

(2016) 02 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4810 of 2015

S.P.R. Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Chhattisgarh Lok Aayog Adhiniyam, 2002 — Section 11, Section 11 (3), Section 2, Section 2 (b), Section 9
Right to Information Act, 2005 — Section 20 (2), Section 3

Citation : (2016) AIR(Chhattisgarh) 93 : (2016) 4 CGLJ 370

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Vaibhav A. Goverdhan, Advocate, for the Appellant; D.R. Minj, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.

1. The superb question of law that falls for consideration in this writ petition is, whether the Chhattisgarh Lok Aayog has jurisdiction and authority to pass an order directing the State Government and/or its authorities to hold departmental enquiry mandatorily and to recover the amount in exercise of its advisory jurisdiction under sub-section (1) of Section 11 of the Chhattisgarh Lok Aayog Adhiniyam, 2002 (for short "the Adhiniyam, 2002").

2. The above stated question of law arises for determination in the following factual backdrop:--

3. The petitioner is holding the substantive post of Extension Officer in the Department of Co-operative, Government of Chhattisgarh. He also worked as Liquidator of Maharana Pratap Grih Nirman Samiti Maryadit, Bilaspur between the period from 28-12-2007 to 26-3-2009. A complaint was lodged by the complainant against the petitioner and five other officers to the Chhattisgarh Lok

Aayog complaining that the petitioner and some other officers have committed serious irregularity in allotment and sale of plots and thereby they have committed misconduct for which they are liable to be prosecuted departmentally and criminally.

4. Upon receipt of complaint, the Chhattisgarh Lok Aayog directed the State Government to conduct an enquiry and submit a report. The State Government constituted a three-member committee to enquire into the allegation which conducted preliminary enquiry and submitted report that embezzlement of Rs. 41,11,100/- has been committed and the complaint against the petitioner is true. Thereafter, the matter was forwarded to the learned Pramukh Lokayukt and on 20-5-2014, the Legal Adviser to the learned Pramukh Lokayukt submitted the matter to the learned Pramukh Lokayukt who on 26-6-2014 agreed with the interpretation/note submitted by his Legal Adviser and acting upon that, on 28-6-2014, the Secretary of the Chhattisgarh Lok Aayog directed the Registrar, Co-operative Societies to recover the amount embezzled by holding a departmental enquiry and to submit compliance report within three months by 25-9-2014. The State Government and its authorities thereafter, by order dated 15-10-2015 (Annexure P-2), directed the petitioner to deposit an amount of Rs. 54,70,600/- within 15 days from the date of receipt of the order.

5. Impugning the legality and correctness of the order dated 28-6-2014 passed by the Chhattisgarh Lok Aayog as well as the order dated 15-10-2015 passed by the Deputy Director, Co-operative Societies, Bilaspur, this writ petition has been filed by the petitioner alleging inter alia that function and duty of the Lok Aayog under Section 11 (3) of the Adhiniyam, 2002, is recommendatory in nature and after enquiry on a complaint, if the complaint is established, the Lok Aayog has duty and responsibility to communicate its finding and recommendation along with relevant documents and other evidence to the competent authority/appointing authority. Thus, report of the Lok Aayog is recommendatory in nature and the Lok Aayog can make any recommendation for departmental action but no order or direction can be issued to necessarily hold departmental enquiry and to pass order directing recovery. It has further been pleaded that in the instant case, though prior to making of complaint to the Lok Aayog, departmental enquiry was already pending against the petitioner, but since the Lok Aayog has passed order for holding of departmental enquiry and recovery of the amount in dispute, the State Government without conducting any enquiry, only on the basis of order passed by the Lok Aayog, has directed recovery of Rs. 54,70,600/- which is absolutely bad and unsustainable in law.

6. Upon being noticed, the State/respondents No. 1, 3 and 4 have filed their return opposing the writ petition and supporting the order passed by the State Government and its authorities as just and proper.

