Karnataka High Court
Dr. K. Chowdappa vs State Of Karnataka on 20 April, 1989
Equivalent citations: ILR 1990 KAR 798, 1989 (3) KarLJ 512
Author: K Swami
Bench: K Swami
ORDER K.A. Swami, J.

1. At the stage of preliminary hearing, Sri N. Devadas, learned High Court Government Advocate was directed to lake notice for respondents 1 and 3 and Sri R.C. Castelino, learned Standing Counsel for the Corporation to take notice for respondent No.2, Accordingly Sri N. Devadas has put In appearance on behalf of respondents 1 and 3 and Sri R.C. Castelino for respondent No.2. The respondents 1 and 3 have also filed a common statement of objections in these petitions and also in W.P.No.2951/1989 which is disposed of today by a separate order, . These two petitions were heard along with W.P. No. 2951/1989.

2. In these petitions under Article 226 of the Constitution, the petitioners have sought for quashing the order dated 25-1-1988 bearing No.HUD 314 MNY 86 passed by the State Government under clause (Mi) of sub-rule (1) of Rule 14A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as 'CCA Rules') directing enquiry Into the case against the petitioners.

3. The Impugned order is passed on the basis of the report made by the Upa Lokayukta. The contention urged on behalf of the petitioners is that the State Government becomes a Competent Authority under the provisions of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as the 'Act') In respect of the officials of the Corporation if the case Is initiated only on the report made by the Lokayukta or Upalokayukta as the case may be under the provisions of the Act. As in the Instant case, the report is made by the Upalokayukta under the provisions of the Act, it is submitted that Sub-section (3) of Section 9 of the Act ought to have been complied with by the Upa Lokayukta before making a report against the petitioners.

4. On the contrary, it is contended on behalf of the respondents that the case against the petitioner is not initiated on the basis of a private complaint filed before the Lokayukta or Upalokayukta as per the provisions of Section 9 of the Act, whereas the case against the petitioners was taken up by the Upalokayukta as it was referred to him by the Government under subsection (2A) of Section 7 of the Act. Therefore, in such a case, it is not necessary for the Upalokayukta to comply with the requirements of Sub-section (3) of Section 9 of the Act. It is also contended on behalf of the petitioner that before the Upalokayukta took up the matter under the provisions of the Act, there: was a complaint made before the Competent Authority viz., the Commissioner of Corporation, who investigated into the matter and closed the case against the petitioner in W.P. No. 13405/88 as per the Official Memorandum dated 12-11-1987 bearing No.B.12(4) PR: 407/87-08 issued by the Deputy Commissioner (Administration), Corporation of the City of Bangalore, produced as Annexure-D.

5. On the contrary, it is contended on behalf of the respondents that unless the case is investigated and the enquiry is held in accordance with the Rules, governing disciplinary proceeding and the

petitioner is exonerated, the fact of mere holding a preliminary enquiry and dropping the case will not operate as a bar to take up the case when it is subsequently found that there is a prima facie case to proceed against the petitioner. Therefore, there was no bar for the Upalokayukta to take up the matter when it was referred to him by the State Government.

6. In the light of these contentions, the following points arise for consideration:

1) Whether the provisions of Sub-section (3) of Section 9 of the Act are attracted to these cases?

2) Whether the case against the petitioner in W.P. No. 18405/1988 can be held to have been enquired into and a disciplinary proceeding was held and the petitioner was exonerated by the Commissioner of Corporation and therefore, it was not open to the Upalokayukta to re-investigate into the same matter?

3) What, order?

POINT NO.1

7. The records of the case are produced. On going through the records of the case, it is noticed that this is a case in which a complaint was filed before the Chief Minister of the State. The office of the Chief Minister, after examining said complaint, and on the approval of the Chief Minister, had referred the complaint to the Upalokayukta for investigation. Therefore, this is a case which falls under Sub-section (2A) of Section 7 and not Section 9 of. the Act. Sub-section (2A) of Section 7 of the Act over-rides Sub-section (1) and (2) of Section 7 of the Act. Section 9 of the Act is attracted when a complaint is made directly by any person before the Lokayukta or Upalokayukta, as the case may be, and not to a case where the State Government refers a matter for investigating into any action taken by or with the general or specific approval of a public servant. Thus when a case is referred to Lokayukta or Upalokayukta is not required to follow the procedure laid down in Sub-section (3) of Section 9 of the Act.

8. In the instant case, there was a complaint made before the Chief Minister of the State relating to an action taken by the petitioners as public servants. It was this complaint which, after verification, was referred to the Upalokayukta. The Upalokayukta, after investigation, had forwarded the report to the Competent Authority. As such Sub-section (3) of Section 9 of the Act was not attracted. Hence it is not possible to hold that the investigation and the report made by the Upalpka-yukta are vitiated because Sub-section (3) of Section 9 of the Act is not complied with.

