

CWP No.7208 of 2015
CWP No.7589 of 2016

[1]

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

(1) CWP No.7208 of 2015
Date of decision:18.04.2017

NIILM University ...Petitioner

Versus

State of Haryana and others ...Respondents

(2) CWP No.7589 of 2016
Date of decision:18.04.2017

NIILM University, Kaithal ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. A.K.Chopra, Senior Advocate, with
Mr. Askshit Chaudhary, Advocate,
for the petitioner in CWP No.7208 of 2015

Mr. Arun Jain, Senior Advocate, with
Mr. Deepak Saini, Advocate,
for the petitioner in CWP No.7589 of 2016.

Ms. Tanisha Peshwaria, DAG, Haryana.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.7208 of 2015 (first petition) and CWP No.7589 of 2016 (second petition) as both the petitions are inter-connected. However, for the sake of convenience, the facts are being extracted from the first petition.

In short, the petitioner-University was established by the Haryana Private Universities (Amendment) Act, 2011, which was duly notified in the

Haryana Government Gazettee (extra) published on 27.09.2011. It is stated to be a self-financed University, getting no aid, grant, subsidy either from the State or the University Grants Commission. According to the petitioner, on 13.03.2015, a team from the office of respondent no.3 entered the campus of the University and started conducting investigation and collected numerous documents from the representatives of the petitioner, without giving prior notice/information. On 12.04.2015, Vice Chancellor of the University was served with a summon dated 10.04.2015 along with photocopy of the order dated 20.02.2015 passed by respondent no.2 to appear before respondent no.3 along with certain records.

The petitioner has challenged the order dated 20.02.2015 and summons dated 10.04.2015 on the ground that the impugned order and the summons both are contrary to the provisions of the Haryana Lokayukta Act, 2002 (hereinafter referred to as the "Act") and the Haryana Lokayukta [Functions, Powers, Inquiry and Investigation] Rules, 2008 (hereinafter referred to as the "Rules").

Counsel for the petitioner has submitted that the order dated 20.02.2015 has been passed by respondent no.2 by exercising powers under Sections 14 and 20 of the Act and Rule 7 of the Rules and the complaint made against it was assigned to respondent no.3 for the purpose of holding a detailed inquiry/investigation after due notice to the petitioner and then to submit the report within three months. It is further submitted that respondent no.3, having been empowered to hold the inquiry, issued summons to the Vice Chancellor of the University to appear before him along with records on 16.04.2015. It is submitted that the Vice Chancellor of the University is a public servant in

terms of Section 2(m)(k) of the Act. Respondent no.2 did not hold any preliminary inquiry, as required under Section 11 of the Act, and no opportunity of hearing was given before holding the inquiry by serving upon them the complaint and by taking response of the petitioner.

On the other hand, case of the respondents is that the Registrar in the office of the Lokayukta, Haryana forwarded the complaint on 19.02.2015 to the Lokayukta with the remarks that *“keeping in view the seriousness of the allegations, the file be put up before Hon'ble Lokayukta to entrust the inquiry to some reputed person”*. Thereafter, it is alleged that the file was put up by the Reader on 20.02.2015 before the then Lokayukta, Haryana, who entrusted the inquiry to respondent no.3 on 20.02.2015. It is further submitted that the preliminary inquiry was conducted by respondent no.3 in terms of Section 11 of the Act but due to typographic mistake, in the order dated 20.02.2015, Section 14 was mentioned instead of Section 11. It is further averred that after receiving the preliminary inquiry report on 15.12.2015, respondent no.2 issued notices to the complainant as well as to the petitioner for the date fixed i.e. 11.01.2016 and supplied copy of the complaint to the petitioner for filing its reply. It is, thus, submitted that there is no violation of provisions of the Act or the Rules on the part of respondent no.2 and hence, the writ petition deserves to be dismissed.

Counsel for the petitioner has submitted that at the time when the order dated 20.02.2015 was passed, respondent no.2 had ordered for holding a detailed inquiry/investigation after giving due notice to the petitioner and directed that the inquiry report be submitted within three months and during the course of investigation, the complainant be also associated so that they can

produce evidence. It is submitted that as per Rule 14 of the Rules, it is incumbent upon respondent no.2 to forward a copy of the complaint to the public functionary concerned in Form VI and to afford an opportunity of hearing to it so that the public functionary concerned may file its comments to such complaint or statement.

The grievance of the petitioner is that the procedure prescribed under the Act and the Rules has not been followed as no copy of the complaint was given to the petitioner at the time when the inquiry was made by respondent no.3, therefore, no opportunity of hearing was granted, which is in complete violation of Rule 14 of the Rules. It is further submitted that even if it is assumed, though for the sake of arguments, that it was a preliminary inquiry conducted by respondent no.3, even then respondent no.2 was obliged to offer an opportunity of hearing to the petitioner.

On the other hand, counsel for the respondents has submitted that they have duly followed the provisions of the Act and the Rules. It is further submitted that in the preliminary inquiry, no opportunity of hearing is required and after the preliminary inquiry has been conducted by respondent no.3, copy of complaint has been given to the petitioner and its reply has also been sought.

