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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 153 OF 2022

SHAMBHU PAGI @ KANKONKAR

AND 3 OTHERS

... PETITIONERS

VS

MANISHRAM R. KANKONKAR AND

6 OTHERS

... RESPONDENTS

Mr. Shivan Desai with Ms. Maria Viegas and Mr. Aniroodh Sardesai, Advocates for the Petitioners.

Mr. S. N. Joshi with Ms. Snehal Rawool, Advocates for Respondent No. 1.

Ms. Sulekha Kamat, Additional Government Advocate for Respondent No. 7.

CORAM: G.S. KULKARNI, J.

DATED: 20 DECEMBER 2022

ORAL ORDER.

1. Heard learned Counsel for the parties.

2. The Petition impugns an order dated 14 September 2020 passed by the Institution of Goa Lokayukta, primarily on the ground that the same contravenes the jurisdiction conferred on the Institution of Lokayukta, under the provisions of Section 16(1)

(a) of the Goa Lokayukta Act, 2011 (for short, “the Act”). This more particularly, considering the observations made in paragraph 6 of the order and the “Recommendations” as recorded therein, which are in the nature of directions to register a First Information Report against the petitioner and to undertake an investigation.

3. Paragraph 6 of the impugned order and the recommendations are required to be noted, which read thus:

*“6. In view of the above, it was the duty of the police officer in charge of the Police Station to register FIR and to investigate. Respondent No.1 has taken the plea that initially it was filed before the officer in charge who had entrusted the matter to Respondent no.1 for preliminary inquiry. Admittedly such officer in charge at the relevant time has been subsequently transferred and the present Respondent no.1 is continuing as the officer in charge. Therefore after departure of the previous officer in charge it was the duty of present Respondent no.1 to register FIR. While **directing** the Respondent no.1 to register FIR and to undertake investigation, it is also deemed proper to issue necessary **direction** to the Director General of Police as well as the Chief Secretary who is in charge of Home Department and the Competent Authority, to initiate disciplinary action against*

Respondent No.1 in accordance with observations made by the Supreme Court which has been summarized in paragraph 120 and which has been extracted. Prima facie it appears that there was also dereliction of duty on the part of previous officer in charge. The DGP/CS in charge of Home Department are also required to initiate disciplinary proceeding against such person.

After initiation of such departmental proceeding and giving the concerned officer in charge adequate opportunity of hearing, the disciplinary proceeding should be disposed of in accordance with law keeping in view the observations of the Supreme Court as quoted above.

Recommendations:

*1. FIR should be registered by Respondent no.1.
The SP must ensure compliance with this direction.*

2. The matters pending before the Respondent no. 2 and Respondent no. 3 should be disposed of as expeditiously as possible, preferably before 31st Dec. 2020."

(emphasis supplied)

4. As the impugned order is passed under the provisions of Section 16(1)(a) of the Act, the contours of the said provision are required to be noted, which read thus:

“16. Reports of Lokayukta.— (1) (a) If, after investigation of any complaint involving an allegation, the Lokayukta or the Upa-Lokayukta, as the case may be, is satisfied that such allegation is substantiated either wholly or partly, he shall, by report in writing within a period of ninety days from the date of the completion of inquiry to the Government, communicate his findings and recommendations and as far as possible along with the relevant documents, materials, and other evidence to the competent authority concerned and a copy of the report regarding the findings and recommendations shall be submitted to the Government.”

(emphasis supplied)

From the reading of Section 16(1)(a) of the Act, it is clear that the jurisdiction of the Institution of Lokayukta is to record findings on the complaint and make recommendations to the Government.

5. In the above circumstances, on 7 September 2022, this Court had passed a detailed order considering the said provisions of the Act. The said order reads thus:—

“1. The challenge in this petition is to an order dated 14.9.2020 passed by the Institution of Goa Lokayukta which is in the nature of a report under Section 16(1)(a) of the Goa Lokayukta Act, 2011(“the Act” for short) passed

on a complaint (Proceeding No.17/2020) made by the respondent no.1.

2. The prayers in the complaint are set out on page 2 of the impugned order. They are substantially against the petitioners on the allegations that the petitioners have violated CRZ regulations. Prayers read thus:-

“1. To enquire into the conduct of Respondent no.1 in refusing registration of FIR in respect of offence allegedly committed by Respondent nos. 5 to 8. Since Respondent no 5 to 8 were private persons, notices have not been issued to them.

2. To enquire in respect of conduct of Respondent No. 2 relating to manner in which technical clearance on 20.2.2020 was given for regularizing alleged illegal structure without verifying the title of respondent nos. 5 to 8 to such property.