7. The Chhattisgarh Lok Aayog - respondent No. 2, though served has chosen not to appear.

8. Mr. Vaibhav A. Goverdhan, learned counsel appearing for the petitioner, would submit that the Chhattisgarh Lok Aayog has passed an order directing holding of departmental enquiry for recovery of the questioned amount and also fixed the time limit of three months to recover the amount, which the Lok Aayog has no jurisdiction and authority in light of the provisions contained in sub-section (1) of Section 11 of the Adhiniyam, 2002, which only authorizes the Lok Aayog to report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the competent authority as defined in Section 2 (b) of the Adhiniyam, 2002, which in case of the petitioner would be the State Government/Registrar, Co-operative Societies. He would further submit that the word "recommendation" cannot be read as order or mandate, as the word "recommendation" as employed in sub-section (1) of Section 11 of the Adhiniyam, 2002, is only an advise and it cannot be a mandate to the competent authority, and it is the opinion of the Lok Aayog which has to be examined by the competent authority under sub-section (2) of Section 11 of the Adhiniyam, 2002, and report back to the Lok Aayog the action taken or proposed to be taken thereon. In the instant case, the State Government/Registrar, Co-operative Societies, without holding any departmental enquiry, on the basis of the order passed by the Lok Aayog, directed recovery of the impugned amount and did not hold any departmental enquiry against the petitioner as envisaged in the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 and, therefore, the order of the Chhattisgarh Lok Aayog as well as the Registrar, Co-operative Societies deserves to be quashed.

9. Mr. D.R. Minj, learned Deputy Government Advocate appearing for the State/respondents No. 1, 3 and 4, while opposing the writ petition would submit that the State Government and its authorities are absolutely justified in directing recovery of aforesaid amount as such, the Lok Aayog has only recommended for recovery of aforesaid amount by way of impugned order Annexure P-1 as such, the writ petition deserves to be dismissed.

10. I have heard learned counsel for the parties present and bestowed my thoughtful consideration to the rival submissions made on either side herein-above and gone through the available record with utmost circumspection.

The Chhattisgarh Lok Aayog Adhiniyam, 2002:--

11. The Adhiniyam, 2002 has been enacted to make provisions for the appointment and functions of certain authorities for the inquiry into specific information of misconduct or complaint against certain Public Servants and for the matters connected therewith. Sub-section (b) of Section 2 of the Adhiniyam, 2002 defines "competent authority" and clause (v) of sub-section (b) of Section 2 defines "competent authority", means in the case of any other public servant, such authority as may be prescribed by the Government. Sub-section (a) of Section 2 defines the term "action". Section 9 provides procedure in respect of inquiries and Section 11 provides for reports of Lok Aayog. Sub-sections (1), (2) and (3) of Section 11 of the Adhiniyam, 2002 are relevant for the present case

and it is appropriate to notice the said provisions which read as follows:--

"11. 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."

12. A meaningful perusal of sub-section (1) of Section 11 of the Adhiniyam, 2002 would show that upon receipt of complaint and after inquiry if the Lok Aayog is of the opinion that the complainant has been able to establish the complaint, the Lok Aayog by a report in writing, communicate its findings and recommendations along with the relevant documents and other evidence to the competent authority as defined in Section 2 (b) of the Adhiniyam, 2002.

13. It is appropriate to notice that what is required to be reported by the Lok Aayog is its finding and recommendation. Both the words have not been defined in the Adhiniyam, 2002. It would be apposite to notice their dictionary meaning. Black's Law Dictionary, Sixth Edition, defines the word "Finding" as under:--

"Finding. The result of the deliberations of a jury or a court. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. A recital of the facts as found. The word commonly applies to the result reached by a judge or jury. See also Decision; Judgment; Verdict.

