

GAHC020000152023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8/2023

- 1) SMTI. CATHERINE DZUVICHU AND 2 ORS
REGISTRAR, WATER RESOURCES DEPARTMENT,
NAGALAND, KOHIMA – 797001
- 2) SMTI. KHEHOLI, SUPERINTENDENT,
WATER RESOURCES DEPARTMENT, NAGALAND,
KOHIMA – 797001
- 3) SMTI. ROKOLANO, SUPERINTENDENT,
WATER RESOURCES DEPARTMENT,
NAGALAND, KOHIMA – 797001

..... *Petitioners*

VERSUS

- 1) THE NAGALAND LOKAYUKTA AND ANR
Address - REPRESENTED BY ITS SECRETARY,
NAGALAND LOKAYUKTA, NAGALAND, KOHIMA -
797001

....*Respondent*

- 2) THE CHIEF ENGINEER, DEPARTMENT OF WATER
RESOURCES, NAGALAND, KOHIMA – 797001

..... *Proforma Respondent*

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : T. B. JAMIR

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Date : 15-01-2024

Heard Mr. C.T Jamir, learned Sr. counsel assisted by Mr. I. Imchen, learned counsel for the petitioners, Mr. T.B. Jamir, learned counsel for the respondent No.1 and Mr. E. Thiba Phom, learned Government Advocate for the State respondent.

2. The present writ petition has been filed to quash and set aside the Case No. A-NLP-34/2022 and the order dated 07/12/2022 passed by the learned Upa-Lokayukta, Nagaland, Kohima, on the ground that it is violative of the provisions of the Nagaland Lokayukta Act, 2017.

3. The fact of the case in brief is that the petitioner No.1 was initially appointed as LDA (District) on work-charge basis by the order dated 16/11/1983, the petitioner No.2 was appointed as LDA (District) on work-charge basis by the order dated 20/07/1987 and the petitioner No.3 was appointed as LDA (District) on work-charge basis by the order dated 01/08/1983. The service of the petitioners were extended from time to time and by the order dated 15/07/1998, the work-charge service of the petitioners was last extended upto 30/09/1998. Thereafter, by a common order dated 14/06/1989 issued by the department, the petitioners were appointed as LDA (Directorate) against the newly created post of Cashier (District) in the scale of pay with all other allowances as are admissible under the rules from time to time in the State of Nagaland, with effect from 01/06/1989.

4. The Government of Nagaland, Department of Water Resources, Nagaland, Kohima, has issued the notification dated 02/12/2021 publishing the final combined seniority list in respect of Class-I & II Gazetted Officers and Ministerial Staff in the department as on 01/08/2021. In the final

combined seniority list of ministerial staff, the name of the petitioner No.1 is at Sl. No.1, the name of the petitioner No.2 is at Sl. No.2 and the name of the petitioner No.3 is at Sl. No. 3 and the date of the petitioners joining service is recorded as 01/06/1989. The department has also issued the order dated 30/05/2023 showing the list of Government servant who are to be released from service on completion of 35 years of service/attaining 60 years of age in terms of Section 3(1) and Section 3(2) of the Nagaland Retirement from Public Employment (Second Amendment), Act, 2009 and the P&AR Department's Notification No. AR-3/GEN-174/2007 (Pt) dated 20/08/2009, for the year ending 31/12/2024. In Annexure-1 to the order dated 30/05/2023, the date of the petitioners joining Government service is shown as 01/06/1989 and the date of release of the petitioners from service on completion of 35 years of service is shown as 31/05/2024.

5. That on 17/10/2022, the Director & Deputy Inspector General of Police, Nagaland Lokayukta Police has issued the summon under Section 17(2)(a) of the Nagaland Lokayukta Act, 2017, to the Chief Engineer, Water Resources Department, Nagaland, Kohima, requiring the petitioner No.2 to appear before the Investigating Officer at Nagaland Lokayukta Police Station Kohima on 18/10/2022 without fail. Similar summon was also issued to the petitioner No.1 and 3 on subsequent dates.