3. To enquire into the conduct of respondent no.3 as the Member Secretary of GCZMA relating to manner in which on the basis that the structure were old and were existing prior to 1919 and on the basis of forged and without verifying the title of Respondent 5 to 8. The complainant has further prayed that direction should be issued to Respondent no.4 to take steps for demolition of illegal structure.”

3. The petitioners who were impleaded as respondent nos.5 to 8 were not served with the copy of the complaint as filed before the Lokaykuta, although there were serious allegations against the petitioners that they had indulged in illegal construction and had filed and produced forged and fabricated documents before the Authorities to show that the structure was in existence before 1991 i.e. before

the CRZ regulations were notified and brought into force. It was alleged that although such complaint was made by the complainant/respondent no.1, the authorities including the police were not taking cognizance of such complaints, and a first information report, was not being registered.

4. Considering such case of respondent no.1, the impugned order records that the institution of Lokayukta was satisfied that respondent no.2 namely Deputy Town planner had issued a show cause notice and had initiated appropriate action, hence, the only issue which fell for consideration of the Institution of the Lokayukta was as to why the police officer who was in charge of concerned police station was not registering an FIR. It is in such context, the impugned order has made certain observations, which according to the petitioners, are in the nature of directions, causing a serious prejudice to the petitioners, inasmuch as, it is the petitioners' contention that their civil rights including their right under Section 14 and 21 of the Constitution of India are being affected. Considering such submissions, it would be appropriate to note the relevant observations and recommendations as made in impugned order, which read thus:-

6. In view of the above, it was the duty of the police officer in charge of the Police Station to register FIR and to investigate. Respondent No.1 has taken the plea that initially it was filed before the officer in charge who had entrusted the matter to Respondent no.1 for preliminary inquiry. Admittedly such officer in charge at the relevant time has been subsequently transferred and the present Respondent no.1 is continuing as the officer in charge. Therefore after departure of the previous officer in charge it was the duty

of present Respondent no.1 to register FIR. **While directing the Respondent no.1 to register FIR** and to undertake investigation, it is also deemed proper to issue necessary direction to the Director General of Police as well as the Chief Secretary who is in charge of Home Department and the Competent Authority, to initiate disciplinary action against Respondent No.1 in accordance with observations made by the Supreme Court which has been summarized in paragraph 120 and which has been extracted. Prima facie it appears that there was also dereliction of duty on the part of previous officer in charge. The DGP/CS in charge of Home Department are also required to initiate disciplinary proceeding against such person. After initiation of such departmental proceeding and giving the concerned officer in charge adequate opportunity of hearing, the disciplinary proceeding should be disposed of in accordance with law keeping in view the observations of the Supreme Court as quoted above.

Recommendations.

- 1 FIR should be registered by Respondent no.1. The SP must ensure compliance with this direction.
2. The matters pending before the Respondent no. 2 and Respondent no. 3 should be disposed of as expeditiously as possible, preferably before 31st Dec. 2020.
5. It is submitted on behalf of the petitioners that in passing the impugned order the jurisdiction which is vested with the Institution of Lokayukta is completely overlooked, this in as much as, from the reading of paragraph 6, it is seen that what has been issued is in fact

a direction to respondent no.1 therein to register an FIR and to undertake an investigation which is clear from the portion of the order which is emphasized. The learned Counsel for the petitioners has submitted that although the observations in paragraph 6 are required to be considered to be recommendations, such recommendations itself are in the nature of directions, that an FIR be registered by the Police Inspector of Canacona Police Station and that the Superintendent of Police must ensure compliance of such directions, coupled with further recommendations that the matter pending before the Deputy Town Planner should also be disposed of as expeditiously as possible.

6. The learned Counsel for the petitioners has submitted that the effect of such recommendation is quite serious as such recommendation is in fact considered as directions by the police authorities, inasmuch as already a Crime no. 140/2020 has been lodged by the officer in charge of Canacona Police Station, in pursuance of such orders. It is submitted that such recommendations as contained in the impugned order are seriously prejudicial to the petitioners.

