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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th May, 2023

+ **W.P.(C) 6102/2023 and CM APPL. 23934/2023, 23935/2023**

RAMESH ABHISHEK Petitioner

Through: Mr. Ajit K. Singh, Ms. Priyanka Singh, Ms. Anukriti Tiwari, Mr. Shrish Kohli, Mr. Shubham Sahota, Mr. Debasish Mishra, Advocates

versus

LOKPAL OF INDIA & ANR.

..... Respondents

Through: Mr. Apoorv Kurup, CGSC with Mr Ojaswa Pathak, Advocate for R-1.
Mr. Zoheb Hossain, Counsel for Directorate of Enforcement with Mr. Vivek Gurnani, Mr. Kavish Garach, Advocates for R-2 along with Mr. Rajiv Jain, DD, ED

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Mr. Ramesh Abhishek challenging the impugned orders dated 2nd February, 2022 and 3rd January, 2023 passed by the Lokpal of India by which inquiries and investigation by the Directorate of Enforcement (ED) have been directed by Lokpal against the Petitioner, in respect of possession of disproportionate assets.
3. The Petitioner is an ex-IAS officer who served as the Secretary to the Ministry of Commerce/DPIIT as also the Chairperson of the Forward Markets Commission. He retired with effect from 31st July, 2019. A

complaint was received by The Lokpal of India in May 2019 against the Petitioner. Vide impugned order dated 2nd February, 2022, the Lokpal directed as under:

“32. In view of the above facts and circumstances, we cannot be a mute spectator to these allegations relating to corruption which should be dealt with strictly. More so when substantial parts of information furnished by the complainant have been admitted by the public servant (respondent) in his affidavits. We, therefore, refer the matter to Enforcement Directorate (ED) along with all papers relating to this complaint. Director, Enforcement Directorate is directed to make enquiries in regard to the valuation of the property viz. E-72, Greater Kailash, Part-II, acquired by the public servant (respondent) and co-owners/owners of other floors. ED should also enquire whether there was any conflict of interest in terms of remuneration received by the public servant (respondent) and/or his relatives. During this enquiry, it may also be ascertained whether the public servant (respondent) was required to inform relevant authority, the cost of redevelopment of the property bought by him in GK-II and whether the appropriate authority was informed or not.

33. Necessary action in accordance with the provisions of applicable laws /regulations may be taken by ED in this matter. Registry of the Lokpal of India is directed to send to Directorate of Enforcement all papers of this case including affidavits filed by the public servant (respondent) along with this order.”

4. As can be seen from the above directions, the Lokpal referred the matter to the ED to make enquiries in respect of immovable property and other properties of the Petitioner. The ED vide its letter dated 4th August, 2022, communicated a report to Lokpal which was considered on 3rd January, 2023 by the Lokpal. After considering the report submitted by the

ED, vide the impugned order dated 3rd January, 2023, the Lokpal directed an open enquiry and it was further directed that the said enquiry and investigation should be completed by the ED within two months. The relevant portions of the said impugned order dated 3rd January, 2023 are extracted below:

“6. In Para -3 of the Inquiry Report submitted by ED, it has been submitted that to look in to the issues referred to in detail, an open inquiry may be required to be carried out. In this regard, ED has sought the advice of the Lokpal of India or conducting further inquiries.

7 . The Division Bench has carefully considered the request of the ED and the provisions under Rule 4 (a) of the Lokpal (Complaint) Rules, 2020, and is of the view that the rules do not prohibit or prescribe any method of inquiry that may be required to get to the facts of the case. Therefore, it is open to the ED to adopt any method of inquiry that they may feel is necessary and appropriate. However, while doing so, it may be ensured that the identity of the concerned RP8 is not made known to persons who are not concerned or associated with the inquiry . It may al so be ensured that inquiry is made only with persons or organizations associated or conversant with the transactions being inquired into.

8. In view of the above, ED is directed to complete the inquiry/investigation within two (02) months from the date of receipt of this order, i.e. on or before 07th March, 2023.”