6. On receiving the summons, the petitioners appeared before the concerned authorities. The petitioners also submitted separate representations on 23/11/2022 to the Director & Deputy Inspector General of Police, Nagaland Lokayukta Police, through the proper channel, seeking for the copy of the complaint and the general or specific approval of the State Government to investigate the petitioners. Consequent to the representation submitted by the petitioners, the learned Upa-Lokayukta passed the order dated 07/12/2022 in Case No. A-NLP-34/2022, stating therein that the Nagaland Lokayukta is conducting a preliminary enquiry based on a complaint that the petitioners are overstaying in their service

thereby attracting the relevant sections of the Nagaland Retirement from Public Employment Act, 2009 (As Amended) and also stating that the issue was examined by a committee constituted by the Government who after having examined the matter had recommended the voluntary retirement of the petitioner but despite the recommendation the petitioner continued to be in service. On the representation submitted by the petitioners, the learned Upa-Lokayukta in the order dated 07/12/2022 has stated that the instant case is outside the purview of Section-9 of the Act and hence the preliminary enquiry will continue to its logical end. The order has also referred to Section-35 of the Nagaland Lokayukta Act which provides that the provisions of Anti-corruption, Grievance Redressal and the Whistle Blowers Protection Act shall apply mutatis mutandis to the State of Nagaland. Citing all these reasons the representations submitted by the petitioners seeking for the copy of the complaint and the approval of the State Government to investigate the petitioners, has not been considered.

7. Being aggrieved by the action of the respondent No.1 i.e. the Nagaland Lokayukta for registering the Case No. A-NLP-34/2022 against the petitioner for conducting the preliminary enquiry and the order dated 07/12/2022 passed by the learned Upa-Lokayukta Nagaland, the present writ petition has been filed.

8. Mr. C.T. Jamir, the learned Sr. counsel assailing the registration of the case against the petitioners and the order dated 07/12/2022 passed by the learned Upa-Lokayukta submits that the Lokayukta has exceeded its jurisdiction in registering the case and passing the impugned order dated 07/12/2022. Mr. Jamir submits that the action resorted to by the Lokayukta against the petitioner is illegal and violative of the provisions of the Nagaland Lokayukta Act, 2017, more particularly Section-9(1)(a) and Second Schedule-(d) of the Act. Mr. Jamir submits that the service of the petitioners has been counted from the date of their regular appointment i.e. 01/06/1989 and this date has been recorded by the authorities in the

service record of the petitioners. Mr. Jamir accordingly submits that, no foul play or corrupt practice can be attributed to the petitioners to illegally remain in service beyond the period permitted by law. The learned Sr. counsel also submits that in the absence of any criminal element or intent on the part of the petitioners, no case can be registered or preliminary enquiry conducted under the Nagaland Lokayukta Act, nor the Prevention from Corruption Act, 1998 nor under the relevant provisions of the Whistle Blowers Protection Act, 2011. Mr. Jamir also submits that since the department has formally issued the order dated 31/05/2023 for releasing the petitioners from service on 31/05/2024, the petitioners will be superannuated from service on 31/05/2024 on completion of 35 years of service and accordingly no person can have any grievance against the petitioners for remaining in service as per the records officially maintained by the department. Mr. Jamir therefore submits that no enquiry be it preliminary or otherwise can be conducted against the petitioners merely on the basis of a complaint lodged by certain unknown person alleging overstaying in service.

9. The learned Sr. counsel has also submitted that the respondent No.1 has initiated the entire proceedings against the petitioners without serving the copy of the complaint and/or charges made against the petitioners nor the approval of the State Government, so as to enable the petitioners to know the allegation and/or the charges leveled against them and to take steps for their defence. Such action of the respondent No.1, it is submitted, is in complete violation of the principle of natural justice and in total disregard to fairness and the constitutional safeguards.

10. Mr. C.T. Jamir has then referred to Section-8 of the Act of 2017 which provides for Matters which may be investigated by the Lokayukta or Upa-Lokayukta with the general or specific approval of the appropriate authorities for conducting investigation against any Government servant and submits that the action taken against the petitioners, has been

resorted to, by the concerned authorities in complete violation of the procedure laid down under the said provision of the Act.

