

(2009) 11 CHH CK 0048
In the Chhattisgarh High Court

Lakshman Chaturvedi

APPELLANT

Vs

Chhattisgarh Lok Ayog

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Chhattisgarh Lok Aayog Adhiniyam, 2002 — Section 10, 10(3), 11, 14, 14(1)

Citation : AIR 2010 Chh 36 : (2010) 3 CGLJ 207 : (2010) 2 MPJR 18

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.

The petitioner has filed the instant petition and prayed for quashing of the impugned communications of Annexure P/I & P/2 issued by the respondent-Lok Aayog whereby the petitioner has been directed to submit reply latest by 28th August, 2009, failing which it shall be deemed that the petitioner has nothing to say, and has further prayed for direction to the respondent to supply each and every document, records and materials submitted by the complainant, as also collected from the University during inquiry of complaint against the petitioner.

Briefly stated, grievance of the petitioner is that he was Vice Chancellor of Pandit Ravi Shankar Shukla University (hereinafter referred to as "University") at the relevant time. Presently, he is Vice Chancellor of Guru Ghasidas University (now Central University), Bilaspur. A complaint was filed by one Mr. Victor Ekka, Dy. Registrar against the petitioner u/s 8(1) of the Chhattisgarh Lok Aayog Act, 2002 (in short "the Act"). The complainant annexed documents running into 124 pages along with the complaint. The Lok Aayog got the complaint enquired into without notice to the petitioner and thereafter, the petitioner was served with a notice on 4-5-2009 leveling as many as nine charges against him along with incomplete copy of the complaint without annexing the documents filed with the said complaint. The petitioner requested the Lok Aayog for supply of documents filed along with the complaint and the documents, which were supplied by the University. However, the petitioner was advised to get those documents from the

University as being done by one Mr. K.K. Chandrakar. His further request for supply of documents was again turned down vide Annexure P/2 and he has been finally directed to appear on 28-8-2009 before the Aayog.

Mr. Sanjay K. Agrawal, learned Counsel for the petitioner, would submit that the documents annexed with the complaint form integral part of the complaint and the documents provided by the University to the Lok Aayog and relied upon by it to take action against the petitioner also form part of the complaint. The petitioner is entitled to have copies of the above documents. The proceeding before the Lok Aayog is a judicial proceeding by virtue of Section 10(3) of the Act. A conjoint reading of Section 9 of the Act read with Rule 17 of the Chhattisgarh Lok Aayog (Investigation) Rules, 2002 (for brevity "the Rules") clearly indicates that in a proceeding initiated by the Lok Aayog, principles of natural justice are to be strictly adhered to as recommendations of the Lok Aayog will have civil consequences against the petitioner. The petitioner would not be able to reply to the charges merely by reading the charges without the documents, on the basis of which the charges have been levelled.

Section 14(1) of the Act only provides that any information obtained in the course of an enquiry by the Lok Aayog in respect of the complaint and evidence recorded or collected in connection with such information, shall be treated as confidential and this confidentiality will not be applicable for supply of copy of the complaint and the documents filed along with the complaint.

Rebutting the contention of the respondent that evidence gathered during enquiry is confidential u/s 14 of the Act, it was argued that the respondent has itself filed the documents gathered during enquiry as Annexure R/1 to R/3 and therefore, refusal to supply copies of those documents on the ground of confidentiality, is a mere pretext.

So far as the other argument that from the documents of Annexure R/1 to R/3, it is evident that the petitioner was aware about the complaint and the reply filed by the University was processed by himself as the then Vice Chancellor of the University, is concerned, the same would not absolve the respondent from furnishing the material collected during enquiry to afford the petitioner an opportunity to effectively reply to the charges levelled against him.

On the other hand, Mr. Sumesh Bajaj, learned Counsel for the respondent, vehemently argued that the petitioner was very much aware about the notice issued to the University and each and every exercise thereafter was done under his signature. The same would be reflected from the documents of Annexure R/1 to R/3 filed by the respondent. Thus, the petitioner has approached this Court with unclean hands and the petition deserves to be dismissed on this ground. It was further argued that the mode of functioning of the Lok Aayog is not as such a judicial proceeding, but it is a fact finding enquiry.

Referring to various provisions of the Act and the Rules, it was argued that Section 14(1) of the Act clearly stipulates that information containing documents,

obtained by the Lok Aayog would be confidential. Section 14(2) is attracted only when the punitive action is taken against the charged public servant on the report submitted by the Lok Aayog to the competent authority.

Referring to Rule 17 of the Rules, it was argued that this rule provides for the procedure to be followed during Investigation by the Lok Aayog. This rule very specifically stipulates that the Lok Aayog is obliged to serve upon the public servant either a copy of the complaint or a statement of imputations. A bare perusal of this rule makes it clear that the public servant cannot claim even a copy of the complaint as a matter of right, whereas in the instant case, the respondent has served a statement of imputations along with copy of the complaint upon the petitioner. The statement of imputations is quite elaborative and detailed and the same is in absolute compliance of Rule 17.

I have heard learned Counsel for the parties.

The only question to be considered in this petition is whether the respondent/Lok Aayog is obliged to provide copies of the documents annexed with the complaint and copies of the material evidence collected during enquiry on the basis of such complaint at the stage of inquiry under Sections 9 and 10 of the Act?

Before considering the rival contentions of the respective parties, it would be appropriate to refer to the relevant provisions of the Act and the Rules.