Finding of fact. Determinations from the evidence of a case, either by court or an administrative agency, concerning facts averred by one party and denied by another. *Kozsdiy v. O'Fulton Bd. of Fire and Police Com'rs*, 31 III.App.3d 173, 334 N.E.2d 325, 329. A determination of a fact by the court, averred by one party and denied by the other, and founded on evidence in case. *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 159 P.2d 891, 897. A conclusion by way of reasonable inference from the evidence. *Welfare of Carpenter*, 21 Wash.App. 814, 587 P.2d 588, 592. Also the answer of the jury to a specific interrogatory propounded to them as to the existence or non-existence of a fact in issue. Conclusion drawn by

trial court from facts without exercise of legal judgment. Compare Conclusion of law.

Findings of fact shall not be set aside unless clearly erroneous. Fed.R. Civil P. 52(a). The court may amend, or make additional findings, on motion of a party. Fed.R. Civil P. 52(b).

A general finding by a court is a general statement that the facts are in favor of a party or entitle him to judgment. It is a complete determination of all matters, and is a finding of every special thing necessary to be found to sustain the general finding.

A special finding is a specific setting forth of the ultimate facts established by the evidence and which are determinative of the judgment which must be given. It is only a determination of the ultimate facts on which the law must be determined. A special finding may also be said to be one limited to the fact issue submitted."

14. Likewise, the word "Recommendation" is defined as under in Black's Law Dictionary, Sixth Edition:--

"Recommendation. In feudal law, a method of converting allodial land into feudal property. The owner of the allod surrendered it to the king or a lord, doing homage, and received it back as a benefice or feud, to hold to himself and such of his heirs as he had previously nominated to the superior.

The act of one person in giving to another a favorable account of the character, responsibility, or skill of a third.

Recommendation refers to an action which is advisory in nature rather than one having any binding effect. People v. Gates, 41 C.A.3d 590, 116 Cal.Rptr. 172, 178.

Letter of recommendation. A writing whereby one person certifies concerning another that he is of good character, solvent, possessed of commercial credit, skilled in his trade or profession, or otherwise worthy of trust, aid, or employment. It may be addressed to an individual or to whom it may concern, and is designed to aid the person commended in obtaining credit, employment, etc. See Letter of credit."

15. According to Merriam-Webster's Collegiate Dictionary, Eleventh Edition, recommendation means the act of recommending or something that recommends or expresses commendation.

16. Thus, it appears that duty and function of the Lok Aayog after enquiry of any action in respect of the complaint received and investigated by him is recommendatory, precatory, advisory or directory in nature as it has to advise, counsel or suggest with certain course to be pursued or deposition made.

17. The duty of the Lok Aayog is recommendatory in nature, is also reinforced from the Explanation attached to sub-section (1) of Section 11 of the Adhiniyam,

2002, which states that "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. Therefore, it is quite vivid that the Lok Aayog has to communicate its opinion to the competent authority over the conduct of the delinquent public servant after its investigation and in no case it can be the mandate or the order of the Lok Aayog to the competent authority. It is for the competent authority to accept or not to accept that recommendation, but by virtue of sub-section (2) of Section 11 of the Adhiniyam, 2002, the competent authority is obliged to examine the report forwarded to it under sub-section (1) of Section 11 and to intimate to the Lok Aayog within three months from the date of receipt of the report, the action taken or proposed to be taken thereon. Further course of action is provided in sub-section (3) of Section 11 of the Adhiniyam, 2002 that 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. Thus, aforesaid scanning of the provisions of the Adhiniyam, 2002 will show that the role of the Chhattisgarh Lok Aayog under the Adhiniyam, 2002 is only advisory and recommendatory in character and concededly not an authority empowered to issue and enforce any order by itself except submitting a report to the competent authority for appropriate action.

18. Recently, in the matter of Manohar s/o Manikrao Anchule v. State of Maharashtra and another , (2012) 13 SCC 14, while dealing with Section 20 (2) of the Right to Information Act, 2005, the Supreme Court has held that recommendation must be seen in contradistinction to direction or mandate, and observed as under:--

"... Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a "recommendation" and not a "mandate" to conduct an enquiry. "Recommendation" must be seen in contradistinction to "direction" or "mandate"."