11. The learned Sr. counsel has further referred to Section-9(1)(a) and Clause-(d) Second Schedule of the Act to submit that the Lokayukta has been prohibited to conduct any investigation under the Act in cases of complaint involving a grievance in respect of any action taken with regard to appointment, removal, pay, discipline, superannuation or other matters relating to condition of service etc. The complaint against the petitioner is with regard to superannuation in service of the petitioners and therefore, the action taken against the petitioners by the respondent No.1 is not only illegal but in gross violation of the law. Therefore, no enquiry be it preliminary or otherwise can be conducted against the petitioner on the basis of complaint lodged by some unknown person alleging overstay in service. In sum and substance, the learned Sr. counsel submits that the complaint/allegation against the petitioners does not fall within the ambit of corruption against public servant and therefore, the subject matter of the complaint cannot be investigated, enquired upon or adjudicated by the Lokayukta.

12. In support of his submission, the learned Sr. counsel has relied in the case of **Bhavnagar University -versus- Palitana Sugar Mill (P) Ltd. & Others**, reported in **(2003) 2 SCC 111**, to contend that the true meaning of a provision of law has to be determined on the basis of what it provides by its clear language with regard to the scheme of the law and not otherwise.

13. Mr. T.B. Jamir, the learned counsel for the respondent No. 1 at the outset raises preliminary objection to the maintainability of the writ petition on the following grounds;

(i) Firstly, it is submitted that the Case No. A-NLP-34/2022 has been registered by the respondent No.1 solely for the purpose of conducting preliminary enquiry, therefore, no right whatsoever be it constitutional or

legal right of the petitioner has been infringed so as to entitle the petitioners to invoke the writ jurisdiction of the High Court for quashing and setting aside the Case No. A-NLP-34/2022.

(ii) Secondly, it is submitted that the Case No. A-NLP-34/2022 has been registered by the respondent No.1 for conducting preliminary enquiry as mandated by Section-11 of the Act, which provides for holding preliminary enquiry and Section-19 which provides for Secrecy of preliminary inquiry or investigation and therefore, there is no legal infirmity in conducting the preliminary investigation and/or to furnish the copy of the complaint to the petitioner.

(iii) Thirdly, it is submitted that the Case No. A-NLP-34/2022 is not registered based on the approval of, or being referred to, by the State Government, therefore, furnishing the copy of the specific approval by the State Government for conducting the enquiry does not arise. Section-11 of the Act which provides provision for holding preliminary enquiry, has been referred to, to submit that under the said section the Lokayukta or the Upa-Lokayukta has been empowered to make preliminary enquiry on a complaint received or in case initiated on its own motion before proceeding to investigate such complaint or case. Therefore, the prior approval of the State Government is not a pre condition to initiate preliminary enquiry. Accordingly, furnishing the copy of the specific approval of the State Government to the petitioners, for conducting the preliminary enquiry does not arise.

(iv) Fourthly, it is submitted that, by filing the present writ petition, the petitioners have failed to establish as to how, by registering the case and passing the order dated 07/12/2022 for conducting preliminary enquiry, the petitioners constitutional or legal rights has been infringed. Mr. T.B. Jamir submits that the existence of a legal right is the foundation and a pre condition to invoke the writ jurisdiction under Article 226 of the Constitution. In the instant case, the Lokayukta by proposing to initiate

preliminary enquiry against the petitioner has not violated any legal or constitutional rights of the petitioners and therefore, the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked by the petitioner to question the registration of the case or the order dated 07/12/2022.

14. In support of the preliminary objection, Mr. T.B. Jamir has cited the following case laws;

(a) **Charansingh -versus- State of Maharashtra & Others**, reported in **(2021) 5 SCC 469**, to substantiate that an enquiry at pre FIR stage is held to be permissible and not only permissible, but desirable, more particularly in cases where the allegation are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income.