Section 6 of the Act empowers the Lok Aayog to enquire into any complaint of misconduct against the Chief Minister, a Minister or any public servant. Section 8 deals with the provisions relating to complaints. It provides that every complaint involving a misconduct is to be made in such form prescribed and shall be accompanied by the deposit of certain fee and affidavit of the complainant. Sections 9, 11 & 14 of the Act read as under:

9. Procedure in respect of inquiries:--The Lok Aayog shall in cases to be conducted before it decide the procedure to be followed for making the inquiry, and in so doing ensure that the principles of natural justice are satisfied.

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 comments 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.

Secrecy of information:--(1) Any information obtained in the course of an inquiry by the Lok Aayog, members of its staff or a person or agency whose services are utilized by the Lok Aayog for conducting inquiries in respect of any complaint, and any evidence recorded or collected in connection with such information shall be treated as confidential.

(2) Nothing in Sub-section (1) shall apply to the disclosure of information or particulars:

(a) for purpose of the enquiry or in any report to be made thereon or for any action or proceedings to be taken on such report, or

(b) for purposes of any proceeding for an offence under the Official Secrets Act, 1923 (Act No. 19 of 1923), or any offence of giving or fabricating false evidence under the Indian Penal Code or for the purpose of any proceedings u/s 15 of this Adhiniyam, or

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lok Aayog with respect to any document or information specified in the notice or any class of documents so specified, that in the opinion of the State Government the disclosure of the documents or information of documents, or information of that class so specified, would be contrary to public interest, and where such notice is given, nothing in this Adhiniyam shall be construed as authorizing or requiring the Pramukh Lokayukt or a Lokayukt or any member of

the staff of Lok Aayog to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

The rules have been framed in exercise of powers conferred u/s 17(1) of the Act. Rule 15 empowers the Pramukh Lokayukt to regulate the procedure to be followed in any proceedings, inquiry or investigation, where a provision in that regard has not been provided for in these rules. Rule 17 deals with the procedure to be followed during investigation by the Aayog, which reads as under:

17. Procedure to be followed during investigation by the Aayog--When the Aayog decides to conduct an investigation against a public servant, such public servant shall be served with a copy of the complaint or a statement of imputations against him and shall be afforded an opportunity of being heard personally or through his authorized representative.

From conjoint reading of the relevant provisions under the Act and the Rules referred to hereinabove, it can be deduced that the Lok Aayog has been empowered to decide the procedure to be followed in making any inquiry. However, it has to ensure that the principles of natural justice are satisfied. After receiving a complaint u/s 8, the Lok Aayog is competent to collect evidence u/s 10, which casts a duty upon any public servant or any other person to furnish information or produce documents relevant to the inquiry to the Lok Aayog, if demanded. u/s 11 of the Act, if after inquiry on a complaint, the Lok Aayog is of the opinion, that the complaint is established, it shall submit its report with its findings and recommendations to the competent authority.

Section 14(1) clearly envisages that any evidence recorded or collected by the Lok Aayog, members of its staff, such information is to be treated as confidential. Whereas, under Rule 17 of the Rules, if the Lok Aayog decides to conduct an investigation against a public servant, it has to either serve copy of the complaint or statement of imputations against him, and such public servant is also to be afforded an opportunity of being heard personally or through his authorized representative.

In view of the aforesaid provisions, we are of the opinion that where the Lok Aayog decides to conduct an investigation on the basis of complaint received against a public servant, in that case, such public servant has to be served with a copy of the complaint or the statement of imputations against him and also afforded an opportunity of personal hearing or through his authorized representative. If the procedure prescribed under Rule 17 is followed, then the principles of natural justice, as mentioned in Section 9 of the Act, stand satisfied.

Since the Lok Aayog is conducting only preliminary investigation to ascertain the truth in the complaint or the information received against the public servant, such investigation is only a fact finding investigation. After collecting evidence u/s 10, if the Lok Aayog is of the opinion that the complaint is established, it has to submit a report to the competent authority u/s 11, and if the competent

authority desires to take any punitive action against the charged public servant, in that case, that public servant would be given complete opportunity to defend himself.

So far as contention of the petitioner that the documents annexed with the complaint are an integral part of the complaint and therefore, the Lok Aayog ought to have supplied copy of those documents to the petitioner to enable him to effectively reply to the notice, is concerned, the petitioner could have inspected the complaint and documents annexed therewith in this office of the Lok Aayog with the prior permission of the Lok Aayog before filing his reply. However, in view of the procedure prescribed under the Act and the Rules, the Lok Aayog is only obliged to send copy of the complaint or the statement of imputations made against the petitioner. Since the petitioner has been served with a copy of the complaint as also a statement of implications against him, the same satisfies the principles of natural justice as envisaged u/s 9 of the Act.

On the basis of aforesaid discussions, the instant petition is disposed of in the following terms:

(i) The petitioner is not entitled for copy of the documents annexed with the complaint or the evidence collected by the Lok Aayog during investigation in connection with the said complaint at this stage.

(ii) in view of the interim order passed by this Court, the petitioner shall be afforded reasonable opportunity (preferably two weeks) for filing reply to the show cause notice and an opportunity of personal hearing in accordance with Rule 17 of the Rules.

(iii) If the petitioner makes a request for inspection of the record before the Lok Aayog, he may be permitted to inspect the documents annexed by complainant Mr. Victor Ekka along with his complaint in order to enable the petitioner to file reply.

No order as to costs.