

**(2015) 10 KAR CK 0201**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 46556, 46548 and 46544 of 2003 (GM-KLA)

B.G. Prabhakumar and Others

APPELLANT

Vs

The Hon''ble Lokayukta for Karnataka and Others

RESPONDENT

---

**Date of Decision :** 30-10-2015

**Acts Referred:**

**Citation :** (2015) 10 KAR CK 0201

**Hon'ble Judges :** Anand Byrareddy, J.

**Bench :** Single Bench

**Advocate :** K. Shashikiran Shetty, Senior Advocate for Latha Shetty, Advocate, for the Appellant; Mallikarjun C. Basareddy, Advocate, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Anand Byrareddy, J.—These petitions are disposed of by this common order having regard to the fact that the petitioners are similarly placed.

2. The petitioners were drug controllers. There were eight Deputy Drug Controllers working in the Drugs Control Department. It transpires that a complaint was filed by Dr. Prakash C. Rao, supported by an affidavit against the Drug Controller, Government of Karnataka, requesting that action be initiated to withdraw or ban drugs namely, Nimesulide, Cisapride and combination of drugs. It was the further allegation that many Pharmacies were run by unqualified persons and that there was no transparency in quality control of the drug control and sought that these aspects be addressed by the Lokayukta.

One Dr. H. Sudharshan of the Lokayukta - Vigilance, Director of Lokayukta (Health) is said to have visited the Drugs Control Department in March 2003 and held meetings with the officers of the department and at that time, he had recorded the statements of three individuals namely, one H. Srinivasa, Assistant Drug Controller, and D. Kanthi Kumar Bhaskar and M.N. Ramamurthy, who were employed as Deputy Drug Controllers.

Further, the Lokayukta, along with his staff members and the electronic media

personnel had visited the office of the Drug Controller and held meetings with the concerned three individuals, who again had made personal allegations against the Drug Controller and yet another. There was no complaint against the present petitioners. Wide publicity was given to the raid conducted by the Lokayukta through the press and electronic media that there was a scam involving a sum of Rs. 300 Crore in the Drug Control Department and more than 2000 files were seized from the department and carried away by the Lokayukta. Further statements were recorded of the said individuals, named above, in the presence of the Press and Electronic media.

The complainant, Prakash Rao is said to have filed yet another complaint on 29.3.2003 without reference to his earlier complaint, but drawing attention to the Press Reports, which were generated on the basis of his first complaint and the raid conducted by the Lokayukta pursuant to the same. It is in the second complaint that the complainant thought it fit to include two of the petitioners namely, B.G. Prabha Kumar, Deputy Drug Controller and H. Jayaram, Assistant Drug Controller and requisitioned the Lokayukta to inquire into their affairs with regard to the details of rate contract with the Government of Karnataka and to ascertain whether higher rates were quoted for drugs, etc.

Pursuant to this, further statement of Srinivas was said to have been recorded and marked as exhibits and documents were Exhibited as Exhibits C.1 to C.36, which was again recorded and further evidence was recorded and Exhibits were marked. Similarly, the statement of one B. Thirunavukkarasu was recorded and documents were marked as Exhibits C.73 TO C.83. Here again, there was no allegation made against any of the petitioners. So also was the statement of M.N. Ramamurthy was recorded and further exhibits were marked. He was further recalled and further more documents were marked. Kanthi Kumar Bhaskar was examined and additional documents were provided. However, the complainant was never examined and no statement of his was recorded.

It is on the basis of this complaint and the statements of the above witnesses that the Additional Registrar of Enquiries, Vigilance, Lokayukta had directed the petitioner to submit comments on or before 17.5.2003, furnishing copies of the complaint and copies of the depositions without supporting exhibits said to have been marked in the statements recorded. Though the petitioners had sought for copies of the Exhibits C.1 to C.155 and also sought for further time to address the same, the request was turned down and no copies of the documents were furnished. But however, six days" time was granted to peruse documents and furnish their comments in respect of documents which were spread over 2500 files.

The petitioners however, did their best to submit their comments and it was pointed out that the documents sought to be marked pertained to the years 1994 and 1995 and onwards and it was impossible to peruse voluminous documents and to offer their comments in short period of time. Thereafter, the Lokayukta had called for information from the Drug Controller in July 2003 regarding

matters pertaining to the years 1992-93 to March 2003. There were said to have been furnished as per Exhibits - C.152 to C161. It is on the basis of this material that the Lokayukta had submitted a report to the State Government under Section 12(3) and 13 of the Karnataka Lokayukta Act, 1984 (Hereinafter referred to as the "1984 Act", for brevity) and the Lokayukta had also released the report to the Press and media without furnishing a copy of the same to the petitioners. It is in this background that the present petitions are filed.

3. The learned Senior Advocate Shri Shashikiran Shetty leading arguments on behalf of the Counsel for the petitioners would firstly draw attention to the basis of the action initiated against the petitioners namely, the complaint filed by Shri Prakash C Rao and would point out that the so-called complaint contains only allegations and is not directed against any particular individual, but of a grievance that the drugs banned in other countries being continued to be sold across the counter in the State and Pharmacies being run by unqualified Pharmacists and monitoring drugs in the marketing phase, as to their quality and genuineness etc. There was no specific complaint against any of the petitioners.

