
(2012) 09 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 862 of 2012

Ashok Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Chhattisgarh Lok Aayog Adhiniyam, 2002 — Section 11, 2(b), 8(1), 9

Citation : (2013) 1 MPHT 74

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Vaibhav Shukla, for the Appellant; V.V.S. Murthy, Dy. Advocate General for the State, Mr. Raja Sharma, Advocate for the Respondent No. 2, Ms. Pushpa Dwivedi, Advocate appears on behalf of Mr. A.S. Kachhawaha, Advocate for the Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The batch of petitions viz. W.P. (C) Nos. 862, 863 and 864 of 2012, involve common facts and common question of law and, as such, they are being considered and decided by this common order. For adjudication of these petitions, the facts and documents filed in W.P. (C) No. 862 of 2012 are being referred, as the facts and documents of all these petitions are identical. By these petitions, the petitioners seek quashing of the order dated 20-3-2012 (Annexure P-1) passed by the respondent No. 2 in Case No. 8 of 2008.

2. Case of the petitioners, in short, is that the respondent No. 3 filed a complaint before the Chhattisgarh Lok Aayog (for short "the Aayog") u/s 8(1) of the Chhattisgarh Lok Aayog Adhiniyam, 2002 (for short "the Adhiniyam, 2002") making certain allegations in respect of misuse of Government funds by the petitioner (Ashok Sharma) along with the respondent Nos. 7/R.P. Singh [petitioner in W.P. (C) No. 863 of 2012], 8/R.K. Sahu [petition in W.P. (C) No. 864 of 2012] and 9/S.K. Sundarani. The Aayog framed five charges against the petitioners as well as the respondent Nos. 7, 8 and 9. After examining the facts

collected during the process of enquiry, opportunity of hearing was afforded to the petitioners and the respondent Nos. 7, 8 and 9 also. The petitioners are the respondent Nos. 7, 8 and 8 were noticed to submit their reply/explanation. S.K. Sundarani (respondent No. 9) and Chandrakant Uikey, submitted their return/explanation. Ashok Sharma, R.P. Singh and R.K. Sahu, submitted their preliminary explanation and no final explanation was submitted, despite opportunity afforded to them.

3. The Aayog after examining all the informations and facts collected during the enquiry recommended as follows:--

4. The petitioners challenged the validity and legality of the recommendation made by the Aayog on several grounds, inter alia, that (i) the recommendation is perverse, unfounded and unsustainable; (ii) the Aayog has exceeded its jurisdiction by recommending punishment upon the petitioner and the respondent Nos. 7, 8 and 9 and assumed the power of Disciplinary Authority; (iii) the complaint is vague, baseless and suffers from arbitrariness; (iv) no opportunity of cross-examination was afforded, thus, the impugned recommendation is vitiated on account of violation of principles of natural justice; and (v) the finding of misconduct was recorded without summoning the records. The Aayog had not examined all the facts properly.

5. Shri Sharma, learned Counsel appearing for the respondent No. 2 submits that the petitions, at this stage, are premature, as no action has been taken by the authorities, as recommended by the Aayog. The Aayog is a recommendatory body and the recommendation of the Aayog is at the stage of acceptance. He further submits that the identical issue came up for consideration before this Court in Rajesh Bissa Vs. State of Chhattisgarh and others, W.P. (C) No. 4964 of 2008, decided on 27th April, 2010, wherein the Scheme of the Adhiniyam, 2002 was examined and observed that the Aayog is under obligation to communicate its finding and recommendations in writing along with relevant documents to the Competent Authority. Thus, at this stage, the findings of recommendation of the Aayog cannot be questioned.

6. Having heard learned Counsel appearing for the petitioner, perused the pleadings and documents appended thereto, to appreciate the controversy, it is just and proper to refer Section 11 of the Adhiniyam, 2002 dealing with submission of report and action, if any, on the report and recommendation.

8. Section 11 of the Adhiniyam, 2002 reads as under:--

11. Reports of Lok Aayog.--(1) If after inquiry of any action in respect of which a complaint has been received, the Lok Aayog is of the opinion that the complaint is established, it shall by a report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the Competent Authority.

Explanation:--Opinion of Lok Aayog in relation to any complaint, including a

decision, report, finding or conclusion thereon, means the opinion of the majority of its members.

(2) The Competent Authority shall examine the report forwarded to it under sub-section (1) and intimate to the Lok Aayog within three months of the date of receipt of the report, the action taken or proposed to be taken thereon.

(3) If the Lok Aayog is satisfied with the action taken or proposed to be taken on its recommendations, it shall close the case under information to the complainant, the public servant and the Competent Authority, and if in any case the Lok Aayog is of the opinion that the case so deserves, it may make a special report upon the case to the Governor and also inform the complainant.

