

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 47 OF 2013

Shri Bikash Bhowmik,
 Son of Sri Binoy Krishna Bhowmik,
 Resident of Opposite road of Ramthakur Ashram,
 Banamalipur, Agartala, P.O. Agartala,
 P.S. East Agartala, District-West Tripura.

....**Petitioner**

- Vs -

1. The Lokayukta, Tripura

Constituted under the Tripura Lokayukta Act, 2008,
 Old Secretariat Complex, P.O. Agartala,
 PIN-799001, P.S. West Agartala,
 District- West Tripura.

2. The Registrar,

Office of the Lokayukta, Tripura,
 Old Secretariat Complex, P.O. Agartala,
 PIN-799001, P.S. West Agartala,
 District-West Tripura.

3. The State of Tripura,

To be represented by the Secretary,
 Department of Rural Development,
 Government of Tripura,
 New Secretariat Building,
 Capital Complex, P.O. Kunjaban,
 PIN 799006, Agartala, West Tripura.

4. The District Magistrate & Collector,

West Tripura District,
 Office of the DM & Collector,
 Agartala, Tripura West,
 P.O. Agartala. PIN 799001.

5. The Sub-Divisional Magistrate,

Mohanpur Sub-Division,
 Office of the Sub-Divisional Magistrate,
 Mohanpur, West Tripura,
 P.O. Mohanpur,
 PIN 799211.

....**Respondents**

BEFORE
THE HON'BLE MR. CHIEF JUSTICE DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner : Mr. P. Roy Barman &
Mr. S. Bhattacharji,
Advocates.

For the respondents : Mr. S. Chakraborty,
Sr. Advocate,
Ms. D. Das, Advocate.

Date of hearing & delivery
of Judgment & order : **28.07.2015**

Whether Fit for Reporting : **Yes**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

By means of this petition the petitioner has challenged the order passed by the Ld.Lokayukta, dated 17.08.2012 which is the preliminary enquiry report, the notice dated 18.08.2012 and the final recommendations made by the Ld.Lokayukta on 24.01.2013. At the outset it may be noticed that this writ petition was filed on 13.02.2013 after the final report had been submitted by the Ld.Lokayukta.

2. Brief facts of the case are that the petitioner is an employee of the Department of Rural Development, Government of Tripura. The petitioner joined the Department as Junior Engineer in 09.09.1998 and is serving the Department till date. One Smt. Srabari Das, filed a complaint against the petitioner before the Lokayukta under Section 8 of the Lokayukta Act. The complainant is a lawyer by profession and is married to a colleague of the present petitioner. She filed the complaint in which it is alleged that the petitioner is a corrupt official making money on the side and that his total assets are totally

disproportionate to his known sources of income. After this complaint was filed, the Lokayukta held a preliminary inquiry in the matter and during the preliminary inquiry many bank officials etc. were summoned and the complainant was examined. The petitioner was also examined and finally a preliminary inquiry report was given on 17.08.2012 and the Ld.Lokayukta came to a *prima facie* finding that the petitioner had assets which were much beyond his known sources of income. The Ld.Lokayukta held that investigation would have to be carried out and notice was issued to the petitioner to file his reply and at the same time the Ld.Lokayukta also in his order dated 17.08.2012 directed his registry to obtain approval of the State-Government in terms of Section 7 of the Tripura Lokayukta Act. On 22nd August 2012, the Registrar of the Office of the Ld.Lokayukta sent a letter to the Secretary, Government of Tripura seeking approval of the Government for carrying out full-fledged investigation in the matter. This approval was granted on 11th September 2012. Thereafter, the petitioner submitted reply and after considering the reply of the petitioner and other material, the Ld.Lokayukta in his final report dated 24th January 2013 has recommended that action be taken against the petitioner. The Ld.Lokayukta has recommended that a criminal case should be filed against the petitioner and departmental proceedings should also be initiated against him. According to the Ld.Lokayukta the assets of the petitioner are vastly disproportionate to his known sources of income.

3. Aggrieved by this order, the petitioner filed this writ petition on 13th February, 2013. Earlier this matter came up before a Learned Single Judge and notice was issued and vide interim order dated 25.02.2013, the departmental proceedings was stayed. This interim order was made absolute on 23rd April, 2013 because no reply was filed by the State or the office of the Lokayukta.

4. Mr. P. Roy Barman has made three submissions to support his plea that the proceedings before the Lokayukta be quashed. His first plea is that the preliminary inquiry was conducted in such a manner that it was a public inquiry which is violative of the provisions of section 11(2) (a) of the Lokayukta Act which reads as follows:-

“2(a) Every preliminary enquiry referred to in sub-section (1) shall be made in private and, in particular, the identity of the complainant and of the public functionary affected by such preliminary enquiry shall not be made public, whether before or during such preliminary enquiry, but the result of every investigation made under sub section (1) shall be made public.”

5. There can be no doubt that the preliminary inquiry should be discreet inquiry. The same should be carried out in such a manner that neither the identity of the complainant nor the identity of the person against whom the preliminary inquiry is conducted is disclosed. In fact, this court has already decided this matter in WP(C) 333 of 2013. In view of the clear language of the Section we have no doubt that the preliminary inquiry should be a discreet inquiry and should not be a public inquiry. While

taking this view we are taking into consideration the provisions of section 7 of the Lokayukta Act which reads as follows:-

“7. Every investigation on any complaint alleging corrupt practices against the public functionaries under this Act shall be initiated by the Ld.Lokayukta with the prior approval of the competent authority.”

