

**247 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-6688-2014 (O&M)
Date of Decision : 05.02.2015**

Dr. Amit Mann Petitioner

versus

State of Haryana others Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

Present: Ms. Baljit Mann, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Rajesh Hooda, Advocate
for respondent No.5.

K.Kannan, J (Oral)

The petitioner who is made the Head of the Department Nephrology through an Administrative decision of the Vice Chancellor of the Pandit B.D. Sharma University of Rohtak had a reason for approaching this Court complaining about investigation ordered by the Registrar at the office of the Lok Ayukta. The petition was founded on a fundamental objection that a complaint given by the 4th respondent Dr. Nitya Nand, who was a Senior Professor of the Department of Medicine at the University with a copy marked to the Lok Ayukta cannot be acted upon. The further objection was that the prayer in the complaint for quashing the circular issued by the Vice Chancellor after which the petitioner was appointed as the Head of Department could not be a subject of an inquiry by the Lokayukta or the Registrar acting at his behest.

It turned out that the copy of the complaint itself had been subsequently substituted with a complaint in a format laid down under the Lokayukta Act and, therefore, the preliminary objection regarding the maintainability of the proceedings itself may not be available. However, the issue still is whether the Registrar had the competence to issue the directions in the manner that he did under the relevant provisions of the Act.

Before the arguments got under way, I sought the assistance of the counsel appearing on behalf of the complainant, as to how the validity of the circular issued by the Vice Chancellor could be a subject of inquiry. The counsel points out that in the complaint which he had lodged in the format required by the office of the Lokayukta, he had pointed out to the alleged abuse of office of the Head of the Department as contained in Paragraphs 25 to 30 of the complaint and that could be a subject of inquiry before the Lokayukta. I find, if the complaint were to be restricted to the abuse of power of a Public Servant, the complainant could surely seek for an inquiry but the matter that has still to be seen is whether the inquiry directed to be undertaken on the directions of the Registrar is competent under the provisions of the Haryana Lokayukta Act of 2002.

In decision rendered by this Court in a petition brought before this Court in CWP No.22613 of 2012 titled as "Maharaj Singh Vs. State of Haryana" decided on 13.01.2015 this Court has had an occasion to deal with the nature of authority delegated by the Lokayukta to the Registrar and the relevant provision under Section 14 setting out the extent of power of the Registrar. This Court has also considered the nature of authorization that a Lokayukta may make under Section 11 and the power that could be exercised under Section

13. This Court has held that a generic power vested with the Registrar

under Section 11 cannot go as far as to direct any inquiry to be made and that the power will have to be restricted only to examine whether prima facie case exists for an investigation to be undertaken. Section 11 allows for the Lokayukta, on receipt of a complaint, to make a preliminary inquiry before investigating such a complaint or direct any other person to make preliminary inquiry. The power to investigate itself is not provided under Section 11 and the Section contemplates holding of a preliminary inquiry only. The Section reads thus:-

“The Lokpal on receipt of a complaint or in a case initiated on his own motion, may, before proceedings to investigate, such complaint or case, make such preliminary inquiry or direct any other person to make such preliminary inquiry as he deems fit for ascertaining whether there exists reasonable ground for conducting the investigation. If on such preliminary inquiry, he finds that there exists no such ground he shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.”

The Section provides that if on such preliminary inquiry there exists no ground, he shall record the finding to the effect and treat the matter as closed. The power of investigation itself is not conferred under Section 11. If the preliminary inquiry leads to an investigation, the procedure is set down under Section 12 and this power cannot be delegated by the Lokayukta to anyone else. However, Section 14 makes possible for the Lokayukta to authorize any other person to record evidence and do such of those acts which are permitted through Section 14. This section also does not contemplate any direction from an authorized person to make any inquiry. If after

the inquiry which the Lokayukta makes after a complaint, he may make such appropriate recommendation, as Section 17 provides for report of the Lokayukta. Section 19 deals with the staff of Lokayukta who may even include the Registrar and the extent of utilization of his services is brought under Section 20. This power of utilization of services under Section 20 is to carry out the duties as mentioned under Section 20(2). The manner of inquiry that can be conducted is set out under Section 20(3) as:

“The officer, agency or person whose services have been sought under sub-section (1) shall inquire into the matter and submit a report to the Lokayukta within such period as may be specified by him in this behalf.”

