

(2012) 03 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12898 of 2011

Chandradev Ram Yadav (Karaili) Minister Small Scale

APPELLANT

Vs

Lokayukta U.P.

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Advocates Act, 1961 — Section 1(3), 30
Constitution of India, 1950 — Article 226
Lokayukta and Uplokayukta Act, 1975 — Section 10, 11, 11(2), 3, 7
Penal Code, 1860 (IPC) — Section 193

Citation : (2012) 4 ADJ 393

Hon'ble Judges : Devi Prasad Singh, J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Anupam Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

1. Present writ petition under Article 226 of the Constitution of India has been preferred feeling aggrieved with the respondent Lokayukta in not permitting an Advocate to appear and contest the pending investigation under Lokayukta and Uplokayukta Act, 1975 (in short the Lokayukta Act). Sri Anupam Mehrotra learned counsel for the petitioner submits that in view of notification dated 9.6.2011, issued by the Central Government, u/s 30 of the Advocates Act, 1961, the Advocates may appear before the Lokayukta also apart from other authorities where the evidence is recorded during the course of a proceeding.

2. The petitioner, who is a Former Cabinet Minister of the State of U.P., is facing investigation before the Lokayukta of the State with regard to certain misconduct alleged to have been committed by him while discharging obligation as Cabinet Minister of the State of U.P. During the course of investigation, the petitioner tried to defend his cause through an Advocate but it was declined by the Lokayukta. Hence, the present writ petition has been preferred.

3. Apart from claiming relief in the nature of mandamus to permit an Advocate to

appear and defend the petitioner's cause before the Lokayukta, a prayer has also been made that the pending proceeding before the Lokayukta suffers from lack of jurisdiction hence it be set aside.

4. So far as the petitioner's prayer to quash the proceeding before the Lokayukta is concerned, we are of the view that it is always open to petitioner to approach the Lokayukta with regard to alleged illegality on which the Lokayukta may record his finding in accordance with law. However, the argument advanced by the petitioner's counsel to the effect that an Advocate is entitled to appear before the Lokayukta, requires consideration. Accordingly, we entertain the writ petition and record our finding to the limited extent with regard to right of Advocates to appear before the Lokayukta.

5. The Lokayukta is appointed u/s 3 of the Lokayukta Act for the purpose of conducting investigation relating to a complaint of citizen. The power conferred on the State Government to appoint the Lokayukta, has been provided u/s 3 of the Lokayukta Act which provides that the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court of Judicature at Allahabad and the leader of the Opposition in the Legislative Assembly, and if there be no such Leader a person elected in this behalf by the members of the Opposition in that House in such manner as the Speaker may direct.

6. Section 7 of the Lokayukta Act deals with the matters which may be investigated by Lokayukta or Up-Lokayukta. For convenience, Section 7 is reproduced as under:

7. Matters which may be investigated by Lokayukta or Up-Lokayukta.-

(1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of,-

(i) a Minister or a Secretary; and

(ii) any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of Section 2; or

(iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta in this behalf.

(2) Subject to the provisions of this Act and on a complaint a grievance or an allegation being made in that behalf, an Up-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1).

(3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Up-Lokayukta under that sub-section.

(4) Where two or more Up-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by an Up-Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order.

7. A plain reading of the aforesaid provisions, reveals that subject to provisions of the Act, on a complaint involving a grievance or an allegation being made in that behalf, the Lokayukta may investigate and recommend to Government.

8. Section 8 of the Lokayukta Act provides that Lokayukta/Up-Lokayuktas shall not conduct any investigation except on a complaint made under and in accordance with Section 9 of the Lokayukta Act. Section 9 contains the provisions with regard to complaints. For convenience, Section 9 is reproduced as under:

9. Provisions relating to complaints.-(1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokayukta or an Up- Lokayukta-

(a) in the case of a grievance, by the person aggrieved;

(b) in the case of an allegation, by any person other than a public servant;

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf:

[Provided further that in the case of a grievance involving a complaint referred to in sub-clause (ii) of clause (d) of Section 2, the complaint may be made also by an organization recognised in that behalf by the State Government.]

(2) Every complaint shall be accompanied by the complainants' own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings and affidavits respectively.

(4) Not less than three copies of the complaint as well as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

(6) Notwithstanding anything, contained in sub-sections (1) to (5), or in any other enactment, any letter written to the Lokayukta or Up-Lokayukta by a person in police custody, or in a gaol or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the Police Officer or other persons in charge of such gaol, asylum or other place, and the Lokayukta or Up-Lokayukta, as the case may be, may entertain it and treat it as a complaint, but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under sub-section (2).

9. Keeping in view the provisions contained in sub-section (2) of Section 9 read with sub-section (5) of Section 9, condition precedent for Lokayukta to exercise jurisdiction is that the complaint must be filed accompanied by Complainant's own affidavit in support thereof alongwith the affidavit of all other persons from whom, he claims to have received information disclosing the facts relating to accusation. The affidavit should be verified before a Notary together with all documents in possession of the complainant and should be duly verified in accordance with provisions contained in the Code of Civil Procedure. Lokayukta cannot proceed unless the complainant complies with the provisions contained in sub-section (2), (3) and (4) of Section 9 of the Act subject to exception provided in sub-section (6) of Section 9 of the Act. The provisions contained in Section 9 of the Act being procedural in nature, hence in the event of non-compliance of statutory requirement the Lokayukta may direct the complainant to furnish affidavit in terms of provisions contained in subsection (2) and (3) of Section 9 of the Act, before proceeding with the investigation.

10. The procedure with regard to investigation by Lokayukta has been provided u/s 10 of the Lokayukta Act. For convenience, Section 10 is reproduced as under:

10. Procedure in respect of investigations.-(1) Whether the Lokayukta or an Up-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he-

(a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned;

(b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint; and

(c) may make such orders as to the safe custody of documents relevant to the investigation as he deems fit.