I have heard learned counsel for the parties and examined the available records with their able assistance.

In order to appreciate their respective contentions, it would be relevant to refer to certain provisions of the Act, which are as under:-

“Definitions

2. In this Act, unless the context otherwise requires,-

(a) to (d) xxx xxx xxx xxx

(e) “complaint” means a complaint wherein act of any

allegation or grievance is alleged to have been committed by a public servant;

- (f) to (l) xxx xxx xxx xxx
- (m) “public servant” includes a person defined in section 21 of the Indian Penal Code, 1860 and also means a person, who is or has been-
 - a. to j. xxx xxx xxx xxx
 - k. A Vice-Chancellor or a pro Vice-Chancellor or Registrar of a University;

Provisions for holding preliminary inquiry

11. The Lokayukta on receipt of a complaint may before proceeding 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 that thereupon the matter shall be closed and the complainant shall be informed accordingly.

Procedure in respect of inquiry

- 12. (1) Subject to the provisions contained in sub-section (2), the Lokayukta shall devise his own procedure for conducting inquiry or investigation but in so doing shall ensure that the principles of natural justice are satisfied.
- (2) The Lokayukta shall complete the inquiry within one year.
- (3) Every inquiry under the Act shall, unless the Lokayukta for reasons to be recorded in writing determines otherwise, be conducted in camera.

xxx xxx xxx xxx

Evidence

- 14. (1) Subject to the provisions of this section, for the purpose of any inquiry or investigation, the Lokayukta or any person authorized by him in this behalf:-
 - (a) may require any public servant or any other person,

- who, in his opinion, is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;
- (b) may enter upon any land and survey, demarcate or prepare a map of the same;
 - (c) shall have all the powers of civil court while trying a suit under Code of Civil Procedure, 1908, in respect of the following matters, namely:-
 - (i) summoning and enforcing the attendance of any person and examining him on oath;
 - (ii) requiring the discovery and production of any document;
 - (iii) receiving evidence on affidavits;
 - (iv) requisitioning any public record or copy thereof from any court of office; and
 - (v) issuing commissions for the examination of witnesses or documents:

Provided that no person, without the prior permission of the appropriate Government shall be required or authorized by virtue of the provisions contained in this Act to furnish any such information or answer any such question or produce so much of any document as might involve the disclosure of any information or production of any documents which is punishable under the provisions of the Official Secrets Act, 1923.

- (2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of Indian Penal Code, 1860.

Utilization of services of other person

20. (1) Without prejudice to the provisions of sub-section (10) of section 19, the Lokayukta may, in consultation with the State Government, for the purpose of conducting any inquiry

or investigation under this Act, utilize the services of any officer or investigating agency of the State Government, or for reasons to be recorded in writing, of any other person or agency.

(2) Any officer, agency or persons whose services have been sought 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 an office.

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

xxx xxx xxx xxx

Power to make rules

26. (1) The State Government may, by notification, in the Official Gazette, make rules for carrying out the purposes of this Act.

xxx xxx xxx xxx”

The Government of Haryana notified the Rules on 09.01.2008, in which Rules 6, 7, 8 and 14 are relevant and are reproduced as under:-

- “6. (1) On receipt of a complaint, the Registrar shall cause the particulars thereof to be entered in a register of complaints.
- (2) If the Registrar is of the opinion that any such complaint is not in conformity with the provisions of the Act or the Rules, he shall within a period of fifteen days from the date of its receipt, issue a notice in Form No.IV to the complainant requiring him to rectify the defect within the time specified in the notice:

Provided that the Registrar may, on an application made by the complainant, extend the time specified in the notice for sufficient cause.

- (3) All complaints shall be placed before the Lokayukta for orders but complaints regarding which action has been taken under sub-rule (2) shall be placed only after the expiry of the period of time stipulated in the notice or the extended period, as the case may be, whether or not any defect pointed out by the Registrar has been rectified.

- (4) Every person making a complaint under sub-rule (1) shall be informed of the gist of the orders in Form No.V, if no further action on the complaint is to be taken.

7. While conducting a preliminary inquiry or an investigation, the Lokayukta may engage any agency or person or professionals including subject experts, etc. on payment of a reasonable fee with the approval of the Government.

8. (1) If while making any preliminary inquiry or while conducting any investigation under the Act, the Lokayukta on his own motion or on application being made, examines any person as a witness whether to give evidence or to produce any document in his possession, then such person shall be entitled to a certificate from the office of the Lokayukta in Form III certifying that he has attended the office of Lokayukta for the purpose of evidence, etc.

(2) If the person referred to in sub-rule (1) produces the certificate in Form III before his employer, then:-

- (i) if he is in private service, he shall not be deemed to be absent from duty for the purpose of any action/penalty which would otherwise have followed in consequence of such absence;

- (ii) if he is a public servant, he shall be treated as on duty on the day or dates on which he attended the office of the Lokayukta and he shall be entitled to draw traveling allowance/daily allowance from his department;
- (iii) if the person referred to in sub-rule (1) is in private service or is not employed in any service, such person may be paid actual travelling allowances and subsistence allowances at the rates specified by a general or a special order by of the Lokayukta.