7. To appreciate the contentions as urged on behalf of the petitioners, it would be appropriate to note the scheme of the Goa Lokayukta Act, 2011. The Goa Lokayukta Act was brought into force with effect from 12.05.2012. It is a legislation, which provides that the establishment of the Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provisions of the Lokayukta and Upa-Lokayukta and the matters connected therewith. Some of the definitions are relevant in the present context and also required to be

noted. Section 2(a) defines “action” to mean an action taken by a public functionary to discharge or purported discharge as public functionary, by way of decision, recommendation or finding. Section 2(b) defines allegation, Section 2(e) defines complaint, Section 2(i) defines grievance. Section 9 provides that the matter which may be investigated by Lokayukta or Upa-Lokayukta. Section 10 provides for matters not subject to investigation. Section 11 makes provision relating to complaints. Section 12 makes provision for holding preliminary inquiry. Section 13 provides for procedure in respect of detail investigation. Section 16 provides for reports of the Lokayukta.

8. On a perusal of the report of the Lokayukta, prima facie, I find much substance in the contentions as urged on behalf of the petitioners that recommendations ought to have been within four corners of what Section 16(1)(a) would provide. This inasmuch as the petitioners although were impleaded as parties, such impleadment even for the purpose of making recommendations within the provisions of the Act was rendered meaningless, firstly for the reason they were not heard before the recommendations could be made, more particularly, when serious allegations behind their back were made against them and a finding against them has been recorded in the impugned order/ recommendations. Prima facie, the petitioners are right in their contention to the effect that what was alleged by the complainant/respondent no.1 before the Institution of Lokayukta against the petitioners has been accepted to be a gospel truth. On the basis of such observations of the Lokayukta an action as serious as registration of crime against the petitioners has been

resorted which in a given case may amount to the complainant misusing the provisions of the said Act.

9. The learned Counsel for the petitioners would not be incorrect in his submission that it may not be an appropriate course of action for the institution of Lokayukta that directions are issued against private persons and that too of a nature which would adversely affect the legal and constitutional rights guaranteed to the citizens and that no observations against the petitioners could have been made without hearing the petitioners. The petitioners would also be correct in submitting that an extremely cautious approach is required to be taken in considering complaints of such nature, which are likely to cause severe prejudice, damage and infringement of the legal rights and the right to property of the citizens. It is also a submission that the tendency of the complainant to bring inter-se private disputes within the framework of the said Act also needs to be deprecated.

10. Certainly, these issues which are required to be examined. Thus the challenge as mounted in the petition requires the consideration. Respondent nos. 5 and 6 are already served.

11. Ms. R. Pereira, learned Counsel waives notice on behalf of the respondent no. 5 and Mr. G. Shetye, learned Addl. Govt. Advocate waives notice on behalf of the respondent no. 6. Unserved respondents are also required to be heard.

12. Accordingly, issue notice to the unserved respondents returnable on 28.9.2022. In addition to the court notice, the petitioners are permitted to serve the

unserved respondents by private service by all permissible modes and to file an affidavit of service.

13. It is clarified that if the respondents despite service of notice are not represented on the adjourned date of hearing, the Court shall proceed to hear the petitioners and pass appropriate orders.

14. In the meantime it is in the interest of justice and for the above reasons, the petitioners having made out prima facie case would require this Court to grant to the interim protection to the petitioners, by an order in terms of prayer clause (b) of the petition which reads thus:-

Pending hearing and final disposal of the petitioner, this Hon'ble Court be pleased to stay the effect and operation of the impugned order dated 14.09.2020 passed by the Hon'ble Lokayukta in proceeding No. 17/2020.

15. Order accordingly."

6. On the above backdrop, I have heard the learned Counsel for the parties, as also, I have perused the record. In my opinion, the impugned order to the extent it issues "directions" to file the First Information Report against the petitioner is *ex-facie* contrary to the provisions of Section 16(1)(a) of the Act, inasmuch as instead of making recommendations, the impugned order clearly issues directions. The recommendations cannot partake character of any directions. The learned Counsel for the parties

would also not dispute that the Institution of Lokayukta would not have jurisdiction under Section 16(1)(a) of the Act, akin to the jurisdiction of the High Court and/or of the Judicial Magistrate to direct investigation. The nature of the jurisdiction of the Lokayukta is purely recommendatory. It is ultimately for the State Government to consider the recommendations of Lokayukta. Thus, an order of the Lokayukta issuing directions, cannot be sustained and would be required to be set aside to the extent that it directs the authority to take appropriate action, namely, registering the First Information Report by the investigating agency.

7. The Petition is accordingly partly allowed by setting aside the directions of the Institution of Lokayukta as contained in paragraph 6, and the directions as contained in paragraph of the impugned order, titled as “Recommendations”. Ordered accordingly.

8. No costs.

G.S. KULKARNI, J.

VAIGANKAR ESHA
SAINATH

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SAINATH
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