IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-24821-2019 (O&M)
Date of Decision:18.09.2019

Jagmohan Sharma & another ... Petitioners

Versus

Lokayukta Haryana & others ... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Pankaj Jain, Advocate and
Mr. Anil Mehta, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

CM-13610-CWP-2019:

Application is allowed as prayed for. The accompanying affidavit of petitioner No.1 dated 11.09.2019 is taken on record.

Application is disposed of.

Main case:

Instant writ petition is directed against the order dated 13.08.2019 (Annexure P-1) passed by the Lokayukta, State of Haryana.

Briefly, it may be noticed that petitioner No.1 is a Divisional Forest Officer under the Forest Department, State of Haryana. Petitioner No.2 is his wife. A complaint dated 26.10.2015 was made by one Anita Sharma w/o late Sh. Paramjit Sharma against the present petitioners to the Lokayukta, Haryana. The complaint dated 26.10.2015 was in the following terms:

"Respected Lokayukt Haryana Chandigarh.

Complainant: Anita Sharma W/o late Sh. Paramjit Sharma

Resident of village Kherawali, Tehsil Kalka, District Panchkula.

Complaint against:

1. Sh. Jagmohan Sharma Divisional Forest Officer, Research wing Pinjore.

2. Smt. Usha Sharma W/o Jagmohan Sharma.

Respected Sir,

Complainant is in total belief and confidence that the respondent No.1 had misused his Government Post and indulged in corruption to gather a huge amount of illegal money and got registered 2 properties in the favor of respondent No.2 dated 12.09.2008 and 10.09.2008 which amounts Rs.1,25,00,000/-. Copy of the registries is attached herewith.

That respondent no.1 while on the post of Divisional Forest Officer purchased a lot of agricultural land, evidence regarding which can be given by the complainant during the inquiry.

That respondent no.1 Jagmohan Sharma was posted in Ambala as Divisional Forest Officer and he is accused of a MANREGA Scam which is being investigated by the vigilance Bureau Haryana.

That respondent no.1 had purchased illegal property in the name of his wife Smt. Usha Sharma with the money earned by illegal means and corruption and intentionally had written in the registries Usha Sharma D/o M.R. Sharma resident of Laxman Colony, Darra Khera, Kurukshetra, Haryana instead of Usha Sharma W/o Jagmohan Sharma. Truth is Usha Sharma does not have any other source of income as she is a house wife.

That respondent no.1 and 2 together had purchased property with the money gathered from corruption, for which no permission was taken by Jagmohan Sharma from the Department.

That other than above mentioned properties Jagmohan Sharma has bought anonymous properties on the name of his wife and other relatives, which can be disclosed by the complainant during the investigation.

So it is prayed to Sir that a case should be filed under Prevention of Corruption Act, 1988 and for possessing property more than income against both the accused and the illegal property should be confiscated and handed over to the Government.

Judicial Stamp of Rs.1000/- as fee has been attached with the complaint.

Dated 26.10.2015 Yours faithfully,

Anita Sharma W/o late Sh. Paramjit Sharma
Resident of Village and Post Office Kheriwala,
Tehsil Kalka, District Panchkula."

The complaint having been examined and dealt with has led to the passing of the impugned order dated 13.08.2019 by the Lokayukta, Haryana, whereby the following recommendations have been made to the Competent Authority:

i) to initiate appropriate action including registration of criminal case against the respondent No.1 Shri Jagmohan Sharma, the then District Forest Officer, Research Wing, Pinjore and, thereafter a senior competent police officer enjoying the reputation of having impeccable integrity be deputed to investigate into the matter expeditiously and thereafter to prosecute him in accordance with law.

ii) During enquiry, the material placed before this Authority be also considered.

As required under Section 17(2) of the Act of 2002 action taken report on the above recommendations be sent to this Authority of Lokayukta within three months.

With the above recommendations this complaint stands disposed of."

Counsel submits that petitioner No.1 is accused of embezzlement of funds relating to MANREGA Scheme of District Ambala and as per complaint dated 26.10.2015 made by Anita Sharma, there are allegations that from such embezzled amount, petitioner has purchased properties carrying a worth of Rs.1.25 crores vide sale deeds dated 10.09.2008 and 12.09.2008 situated in District Kalka in the name of his wife i.e. petitioner No.2. Further allegations are that the transactions relating to accusation of such properties were concealed from the State Authorities.

