

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18053 of 2019

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Bipin Bihari Singh, Son of Late Ramashish Singh, Resident of Village and
P.O. - Sarbahada, P.S.- Khijarsarai, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. The District Magistrate Patna.
4. The Registrar Co-operative Societies, Bihar, Patna.
5. The Additional Collector Patna.
6. The Circle Officer, Pandarak, Patna.
7. The Lokayukta, Bihar through its Secretary, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Adv. Mr. Rakesh Narayan Singh, Adv. Mr. Kanhaiya Pandey, Adv.
For the Respondent/s	:	Mr. Ravi Verma, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 03-06-2020

This writ application, preferred under Article 226 of the Constitution of India raises a legal question, whether the institution of Lokayukta under Section 3 of Bihar Lokayukta Act, 2011 (hereinafter referred to as the “Act of 2011”) has the jurisdiction to issue direction to the ‘competent authority’ within the meaning of the Act, to take disciplinary action against a Government Servant, exercising its powers under Sections 27, 28A, 29 and 38 of the Act, on the basis of a complaint containing grievance of maladministration, in the absence



of any specific finding of corruption or lack of integrity against the Government servant.

2. An order passed by the learned Judicial Member, Lokayukta, Bihar dated 04.04.2019, in 5/Lok (Rajaswa) 148/2011 (Sri Nand Kishore Paswan vs. Collector, Patna) has been challenged in the present writ application whereby following direction has been issued :-

“In such a situation while rejecting the explanation of Sri Bipin Bihari Singh the Registrar, Co-operative Societies being the appointing authority in consultation with an assistance of the office of the Collector, Patna, the controlling authority is hereby directed to initiate a departmental proceeding for major punishment and ensure its completion within the prescribed time framed and fixed by the government.”

3. I have heard Mr. Sunil Kumar Singh, learned counsel for the petitioner duly assisted by Mr. Rakesh Narayan Singh and Mr. Kanhaiya Pandey, learned Advocates. I have also heard Mr. Ravi Verma, learned AC to GP-4, representing the State of Bihar, at length. Despite valid service of notice of the present writ application respondent no. 7 (Lokayukta, Bihar through its Secretary), has chosen not to appear in the present proceeding, for reasons best known to the said respondent.

4. To begin with, instead of referring to the statutory provisions under the Act of 2011 for examining the powers and



functions of Lokayukta under the Act, I have considered it apt to refer to certain essential facts of the case, which emerge out of the impugned order itself.

5. The petitioner was functioning as Circle Officer, Pandarak when in the month of May, 2011 the office of Lokayukta, Bihar received a complaint signed by 55 villagers to the following effect :-

Subject : Regarding closure of Paniauta (place of source of water)

Sir,

We are permanent residents of Panchayat Raj, Dabhawan of Pandarak Block under the district of Patna. By constructing houses on the Gairmazarua common way (separate), the people have obstructed the Paniauta (place of source of water), which goes to the river Khatta in the north, from Kadimpur Mahal Police Station No. 09-304 South Dhariwa Tar, due to which the farmers are facing difficulties for want of water, Khatta may be dug upto Dhariwa Tar, from north to south and proper legal action may be taken against the people, who have encroached Gairmazarua common way(separate) so that the farmers of that place would be able to visit their fields and the farmers may be protected from starvation and unemployment.

6. Be it noted that Act of 2011 came into force with effect from 23.12.2011, repealing the earlier Bihar Lokayukta Act, 1973. The repeal and savings clause contained in Section 59 of the Act of 2011 reads as under :-



“59(2) Notwithstanding such repeal anything done or any action taken in exercise of the powers conferred by or under the said Bihar Lokayukta Act, 1973 shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken.”

7. There is, thus, no scope of any doubt that an action taken in exercise of the Act of 1973 could be treated to have been done in exercise of the present Act, as if the Act were in force on the day on which the action was taken under the earlier Act. It is evident from the complaint of the said 55 persons, english translation of which has been quoted at page 4 of the impugned order, that there was no allegation against the petitioner of abuse of his position so as to obtain any undue gain or favour to himself or to any person. There was no allegation against the petitioner that his conduct was actuated by personal interest or improper, corrupt motive. There was no allegation of corruption or lack of integrity against him as a public servant much less any allegation constituting an offence punishable under the Prevention of Corruption At, 1988. Section 2(b) of the Act of 1973 which defined allegation read as under :-

“2(b) “allegation” in relation to a public servant means any affirmation that such public servant-

(i) Has abused his position as such to obtain any gain or favour to himself or to any



other person or to cause undue harm or hardship to any other person.