(b) **RT Rev. B.P Sugandhar Bishop in Medak -versus- D. Dorothy Dayasheela Ebeneser**, reported in **(1996) 4 SCC 406**, to support the contention that the challenge to the preliminary enquiry is premature and therefore, no writ lie. The purpose of holding preliminary enquiry is to ascertain whether there is some truth in the complaint and whether there are enough material on the basis of which the misconduct can be proved. At the stage of preliminary enquiry no formal charge is required to be framed nor even the participation of the person against whom complaint is made is necessary.

(c) **Ayaaubkhan Noorkhan Pathan -versus- State of Maharashtra & Others**, reported in **(2013) 4 SCC 465**, in support of the contention that by conducting the preliminary investigation, no constitutional or legal rights of the petitioners have been infringed and therefore, the petitioners have not suffered any legal injury so as to entitle them to invoke the writ jurisdiction of the Court.

(d) **Ch. Rama Rao -versus- Lokayukta & Others**, reported in **(1996) 5 SCC 304**, to submit that the language use in the Andhra Pradesh

Lokayukta & Upa-Lokayukta Act 1983 and the Nagaland Lokayukta Act, 2017 in respect of preliminary enquiry are the same. Therefore, there is no legal infirmity in the order dated 07/12/2022 passed by the Nagaland Lokayukta rejecting the prayer of the petitioners to furnish copy of the complaint in connection with preliminary enquiry. In the aforesaid case, the Hon'ble Supreme Court while discussing the relevant provisions of the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 has held that when the Lokayukta or Upa-Lokayukta, as the case may be, conducts a regular investigation into the complaint it would be necessary to give prior opportunity to the public servant etc. By implication, such an opportunity stand excluded when preliminary verification or investigation is conducted. The object appears to be that preliminary investigation or verification is required to be done in confidentiality to get prima facie evidence so that the needed evidence or material may not get suppressed or destroyed. The Hon'ble Supreme Court in the said case has accordingly held that the Lokayukta was well justified in not issuing any notice or giving any opportunity to the petitioners during preliminary investigation or enquiry.

15. On merit, Mr. T.B. Jamir refers to the Section-8 of the Act more particularly to Section-8(3) and submits that the petitioners have misconstrued and misrepresented Section-8 of the Nagaland Lokayukta Act, 2017. Mr. T.B. Jamir submits that a perusal of the above mentioned provision will reveal that the Lokayukta is empowered to investigate any action irrespective of whether or not a complaint has been made. Therefore, the action taken by the Nagaland Lokayukta in proposing to conduct a preliminary enquiry cannot be said to be in violation of the procedure laid down under Section-8 of the Act, 2017.

16. Mr. T.B. Jamir also refers to the complaint involving allegation as defined in Section-2(f) of the Act and the complaint involving a grievance as defined in Section-2(g) of the Act, to submit that there is a clear distinction between the two definitions. Mr. T.B. Jamir submits that what is

barred under Section-9(1)(a) read with Clause-(d) to the Second Schedule of the Act is a complaint involving grievance but not a complaint under Section-2(f) alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988. Mr. T.B. Jamir further submits that Section-2(g) of the Act is to be read with Section-35 of the Act which provides that the provisions of the Anti-Corruption, Grievance, Redressal and Whistle Blowers Protection Act, 2011 shall apply mutatis mutandis to the State of Nagaland. Mr. T.B. Jamir submits that a conjoint reading of Section-2(f) of the Act of 2017 and Section-3(c) & (d) of the Whistle Blowers Protection Act, 2011 demonstrates that complaint involving an allegation inter-alia mean complaint involving corruption under the P.C Act and also a complaint relating to willful misuse of power or willful misuse of discretion by which demonstrable loss is caused to the Government or demonstrable wrongful gain accrues to the public servant or to any third party. Mr. T.B. Jamir accordingly submits that the present complaint is one falling under the definition under Section-2(f) of the Act of 2017 and under Section-3(c) & (d) of the Whistle Blowers Protection Act, 2011. It is accordingly submitted that the petitioners cannot take the shelter of Section-9(1)(a) and Clause-(d) of the Second Schedule to the Act from raising a plea that the Lokayukta is barred from conducting preliminary enquiry or investigation on the ground that the matter relates to the appointment etc. of the petitioners.

