

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 5079 OF 2012**

G.S. Thakur S/o Jogan Singh Thakur Aged About 59 Years Water
Resource Devel. Maniyari Division, P.S. And Dist. Mungeli C.G.

...**Petitioner(s)**

Versus

1. State of Chhattisgarh through Secretary Department of Water Resources, DKS Bhawan, Raipur (CG).
2. C.G. Lok Ayog Raipur C.G..
3. Executive Engineer, Rural Engineering Services Division Janjgir, Distt. Janjgir Champa (CG).
3. Executive Engineer Minimata Bango Nahar Division Number-5 Kharsiya, Raigarh C.G
4. B.L. Arya S/o K.P. Arya Executive Engineer, Mahanadi Reservoir Project Thana- Civil Line Raipur C.G.
5. Ram Krishna Gabel S/o Nankiram Gabel Village Janjar, Tah. And Thana Sakti, Dist. Janjgir-Champa C.G.
6. Director Command Area Devel. And Water Management (CADWM) Program New Delhi, District : New Delhi, Delhi.

... **Respondent(s)**

For Petitioner	:	Shri Mukesh Mishra, Advocate.
For Respondent-State	:	Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

03.07.2018.

1. The challenge in the present writ petition is to the order dated 04.10.2012 (Annexure P/14) whereby the State has issued an order of recovery against the petitioner to the tune of Rs.10,17,285.85 in respect of certain irregularities in the construction work of drain and lining work executed during the petitioner had worked as Sub Engineer at the relevant point of time. The challenge also is to the order dated 17.09.2012 (Annexure P/1) which is issued by the respondent No.2 on an enquiry conducted by the respondent No.2.

2. The counsel for the petitioner submits that the two orders are bad in law to the extent that finding of respondent No.2 at the first instance is without any concrete evidence which has been led before it and that the entire finding is based on assumption and presumption. The petitioner at the relevant point of time was only a Sub Engineer posted at district Janjgir Champa in the Water Resource Department and it is alleged that during the said period certain line work and construction of drain were executed wherein it is alleged that large scale irregularities have been committed. A complaint was lodged by one Ram Krishna Baghel against two officers of the Water Resource Department and also the third person who was President of the Water Users Association village Judga, Tehsil Sakti.
3. The respondent No.2 on the said complaint took cognizance and proceeded further with the enquiry and finally vide recommendations made on 17.09.2012 held that three persons against whom complaint has been lodged are responsible for the irregularities and misappropriation of funds causing loss to the State exchequer to the extent of Rs.30,51,857.55. The respondent No.2 further recommended for prosecuting the petitioner and other employees of the Department for a major misconduct and ordered for initiating disciplinary proceedings for a major misconduct and be inflicted with a major punishment.
4. It was also ordered for recovering the amount of Rs.30,51,857.55 from the three erring officials who were held responsible by the respondent No.2. The respondent No.2 had further issued an

instruction to the department for providing compliance report within three months from the date of order passed by it.

5. Based on the said recommendations, the State has issued the impugned order Annexure P/14 and Annexure P/1 dated 04.10.2012 ordering for recovery of Rs.10,17,285.55 from the petitioner apportioning equal amounts on the three erring officials who were held responsible for the said loss.
6. The contention of the petitioner is that the impugned order is not sustainable for the reason that firstly the finding of the respondent No.2 is neither specific nor dealing with specific inaction or lapse on the part of the petitioner. It does not disclose as to what was the fault on the part of the petitioner during the period when he discharged his duties of Sub Engineer. The operative part of the order of the respondent No.2 was not sustainable for the reason that it is settled position of law that the respondent No.2 is an advisory body and it can only recommend. It cannot propose punishment, neither can it seek a compliance report of the compliance of the order advised. It was further contended that the respondent No.2 at best could have conducted an enquiry and have given its report giving recommendation to the State for taking appropriate action. As such they could not have given finding of the petitioner being responsible in the commission of irregularities and thereafter proceed further to suggest the State for imposing the petitioner with major punishment and also seek for compliance report. This according to the petitioner is in excess of its jurisdiction and power and the same is in contravention to the provisions of Section 11 of the Chhattisgarh Lok

Ayog Act, 2002. He relied upon the recent decision of this court in WPS No.786 of 2010, decided on 29.06.2018.

7. Per contra, the State counsel opposing the petition submits that the order dated 17.09.2012 (Annexure P/1) issued by the respondent No.2 is self explanatory explaining the irregularities and misconduct on the part of petitioner and therefore the said findings and recommendations made by it cannot be found fault with. It is purely within the power and domain of the respondent No.2. He further submits that even Annexure P/14 & P/1 which is under challenge is nothing but an action initiated by the State Govt. as recommended by the respondent No.2. Therefore, the petitioner as such cannot have any grievance if the State acts upon the recommendations of the respondent No.2. Thus, prayed for rejection of the petition.
8. Having heard the contentions put forth on either side and also on perusal of records, what is necessary to take note of is the powers and authorities of the respondent No.2. The respondent No.2 has been appointed in accordance with provisions of the Chhattisgarh Lok Ayog Adhiniyam, 2002. There are provisions in the said Act which only says that the Lokayukta shall conduct an enquiry or investigation in respect of a complaint that they receive and thereafter shall inform the State Govt. in respect of their finding. On the basis of the said recommendations/findings, the State will proceed against the delinquent and then appropriate action has to be taken. This does not mean that the respondent State shall give a go by to the Rule provision so far as imposition of punishment is concerned. The least that is required by the State is that on

recommendations which they receive from the respondent No.2, they have to proceed in accordance with the rules governing the field. In the instant case the respondent State as such does not appear to have conducted any sort of Preliminary Enquiry or investigation nor have they scrutinized the allegations or findings of the respondent No.2-Lokayukta before issuance of the impugned order which is an order of recovery.

9. The entire proceeding seems to be on the general perception of large scale misappropriation of government funds in the garb of construction of drainage and carrying out lining work. The order of recovery straightway is bad in law and also is in direct conflict with the mandatory requirement as is envisaged under Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short, the Rules, 1966). Further, the respondent No.2 could not propose the punishment to be imposed, neither he could call for compliance report from the State Govt. Thus, the finding of respondent No.2 to that extent is not sustainable and the same deserves to be set aside/quashed so far as petitioner is concerned.
10. Perusal of records and the averment made therein show that no show cause notice or preliminary enquiry or explanation was called from the petitioner before issuance of recovery order Annexure P/14. Thus, on this ground also order Annexure P/14 is not tenable. Moreover, this court is also of the opinion that before issuance of Annexure P/14 the respondent-State should have reached to the conclusion as to whether the alleged lapse, negligence or

irregularities on the part of the petitioner was infact to the extent of causing loss to the State exchequer to the tune of Rs. 10,17,285.55. Before reaching to any such conclusion, straight away issuance of order of recovery as a compliance to the order passed by the respondent No.2 would not be sustainable. The same deserves to be and is accordingly set aside/quashed.

11. Accordingly, the writ petition is allowed. Both the orders impugned are set aside/quashed. Consequence to follow.
12. It is made clear that allowing of the petition would not preclude the State Govt. to act in accordance with law pursuant to the order/recommendations made by the respondent No.2.

Sd/-
(P. Sam Koshy)
Judge