(ii) Was actuated in the discharge of the functions as such public servant by personal interest or improper, corrupt motives, or

(iii) Is guilty of corruption or lack of integrity in his capacity as such public servant;”

8. Section 2(d) defines ‘grievance’ as a claim made by a person that he sustained injustice or undue hardship in consequence of maladministration. Maladministration stood defined under Section 2(f) of the Act of 1973 as an action taken or purported to have been taken in exercise of administrative function in any case-

(i) Where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory, or

(ii) where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;

9. The definition of allegation as occurring in the Act of 2011 reads as under :-

“2(a) “Allegation” in relation to a public servant means affirmation that such public servant-

(i) has abused his position as such to obtain any undue gain or favour to himself or to any other person to cause undue harm or hardship to any other person or loss to the State Government.



(ii) was actuated in the discharge of the functions as such public servant by personal interest or improper, corrupt motives, or

(iii) is guilty of corruption or lack of integrity in his capacity as such public servant.

(iv) has done anything punishable under the Prevention of Corruption Act, 1988.”

10. On comparative examination of the definition of ‘grievance’ and ‘maladministration’, as present in the Act of 1973 and the Act of 2011, it can be easily discerned that they are verbatim the same. It may also be pointed out that the definition of ‘maladministration’ was initially not there and was subsequently added in the Act of 2011 by Bihar (Amendment) Act 12 of 2012.

11. Coming back to the facts; the complaint, which the office of Lokayukta, to the aforesaid effect, had received in May 2011, was simply forwarded to the Collector, Patna on 05.07.2011. The impugned order indicates that the Collector, Patna, in turn, had sent the letter to the petitioner, who was working as the Circle Officer, Pandarak, for submission of his comments. He, it is said, did not respond to the order of the Collector, despite knowing it well that the said report was to be submitted to the institution of Lokayukta. The petitioner did submit his report through his letter No. 2467 dated 01.11.2012 to the Collector, Patna. Learned Judicial Member, Lokayukta has recorded in the impugned order that the petitioner submitted his delayed report after 15 months which was not only



misleading but it also questioned the credentials of the complainants. The petitioner in his report had reported that Nand Kishore Paswan, who was one of the signatories of the complaints before the Lokayukta, had not made any such complaint, which fact he had learnt on a written disclosure given by said Nand Kishore Paswan. The report of the Circle Officer submitted to the Collector was forwarded to Lokayukta on 31.01.2013. Lokayukta, however, proceeded with the complaint petition on the ground that there were persons other than said Nand Kishore Paswan also, who were the signatories of the complaint. It is also to be noted that the petitioner had mentioned in his report that there was a *Pyne* running from village Dagrain Napadi to Khadimpur under Gram Panchayat Dbhava, meant for irrigation, part of which was encroached upon by the villagers, either by using the same for farming or by constructing houses. *Pyne*, it may be noted, is an indigenous traditional water harvesting system in the form of small water distributory. *Pyne*s are artificial channels constituted to utilize river water in agricultural fields. The petitioner, thus, did not deny the grievance of the persons of obstruction in the *Pyne/ Paniauta* because of encroachments. An order dated 10.07.2017, passed by Lokayukta has been quoted in the impugned order which refers to certain observations made by Lokayukta, after receipt of the petitioner's report forwarded by the



Collector. It has been recorded that the petitioner's report was misleading. How the report was misleading has not been mentioned. Learned Judicial Member has recorded his finding for treating the petitioner's report as misleading in following terms :-

“As with regard to the contents of his report dated 01.11.2012 there would be no difficulty in coming to the conclusion that there was no encroachment by way of existence of any house and therefore his report had created an incorrect impression with regard to the true state of affairs and his report would be itself a proof of the fact that he had submitted a table report without visiting the spot.”

According to learned Judicial Member, Lokayukta, thus, the petitioner had prepared the report without visiting the spot.

