

THE HIGH COURT OF TRIPURA

AGARTALA

WP(C) 49 of 2015

Sri Gopal Sherpa,
S/O Sri Kirpa Sherpa,
resident of village- Naraifang,
P.O. Shantirbazar, P.S. Shantirbazar,
District- South Tripura, PIN- 799744.

.... Petitioner.

VERSUS

- 1. The State of Tripura,**
to be represented by the Chief Secretary,
to the Government of Tripura, Civil Secretariat,
New Secretariat Complex, Kunjaban, Agartala
P.O.- Kunjaban P.S. Kunjaban New Secretariat
Complex, District- West Tripura, PIN- 799006.
- 2. The Lokayukta, Tripura,**
to be represented through its Registrar
having its office at Old Secretariat Building,
Agartala, P.O. Agartala, District- West Tripura,
PIN- 799001.
- 3. Secretary-in-Charge of the Home Department,**
Government of Tripura, Civil Secretariat,
New Secretariat Complex, Kunjaban, Agartala,
P.O.- Kunjaban P.S. Kunjaban New Secretariat
Complex, District- West Tripura, PIN- 799006.
- 4. The Secretary-in-Charge,**
of Tribal Welfare Department of the Government
of Tripura, Civil Secretariat, New Secretariat
Complex, Kunjaban, Agartala, P.O.- Kunjaban
P.S. Kunjaban New Secretariat Complex,
District- West Tripura, PIN- 799006.
- 5. The Secretary-in-Charge,**
of Fisheries Department, Government of Tripura,
Civil Secretariat, New Secretariat Complex,
Kunjaban, Agartala, P.O.- Kunjaban
P.S. Kunjaban New Secretariat Complex,
District- West Tripura, PIN- 799006.
- 6. The Director of Fisheries,**
Government of Tripura, Gorkhabasti, Kunjaban,
P.O.- Kunjaban, P.S. Kunjaban New Secretariat
Complex, District- West Tripura, PIN- 799006.

- 7. State Level Scrutiny Committee,**
for verification of ST certificates,
to be represented by its Member Secretary, having
its office in the Directorate for Welfare of
Scheduled Tribes, Gorkhabasti, Kunjaban, P.O.-
Kunjaban,P.S. Kunjaban New Secretariat
Complex, District- West Tripura, PIN- 799006.
- 8. Sri Ranapratap Nath Bhowmik,**
S/O Sri Usha Ranjan Nath Bhaumik,
Radhamadhav Sarani, Dhaleswar,
Jail-Ashram road, P.O Dhaleswar, Agartala,
P.S. East Agartala, District- West Tripura.
- 9. Sri Sitansu Ranjan De,**
S/O late Mahindra Chandra De,
P.O.+ village- Pratapgarh(East), (College Circle),
near Subhashnagar Auto Stand, Agartala,
District- West Tripura, PIN- 799004.

.... **Respondents**

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner : Mr. SK Deb, Senior Advocate
Mr. SC Das, Advocate

For State respondents : Mr. S. Chakraborty, Addl. GA

For respondent no.2 : Mr. CS Sinha, Advocate

Date of hearing and : 13.08.2015.
delivery of judgment.

Whether fit for reporting : YES

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, CJ)

By means of this writ petition, the petitioner has laid challenge to the recommendation of the Lokayukta (Annexure 15) as well as the further proceedings initiated against him by the State Level Scrutiny Committee, vide Annexure-16.

2. The undisputed facts are, that the petitioner was appointed as Fishery Officer in the Department of Fisheries, Government of Tripura on 19.05.1990 against a seat meant for the scheduled tribes. On 06.01.2001, the Tripura Upajati Karmachari Committee, filed a complaint against the

petitioner alleging that the petitioner had wrongly shown himself to be a member of the scheduled tribe. As per Presidential Order no. 10 of 2003, one of the scheduled tribes for the state of Tripura is 'Bhutia'. The petitioner claims that he is a member of 'Bhutia' community but according to the complainants, the petitioner was a 'Sherpa' which is not a part of the 'Bhutia' community.