(2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:

Provided that, the Lokayukta or an Up-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.

(3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Up-Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta or an Up-Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or, an allegation, if in his opinion-

(a) the complaint is frivolous or vexatious, or is not made in good faith; or

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation, or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta or an Up-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

11. A plain reading of Section 10 reveals that Lokayukta or Up-Lokayukta may conduct any investigation under the Lokayukta Act and for the purpose, shall forward a copy of the complaint to the public servant and the competent authority concerned. The Lokayukta may make such orders as to the safe custody of documents relevant to the investigation as he deems fit. It shall be obligatory on the part of the Lokayukta that the investigation may be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation, shall not be disclosed to the public or the press whether before, during or after the investigation. However, proviso (2) of Section 10 further provides that Lokayukta or an Up-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so. Accordingly, it appears that ordinarily, the investigation conducted by the Lokayukta shall be in private without disclosing identity of complainant or the public servant to the people. However, in appropriate cases for the reasons to be recorded, the Lokayukta or Up-Lokayukta may conduct any investigation of public importance in public. But while holding an investigation in public, it shall be obligatory on the part of the Lokayukta to record its reason for going in public.

12. Section 11 of the Lokayukta Act further empowers the Lokayukta to record evidence. Sub-section (2) of Section 11, provides that Lokayukta or Up-Lokayuktas shall have powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of

any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, and issuing commission for the examination of witnesses or documents. Sub-section (3) of Section 11 provides that any proceeding before the Lokayukta or an Up-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. For convenience, Section 11 is reproduced as under:

11. Evidence.-(1) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lokayukta or an Up-Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such documents.

(2) For the purpose of any such investigation (including the preliminary enquiry) the Lokayukta or an Up-Lokayukta shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act no. 5 of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requiring any public record or copy thereof from any Court or office;

(e) issuing commission for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Lokayukta or an Up-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code (Central Act no. 45 of 1860).

(4) Subject to the provisions of subsection (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the State Government or any public servant, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purpose of any investigation under this Act and the State Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule of law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document-

(a) as might prejudice the security of the State or the defence or international relations of India (including India's relations with the Government of any other

country or with any international organisation), or the investigation of detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet. and for the purpose of this sub-section a certificate issued by the Chief Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

(6) Subject to the provisions of subsection (4), no person shall be compelled for the purpose of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

13. While making submission with regard to right of Advocates to appear before the Lokayukta, Sri Anupam Mehrotra learned counsel invited attention to the fact that the proceeding pending before the Lokayukta is judicial proceeding where evidence is recorded and a person is examined on oath. Accordingly, relying upon Section 30 of Advocates Act, 1961, it has been stated by the petitioner's counsel that being a judicial proceeding or even if Lokayukta is Tribunal or authority authority having right to record evidence, Advocates shall have right to appear before the Lokayukta. Section 30 of the Advocates Act, 1961 is reproduced as under;

30. Right of advocates to practice.- Subject to the provisions of this Act, every advocate whose name is entered in the (State roll) shall be entitled as of right to practice throughout the territories to which this Act extends.-

(i) in all Courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice.

14. The Government of India, Ministry of Law and Justice has issued notification dated 9.6.2011. According to the notification as published in Lucknow Law Times Vol. LII, Issue 10, October 25, 2011 provides that in exercise of powers conferred by sub-section 3 (ii), of Section 1 of the Advocates Act, 1961 (25 of 1961), the Central Government hereby appoints the 15th day of June, 2011 as the date on which Section 30 of the said Act shall come into force. For convenience, the notification dated 9.6.2011 is reproduced as under:

[409] Ministry of Law and Justice (Deptt. of Legal Affairs), Noti. no. S.O. 1349(E), dated June 9, 2011, published in the Gazette of India, Extra., Part II, Section 3 (ii), dated 9th June, 2011, p. 1, no. 1139 [F. no. 8 (5)/88-IC]

In exercise of powers conferred by sub-section 3 (ii), of Section 1 of the Advocates Act, 1961 (25 of 1961), the Central Government hereby appoints the 15th day of June, 2011 as the date on which Section 30 of the said Act shall

come into force.

15. Number of cases cited by the learned counsel for the petitioner, need not be considered keeping in view the fact that Union of India has issued notification making Section 30 operative from the 15th day of June, 2011. Section 30 of the Advocates Act confers on Advocates the right to practise throughout the territories to which the Act extends. Thus, in all Courts including Hon''ble Supreme Court, Advocates have right to appear and practise and represent the cause of litigants. Under Clause (2) of Section 30, the Advocates have got further right to appear before any Tribunal or person legally authorised to check the evidence. Undoubtedly, the Lokayukta has got power to take evidence keeping in view the statutory provisions contained in the Act. Accordingly, the Advocates have right to appear before the Lokayukta in view of the notification issued by the Union of India (supra).

16. To the extent above, there appears to be no room of doubt that in view of the notification of the Government of India, the Advocates have right to appear before the Lokayukta. However, the appearance of Advocates does not mean that the person against whom the investigation is pending, has got right to represent the cause only through the counsel. The Lokayukta has got right to call for and ensure personal appearance of person against whom the investigation is pending, and to pass appropriate order in compliance of the statutory provisions during the course of investigation. However, the Lokayukta may not restrain the Advocates from appearing before him/her to contest the cause of a person against whom investigation is pending under the Act. To the extent as above, the writ petition is allowed. Subject to the order passed by the Lokayukta and in compliance of statutory provisions, the petitioner may be represented by the Advocate before the Lokayukta of the State of U.P. during the pendency of investigation.