

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9494-2019 (O&M)

Date of Decision: April 01, 2021

HARI OM

..... PETITIONER(s)

Versus

LOKAYUKTA HARYANA AND ANOTHER RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Alok Mittal, Advocate for the petitioner.

Mr. Amit Aggarwal, DAG., Haryana.

LISA GILL, J.

This writ petition has been filed challenging order dated 04.02.2019 (Annexure P-3), passed by learned Lokayukta Haryana, whereby registration of an FIR against the petitioner has been recommended as well as to review the punishment of stoppage of two increments with non-cumulative effect awarded to the petitioner besides recommendation of stern departmental action i.e. of removal from service.

Brief facts necessary for adjudication of the matter are that a complaint was filed by respondent no.2 before the learned Lokayukta against the present petitioner and three other persons claiming undue harm to the complainant and illegal benefit to one Kartar Singh. It is alleged in the complaint that the said officials prepared an illegal mutation no.4240/1 and the same was pasted in the mutation register on 27.06.2013 whereas mutation reflects entry dated 15.07.2010. It is further alleged that on the basis of the above said mutation, sale deed No.1316 dated 27.08.2013 was

executed without verification of mutation and Jamabandi for the year 2005-2006. Beneficiary of the alleged mutation namely Kartar Singh filed a civil suit on 12.12.2007 seeking a relief of declaration, permanent injunction and joint possession of the land in question. The suit was dismissed by the learned trial Court. Complainant stated that he filed a complaint in this respect before Deputy Commissioner, Jhajjar in respect to the illegal mutation and sale deed executed on 27.08.2013. SDM (Civil), Jhajjar was appointed as inquiry officer and he submitted report dated 02.04.2014. Matter, it is stated, was inquired into by the Economic Cell, on instructions of IGP, Rohtak, but question regarding forgery was not touched. It is alleged that proper and appropriate decision was not taken by the authorities, thus complainant filed before the Lokayayukta.

Reply to the said complaint was filed by the present petitioner. Registrar of the Lokayukta held a preliminary inquiry and submitted his inquiry report before the learned Lokayukta. Learned Lokayukta considered the fact that a complaint had been preferred before the authorities and as per inquiry report dated 22.01.2014 of the SDO (Civil), Jhajjar, petitioner was found guilty of dereliction in his duties. A second inquiry was also conducted by the Additional Deputy Commissioner, Jhajjar, who also found the present petitioner guilty. It was noted that the Deputy Commissioner, Jhajjar while holding the petitioner guilty of keeping mutation no.4240/1 with him and not pasting the same in the revenue record in time, punished him merely with stoppage of two annual increments with non-cumulative effect under the Haryana Civil Services (Punishment & Appeal) Rules, 1987 vide its order dated 29.02.2016. On going through the record and report of

the Superintendent of Police, learned Lokayukta was of the view that present is not a case where there was a mutation and fault of the Kanungo was only to paste it in the mutation register belatedly. It is observed that knowing fully well that the mutation was cancelled vide Rapat No. 340 dated 11.06.2013, even then the same was pasted in the register without verification by the petitioner. Therefore, prima facie, it was observed that action had been taken by the petitioner to facilitate a private person for execution of the sale deed. In this view of the matter, it was opined that for carrying out fake entries in public records, punishment of stoppage of two annual increments with non- cumulative effect is inadequate and the petitioner was also liable for criminal action in this regard. It was thus recommended as under:-

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- i) *to register an F.I.R. against Hari Om, Field Kanungo for preparing and pasting fake entry in the mutation register i.e. Parat Patwar and, thereafter a senior competent police officer enjoying the reputation of having impeccable integrity be deputed to investigate into the matter expeditiously. If, on investigation the Investigating Officer finds sufficient material against any other officers/officials other than the aforementioned person it is for him to take appropriate action against them too.*
- ii) *to review the punishment of stoppage of two increments with non-cumulative effect awarded under Haryana Civil Services (Punishment & Appeal) Rules to Hari Om, Field Kanungo and stern departmental action i.e. removal be taken against him.*
- iii) *Stern Departmental Action be taken against Virender, Patwari.*

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.”

Aggrieved therefrom present writ petition has been filed.

Argument raised by learned counsel for the petitioner is that recommendation of registration of the FIR by the learned Lokayukta is neither justified nor permissible. He relies upon the judgment of the Jharkhand High Court in *Shashank Kumar Sinha Vs. The Office of Hon'ble Lokayukta, Jharkhand, in W.P.(C) No. 263 of 2019*.

It is pertinent to note that during the pendency of this writ petition, FIR No.461 dated 30.12.2019 under Sections 218, 420, 467, 468 and 471 IPC has been registered at Police Station Beri. Learned counsel for the petitioner informs that CRM-M-18502-2020, titled 'Hari Om Vs. State of Haryana and another' has been filed for quashing of the said FIR.