It has vehemently been argued that pertaining to the MANREGA scam at Ambala, FIR No.1, dated 29.01.2015 was already registered and in which final report under Section 173 Cr.P.C. was filed and thereafter charges having been framed, the petitioner along with other accused are already facing trial. On the same set of allegations, the petitioner has also been proceeded against departmentally. Contention raised is that the basic foundation of passing of the impugned order by the Lokayukta and the recommendations contained therein is on the presumption that the petitioner is guilty in the MANREGA scam for the years 2007-08 and the money embezzled in such scam has been utilized to purchase the properties in question. It is argued that the Lokayukta has failed to appreciate that the guilt of the petitioner qua the MANREGA scam is yet to be established and under such circumstances, this Court ought to interfere so as to direct the recommendations contained in the impugned order at Annexure -1 to be held in abeyance till the culmination of the trial. Further contended that the Lokayukta has ignored the vital fact that during the inquiry conducted by the

Forest Department, the petitioners had produced an agreement to sell dated 20.06.2008 in terms of which they had agreed to sell land measuring 64 kanals and 10 marlas in the name of their two minor sons for a total sum of Rs.8,10,00,000/- and earnest money of Rs.80 lakhs had been received. It is urged that the Lokayukta has brushed aside such vital piece of evidence by merely observing that the agreement to sell was not disclosed in the property returns filed by petitioner No.1 in the year 2009-10, 2010-11 and even thereafter. It is argued that the findings contained in the impugned order by the Lokayukta are lopsided and run contrary to the instructions issued by the State of Haryana which provide that any property acquired by the members of the family of the employee out of their own funds or inherited by them would not attract the provisions of Government Employee (Conduct) Rules, 1966.

Counsel for the petitioners has been heard at length and pleadings on record have been perused.

Perusal of the impugned order dated 13.08.2019 (Annexure P-1) would reveal the reasoning furnished by the Lokayukta and wherein it has been observed that petitioner No.1 has failed to explain the ownership of agricultural land in the name of his wife Smt. Usha Sharma and from which she could possibly generate agricultural income. It has further been observed that the selling of some land which was stated to be in the name of two minor sons of the petitioners and Rs.80 lakhs having been received as earnest money from such agreement of sale to facilitate the purchase of immovable property in the name of petitioner No.2 has also not been substantiated. It has been recited in the impugned order that petitioner No.1

has miserably failed to demonstrate that the immovable properties purchased by his wife/petitioner No.2 herein was from her own income and as such the instructions issued by the Chief Secretary to Government of Haryana vide circular dated 21.12.1992 was very much applicable. It has also been observed that if the property was in the name of two minor children as was the case of the petitioners before the Lokayukta, then permission was required from the Competent Authority as the minors cannot be treated as independent persons earning money of their own.

Having examined the complaint dated 26.10.2015 as also the findings of the inquiry conducted into the same, the Lokayukta has concluded that petitioner No.1 is in possession of the properties which he cannot satisfactorily explain and as such, is in possession of properties disproportionate to his known-sources of income and as such is liable for prosecution under Section 13(1)(e) of the Prevention of Corruption Act, 1988.

It would be apposite to take note that in FIR No.1, dated 29.01.2015, under Sections 409/420/467/468/471/120-B/204 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988, registered at Police Station SVB Ambala and pertaining to which the petitioner along with others are facing trial, the allegations were with regard to having embezzled huge sums of money which has been sanctioned for the MANREGA scheme pertaining to Ambala District. The allegations in brief were with regard to official of the Forest Department having connived with each other and by misusing their official powers had embezzled sums of money pertaining to works of Herbal Parks, Works of certain Nurseries, works regarding katcha passages, amount having been shown to be spent on labour force fraudulently and by destroying muster rolls and vouchers intentionally as also for not undertaking certain plantation work, not doing the work of installation of display boards in certain villages and showing excess material having been used on the concrete passages etc.

The submission raised by counsel that the scope of the trial relating to embezzlement of funds pertaining to FIR No.1, dated 29.01.2015 (Annexure P-4) and the investigation having been directed by the Lokayukta vide impugned order at Annexure P-1 would completely overlap is not well founded. The recommendations contained in the impugned order dated 13.08.2019 (Annexure P-1) is with regard to being in possession of immovable properties beyond the known-sources of income of the petitioners.

In the considered view of this Court, there would be no basis to insulate the petitioners from the investigation that has been directed as per recommendations made by the Lokayukta in the order dated 13.08.2019 (Annexure P-1). After all, the Lokayukta while recommending registration of a criminal case against the backdrop of the petitioners being in possession of disproportionate to their known-sources of income has already incorporated a safeguard in the recommendation itself i.e. the investigation to be conducted at the hands of a senior police officer enjoying reputation of impeccable integrity.

It is the case of the petitioners themselves in the light of affidavit dated 11.09.2019 of petitioner No.1 having been placed on record that under the scheme of the Lokayukta Act, the recommendations contained in the order dated 13.08.2019 (Annexure P-1) had already been placed for consideration before the competent authority and which in the facts of the present case happens to be the Chief Minister of the State and such recommendations have since been accepted by the Competent Authority.

In view of the above, no intervention in the matter is called for.

Writ petition is dismissed.

It is, however, clarified that the observations made by the Lokayukta in the impugned order dated 13.08.2019 (Annexure P-1) would be confined only for purposes of the recommendations made and would have no bearing on the investigation that is to follow and which would be totally impartial and would be uninfluenced by the observations contained in the order dated 13.08.2019 (Annexure P-1) passed by the Lokayukta.

18.09.2019 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No