

**(2012) 11 AHC CK 0004**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 20236 of 2012

Naseemuddin Siddiqui and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision :** 08-11-2012

**Acts Referred:**

Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975 — Section 12, 12(3), 14, 14(3), 14(3)(i)

**Citation :** (2012) 10 ADJ 697 : (2013) 1 AWC 872

**Hon'ble Judges :** Amitava Lala, Acting C.J.; P.K.S. Baghel, J

**Bench :** Division Bench

**Advocate :** Shashi Nandan and Ashutosh Gupta, for the Appellant; S.P. Gupta, A.G., Yashwant Varma, Ramanand Pandey and S.C., for the Respondent

**Final Decision :** Dismissed

## Judgement

Hon'ble Amitava Lala, ACJ.

1. This writ petition has been filed by the petitioners basically to obtain an order of the Court quashing the recommendation dated 15th March, 2012 made by the Lokayukta, Uttar Pradesh to the Chief Minister of the Uttar Pradesh to pass an appropriate order in connection with the investigation through an appropriate agency. Other incidental prayers have also been made in connection thereto. The facts of the case in nutshell are that the petitioner No. 1 is an Ex-Cabinet Minister of the State of Uttar Pradesh, whereas presently both the petitioners i.e. petitioner No. 1 and petitioner No. 2, who is wife of petitioner No. 1, are said to be Members of the Legislative Council of the State. A complaint was filed before the Lokayukta levelling certain allegations against the petitioners. Pursuant to the notice issued by the Lokayukta, the petitioners filed their reply to such complaint. On 22nd February, 2012 the Lokayukta made recommendation to the Chief Minister, being competent authority, recommending for investigation by any Central Investigating Agency, like Central Bureau of Investigation or Enforcement Directorate, on the points referred to in such recommendation and to take

further action according to the investigation/enquiry report. The Cabinet Secretary, Government of Uttar Pradesh, on behalf of the competent authority, vide its report/letter dated 27th February, 2012 turned down the request of the Lokayukta and informed the decision of the competent authority to close the matter. The Lokayukta again on 15th March, 2012 made the recommendation to the competent authority to review its earlier decision taken on the recommendation dated 22nd February, 2012 with regard to maintainability of the complaint and jurisdiction of the Lokayukta. Such recommendation dated 15th March, 2012 of the Lokayukta is under challenge in this writ petition.

2. Mr. Shashi Nandan, learned Senior Counsel appearing for the petitioners, has contended before us that as per Section 12 of the Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975 (hereinafter in short called as the "Act") a report is to be filed by the Lokayukta to the competent authority to examine the same, for his satisfaction, to the extent whether the proceedings will be closed or will be proceeded further and he may also make a special report to the Governor, who, on receipt of such special report, shall cause a copy thereof together with explanatory memorandum to be laid before each House of the State Legislature. Neither the Lokayukta is empowered to recommend for investigation by any agency nor he has any power to send the matter to the competent authority for review of such investigation when in the earlier occasion the competent authority has closed the investigation. After sending the report, the Lokayukta becomes functus office. Review is a creature of the statute. No review can be made beyond the provisions of the Act. In support of his submissions as regards power of review, Mr. Shashi Nandan has relied upon the judgments in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, ; A.K. Roy and Another Vs. State of Punjab and Others, ; Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, and All Kerala Private College Teachers Association Vs. Nair Service Society and others, .

3. On the other hand, Mr. S.P. Gupta, learned Advocate General, duly assisted by Mr. Yashwant Varma, learned Chief Standing Counsel and Mr. Ramanand Pandey, learned Standing Counsel, has contended before this Court that the petitioner has proceeded on a wrong premise. There is a basic difference in making report before investigation and after investigation. u/s 12 of the Act, the report is to be placed by the Lokayukta before the competent authority only after investigation and not before investigation. Admittedly, in this case no investigation has been made as yet, therefore, the Lokayukta thought it fit to get permission from the competent authority for investigation. Such power is available to the Lokayukta u/s 14(3) of the Act, which speaks as follows:

14(3). Without prejudice to the provisions of sub-section (1), the Lokayukta or an Up-Lokayukta may for the purpose of conducting investigation under this Act utilise the services of-

(i) any officer or investigation agency of the State or Central Government with the concurrence of that Government.

(ii) any other person or agency.

