

(2019) 02 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (M Of S) No. 1409 Of 2013

Uttarakhand Power Corporation Ltd

APPELLANT

Vs

Lokayukt And Another

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Lokayukt Act, 2014 — Section 12(1), 14
Prevention Of Corruption Act, 1988 — Section 2, 20
Constitution Of India, 1950 — Section 194, 226

Citation : (2019) 02 UK CK 0035

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

**Advocate : Naresh Pant, D.K. Sharma, Siddhartha Bankoti, Vikas Pandey,
Dinesh Chauhan**

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. Present writ petition has been filed seeking the following reliefs:-

(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 19.10.2012 passed by respondent no. 1/ Lokayukt Uttarakhand Dehradun (Annexure No. 1 to the writ petition).

(ii) Mould and grant and other suitable writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Factual matrix of the case is that the second respondent filed a complaint case no. 71 of 2011, Dinesh Kumar vs. Managing Director, Uttarakhand Power Corporation Limited under section 12(1) of the Lokayukt Act before the first respondent-Lokayukt with the assertion that the petitioner retired on 31.12.2018 from the post of Executive Engineer and a sum of Rs. 9,31,161/- of gratuity has been sanctioned vide P.P.O. No. UCI/201/15014 dated 06.01.2010 but by order dated 19.01.2010 the payment of gratuity was stopped temporarily, as the

departmental enquiry is pending against the petitioner and communication dated 20. 01.2012 has been sent to the Lokayukt in this regard. The lokayukt by impugned order dated 19.10.2012 has directed the petitioner to take decision in the matter and further directed to pay the amount of gratuity to the petitioner. Hence this present petition.

3. It is the contention of the learned counsel for the petitioner that the Lokayukt has got no jurisdiction to hear the complaint filed by the petitioner and the Lokayukt has exercise the jurisdiction of Article 226 of the Constitution of India which is not vested upon it.

4. Per contra, learned counsel for the respondent denied the submission made by the learned counsel for the petitioner and would submit that the impugned order has been passed by the first respondent according to the jurisdiction and law vested upon him.

5. The jurisdiction of Lokayut has been defined in Section 14 of the Lokayukt Act, 2014. For Kind reference Section 14 of the Lokayukt Act, 2014 is extracted hereunder:-

Jurisdiction in respect of inquiry:-

14.(1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:-

(a) any person who is or has been a Chief Minister: Provided that the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Chief Minister,- (i) unless a full bench of the Lokayukta consisting of its Chairperson and all Members considers the initiation of inquiry and at least four member approves of such inquiry:

Provided further that any such inquiry shall be conducted in camera and if the Lokayukta comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or shall not available to anyone;

(b) any person who is or has been a Minister of the State;

(c) any person who is or has been a Member of Legislative Assembly;

(d) any Group 'A' or Group 'B' officer or equivalent or Higher Officer, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;

(e) any Group 'C' or Group 'D' Official or equivalent officials from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the State subject to the provision of sub-section (1) of section

20;

(f) such any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (whether by whatever name called) established by an Act by the legislative Assembly or wholly or partly financed by the State Government or controlled by it:

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the State Government and the annual income of which exceeds such amount as the State Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the State Government may by notification specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the State Government may, by notification, specify. Explanation.-For the purpose of clauses (e) and (f), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses: Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either Legislative Assembly in respect of anything said or a vote given by him in Legislative Assembly or any committee thereof covered under the provisions contained in clause (2) of Article 194 of the Constitution.

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected Constitution of benches of Lokayukta the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruptio⁴ under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

(4) No matter in respect of which a complaint has been made to the Lokayukta under this Act, shall be referred for inquiry under the Commissions of Inquiry

Act, 1952.

Explanation.- For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

6. None of the provisions of Section 14 of the Lokayukt Act empowers the Lokayukt to entertain such complaint. Thus, the impugned order is without jurisdiction.

7. This Court is of the view that as per the provisions of Section 14 of the Lokayukt Act, 2014, such kind of complaint, made by the second respondent, was not tenable before the Lokayukt and the order impugned passed by the Lokayukt is without jurisdiction and same is liable to be quashed.

8. In view of the aforementioned discussion, the order dated 19.10.2012 passed by respondent no. 1/ Lokayukt Uttarakhand Dehradun is hereby quashed. The writ petition is allowed. However, the second respondent would be at liberty to avail appropriate legal remedy available to him, before the appropriate forum.

9. In the facts and circumstances, parties shall bear their own cost.