19. In the matter of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others , AIR 1958 SC 538(1), Their Lordships of the Supreme Court while dealing with function of the Enquiry Commission constituted under the provisions of the Commissions of Enquiry Act, 1952, have held that function of the Commission is only recommendatory in nature, and observed as under:--

"... In the first place neither Parliament nor the Government has itself undertaken any inquiry at all. Parliament has made a law with respect to inquiry and has left it to the appropriate Government to set up a Commission of Inquiry under certain circumstances referred to in S. 3 of the Act. The Central Government, in its turn has, in exercise of the powers conferred on it by the Act,

set up this Commission. It is, therefore, not correct to say that Parliament or the Government itself has undertaken to hold any inquiry. In the second place the conclusion that the last portion of cl. (10) is bad because it signifies that Parliament or the Government had usurped the functions of the judiciary appears to us, with respect, to be inconsistent with the conclusion arrived at in a later part of the judgment that as the Commission can only make recommendations which are not enforceable *proprio vigore* there can be no question of usurpation of judicial functions. As has been stated by the High Court itself in the latter part of its judgment, the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called and consequently the question of usurpation by Parliament or the Government of the powers of the judicial organs of the Union of India cannot arise on the facts of this case and the elaborate discussion of the American authorities founded on the categorical separation of powers expressly provided by and under the American Constitution appears to us,..."

20. Likewise, in the matter of Justice Chandrashekaraiah (Retired) v. Janekere C. Krishna and others , (2013) 3 SCC 117, Their Lordships of the Supreme Court while considering the provisions contained in the Karnataka Lokayukta Act, 1984 which contains *pari materia* provisions like sub-section (1) of Section 11 of the Adhiniyam, 2002, have held in no uncertain terms that the Lokayukta or Upa-Lokayukta under the Act are established to investigate and report on allegations or grievances relating to the conduct of public servants and their functions are investigative in nature, and observed as under:--

"37. The Lokayukta and Upa-Lokayukta while exercising powers under the Act, of course, is acting as a quasi-judicial authority but his functions are investigative in nature...."

Their Lordships further held that the Lokayukta or Upa- Lokayukta has no jurisdiction or power to implement its report and has further observed in paragraph 41 as under:--

"41.... The Lokayukta or Upa-Lokayukta, however, has no jurisdiction or power to direct the Governor or the Chief Minister to implement his report or direct resignation from the office they hold, which depends upon the question whether the Governor or the Chief Minister, as the case may be, accepts the report or not. But when the Lokayukta or Upa-Lokayukta, if after the investigation, is satisfied that the public servant has committed any criminal offence, prosecution can be

initiated, for which prior sanction of any authority required under any law for such prosecution, shall also be deemed to have been granted."

21. After having examined the authority and jurisdiction of the Lok Aayog to enquire into the complaint and to make recommendation along with its finding to the competent authority, it would be appropriate to examine the proceedings that took place before the Lok Aayog leading to passing of the impugned order. Upon enquiry conducted by the Lok Aayog, on 20-5-2014, the Legal Adviser of the Lok Aayog submitted following note to the learned Pramukh Lokayukt:--

22. On 26-6-2014, the learned Pramukh Lokayukt, Lok Aayog, made following note:--

23. On the basis of the above-stated note made by the learned Pramukh Lokayukt on 26-6-2014, the Secretary of the Lok Aayog communicated the following order to the Registrar, Cooperative Societies, Chhattisgarh, Raipur:--

24. On the basis of the aforesaid order of the Secretary, Chhattisgarh Lok Aayog, the Deputy Registrar, Co-operative Societies, Bilaspur, passed following order directing recovery of above-stated amount from the petitioner:--