6. The Lokayukta under Section 7 of the Act can embark on a full-fledged investigation only after he has obtained approval of the State-Government. However, this does not mean that he cannot inquire into the matter prior to that. The Lokayukta is entitled to carry out a discreet investigation when a complaint is filed to satisfy himself whether the matter needs to be investigated or not. The Ld. Lokayukta may decide on the bare perusal of the complaint that no case is made out for investigation and reject the compliant. On the other hand, he may find that he requires to verify certain facts. He can verify such facts from the concerned department in a discreet manner and if on verification of the facts he finds that a case for further investigation is made out, he must proceed under Section 7 of the Act.

7. Here in the presence case, the procedure followed by the Ld. Lokayakuta was not strictly in accordance with the Act in much as he carried out a detailed investigation at the preliminary stage recording evidence of witnesses. This is not a discreet inquiry because when evidence is recorded in the open court, then there is no discreet inquiry. This is not an inquiry held in private as is the mandate of Section 11(2) (a). We must also take

note of the fact that under sub-Section 2 (a) of Section 11 of the Act, the Lokayukta is debarred from making public the identity of the complainant, the identity of the person against whom the complaint has been filed and any other material which comes to his knowledge during the preliminary inquiry except his final report which is made on the basis of such discreet inquiry. After the preliminary inquiry has been conducted and the Lokayukta is satisfied that the matter requires investigation he has to seek permission of the State Government in terms of Section 7 and thereafter can proceed under Section 11(1) in accordance with law. The Act envisages two different steps. The first is a preliminary inquiry. This must be a discreet private inquiry. If on completion of this private discreet inquiry the Lokayukta is satisfied that the matter requires further investigation, he has to seek approval of the State Government under Section 7 and after obtaining such approval can proceed to hold the investigation under Section 11 of the Act.

8. We are *prima facie* of the view that the procedure followed by the Ld.Lokayukta was not totally inconsonance with the provisions of Section 7 and 11 of the Act. The next question that arises is whether for such non-compliance of the Act, the entire inquiry proceeding should be quashed or not.

9. At this stage it would be pertinent to recapitulate that the petitioner did not approach this Court at the time when he was summoned in the preliminary inquiry. He acquiesced and appeared before the Ld. Lokayukta even after the preliminary inquiry report went against him he did not approach this Court.

He submitted to the jurisdiction of the Ld.Lokayukta and did not raise any objection which is now raised in the petition. He has thus waived such objection and he cannot be permitted to raise this objection after the final report has commenced. The petitioner was represented by a counsel before the Lokayukta and the counsel has not only submitted to the jurisdiction of the Lokayukta but has filed reply not raising any of these objections and in this regard the reliance placed by Mr. P. Roy Barman on the judgment of this Court in WP(C) 333 of 2013 is totally misplaced because in that case the counsel for the official had at every stage raised an objection to the Ld.Lokayukta proceeding in the matter.

10. The second point raised by Mr. Roy Barman is that the Ld. Lokayukta proceeded to fix a date for the investigation even before he had received approval of the State Govt. in terms of Section 7 of the Act. Mr. Roy Barman is right that the notice was issued on 24th August whereas the approval of the State Govt. was received on 11th September. We would expect the Lokayukta to follow the law and to ensure that the mandate of Section 8 is followed in each and every case. However, for the same reasons which weighed with us while dealing with point No.1 we are not inclined to accept the submission of Mr. Roy Barman because the effective date for hearing was 13th September by which time the State Govt. had ordinarily given its approval and all effective investigation has been done after 11th September and therefore, this point cannot be permitted to be raised by the petitioner who had not raised any objection in this

regard before the Lokayukta. In any event the actual proceeding commenced after receipt of approval of the State Govt. Furthermore no prejudice has been caused to the petitioner.

11. Last objection raised by Mr. Roy Barman is that under Section 8 of the Lokayukta Act, the Lokayukta cannot inquire into complaints alleging corrupt practices against any public functionary if such complaint is made after the expiry one year from the date of such action. As far as the present case is concerned we are clearly of the view that this is a case of a continuing cause of action. Having assets disproportionate to the known sources of income cannot be related to a particular year. This is a corruption which evolves over period of time. It is not a specific act of corruption which is complained of by the complainant in this case. What is the allegation made against the petitioner is that over his service tenure he has collected and accumulated assets which are much more than his known sources of income. In such a case we do not think the bar of Section 8(2) would apply.

12. While taking this view we are also not oblivious to the fact that the Lokayukta only makes recommendations to the State Govt. It is for the State Govt. to accept or reject the said recommendations. If the criminal proceedings or departmental proceedings as recommended by the Ld.Lokayukta are not time barred, we fail to understand how the State of Tripura can be restrained from taking any action against the petitioner even if it be on the report of the Ld.Lokayukta. Once material has come to

the notice of the State Govt., which is the employer, which *prima facie* indicates that the petitioner has indulged in some corrupt practices then the State Govt. is duty bound to take action.

13. We, therefore, find no merit in the petition which is accordingly rejected. The stay order is vacated. We make it clear that we have not expressed any opinion on the merits of the case and we have gone only by the recommendations of the Ld.Lokayukta which are recommendations of facts and which we cannot set aside in writ petition.

14. We may also make it clear that in any departmental proceedings or criminal proceedings, which may be launched against the petitioner, he shall have the right to defend the same on all grounds and it will be for the department/the prosecution to prove the case in accordance with law and the report of the Lokayukta cannot be treated as evidence in that matter.

15. Return the record.

JUDGE

CHIEF JUSTICE