17. Mr. T.B. Jamir has also referred to the Section-19 of the Nagaland Lokayukta Act which provides for Secrecy of preliminary enquiry or investigation and submits that the ground taken by the petitioners that Section-19 of the Act only prohibits the disclosure of the enquiry or investigation to the public or the press and not to the petitioners is not legally tenable. Section-19 provides that every preliminary enquiry or investigation shall be conducted in private and in particular the identity of the complaint and the public functionary affected by the preliminary enquiry

of investigation shall not be disclosed to the press or published in any manner before or during the preliminary enquiry or investigation. Mr. T.B. Jamir accordingly submits that if the interpretation of the petitioners is accepted then the very use of the word "Every preliminary enquiry or investigation under the Act shall be conducted in private...." as contemplated in Section-19 of the Act shall be made redundant.

18. Lastly, Mr. T.B. Jamir submits that the applicability of the principle of natural justice will arise only when regular investigation is conducted under Section-12 of the Act but not when a preliminary enquiry or investigation is conducted under Section-11 and Section-19 of the Act.

19. Mr. E. Thiba Phom, the learned Government Advocate for the respondent No.2 submits that the service particulars of the petitioners as set out in the writ petition is not denied. It is however submitted that though there is no extension order of the service of the petitioners beyond 30/09/1988, as per the A-Roll available in the Office, the petitioners had been drawing their salaries and allowances regularly from May, 1988 to 30/05/1989. The learned Government Advocate has also submitted that, the Office of the Water Resources Department does not have the record to show that there was a recommendation by the Committee, for the petitioners, to apply for voluntary retirement as reflected in the order dated 07/12/2022.

20. Heard the learned counsel for the parties. A perusal of the order dated 07/12/2022 passed in Case No. A-NLP-34/2022 reveals that the learned Upa-Lokayukta is conducting a preliminary enquiry based on the complaint that the petitioners who are serving in the Directorate of Water Resources Department are overstaying in their service thus attracting the relevant provisions of the Nagaland Retirement from Public Employment Act, 2009 (As Amended). The order also states that the allegation against the petitioners was examined by a Committee constituted by the Government and the Committee having examined all the relevant

documents has recommended voluntary retirement of the petitioners, however the petitioners are continuing in their service. The order also states that the petitioner under enquiry has petitioned the Office of the Lokayukta to issue the copy of the complaint as well as the copy of the specific approval of the State Government to investigate them. The learned Upa-Lokayukta inter-alia observing that the instant case is outside the purview of Section-9 of the Act, the preliminary enquiry shall continue to its logical end. In the order dated 07/12/2022, the learned Upa-Lokayukta has also referred to Section-35 of the Act of 2017 which provides that the provisions of Anti-Corruption, Grievance, Redressal and Whistle Blowers Protection Act, 2011 shall apply mutatis mutandis to the State of Nagaland. Further the said order has also reproduced Section-13 of the Whistle Blowers Protection Act, 2011 which provides that the competent authority shall, notwithstanding any law for the time being in force, conceal, as required under this Act, the identity of the complainant and the documents or information furnished to him for the purpose of enquiry under this Act, unless so decided otherwise by the competent authority itself or it became necessary to reveal or produce the same by virtue of the order of the Court. Citing the above reason and the provisions of the law, the petition submitted by the petitioners seeking copy of the complaint and the copy of the specific approval of the State Government to investigate the petitioners, has not been considered.

