

(2006) 11 MP CK 0002
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5649 of 2005

Pooran Singh Palaiya and Others

APPELLANT

Vs

Lokayukt and Another

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 243, 243Q, 243R
Indira Kala Sangeet Vishwavidyalaya Act, 1956 — Section 3
Jawaharlal Nehru Krishi Vishwa Vidyalaya Act, 1963 — Section 3
Madhya Pradesh Co-operative Societies Act, 1960 — Section 2
Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 — Section 2(g), 2(g)(v)(ii), 7
Madhya Pradesh Municipalities Act, 1961 — Section 3, 4
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 5
Road Transport Corporations Act, 1950 — Section 3
State Financial Corporations Act, 1951 — Section 3

Citation : (2007) 1 MPJR 182

Hon'ble Judges : S.M. Samvatsar, J

Bench : Single Bench

Advocate : P.N. Kelkar, for the Appellant; Atul Gupta with Miss Madhurima, Advocate for respondent No. 1 and Mr. Brijesh Sharma, G.A., for the Respondent

Final Decision : Dismissed

Judgement

S. Samvatsar, J.

This petition is filed by the petitioners challenging the findings on preliminary objections raised by the petitioners before the Lokayukt dated 24.6.2005 Annexure P/1 whereby the Lokayukt has held that he has jurisdiction to proceed against the petitioners.

Brief facts of the case are that the petitioner No. 1 was the Mayor of Gwalior Municipal Corporation while petitioners No. 2 to 6 are ex councilors of the Municipal Corporation. These persons were elected as mayor and councillors in the general elections held for Gwalior Municipal Corporation in the end of the

year 1999 in accordance with the provisions of the M.P. Municipal Corporation Act, 1956. They were elected for a term of five years which expired in January, 2004.

A complaint was made before the Lokayukt Madhya Pradesh about some irregularities in acceptance of tenders called by the Municipal Corporation for construction and repairs of roads. The Lokayukt in exercise of the powers u/s 7 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 inquired the matter by deputing Chief Engineer. Chief Engineer on the preliminary enquiry found prima facie case against the petitioners as well as Municipal Commissioner, Engineers and officers of the Corporation. A show cause notice was issued by respondent No. 1 to the petitioners and other members of the Mayor-in-council as well as to the Municipal Corporation and Engineers, copy of which is Annexure P/7.

Petitioners raised a preliminary objection that the Lokayukt has no jurisdiction to entertain any matter against them, as they are not covered by the provisions of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (hereinafter, referred to as "Adhiniyam").

Shri P.N. Kelkar, learned counsel for the petitioners has invited attention of this Court to the definition of "public servant" as defined in Section 2 (g) of the Adhiniyam. According to him, the Adhiniyam is promulgated for making inquiries into the allegations against public servants. According to the petitioners, as they are not covered by the said definition, no action can be taken against them by the Lokayukt."

For proper appreciation of the argument advanced by Shri Kelkar, it will be necessary to first refer to the definition of public servant under the Adhiniyam. Said Section reads as under:

"Public Servant" means a person falling under any of the following categories, namely -

- (i) Minister;
- (ii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Madhya Pradesh Vidhan Saha and Neta Pratipaksha);
- (iii) an officer referred to in clause (a);
- (iv) an officer of an Apex Co-operative Society or District Cooperative Society within the meaning of clause (u) of section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961);
- (v) Any person holding any office in, or any employee of -
 - (i) a Government company within the meaning of section 617 of the Companies Act, 1956; or
 - (ii) a Corporation or local authority established by State Government under a

Central or State enactment.

(vi) (a) Up-Kulpati, Adhyacharya and Kul-Sachiva of the India Kala Sangeet Vishwavidyalaya constituted u/s 3 of the Indira Kala Sangeet Vishwavidyalaya Act, 1956 (No. 19 of 1956);

(b) Kulpati and Registrar of the Jawaharlal Nehru Krishi Vishwavidyalaya constituted u/s 3 of the Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963 (No. 12 of 1963);

(c) Kulpati, Rector and Registrar of the Vishwavidyalaya constituted u/s 5 of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (No. 22 of 1973).

Contention of the learned counsel for the petitioners is that the petitioners who was Mayor and Ex-councillors are not covered by any of the six categories mentioned in the said Section. As per the orders passed by the Lokayukt, petitioners are covered under clause (v) (ii) of the said definition. According to clause (v) (ii) a public servant includes a person who is covered by any of the categories mentioned in the said section.

Relying on the said section, Shri Kelkar submitted that the Corporation, i.e., The Municipal Corporation is not established by the State and therefore no action can be taken against the petitioners and employees of the Municipal Corporation by the Lokayukt. He emphasised the words "Corporation or local authority established by the State Government". According to him, Municipal Corporation is not established by the State Government and therefore, the petitioners will not be covered by the provisions of the said Adhiniyam.

Shri Kelkar pointed out that the Municipal Corporation are established in exercise of the powers under Article 243 of the Constitution of India. Article 243-Q provides that there shall be constituted in every State a Nagar Palika, Municipal Council for smaller urban area and Municipal Corporation for larger urban area in accordance with the provisions of this Part. Article 243-R provides for composition of municipalities. Thus, according to Shri Kelkar, Municipal Corporation is established under this provision and not by the State Government as required by Section 2 (g) of the Adhiniyam.