It is pointed out that in terms of Section 2(2) of the 1984 Act, the allegation in relation to a public servant includes any affirmation that such public servant, (a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person; (b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; (c) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant; or (d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs.

The requirement, as specified in (a) above, is absent in the complaint and since no petitioner has been named in the complaint, it is inexplicable that ultimately a report is submitted by the Lokayukta seeking to implicate the present petitioners, to acts which were not even suggested in the complaint.

4. Secondly, it is contended that the complaint was acted upon, which could not have been acted upon by the Lokayukta and examination of totally unconnected persons was done, which became the further basis for the press reports being generated and on the basis of the press reports, the very same complainant has filed the second complaint, containing vague allegations except against two of the petitioners without again mentioning specific acts of abuse of power, maladministration, which are the very necessary ingredients of a complaint, on which the Lokayukta could take cognizance. Attention is drawn to Rules 4 and 5 of the Karnataka Lokayukta Rules, 1985, which mandate that unless the complaint is in the prescribed form, containing necessary particulars, the Lokayukta could not even act upon it and therefore it is indeed inexplicable that notwithstanding the vague complaint initiated by the said Prakash Rao, the Lokayukta had taken upon itself the investigation into the alleged events and circumstances spread over more than a decade. In that, a complaint has been

lodged in the year 2003 in relation to alleged acts of irregularities of the year 1992-93. The learned Senior Advocate would point out that the Act itself places an embargo against such action being initiated in respect of allegations pertaining to a period more than five years old and if it is in relation to a grievance, no such grievance can be addressed if it was in relation to a grievance made after the expiry of six months from the date on which the action complained of was known or any complaint involving an allegation made after the expiry of five years from the date on which the action complained of is alleged to have taken place. Therefore, the learned Senior Advocate would submit that on both counts, namely, vagueness of the complaint and the inordinate delay in any such irregularity being brought to the attention of the Lokayukta, did not enable the Lokayukta to take any such action and on that count, the action taken by the Lokayukta would have to be set at naught.

It is also pointed out that there is gross violation of the principles of natural justice and the entire proceedings are lopsided. In that, there is investigation conducted even before the second complaint is lodged and in fact, the investigation becomes basis for the second complaint and an inquiry is conducted behind the back of the petitioners and it is only on repeated demands that a copy of the complaint is furnished and the petitioners were not afforded reasonable time to examine the voluminous documents that are the basis of the investigation nor was any opportunity to cross examine the witnesses examined by the Lokayukta and hence, the entire proceedings stand vitiated. In any event, the petitioners have all attained superannuation and any further inquiry on such vague complaint and material would be whipping the dead horse and hence, the learned Senior Advocate would submit that the petitions be allowed and the proceedings be set at naught.

5. The learned counsel for the Lokayukta, on the other hand, seeks to justify the action challenged in the present petitions and he would point out that the Lokayukta has merely carried out investigation and the statements of the witnesses need not be offered for cross examination and there is no law which prescribes the same. The question of complainant being provided with a copy of the complaint or documents again did not arise. They would have all such opportunity at the trial when once the proceedings are initiated in due course. The inquiry conducted by the Lokayukta was in the nature of a precursor to the actual initiation of the prosecution, which would take place after the State Government takes a call on the reference now made. Hence, there is no irregularity or illegality which warrants interference by this court and would submit that the very fact that the petitioners have attained superannuation would not be a ground to drop the proceedings. The petitioners having conducted themselves in gross violation of the law would have to face the proceedings. Hence, to scuttle the proceedings on the several grounds urged by the petitioners would result in a miscarriage of justice and the law should be allowed to take its course and the learned Counsel seeks dismissal of the petitions.

However, it is to be found that the complaint initially lodged did lack material particulars and there were no allegations against the present petitioners. The further investigation by the Lokayukta appears to have provided fodder for the second complaint, which actually relies on the press reports of the investigation and statements recorded by the Lokayukta, as rightly pointed out by the learned Senior Advocate. The complaint has followed investigation, which is wholly irregular and would obviously prejudice the case of the petitioners.

6. Further, the voluminous records that were relied upon pertained to a period dating back to the year 1992-93 and it is therefore evident that there could have been no investigation or proceedings initiated in respect of alleged acts of irregularities or mal-administration extending beyond the period of 5 years, which would be contrary to section 8(2) of the 1984 Act. Even though section 9 of the 1984 Act does not contemplate the requirement of the authority conforming to principles of natural justice in conducting investigation and submitting its report, it is laid down by this court in the case of Prof. S.N. Hegde Vs. The Lokayukta and Others, , that such a requirement of conforming to the principles of natural justice must be read into the provisions of the Act.

7. Consequently, the lopsided manner in which the investigation and further reference is made to the State Government to prosecute the petitioners is certainly vitiated and would require to be set at naught.

Accordingly, the petitions are allowed. The report of the Lokayukta and the reference to State Government is quashed.