The power exercised by an authorized person shall therefore, include the power to secure the attendance of any person to examine and to require the production of some documents or copies of documents. He shall thereafter submit a report to Lok Ayukta who may proceed to deal with it in a manner contemplated under Section 17. Here again, an authorized person will not have any power to any officer to conduct any independent inquiry. His power shall stay restricted to only the powers outlined under Section 20(2). Section 23 allows for the Lokayukta to call for some matters pending before the State Government and this power cannot be a matter of delegation to any other staff.

From the examination of the above provisions it could be seen, therefore, a delegated person will have the power to hold a preliminary inquiry under Section 11 and to do such of those acts which Section 20(2) provides:

Any officer, agency or persons whose services have been brought under sub-section (1) may

a) Summon and enforce the attendance of any person and examine him;

- b) require the production of any document; and*
- c) requisition any public record or copy thereof from any office.*

Any other power will be in excess of authority and cannot be legally supported.

The learned counsel appearing on behalf of the petitioner points out that the Registrar has exceeded the brief and has issued orders to authorities to hold inquiry and sent a report to him. The relevant provisions are as under:

“I find that as requested by the complainant and also suggested by the PGI matter is sent to the Superintendent of Police, Vigilance, Rohtak to inquire this aspect of the matter as to whether this Rohit was admitted prior to 30.07.2012 in Mann Hospital and as to whether dialysis was conducted on 28.7.2012, 29.7.2012 or 30.7.2012. In case of 30.7.2012 he shall give the time. He shall also examine one Suresh Kumar aged 53 years who was allegedly examined in the Mann Hospital on 3.2.2012. Inquiry Officer shall also inquire from that Suresh Kumar resident of Rohtak to ascertain whether he was examined by Dr. Mann or not. Inquiry shall not be got conducted below the rank of D.S.P. He shall also join the complainant and respondent on their given Mobile Nos 9996666530, 9996411777 respectively in the inquiry. He shall submit the report within 30 days.”

None of these directions could be lawfully issued by the Registrar and the powers so exercised is without authority law and it is quashed. In the subsequent portion of the order he has directed the Superintendent of Police, Vigilance to make some inquiries.

“Lokayukta, Haryana hereby direct that all the grievances against public servants and will be routed through the learned Registrar of necessary evidence and other material for the purpose of preliminary inquiry and conducting the essential proceedings and thereafter, shall submit his reports/special reports to the undersigned for further finalization of the recommendations as required under Section 17 of the aforesaid Act”.

This direction is also incompetent and it is quashed.

The prayer in the complaint to quash the circular, I clarify the realm of inquiry to quash the circular of the Vice Chancellor is outside the ken of inquiry contemplated under the Lokayukta Act. Even the Lokayukta does not have such power to examine whether the circular could be quashed. I am merely stating this for the purpose of clarifying the issue since the counsel appearing on behalf of 4th respondent does not himself support that such a prayer could be made before the Lokayukta and states that his prayer is confined to what is brought out in Paragraphs 25 to 30 of the complaint to the Vice Chancellor which is made a part of the complaint made before the Lokayukta. The impugned order is quashed to the extent indicated above and the matter is remitted to the Lokayukta for appropriate consideration.

Needless to state that any material gathered by the Registrar through investigating agencies need not be wholly discarded and it will be examined by the Lokayukta himself and may direct such inquiry or give such report in the manner contemplated under the relevant provisions of the Act.

The Lokayukta will also be competent to call for any result of inquiry conducted by the Vigilance said to have been instituted by the PGI, Rohtak before he takes any decision.

The writ petition is disposed of with the above directions.

(K. KANNAN)
JUDGE

February 05, 2015
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