Discussion and consideration:--

25. At this stage, it would be pertinent to mention that departmental enquiry against the petitioner is already pending before the competent authority which has been initiated by order dated 24-1-2012 for the alleged misconduct and against which the petitioner has also preferred W.P.(S) No. 687/2015 in which this Court has directed the petitioner to file his reply to the show cause notice through his counsel. The petitioner's services are governed by the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. Recovery of any pecuniary loss caused by him to the Government by negligence or breach of orders is one of the minor penalties under clause (iii) of Rule 10 of said Rules, 1966. No material has been brought on record by the respondent State to demonstrate that the procedure followed for imposing such a penalty has been complied with while directing recovery of the above-stated amount.

26. The above-stated proceedings recorded by the Lok Aayog would show that the Lok Aayog directed the Registrar, Cooperative Societies to proceed and recover the amount against the petitioner. Rather the Chhattisgarh Lok Aayog has clearly in its memo dated 28-6-2014 directed the Registrar, Co-operative Societies that the misconduct against the petitioner has been established therefore, departmental proceeding be taken against him for recovery of embezzled amount and result of the departmental proceeding be informed to the Lok Aayog within three months.

27. It appears from the record that pursuant to the memo order dated 28-6-2014 issued by the Secretary, Lok Aayog to the Registrar, Co-operative Societies, Raipur; the Registrar, Co-operative Societies by its order dated 18-9-2015, directed the Deputy Registrar, Co-operative Societies, Bilaspur to

take action against the petitioner and on the basis of that order, the Deputy Registrar by its order Annexure P-2 dated 15-10-2015 acting upon the memo order dated 28-6-2014, directed recovery of Rs. 54,70,600/- against the petitioner.

28. Thus, in the instant case, the Lok Aayog has travelled beyond its jurisdiction in issuing mandate to hold departmental enquiry and recover the impugned amount from the petitioner. As stated above, duty and function of the Lok Aayog under sub-section (1) of Section 11 of the Adhiniyam, 2002 is only recommendatory in nature. The Lok Aayog can make recommendations along with its findings to the competent authority to take action against the delinquent public servant, rather it can be said to be the opinion of the Lok Aayog which has to be forwarded to the competent authority for examination and it is for the competent authority, which, in the present case, the Registrar, Co-operative Societies, to examine the report forwarded to it under sub-section (1) of Section 11 of the Adhiniyam, 2002 and upon examination, intimate the action taken or proposed to be taken thereon to the Lok Aayog.

29. Thus, in the instant case, the Lok Aayog has failed to communicate its recommendation in the shape of report to the competent authority, rather it has communicated its order in the shape of mandate and thereby transgressed the advisory jurisdiction envisaged under sub-section (1) of Section 11 of the Adhiniyam, 2002 to report its recommendation which is ex facie without jurisdiction and without authority of law. The Lok Aayog being recommendatory body is not an authority empowered to pass an order and recommendation must be seen in contradistinction to direction or mandate as held by the Supreme Court in Manohar (supra). Directing departmental proceeding for recovery of loss caused to the State - proprio vigore that too by an authority which is not entitled to do so, have far-reaching civil consequences and the State/respondent without conducting any proceeding, straightway directed recovery of the disputed amount against the petitioner.

30. As a fallout and consequence of the above-stated discussion, the order of the Lok Aayog dated 28-6-2014 directing holding of departmental proceeding for recovery of the impugned amount, and the order dated 15-10-2015 (Annexure P-2) passed by the Deputy Registrar, Co-operative Societies, Bilaspur directing recovery of Rs. 54,70,600/- are hereby quashed. However, the Chhattisgarh Lok Aayog will have the leave and liberty to communicate its findings and recommendations along with relevant documents and other evidence to the competent authority, in accordance with the provision contained in subsection (1) of Section 11 of the Adhiniyam, 2002.

31. The writ petition is allowed to the extent indicated herein-above, but without imposition of costs.