21. There is no dispute that the petitioners were initially appointed as LDA (District) in the year 1983, on work-charge basis. The service of the petitioners were extended from time to time and by the order dated 15/07/1998, the petitioners work-charge service was last extended upto 30/09/1988. Thereafter, by the common order dated 14/06/1989, the petitioners were appointed as LDA (Directorate) against the newly created post of Cashier (Dist.) in the scale of pay w.e.f. 01/06/1989. The Department has issued the notification dated 02/12/2021 publishing the

final combined seniority list in respect of Class-I & II Gazetted Officers and Ministerial Staff. In the seniority list of Ministerial Staff the date of entry in service of all the petitioners are shown as 01/06/1989. The Department has also issued the order dated 30/05/2023 showing the list of the particulars of the Government servant who are to be released from service on completion of 35 years of service/attaining 60 years in terms of Section-3(i) and Section-3(2) of the Nagaland Retirement from Public Employment (Second Amendment) Act, 2009 and the P&AR Department's Notification dated 20/09/2009. From the order dated 30/05/2023, it is seen that the date of the petitioners joining the service is on 01/06/1989 and accordingly, the petitioners will be superannuated from service on 31/05/2024 on completion of 35 years of service. The complaint lodged against the petitioner is for overstay in service and on the complaint the Nagaland Lokayukta has registered the Case No. A-NLP-34/2022 and passed the order dated 07/12/2022 rejecting the applications submitted by the petitioners to issue the copy of the complaint and the specific approval of the Government to investigate the petitioners, observing that since the case is outside the purview of the Section-9 of the Act the preliminary enquiry against the petitioners shall continue to its logical end.

22. The pertaining question to be considered by this Court, in the case is, whether under the Act of 2017, the Nagaland Lokayukta has the power and the competence to register the Case No. A-NLP-34/2022 and pass the order dated 07/12/2022 against the petitioners to conduct preliminary enquiry/investigation. In this connection, it is relevant to refer to Section-9(1)(a) and Clause-(d) Second Schedule to the Act of 2017;

"Section-9: Matters not subject to investigation:

(1) Except as hereinafter provided, the Lokayukta or Upa-Lokayukta shall not conduct any investigation under this Act in cases of a complaint involving a grievance in respect of any action;

(a) If such action relates to any matter specified in the Second Schedule;

or

(b).....

(2).....

(3).....

(4).....

“SECOND SCHEDULE

(See Section-9(1)(a)

(a)

(b)

(c)

(d) *Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to condition of service of public servant but not including action relating to claims for pension, gratuity, provident fund or to any claim which arise on retirement removal or termination of service and such other action involving allegations of corruption in respect of appointment not barred under provision of Section-35 of the Act.*

(e).....”

23. A reading of Section-9(1)(a) and Clause-(d) Second Schedule to the Act, in particular, will demonstrate that there is a statutory bar for the Lokayukta or Upa-Lokayukta to conduct any investigation in cases of a complaint involving a grievance for any action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service etc. The complaint lodged against the petitioners is for overstay in service and therefore, the matter relates to superannuation in service of the petitioners. Section-9(1)(a) and Clause-(d) to the Second Schedule is therefore attracted barring the Lokayukta to investigate the complaint and making any preliminary enquiry on the complaint. Mr. T.B. Jamir has submitted that as the Lokayukta is conducting only a preliminary enquiry on the complaint as provided under Section-11 and Section-19 of the Act, the provision of Section-9(1)(a) and Clause-(d) to the Second Schedule will not come into play during the stage of preliminary investigation. Mr. T.B. Jamir has also submitted that whether the present case against the petitioners will come within the purview of Section-9(1)(a) and Clause-(d) to the Second Schedule of the Act will be subject to the finding of the preliminary enquiry.

24. The submission made by Mr. T.B. Jamir sound convincing at the first glance, but this Court is not inclined to accept such a submission for the