5. Mr. Ajit Kumar Singh, Id. Counsel appearing for the Petitioner takes the following grounds to challenge the jurisdiction of Lokpal and the manner in which the Lokpal is proceeding in the matter. The contentions of Id. Counsel are as under:

- i) Under Section 14 of the Lokpal and Lokayuktas Act, 2013 (*hereinafter, ‘Lokpal Act, 2013’*), an enquiry can relate to only

the period during which the public servant is holding or serving capacity;

- ii) Under Section 20 of the Lokpal Act, 2013, preliminary enquiry can only be directed by the Central Vigilance Commission and not by the ED;
- iii) Under Rule 4 of the Lokpal (Complaint) Rules, 2020 the identity of the complainant or the public servant has to be protected till the enquiry or investigation is going on.
- iv) The manner in which the Lokpal has directed the ED to enquire into the matter would also be in contrary to the scheme of the Lokpal Act, 2013 inasmuch as the Lokpal could not have sought enquiry by the ED as the Petitioner belongs to Group A class of officers and would be covered by the first proviso to Section 20 (1) of the Lokpal Act, 2013.
- v) Finally, the complaint is also not in the proper format as required under Section 2(e) and the accompanying format of the Lokpal Act, 2013.

6. It is urged on behalf of the Petitioner that summons are currently being sent by the ED to clients of the Petitioner to whom the Petitioner is currently providing professional services which is contrary to Rule 4 of the Lokpal (Complaint) Rules, 2020. It is further submitted that the right to livelihood of the Petitioner is being adversely affected by such methods adopted by the ED.

7. On behalf of the ED, Mr. Zoheb Hossein, Id. Counsel submits that under Section 20, preliminary enquiry can be directed against any public servant by *any agency* to ascertain whether there exists a *prima facie* case

which is what has been done by the Lokpal in the present case. For the said purpose, under the PMLA, 2002 the ED is empowered to issue notices/summons calling for information. The said clients or employers of the Petitioner are not themselves under investigation but only information gathering is being done.

8. Mr. Kurup, Id. Counsel for the Lokpal of India submits that insofar as the Petitioner is concerned, the period for which the enquiry is being conducted, is the period during which the Petitioner was a public servant. However, the activities of the Petitioner post retirement may also have a bearing on the conduct while the Petitioner was a public servant. Further, insofar as Rule 4 of the Lokpal (Complaint) Rules, 2020 is concerned, the same is directory and it is left to the discretion of the Lokpal as to in what manner the confidentiality is to be maintained.

9. The Court has considered the matter. The Lokpal is a body created by Parliament to look into allegations of corruption and misconduct of public servants. In order for it to function effectively, the Lokpal needs to be able to get enquiries and investigations done by specialised agencies. Moreover, interference in the proceedings before Lokpal, while exercising writ jurisdiction, ought to be avoided, unless there is something palpably wrong or contrary to law. Repeated petitions seeking to interdict the proceedings before Lokpal would defeat the very purpose of the legislation.

10. The first impugned order of the Lokpal is of 2nd February, 2022 when the ED was asked to enquire into the complaint which was before it. The second order dated 3rd January, 2023 is also in continuation of the ED report received in terms of the first order.

11. Today, Mr. Zoheb Hossein submits that the ED has in fact already

submitted its report to the Lokpal which is proceeding in the matter. A report in terms of the order dated 3rd January, 2023 has already been submitted. However, the ED has sought further time to submit a final report.

12. The entire matter is under consideration of the Lokpal and challenge in the present petition is to stop the investigation by Lokpal which this Court is not inclined to do at this stage. The legal grounds which are being raised by the Petitioner, relating to the jurisdiction of Lokpal or the manner in which it is proceeding, can be brought to the attention of Lokpal by the Petitioner himself by appearing before the Lokpal at the appropriate stage.

13. A perusal of Section 20 would reveal that the stage of the enquiry/investigation is currently preliminary in nature. The relevant part of the provision is as under:

“20. Provisions relating to complaints and preliminary inquiry and investigation.

(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003:

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso,

after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003:

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

.....”

14. It is noticed that the various steps in terms of Section 23 of the Lokpal act, 2013 i.e. initiating prosecution etc., are yet to be initiated by Lokpal. Prior to the said steps being undertaken by Lokpal, the Petitioner shall be afforded a hearing and the contentions raised by the Petitioner duly considered and a reasoned order shall be passed before proceeding further.

15. The Petitioner may also move an appropriate application before Lokpal, for dealing with the findings/conclusions in the final report that shall be filed by the ED before the Lokpal. The reports of the ED shall be provided to the Petitioner for the said purpose.

16. Insofar as the current clients and professional employers of the Petitioner are concerned, it is made clear that at this stage, the ED's summons/notices are only for the purpose of gathering of information unless directed to the contrary by Lokpal.

17. Accordingly, all the grounds raised in this petition are left open to be

considered and decided by Lokpal. This Court has not made any observations on merits in this regard. The remedies of the Petitioner, if needed, at the appropriate stage are also left open.

18. Petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 10, 2023

Rahul/KT