Though, notice of motion had not been issued in this writ petition, learned counsel for the State, to whom an advance copy of the paper book stood supplied, had been asked to seek instructions regarding procedure adopted for consideration of recommendation of learned Lokayukta leading to registration of FIR. Learned counsel for the State had submitted that recommendation made by the learned Lokayukta were duly considered in accordance with law and it is thereafter, looking to the facts and circumstances, it was decided to register FIR No.461 dated 30.12.2019 under Sections 218, 420, 467, 468 and 471 IPC at Police Station Beri against the petitioner. Learned counsel for the State also relies upon order dated 18.09.2019 in CWP-24821-2019 to submit that petitioner cannot be insulated from the investigation in the FIR, which has been lodged after the recommendations of the learned Lokayukta have been accepted. It is, thus, prayed that this writ petition be dismissed.

Heard learned counsel for the parties and the file perused.

At the outset, it is considered useful to refer to Section 8 of the Haryana Lokayukta Act, 2002 (hereinafter referred to as 'the Act'), which deals with matters which may be inquired into by the Lokayukta. Section 8 of the Haryana Lokayukta Act reads as under:-

“8. (1) Subject to the provisions of this Act, the Lokayukta may on receipt of a reference from Government proceed to inquire into the allegations or the grievances made against a public servant.

(2) The Lokayukta may inquire into any act or conduct of any person other than a public servant in so far as he considers it necessary so to do for the purpose of his enquiry into any allegation of misconduct against a public servant provided that the Lokayukta shall give such a person reasonable opportunity of being heard and to produce evidence in his defence.”

Sections 11 & 12 of the Act dealing provision for holding preliminary inquiry and procedure thereof reproduced as under:-

“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 finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.

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 doing so 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.”

Sections 17(1) & (2) of the Act providing for reports of Lokayukta read as follows:-

“17. (1) If, after inquiry in respect of a complaint, the Lokayukta is satisfied —

(a) that no allegation or grievance has been substantiated, he shall close the case and intimate the competent authority concerned accordingly;

(b) that all or any of the allegations or grievances have or has been substantiated either wholly or partly, he shall, by report in writing, communicate his findings, appropriate recommendations and suggestions to the competent authority and intimate the complainant and the public servant concerned about his having made the report.

(2) The competent authority shall cause the report to be examined and communicate to the Lokayukta within three months of the date of receipt of the report, the action taken thereon.”

In the instant case, complaint against the petitioner was admittedly filed by respondent no.2 with allegation of the petitioner having prepared a fictitious mutation and pasting it in the revenue record on 27.06.2013 to afford undue benefit to a person. While relying upon inquiry report submitted by the SDM (Civil), Jhajjar, learned Lokayukta made the recommendations as have been reproduced in the foregoing paras. During pendency of the writ petition, FIR No.461 dated 30.12.2019 under Sections 218, 420, 467, 468 and 471 IPC, has been lodged against the petitioner at Police Station Beri, after acceptance of the recommendations of the learned Lokayukta.

Primary argument raised by learned counsel for the petitioner in this writ is that direction for registration of an FIR could not have been issued by the learned Lokayukta. A perusal of the impugned order dated 04.02.2019 reveals that learned Lokayukta has recommended registration of

FIR and the same cannot be termed or taken as a direction merely because it is mentioned that action taken report in terms of Section 17(2) of the Act be submitted within three months. This argument raised by learned counsel for the petitioner is untenable, hence rejected. Needless to say it is for the competent authority to accept or reject the recommendation made by the learned Lokayukta. In the present case, it was informed by learned counsel for the State that recommendations of the learned Lokayukta for registration of the FIR were accepted in accordance with law and FIR was accordingly registered against the petitioner. Judgment of the Jharkhand High Court in Shahank Kumar Sinha's case (supra) dealing with a matter under the Bihar Lokayukta Act, 1974, in my considered opinion is not relevant in the facts and circumstances of the present case. There is, thus, no ground for interference at this stage.

Needless to say, investigation in FIR No.461 would not be influenced by the observations in impugned order dated 04.02.2019, passed by the learned Lokayukta, which shall remain confined for purpose of decision of the complaint before said authority. Furthermore, the petitioner is at liberty to take all the pleas available to him for quashing of FIR No.461 dated 30.12.2019, registered under Sections 218, 420, 467, 468 and 471 IPC at Police Station Beri, District Jhajjar, which is stated to be pending. Decision of this writ petition would have no bearing on the said quashing petition.

This writ petition is accordingly disposed of.

April 01, 2021

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**(LISA GILL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No