12. Secondly, the learned Judicial Member has recorded that though he had assured the Collector in his reply dated 01.12.2012 that steps for removal of encroachment were taken by him, he, in fact, had not initiated any encroachment proceeding in exercise of his powers as Collector under Bihar Public Land Encroachment Act, 1956. According to the learned Judicial Member, the report submitted by the petitioner was false and there was dereliction of duty on his part in his capacity as the Collector under the said Act. On the question as to whether Nand Kishore Paswan was one of the complainants or not, learned Judicial Member has recorded as under :-

“To top it all, he became also a party



in submitting a misleading report supported by a forge signature of Sri Nand Kishore Paswan to create an impression that the complaint which was filed before the Institution of Lokayukta was itself fake. This aspect of the matter however became very clear on a comparison of signature of Sri Nand Kishore Paswan to his original complaint petition and his subsequent application as discussed in the order dated 13.02.2019.

His explanation submitted today that there are two Nand Kishore Paswan one being resident of village Dbhava and the other being resident of village Kadimpur will again expose Sri Bipin Bihari Singh to no uncertain end inasmuch as if there was any trace of a complaint filed by Sri Nand Kishore Paswan of village Kadimpur whose correctness was being doubted or denied by him in his subsequent application enclosed with the report of Sri Bipin Bihari Singh dated 01.11.2012, probably something could have come to the light of Sri Bipin Bihar Singh but then here is a case where the copy of the complaint petition received in the Institution of Lokayukta was sent to him through the office of Collector, Patna District which contained the signature of Sri Nand Kishore Paswan and 54 others all being resident of village Dbhava. Thus his explanation with regard to confusion in the name of Sri Nand Kishore Paswan also does not seem to be correct and justified and therefore it has to be held that Sri Bipin Bihari Singh had also submitted a misleading report denying the filing of complaint by Sri Nand Kishore Paswan.”

13. Learned Judicial Member has concluded, thus, that the



petitioner did not initiate any encroachment proceeding nor did he take any step for making the *Pyne/ Paniauta* functional and he did not pay any heed to the problems of villagers in relation to irrigation of their lands through *Paniauta* (a small water distributory) which could become functional in the year 2017, after repeated orders having been passed by the institution of Lokayukta.

14. Whether in the background of abovenoted facts, the institution of Lokayukta had any jurisdiction to issue orders from time to time and issue the impugned direction, is the primordial question involved in this case. It can be seen from the impugned order that certain directions were issued to the District Magistrate to conduct an inquiry and inform the office of Lokayukta about the correct state-of-affairs. One of the petitioner's successors in the office of Circle Officer, in compliance thereof had submitted a report on 08.02.2017 wherein he recorded that the *Paniauta* was being used by local villagers for irrigation. Because of earth filling, the local villagers were using the same for farming. Once the soil was removed from *Paniauta*, the farmers of the adjacent villages would start getting benefit of irrigation, he recorded. There is absolutely no material in the nature of any allegation that the petitioner did indulge in any corrupt activity or that he did anything for his personal gain to harm others. In respect of his report being misleading, regarding the status



of *Paniauta*, he had mentioned in his report that some villagers were using the *Pyne* for farming because of which the flow of water had been obstructed, thus, causing obstruction in irrigation of agricultural fields.

15. In the background of the abovenoted facts, I proceed to answer the legal question, as noticed at the very outset, which the present writ application involves in the light of statutory provisions, dealing with jurisdiction of Lokayukta under the Act of 2011.

16. Before I refer to various provisions under the Act of 2011, I must mention that the Lokpal and Lokayuktas Act, 2013(hereinafter referred to as the 'Lokpal Act') (a Central Act), which received the assent of the President on 01.01.2014 i.e. subsequent to enactment of the Act of 2011, envisages, *inter alia*, establishment of Lokayukta for every State, if not so established, by law made by State Legislature, 'to deal with complaints relating to corruption against certain public functionaries'. Many of the provisions under Bihar Lokayukta Act, 2011 and Lokpal and Lokayuktas Act, 2013 are akin to each other. The preamble of Lokpal Act reads as under :-

“An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.



WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

And WHEREAS India has ratified the United Nations Convention Against Corruption; and

WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption."

Now, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption."

17. The preamble of Bihar Lokayukta Act, 2011 makes clear the purpose behind enactment of the Act, viz. to provide for establishment of institution of Lokayukta, its powers and functions and 'for expeditious investigation and prosecution relating to allegation involving corruption against public servants of all grades'. Chapter VII of the Act of 2011 lays down the procedure in respect of inquiry and investigation. Section 27 under Chapter VII of the Act of 2011 stipulates the action which may be taken on inquiry in relation to the public servants other than the Chief Minister or Ministers or members of the State Legislature. Since Section 27 of the Act of 2011 is one of the significant provisions to address the legal issues raised in the present writ application, the same is being reproduced



hereinbelow :-

“27. Action on inquiry in relation to Public Servants not being Chief Minister or Ministers or Members of the State Legislature.-*(1) Where after the conclusion of the inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (d), (e), (f), or (g) of sub-section (1) of Section 16, any officer authorized by Lokayukta shall-*

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority; and

(b) recommend to the competent authority for initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the public servant or his representative;

(2) The competent authority shall, having regard to the recommendations of the Lokayukta within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Chairperson ordinarily within six months of initiation of such disciplinary proceedings.”