For the purposes of his argument, he has invited attention of this Court to constitution of various other corporations in the State. According to him, the Road Transport Corporation is established under the provisions of Road Transport Corporation Act, 1950 and Section 3 of the said Act provides that the State Government having regard to various factors may establish by notification in the official gazette Road Transport Corporation. Similarly, Section 3 of the State Financial Corporation Act provides that the State Government may by notification in the official gazette establish a financial Corporation. Madhya Pradesh (Rajya) Bhumi Vikas Nigam is established u/s 3 of the M.P. (Rajya) Bhumi Vikas Nigam Adhiniyam, 1976 which provides that with effect from such date as the State Government may, by notification, appoint, there shall be established for the

purpose of this Act a Nigam to be known as the Madhya Pradesh Rajya Bhumi Vikas Nigam. The Madhya Pradesh Rajya Beej Evam Farm Vikas Nigam is established u/s 3 of the Madhya Pradesh Rajya Beej Evam Farm Vikas Nigam Adhiniyam, 1980 which provides that the State Government by Notification shall establish a Nigam. Similar is the situation with that of the Madhya Pradesh Rajya Matsya Vikas Nigam Adhiniyam, 1979 and Madhya Pradesh Housing Board.

So far as the Municipalities are concerned, the same are constituted under the provisions of Madhya Pradesh Municipalities Act, 1961 by the State Government. This fact is clear from sub-section (8) of Section 3 which defines Council means Municipal Council constituted by or under this Act. Section 4 provides that the State Government shall by a notification, specify the class to which a municipality shall belong in accordance with sub-section (1) and the notification shall be conclusive evidence of the classification of Municipality.

From perusal of the section about establishment in all these Adhiniyam, it is clear that these Corporations are established by the State Government by issuing notifications. Shri Kelkar submitted that in the case of Municipal Corporation, there is no such notification. He invited attention of this Court to Section 7 of the Municipal Corporation Act, 1957 which provides that there shall be constituted a Municipal Corporation for larger urban area in accordance with the provisions of the said Act. The words which are incorporated under various Acts under which different corporations are established are different than Section 7 of the Municipal Corporation Act. The words "State Government shall establish" do not find place in Section 7 of the M.P. Municipal Corporation Act. Therefore, Shri Kelkar submitted that the Municipal Corporation is not established by the State Government, but it is established under the provisions of Constitution of India.

To meet his argument, the Lokayukt has referred to the notification issued on 30th October, 1956 in exercise of the powers conferred u/s 1(3) of the Madhya Bharat Municipal Corporation, 1956. Section 1 (3) of the Madhya Bharat Municipal Corporation Act, 1956 provides that this section shall come into operation at once. The remaining provisions of the Act shall come into operation in such cities of Madhya Bharat and on such dates as the Madhya Bharat Government may, by notification in the official Gazette, specify in respect of each City. On the respective dates, the said provisions shall apply to such cities in the manner, to the extent and for the purposes expressly provided therein.

Thus, by reading of Section 1 (3) of the Madhya Bharat Municipal Corporation Act, 1956 it is clear that the Notification issued u/s 1 (3) is only for the purpose of applying the provisions of the said Act to different cities at different times. The Notification which is relied by the Lokayukt is to the following effect.

In exercise of the powers conferred by Section 1 (3) of the Madhya Pradesh Municipal Corporation Act, 1956, the Rajpramukh is pleased to notify that all provisions of the above Act shall come into operation in the following cities of Madhya Bharat from the date of publication of his notification in the Government

Gazette.

(1) Indore

(2) Gwalior

By order, K.M. Bhavraskar, for Secretary

Thus, by the said notification, name of Gwalior is included in the city in the said Notification. This notification is issued only for the purposes of applying the provisions of Madhya Bharat Municipal Corporation Act to Gwalior. This notification nowhere says that the Gwalior Municipal Corporation is established by the State Government by the said Notification.

Thus, after hearing the arguments of the counsel for the petitioner, I am satisfied that the reasoning adopted by the Lokayukt cannot be sustained.

However, from a careful reading of the definition of public servant defined in Section 2 (g) of the Adhiniyam, I find that the conclusions arrived at by the Lokayukt are correct. If we read Section 2 (g) (v) (ii) of the Adhiniyam, we find that the interpretation made by Shri Kelkar, learned counsel for the petitioners, though are attractive, but is not correct. For the correct interpretation, we have to divide sub-clause (ii) into two parts, i.e.

(i) Corporation, or

(ii) local authority established by State Government under a Central or State enactment.

Thus, this sub-clause is in two parts and words "established by State Government" is applicable only to the local authority and not to the Corporation. By adding the words "established by State Government" the Legislature had intended to include all the local authorities established by the State Government under the provisions of the Adhiniyam and not to keep persons holding any office or in employment of the Corporation out of the scope of Adhiniyam.

It is true that the Municipal Corporation, Gwalior is not established by the State Government and it is constituted under the provisions of the Constitution of India i.e. Article 243Q and R, still the office holders and employees of the Corporation are not beyond the purview of the definition of public servant defined in the said Adhiniyam. In such circumstances, even though, I do not agree with the reasoning adopted by the Lokayukt, yet he has reached the right conclusions.

Hence, this petition is without any merit and is dismissed.