very reason that Section-9(1)(a) read with Clause-(d) to the Second Schedule of the Act imposes a statutory bar on the Lokayukta or Upa-Lokayukta to conduct any investigation in cases of complaint involving a grievance in respect of any action taken with regard to appointment, superannuation or matters relating to conditions of public servant etc. The complaint, as earlier observed, is only with regard to overstay in service and therefore, the complaint against the petitioners will squarely fall under Section-9(1)(a) and Clause-(d) to the Second Schedule and not otherwise, thus barring the Lokayukta to conduct the investigation on the complaint made against the petitioners by scrupulously adhering to the dictate of law. No investigation or enquiry, be it preliminary or otherwise, therefore, can be conducted on the complaint made against the petitioners, in violation of the mandate of law. The provision of Section-11 of the Act which deal with preliminary enquiry and Section-19 which deal with the Secrecy of preliminary enquiry or investigation, therefore, in the considered opinion of this Court cannot come to the aid of the respondent No.1 to conduct a preliminary enquiry/investigation on the complaint. The Lokayukta or Upa-Lokayukta cannot ignore the policy intent and the law laid down under the Act.

25. The law is well settled that any interpretation to any provision should be as per the provisions written in the statute or the relevant provisions and not otherwise. In the case of **Bhavnagar University -versus- Palitana Sugar Mill (P) Ltd. & Others**, (supra), the Hon'ble Supreme Court has held that;

"23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be

enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficial provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it."

26. It is also well settled that if the law requires that a particular thing should be done in a particular manner it must be done in that way and none other. In the case of **J. Jayalithaa & Others -versus- State of Karnataka & Others**, reported in **(2014) 2 SCC 401**, the Hon'ble Supreme Court has held as follows;

"34. There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim expressio unius est exclusio alterius, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

35. [In State of Uttar Pradesh v. Singhara Singh](#)³², this court held as under: (AIR p. 361, para-8)

"8. The rule adopted in Taylor v. Taylor³³ is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

27. Furthermore, it is also a well settled proposition of law that what cannot be done directly cannot be done indirectly. In the case of **State of Tamil Naidu & Others -versus- K. Shyam Sunder & Others**, reported in **(2011) 8 SCC 737**, the Hon'ble Supreme Court held that;

"43. "21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by shift or contrivance." Therefore, when the Lokayukta or Upa-

Lokayukta is statutorily barred to investigate a complaint on the subject covered by Section-9(1)(a) and Clause-(d) to the Second Schedule of the Act, it cannot be permitted to circumvent the law by attempting to circuitously take a stand that preliminary enquiry is permissible.

28. On the submission made by Mr. T.B. Jamir that Section-9(1)(a) and Clause-(d) to the Second Schedule only bars a complaint involving a grievance as defined in Section-2(g) of the Act, but not a complaint as defined in Section-2(f) of the Act, alleging commission of an offence punishable under the Prevention of Corruption Act, 1988 nor the disclosure/complaint relating to offence as defined in Section-3(c)(d) of the Whistle Blowers Protection Act, 2011, this Court is also unable to accept such a submission. The order dated 07/12/2022 explicitly states that the Nagaland Lokayukta is conducting a preliminary enquiry based on the complaint that the petitioners are overstaying in their service, thereby attracting the relevant section of the Nagaland Retirement from Public Employment Act, 2009. No other allegation as would constitute an offence under the Prevention of Corruption Act, 1988 nor any disclosure or complaint relating to an offence under Section-3 of the Whistle Blowers Protection Act, 2011 is discernible. The complaint therefore relates to a grievance as defined in Section-2(g) of the Act, thereby attracting the statutory bar to investigate the complaint under Section-9(1)(a) and Clause-(d) to the Second Schedule. Moreover, the order dated 30/05/2023, issued by the Government of Nagaland, Department of Water Resources and the service records of the petitioners reveals that the date of the petitioners joining Government service is 01/06/1989 and their date of release from service on completion of 35 years of service is 31/05/2024. The complainant, therefore, cannot have any grievance alleging that the petitioners are overstaying in service when the official record does not reveal so.

29. In view of the observation made above, it may not be necessary for this Court to dwell on the other submissions made by the parties.

30. The Case No. A-NLP-34/2022 registered by the Lokayukta and the order dated 07/12/2022 passed by the learned Upa-Lokayukta is accordingly quashed and set aside.

31. The preliminary objection raised by the respondent No.1 is also rejected.

32. Writ petition allowed. No cost.

JUDGE

Comparing Assistant