity. To be an adequate opportunity, the public servant is required to be provided the basis upon which the proceedings have been initiated so that an effective reply could be submitted. Under such circumstances, we are of the opinion that the petitioner ought to be provided with the Preliminary Enquiry Report so that the petitioner is in a position to submit an effective reply.

21. Accordingly, we dispose of the instant writ petition with a direction to the Mizoram Lokayukta to furnish the copy of the Preliminary Report to the petitioner within a period of 15 days from the date of the passing of the instant judgment and thereupon, convey to the petitioner a date for filing of the written statement in pursuance to the notice issued on 28.12.2021.

22. With the above observation and directions, the instant writ petition stands disposed of.

23. Interim orders passed earlier stands vacated.

JUDGE **JUDGE**

Comparing Assistant