(4) The Lok Aayog shall present to the Governor, annually, a consolidated report on the performance of its functions under this Adhiniyam.

(5) If in any special report under sub-section (3) or the annual report under sub-section (4), any adverse comment is made against any public servant, such report shall also contain the substance of the defence adduced by such public servant and the comment made thereon by or on behalf of the State Government or the relevant Competent Authority, as the case may be.

(6) On receipt of a special report under sub-section (3) or the annual report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the State Legislative Assembly.

(7) Subject to the provisions of Section 9 of this Adhiniyam, the Lok Aayog may at its discretion make available from time to time and in such manner and to such persons as it may deem appropriate, the substance of cases closed or otherwise disposed of by it which may in its opinion be of general public, academic or professional interest.

8. "Competent Authority" has been defined u/s 2(b) of the Adhiniyam, 2002, which reads as under:--

2. (b) "Competent Authority" means,--

(i) in the case of a Minister other than Chief Minister, the Chief Minister of Chhattisgarh;

(ii) in the case of the Chief Minister or a Member of the State Legislature, the Governor of Chhattisgarh;

(iii) in the case of an officer of the All India Services, the Chief Minister;

(iv) in the case of a Government servant, other than a member of the All India Services, the Appointing Authority of such Government servant;

(v) in the case of any other public servant, such authority as may be prescribed by the Government.

9. Under sub-section (2), Section 11 of the Adhiniyam, 2002, the Competent Authority is authorised to examine the report forwarded to it under subsection (1) and intimate to the Aayog. There is no contemplation of any restriction or prohibition in the examination of the report by the Competent Authority. Thus, the allegation of the petitioner that the recommendation is binding, is baseless.

10. After examining the report alongwith the recommendation, the Competent Authority has to inform the Aayog and further the action proposed to be taken thereon. It envisages action to be taken in accordance with the provisions of law. It is not the case of the petitioners that any action has been taken or any punishment has been imposed without following due process of law, on the basis of recommendation of the Aayog. Thus, it cannot be held that it is perverse and vitiated. If the Competent Authority after examining the report alongwith the recommendation comes to a conclusion that the proposed punishment may be imposed, the petitioners are entitled to basic principles of natural justice, as prescribed under the service jurisprudence.

11. The learned Division Bench of this Court in Randhir Deyasi Vs. Chhattisgarh Lok Aayog and others, W.A. No. 481 of 2011, decided on 17-10-2011, observed as under:--

9. A bare reading of Section 11 of the Adhiniyam, 2002 would show that after enquiry of any action, in respect of which a complaint has been received, the Lok Aayog is of the opinion that the complaint is established, it shall by a report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the Competent Authority, who, in turn, shall examine the report forwarded to it under sub-section (1) and intimate to the Lok Aayog within three months of the date of receipt of the report, the action taken or proposed to be taken thereon.

10. Further, according to definition given in the Concise Oxford English Dictionary, the word "recommendation" means "suggestion or proposal as to the best course of action".

11. In view of the above, it is clear that report of the Aayog is only a recommendation based on which no punitive action can be taken by the Competent Authority as under the statute, i.e., C.G. Civil Services (Conduct) Rules, 1965 or any other relevant Disciplinary Rules, as applicable in the case of a charged public servant concerned, the procedure has been laid down to take action by the Competent Authority on receipt of the recommendations of respondent No. 1. Therefore, any decision taken by the Competent Authority merely on the basis of recommendations of respondent No. 1 would be a futile exercise. Therefore, we are of the opinion that report of respondent No. 1 along with relevant documents can form part of the charge-sheet or show-cause notice, but the Competent Authority has to take an independent decision in respect of the charged public servant after following the procedure as laid down in the applicable service rules.

12. This Court in Rajesh Bissa (supra), observed as under:--

28. On perusal of the entire provisions of the Adhiniyam, 2002, it appears that the office of Lok Aayog has been constituted to enquire into misconduct as alleged against certain public servants and further for the matter connected therewith. "Misconduct" has been defined as a public servant who has abused his position to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person, or has actuated in the discharge of his functions and as such public servant by personal interest or improper or corrupt motives, has indulged in corruption, undue favour, nepotism or lack of integrity in his capacity, or such public servant is in possession of pecuniary resources or property disproportionate to his known sources of income and such pecuniary resources or property is held by public servant personally or by any member of his family or by any other person on his behalf.

Applying the well-settled principles of law to the facts of the present cases and for the reasons mentioned hereinabove, there is no substance in these petitions and the same are liable to be and are hereby dismissed. No order as to costs.