3. The complainant was inquired into by the State Level Scrutiny Committee which vide its Order dated 04.04.2011 held that the petitioner is a member of the scheduled tribe and he is member of the 'Bhutia' community. Thereafter, in the year 2014, private respondent nos. 8 and 9 submitted a complaint to the learned Lokayukta of Tripura. In this complaint, the main allegation was that the petitioner had wrongly obtained appointment as Fishery Officer against a scheduled tribe post by wrongly showing that he is a member of scheduled tribe.

4. The learned Lokayukta inquired into the matter. He has recorded evidences and has called various officials including the Chairman of the State Level Scrutiny Committee before him and finally he has given a recommendation on 13.11.2014 wherein he has held that he was clearly of the view that 'Sherpa' cannot be treated as scheduled tribe for Tripura. He has also come to the conclusion that there is no corrupt practice in the case but since 'Sherpa' should not be treated as scheduled tribe in Tripura, the petitioner should henceforth be treated as a General candidate for all intents and purposes. The question that arises is, whether the learned Lokayukta had any jurisdiction to pass such orders.

5. We are afraid that the learned Lokayukta has totally over-stepped his jurisdiction. The Lokayukta can only investigate into matters relating to corrupt practice and corrupt practice has been defined as follows:-

“2(5). “corrupt practice” means that the public functionary in any of his action has been guilty of willful lack of financial integrity and/or willful abuse of power for personal gain”.

6. Therefore, the jurisdiction of the Lokayukta is limited to decide whether any public functionary has been guilty of willful lack of financial integrity and/or willful abuse of power for personal gain. We failed to understand how this provision could have been resorted to in the present case.

7. From the material on record it is apparent that before the Lokayukta took up the matter and much before the complaint was filed before it, the State Level Scrutiny Committee had decided the issue in favour of the writ petitioner. This State Level Scrutiny Committee has been appointed by the State government pursuant to the directions issued by the Apex Court in ***Kumari Madhuri Patil & anr. Vs. Addl. Commissioner, Tribal Development and ors.*** reported in ***AIR 1995 Supreme Court 94***. The decision of the State Level Scrutiny Committee is not amenable to the jurisdiction of the Lokayukta. If anybody is aggrieved by the decision of the State Level Scrutiny Committee, then the only forum which that person can approach is the High Court which in exercise of its jurisdiction under Article 226 of the Constitution of India can look into the matter. The Lokayuta has no jurisdiction whatsoever to decide on the correctness or otherwise of the finding given by the State Level Scrutiny Committee.

8. We are also constrained to observe that in the present case, the learned Lokayukta has not followed the mandate 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 Lokayukta with the prior approval of the competent authority”

9. The Lokayukta is debarred from investigating any complaint alleging a corrupt practice without the prior approval of the competent authority. In this case, on perusal of the file, we find that there is no such approval. Since there is no approval, the entire action taken by the learned Lokayukta is dehors the act and has, therefore, no legal value, whatsoever.

10. Assuming for the sake of argument, that there was any corrupt practice, the Lokayukta has also ignored the provisions of Section 8(2) of the Lokayukta Act, which creates a bar of limitation. Assuming for the sake of argument, that obtaining a job on a false certificate is a corrupt practice, the said Act was committed in 1990 and the Lokayukta in the year 2014, had no jurisdiction to entertain the complaint. Similarly, the State Level Scrutiny Committee in the year 2011, had decided the matter in favour of the petitioner and held that he was a member of the scheduled tribe and, therefore, also the Lokayukta in the year 2014 could not have taken cognizance of the matter.

11. Even more surprising is the fact that the learned Lokayukta after holding that there is no corrupt practice in the case, has made certain recommendations. We are clearly of the view that once the learned Lokayukta held that there was no corrupt practice, he had no jurisdiction to make any recommendation. He should not have made such recommendations. Therefore, these recommendations having been issued without any jurisdiction have no value and shall not be acted upon by the State government.

12. We are making it clear that we have not expressed any opinion on the merits as to whether a 'Sherpa' can be part of the 'Bhutia' community or not but in the facts of the present case where the matter has been decided in favour of the petitioner by the State Level Scrutiny Committee and that matter has not been challenged in the appropriate forum, this cannot be reopened as far as the petitioner is concerned.

13. In view of the above discussion, the writ petition is allowed. The recommendations of the learned Lokayukta are set aside. The petitioner shall continue to be treated to be a member of the Scheduled Tribe.

14. No order as to costs.

JUDGE

CHIEF JUSTICE

Saikat