Explanation.-- For the purpose of these Rules, "private service" means any service other than public service."

"14. (1) Where the Lokayukta decides to conduct any investigation under these Rules, he--

- (a) shall forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefore, to the public functionary concerned and the competent authority in Form VI;
- (b) shall afford to the public functionary concerned, an opportunity to offer his comments on such complaint or statement; and
- (c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit,

(2) Subject to the provisions of the Right to Information Act, 2005 (Act 22 of 2005), every such investigation shall be conducted in private and, in particular the identity of the complainant and of the public functionary affected by the investigation shall not be disclosed to the public or the press or published in any manner whether before, during or after the investigation.

(3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint if in his opinion-

(a) there are no sufficient grounds for investigating or as the case may be, for continuing the investigation; or

(b) other remedies are available to the complainant and in the circumstance of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta decides not to entertain any complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public functionary concerned.”

The complaint against the petitioner is that it had forwarded bogus claims of scholarship, which is to be provided by the State Government to the candidates belonging to the SC and BC category. The said complaint was made by Pardeep Kumar and Mohan Lal, which was processed by the Registrar in terms of Rule 6 of the Rules and, thereafter, he made an endorsement on the complaint that *“keeping in view the seriousness of the allegations, the file be put up before Hon'ble Lokayukta to entrust the inquiry to some reputed person”*.

Respondent no.2 then, vide impugned order dated 20.02.2015, entrusted the inquiry to respondent no.3. No doubt that in the impugned order dated 20.02.2015, respondent no.2 did not mention the words “preliminary inquiry” and has rather mentioned the words “detailed inquiry” but it was

specifically mentioned that the action has been taken while exercising the powers under Rule 7 of the Rules, which deals with the preliminary inquiry. Hence, the words “detailed inquiry” in fact relates to “preliminary inquiry” and for holding the preliminary inquiry, respondent no.2, while exercising his powers under Section 11 of the Act (though wrongly mentioned as Section 14 in the impugned order), appointed respondent no.3. There is no provision in Section 11 of the Act that at the time of holding preliminary inquiry, copy of the complaint has to be given to the public functionary and the principle of natural justice has to be followed. Therefore, the provisions of Section 12 of the Act cannot be read with the provisions of Section 11 of the Act. Section 12 of the Act only says that subject to the provisions contained in Section 12(2) of the Act wherein the Lokayukta has to complete the inquiry within one year, the Lokayukta can devise his own procedure for conducting inquiry and shall ensure that the principle of natural justice are satisfied and in sequel thereto, Rule 14 prescribes the procedure wherein it is provided that when the Lokayukta decides to conduct an investigation, then he would give a copy of the complaint to the public functionary and also grant opportunity of hearing to the public functionary for the purpose of its comments to the complaint or the statement.

Thus, it is nowhere provided that at the time of conducting preliminary inquiry in terms of Section 11 of the Act and Rule 7 of the Rules, the procedure prescribed under Rule 14 of the Rules has to be followed rather it has to be followed while conducting the detailed inquiry only after reception of the report of the preliminary inquiry. In the impugned order dated 20.02.2015, respondent no.2 has only made a reference to the contents of the

complaint and the affidavit accompanied with it and also order of the Registrar and found that the allegations made in the complaint were serious in nature and, thus, ordered for a preliminary inquiry in terms of Rule 7 by appointing respondent no.3 in terms of Section 20 while exercising his powers under Section 11 of the Act. After receiving the preliminary inquiry report on 15.12.2015, respondent no.2 issued notice to the complainant as well as the public functionary (petitioner herein) and passed the following order:-

“Shri Deepak Saini, Counsel for Shri Suresh Sachdev, Vice Chancellor, NIILM University, Kaithal and complainant Pardeep Kumar and Mohan Lal are present. In complaint of the last order dated 15.12.2015, parties have appeared and now copy of the complaint be supplied to the respondents for filing their reply with advance copy thereof to the complainants.

Now adjourned to 26th February, 2016 at 10.30 A.M. for further consideration on the reply and enquiry report received from Sh. Shrikant Jadhav, IPS.”

Thus, in view of the aforesaid facts and circumstances, I am of the considered opinion that there is no legal infirmity in the procedure adopted by respondent no.2, which is rather in consonance with the provisions of the Act and the Rules.

Consequently, the first petition bearing CWP No.7208 of 2015 is hereby dismissed being denuded of any merit.

Insofar as the second petition bearing CWP No.7589 of 2016 is concerned, the petitioner has prayed for setting aside the letter dated 04.06.2015 issued by respondent no.2 therein, in respect of the disbursement of the amount of post matric scholarship, till the completion of the investigation

on the complaint No.72 of 2015, in regard to which the first petition has been filed and dismissed here-in-above.

Since the matter is still under investigation in regard to genuineness of the claims submitted by the petitioner because serious allegations of siphoning off the public money by submitting bogus claims have been made against the petitioner, therefore, I do not find any reason to interfere in the impugned order dated 04.06.2015 and hence, the second petition bearing CWP No.7589 of 2016 is also hereby dismissed.

April 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No