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**(2010) 07 MP CK 0018**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 7245 of 2010 (PIL)**

Abdul Naim

APPELLANT

Vs

State of M.P. and others

RESPONDENT

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**Date of Decision : 21-07-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 — Section 10, 11, 12, 2(a), 2(b)

**Citation : (2010) 4 MPLJ 580**

**Hon'ble Judges : S.R. Alain, C.J;Alok Aradhe, J**

**Bench : Division Bench**

**Advocate : R.B. Singh, for the Appellant; Jaideep Singh, Government Advocate, for the Respondent**

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## **Judgement**

Heard on the question of admission.

In this petition, which has been filed as public interest litigation, the petitioner inter alia has alleged that a sum of Rs. 52,21,000/- was sanctioned for construction of 115 kitchen sheds for midday meals in several schools situated at Block Birsa, District Balaghat. Similarly, amounts of Rs. 5,80,000/- and Rs. 1,28,000/- were sanctioned for construction of boundary walls of two girls hostels and two water wells respectively. The aforesaid works were to be carried out under the control and supervision of the respondent No. 5, namely M. D. Daharwal, the then Chief Executive Officer and Block Development Officer, Birsa, who is presently working as Principal of High School, Janpur, District Balaghat. In the aforesaid factual backdrop the petitioner inter alia has sought for direction to the respondents to hold an enquiry against the respondent No. 5 and to take suitable action.

Learned Counsel for the petitioner vehemently contended that the petitioner being a social activist and public spirited person has always vindicated the cause of common people and has raised grievance against the corruption which is

rampant in the public life. He further submitted that the respondent No. 5 has misused his official position as Block Development Officer, Birsa, and the amount sanctioned for construction of kitchen sheds under the Midday Meal Scheme, construction of boundary walls of girls hostels and the amount sanctioned for the construction of water wells was misappropriated. The petitioner made several complaints, but the complaints made by the petitioner failed to evoke any response. Being aggrieved by the inaction on the part of authorities, the petitioner has approached this Court.

On the other hand, learned Government Advocate opposed the submissions made on behalf of the petitioner and argued that against the alleged financial irregularities and misappropriation of the amount the petitioner should approach the appropriate authority at the first instance before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

We have considered the submissions made on both sides. We are of the view that the allegations made by the petitioner are required to be investigated before expressing any opinion on such allegations. In this regard it would be relevant to notice that the Government has created various authorities under the Special Act to investigate and also to suggest appropriate action against such public servant or officer who has misused or abused his position and as such is guilty of corruption. In this regard it would be relevant to take note of the provisions of M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981, (hereinafter referred to as "the Act") which is an Act to make provision for the appointment and functions of certain authorities for enquiry into the allegations against public servants and for matters connected therewith. The Act was enacted with an object to constitute Lokayukt Organisation, which replaced the Vigilance Commission. Lokayukt Organisation is an organisation which is setup under an enactment made by the State Legislature. Having received the statutory sanction, the Lokayukt Organisation is totally free from executive influence. The organisation functions as an instrument of control over the executive by the legislature as its annual reports are submitted to the Governor to be laid and discussed in the State Legislative Assembly. Section 2(a) of the Act defines "officer" which reads as under:

2(a) "Officer" means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh." Section 2(b) defines the expression "allegation" which reads 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 to any person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption; or

(iv) is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf. Explanation - For the purpose of this sub-clause "family" means husband, wife, sons and unmarried daughters living jointly with him.

Section 9 of the Act deals with the provisions relating to complaints. Section 9 inter alia provides that every complaint involving an allegation shall be made in such form as may be prescribed and shall be accompanied by deposit of twenty-five rupees. In case a complaint is made against a public servant in relation to whom the Chief Minister is not the competent authority neither the deposit nor the affidavit shall be necessary. Section 10 of the Act deals with the procedure in respect of enquiry. It empowers the Lokayukt or Up-Lokayukt to decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. Section 11 of the Act makes the provision of the Evidence Act as well as the Code of Criminal Procedure applicable to the procedure of enquiry before the Lokayukt or Up-Lokayukt.

Section 12 of the Act provides that if after enquiry into the allegations the Lokayukt or an Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations along with the relevant document, materials and other evidence to the competent authority. The competent authority is under the obligation to examine the report and to initiate within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

Thus, from perusal of the provisions of the Act it is graphically clear that the Act has been enacted with the object to investigate cases of corruption in public life and provides for an inbuilt mechanism in respect of complaint with regard to corruption by an officer appointed to a public service or post in connection with affairs of the State of Madhya Pradesh. Since the provisions of the Act are a complete Code in itself and provide a remedy to an aggrieved person, he should at the first instance resort to the remedy provided to him under the Act. In such a case the public interest litigation should not be entertained.

The Apex Court in the case of Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, , wherein the allegations were made regarding mismanagement of the affairs of the Guruvayoor temple by a devotee, found that the affairs of the temple are governed by the provisions of the Guruvayoor Devaswom Act, 1978, wherein forums have been created for ventilating the grievances of the affected persons. In that backdrop it was observed in para 60 of the judgment that ordinarily, therefore, such forums should be moved at the first instance. It was further held that the State Government should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.

In view of the aforesaid enunciation of law by the Supreme Court facts of the case in hand may be examined. The allegations made by the petitioner required to be enquired into in the appropriate forum, wherein detailed enquiry would be conducted as per provisions prescribed in the Act and an opportunity of hearing would be afforded to the respondent No. 5. Therefore, the petitioner should avail the remedy provided under the Act.

For the aforementioned reasons, we are of the considered opinion that the petitioner has remedy to agitate his grievance under the provisions of the Act. We have no doubt that in the event the petitioner approaches the appropriate authority, as indicated above, by making complaints as per the prescribed procedure, the same would be examined and necessary action would be taken in accordance with law.

With the aforesaid observation, the writ petition stands dismissed.