4. Therefore, sub-section (3) of Section 14 of the Act is applicable in the case of the petitioners to recommend the matter to the competent authority for the purpose of investigation. According to Mr. Gupta, the Act is not happily drafted, otherwise there is no occasion to incorporate subsection (3) u/s 14 of the Act and place it after Section 12, which speaks about the stage after the investigation. He further said that wrong recital in the order impugned/ recommendation being proceeding u/s 12(3) of the Act does not wash out the contents and spirit of the communication, by which the recommendation has been made. In other words, the Court will proceed on the basis of the contents and not on the basis of the heading or recital alone. In support of his submissions, Mr. Gupta has relied upon the judgment of the Supreme Court in *Vikram Singh Junior High School Vs. The District Magistrate (Fin and Rev) and Others*, wherein it has been held that merely quoting wrong provision of the statute for exercising power would not invalidate the order passed by the authority if it is shown that such order could be passed under other provisions of the statute.

5. We have also gone through the judgment in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, and found that it has been held by the Supreme Court as under:

57. ...A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the contest....

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71. ...A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court....

(emphasis supplied)

6. The Supreme Court had occasion to consider this issue in the judgment in *Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another*, wherein there was a wrong reference in the order issued by the Government. The Supreme Court observed as follows:

3. ...It is well-settled that merely a wrong reference to the power under which certain actions are taken by Government would not per se vitiate the actions done if they can be justified under some other power under which the Government could lawfully do these acts. It is quite clear that the Government had the power u/s 5 (1) and (3) of Act 1 of 1948 to amend to Tax Rules, for that was a law in force in one of the merged States. The only mistake that the

Government made was that in the opening part of the notification Section 5 of the Act was not referred to and the notification did not specify that the Government was making a regulation under Act 1 of 1948. But that in our opinion would make no difference to the validity of the amendments, if the amendments could be validly made u/s 5 of Act 1 of 1948. It is not disputed that the amendments could be validly made u/s 5 of the Act 1 of 1948. We are therefore of opinion that the mere mistake in the opening part of the notification in reciting the wrong source of power does not affect the validity of the amendments made.

7. Similar view has also been taken in the judgments in *Mayongbam Radhamohan Singh Vs. The Chief Commissioner (Administrator), Manipur and Others*, ; *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, and *Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal*, .

8. So far as part of review is concerned, Mr. Gupta has contended that there is no difference between the "review" and "reconsideration" as per the judgment in *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, . It is a case of reconsideration. He further submitted that the word "review" includes "procedural review" and "review on merit". In case of review on merit, the Court will have to proceed if the relevant Act provides for the scope of review. But the case of procedural review is inbuilt and there is no embargo in reviewing any issue related to procedure. Here, the case is strictly covered by the scope of procedural review to the effect whether the Lokayukta can send the matter to the competent authority for reconsideration regarding investigation after the same has been declined by the competent authority in the earlier occasion. In respect of procedural review, he has cited various judgments in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others*, 1980 (Supp) SCC 420; *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, ; *Budhia Swain and Others Vs. Gopinath Deb and Others*, ; *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, and *Jet Ply Wood Private Ltd. and Another Vs. Madhukar Nowlakha and Others*, .

9. In the midst of hearing, it was brought to our notice by the learned Advocate General that there is no signature of the competent authority on the recommendation made to it in the earlier occasion, meaning thereby the Chief Minister, who happens to be the competent authority as per Section 2(c)(i) of the Act, had not examined and considered the report of the Lokayukta, therefore, the Court had no other option but to adjourn the matter and direct the State to produce the record before the Court. Thereafter, the record was produced, from which it appears that all the papers pertaining to the report have been considered by the Cabinet Secretary. There was no separate order of the Chief Minister, her signature was found only on the note-sheet and ultimately in the last page of note-sheet signature of the then Chief Minister, being competent authority, is there as if she, only as a matter of formality, has put her signature

and sent the file which, according to us, is not the intention of the Act. The competent authority has to apply her/his mind before directing or recommending for investigation or closing the proceeding, particularly when the charges are under the Prevention of Corruption Act, 1988 against a Cabinet Minister in discharging duties of office.

10. Having considered the rival contentions of the parties, in totality we find that the intention of the Lokayukta was to send the matter to the competent authority for the purpose of getting recommendation for investigation by an appropriate agency of the State or the Central Government with the concurrence of the Government as per Section 14(3)(i) of the Act, to which there is no bar. It may be accepted by the competent authority or it may be rejected. However, it is true to say that the communication will not be understood by the wrong recital but by the contents of the letter when no investigation has been made by any agency as yet in the matter. Thus, we are of the view that the writ petition is premature in nature and, as such, it is liable to be dismissed. Accordingly, the writ petition is dismissed. Interim order, if any, stands vacated.

However, no order is passed as to costs.

The original record, which was produced before the Court by Mr. Yashwant Varma, learned Chief Standing Counsel, and which was directed to be kept under the sealed cover, is directed to be returned to Mr. Yashwant Varma.

Hon"ble P.K.S. Baghel, J.

I agree.