18. The provision in clear terms authorizes the Lokayukta to

(i) file a case in the Special Court and send a report together with its



finding to the competent authority and (ii) to recommend to the competent authority for initiation of disciplinary proceedings under the Rules of the disciplinary proceedings applicable to such public servant; only when after conclusion of the inquiry or investigation, findings of Lokayukta discloses commission of an offence punishable under the Prevention of Corruption Act by a public servant referred to Clause (d)(e)(f) or (g) of sub-section (1) of Section 16 of the Act of 2011. I have failed, on close scrutiny of the impugned order, to notice any allegation against the petitioner of having indulged in corrupt activities for any financial gain or other personal gain.

19. Section 28A of the Act of 2011 stipulates that if, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made and the Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta shall, by a report in writing, 'recommend to the public servant' and the 'competent authority' concerned that such injustice or undue hardship should be remedied or redressed in such manner and within such time as may be specified in the report. Sub-section (2) of Section 28A of the Act of 2011 requires the competent authority to examine the report forwarded to it under sub-section (1) and intimate within three months of the date of receipt of the report, to the Lokayukta, the



action taken or proposed to be taken on the basis of the report. Sub-section (3) of Section 28A of the Act of 2011 lays down that in case Lokayukta is satisfied with the action taken or proposed to be taken on its recommendations or findings referred to in sub-section (1), it shall close the case otherwise it may make a special report upon the case to the Governor and also inform the complainant concerned.

20. Competent authority has been defined under sub-section (d) of Section 2(1) of the Act of 2011, for the present purpose, as the appointing authority. A person may be aggrieved of maladministration within the meaning of Section 2(ii) of the Act; he may have a grievance within the meaning of Section 2(f) of the Act that he had to sustain injustice or undue hardship in consequence of maladministration. In such situation, one may make a complaint before the Lokayukta. The word ‘complaint’ in Section 29 of the Act has been defined as allegation, grievance or request by a whistle blower for his protection. Section 28A of the Act, salient features of which has been discussed hereinabove reads thus :-

*“28A. **Reports of Lokayukta.**-(1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta shall, by a report in writing, recommend to the public servant and the*



competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and intimate within three months of the date of receipt of the report, to the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta is satisfied with the action taken or proposed to be taken on its recommendations or findings referred to in sub-section (1), it shall close the case under information to the complainant, the public servant and the competent authority concerned; but where it is not so satisfied and if it considers that the case so deserves, it may make a special report upon the case to the Governor and also inform the complainant concerned.

(4) The Lokayukta may, at his discretion, make available from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general public, academic or professional interest in such manner and to such persons as he may deem appropriate.”

21. On conjoint reading of Sections 28A and 29 of the Act, I have absolutely no hesitation in reaching a definite conclusion that Lokayukta has no jurisdiction, acting on a complaint containing grievance of maladministration beyond submitting a report to the competent authority, as defined under Section 2(d) of the Act, prescribing the manner in which injustice or undue hardship has to be



remedied or redressed. It is expected of the competent authority to examine the report and inform the Lokayukta, the action taken or proposed to be taken on the basis of the report. In view of clear language used in Section 28A of the Act, Lokayukta does not have any jurisdiction to issue any direction to the competent authority. The provision clearly stipulates that if, on receipt of report from the competent authority, in response to recommendations made by the Lokayukta, the Lokayukta is dissatisfied with the action taken or proposed to be taken, he can make 'a special report to the Governor of the State and inform the complainant in this regard'. Lokayukta does not have any other jurisdiction at all under the Act when the matter is on the basis of a complaint raising a grievance of maladministration.

22. There must not be any doubt that question of application of Section 27 of the Act will arise only when the findings of the Lokayukta after conclusion of inquiry or investigation disclose commission of offence under the Prevention of Corruption Act, 1988 and not otherwise.