In this connection, it is submitted that the provisions of Section 9 of the Act are required to be read with the provisions of Sub-section (2A) of Section 7 of the Act. It Is further submitted that in case both these provisions are read apart, no one will file a complaint before the Lokayukta or Upalokayukta and everyone will file a complaint before the State Government and it will be referred to the Lokayukta or Upalokayukta; that consequently, the very purpose and object of Section 9 of the Act and the protection assured to a Public Servant to save him from frivolous and vexatious complaints is rendered illusory. It is not possible to accept these submissions.

The power to refer the case under Section 7(2A) of the Act Is given to the State Government and not to any inferior body or authority. The State Government apart from being a high Authority; it is also the Competent Authority under the Act. It is not expected to act without any responsibility. The State Government is expected to examine the complaint and satisfy Itself before referring the same to the Lokayukta or Upalokayukta, that the case requires investigation by the Lokayukta or Upalokayukta; that it is not frivoious and vexatious. The State Government cannot act as a post box. It has also to be remembered that the Legislature itself has reposed confidence In the State Government by providing Section 7(2A). Unless It is specifically proved that the State Government has acted mala fide in exercise of its power under Section 7(2A) of the Act or the case does not fall under the Act or It does not relate to any action taken by or with the general or specific approval of a Public Servant, no complaint about the tenabillty of a reference made under Section 7(2A) of the Act by the State Government can be entertained.

9. However, learned Counsel for the petitioners has placed on a decision of the Supreme Court in THE STATE OF ORISSA v. DHIRENDRANATH DAS, AIR 1961 SC 1715. In that case, it was held thus:

"If the two sets of Rules were in operation at the material time when the enquiry was directed against the respondent and by order of the Governor, the Enquiry was directed under the Tribunal Rules which are "more drastic" and prejudicial to the interests of the respondent, a clear case of discrimination arises and the order directing enquiry against the respondent and the subsequent proceedings are liable to be struck down as infringing Article 14 of the Constitution."

In the instant case, there are no two sets of Rules. The Act governs the proceedings before the Lokayukta or the Upalokayukta and it also prescribes the limits of jurisdiction. Section 7(2A) of the Act, the Constitutional validity of which is not challenged, starts with a non-obstante clause and enables the State Government to refer a case for Investigation to the Lokayukta or an Upalokayukta In respect of any action taken by or with the general or specific approval of a public servant. It is already pointed out that the State Government being a high authority and a Competent Authority under the Act is expected to satisfy Itself as to whether the complaint is false and vexatious. In fact, the grounds on which the Lokayukta or an Upalokayukta can refuse to investigate or cease to Investigate any complaint as enumerated in Sub-section (5) of Section 9 of the Act, will have to be applied and the State Government has to satisfy itself that the case does not fall under Sub-section (5) of Section 9 of the Act before referring it to the Lokayukta or an Upafokayukta as the case may be. It cannot act as a Post Box. Therefore, it is not possible to hold that the ratio of the aforesaid decision of the Supreme Court applies to the case on hand. Accordingly, Point No. 1 is answered in the negative.

POINT NO.2

10. The records placed before the Court by the petitioner as well as the records of the case made available to the Court by the learned Government Pleader appearing for respondents 1 and 3, do not disclose that the Competent Authority of the Corporation at any time had framed the charges against the petitioner in W.P. No. 18405/88 and enquired into the same and found that those

charges were not established and thereby exonerated the petitioner in W.P. No. 18405/88. A mere preliminary enquiry without holding a disciplinary proceeding will not have the effect of operating as a bar against further enquiry. Even in the case of criminal charge, unless the charge is framed and a trial is held and that trial results in either acquittal or conviction, there is no bar for a second trial. It will be more so in the case of administrative matter. Annexure-D produced in W.P. No. 18405/88 states that on examining the reply submitted by the official it was felt that the official could not be held responsible and therefore, the official was relieved of the allegation. This had been done in a preliminary enquiry. In such a situation, nothing prevents the Competent Authority on coming to know the further material leading to a prima facie case against the official to take up the matter afresh because on an earlier occasion, charges were not framed and there was no disciplinary proceeding conducted in accordance with the Rules governing the Disciplinary Proceedings. Therefore, I am of the view that the order Annexure-D cannot be construed as a bar to the Lokayukta or an Upalokayukta to investigate into the matter on the reference made by the State Government. That being so, it is not necessary to go into the merits of the case because an enquiry under Rule 14A of the CCA Rules against both the petitioners is in progress. Therefore, I refrain from expressing any opinion on the merits of the case. Accordingly Point No. 2 is answered against the petitioner in W.P. No. 18405/88. Consequently it follows that the petitions have to fail. Accordingly, they are dismissed.