23. Before I conclude, I must not lose sight of the other powers and functions conferred on the institution of Lokayukta under Section 38 of the Act, which reads as under :-

“38. Other power and function.-

Lokayukta shall have also following functions and powers:-

1.(a) If the Lokayukta prima facie is



satisfied on the basis of preliminary inquiry of investigation that a lease, license, permission, contract or agreement was obtained by corrupt means including misfeasance, misrepresentation, fraud and coercion, it shall recommend cancellation or modification of the lease, license, permission, contract or agreement and it may also recommend blacklisting of firm, company, contractor or any other person involved in act of corruption. The above said recommendations shall be complied by the public authority or be rejected by him within a month of receipt of recommendation.

(b) If the Lokayukta in course of any investigation is satisfied that any preventive action is necessary in public interest to prevent the ongoing incident of corruption it may make recommendation to the public authority concerned either to stay the implementation/enforcement of any decision or take any such action as is recommended by the Lokayukta. The aforesaid recommendation shall be complied by public authority or be rejected by him within fifteen days of receipt of recommendation.

(c) to monitor the investigation of offences under Prevention of Corruption Act, 1988 involving any act of corruption, for the cases initiated on behalf of the Lokayukta.

(d) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988 and the Bihar Special Courts Act, 2009, for the cases initiated on behalf of the Lokayukta.

(e) to appoint prosecutors and Senior Counsels under Prevention of Corruption Act, 1988 or under the Bihar Special Court Act, 2009 or under this Act, for the cases initiated



on behalf of Lokayukta.

(f) to get the Investigating Officer trained in modern methods of scientific investigation.

(g) to enquire modern equipments necessary for proper investigation.

(h) to receive complaints against any officer or staff of Lokayukta.

(i) to ensure the integrity of its functionaries and impose punishments of dismissal, removal and reduction in rank.”

24. There is no jurisdiction, under the aforesaid provision too, vested in the institution of Lokayukta to direct for initiation of a disciplinary proceeding, unless requisite conditions envisaged in Section 27 of the Act of 2011 are available.

25. On the basis of discussions as noted above, it can be easily culled out that Section 27 of the Act is the only provision which enables the institution of Lokayukta to make recommendations to the competent authority for initiation of disciplinary proceeding upon recording a finding which discloses commission of an offence by a public servant punishable under the Prevention of Corruption Act 1988. In case, a recommendation is made by Lokayukta, in exercise of power under Section 27 of the Act, the competent authority is obliged to initiate disciplinary proceeding against the delinquent public servant ‘accused of committing the offence under the Prevention of Corruption Act, 1988’ and forward its comment on the report including action taken or proposed to be taken thereon, to the



Chairperson of Lokayukta within six months of initiation of such disciplinary proceeding.

26. There is no gainsaying that a decision sans jurisdiction is *non est*. A direction issued by any statutory body, howsoever high the said body may be, cannot be allowed to be sustained, for, anything done in excess of jurisdiction is void *ab initio*. The impugned order passed by learned Judicial Member of Lokayukta suffers from inherent jurisdictional error. It is settled legal principle which needs no reiteration that absence of jurisdiction in a statutory body goes to the root of the matter, which, if absent, cannot be conferred, even with the consent of the contesting parties. A decision rendered by any statutory body without jurisdiction is inoperative.

27. If a statutory authority assumes to act in a case over which the law does not give it authority, the proceeding and adjudication will be altogether void. An authority has jurisdiction of any subject matter if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description and not otherwise. (See A Treatise on the Constitutional Limitations by THOMAS M. COOLEY).

28. Before I conclude, I need to observe that the institution of Lokayukta must remind itself the purpose of its constitution and its own limitations, while exercising its powers and discharging its duties



and functions under the Act of 2011. It cannot act beyond the provisions of the Act which has constituted it. The Lokayukta is certainly not a super executive empowered to supervise/ control functionings of the executive and issue commandments to various functionaries asking them to discharge their duties in a particular manner. Further, the Lokayukta does not have any power of judicial review over administrative action, akin to the powers of the High Court under Article 226 of the Constitution of India.

29. In view of the discussions noted above, I have no other option but to interfere with the impugned order. The impugned order dated 04.04.2019, passed by learned Judicial Member, Lokayukta is accordingly set aside.

30. This writ application is allowed. There shall be no order as to costs.

31. Let this order be communicated to the Chief Secretary of Bihar and the Respondent No. 7 forthwith.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	24.02.2020
Uploading Date	04.06.2020
Transmission Date	NA

