

Writ Petition No. 43079/2015 (S-KAT)

Karnataka Lokayuktha v. H.N. Niranjan

2017 SCC OnLine Kar 4976 : (2017) 2 AIR Kant R 463 : (2017) 4 KCCR 2926
(DB) : (2017) 6 Kant LJ 80 (DB)

In the High Court of Karnataka¹
(BEFORE JAYANT PATEL AND N.K. SUDHINDRARAO, JJ.)

Karnataka Lokayuktha, Rep. By Registrar Lokayuktha
Petitioners;

v.

H.N. Niranjan and Another Respondents.

Writ Petition No. 43079/2015 (S-KAT)¹

Decided on March 6, 2017

Advocates who appeared in this case :

Sri. Devaraj G, Adv.

Sri. Nagaraj, AGA, for R2

The Order of the Court was delivered by

JAYANT PATEL, J.:— The present petition is directed against the order dated 27.11.2014 passed by the Tribunal, whereby the Tribunal for the reasons recorded in the order has allowed the application.

2. We have heard Sri. G. Devaraj, learned counsel for the petitioner and Mr. D. Nagaraj, learned AGA for State authorities.

3. It appears that the Tribunal has exercised the power for alleged breach and non-compliance to the provisions of Section 12(4) of the Karnataka Lokayukta Act, 1984. The relevant reasoning recorded by the Tribunal in the impugned order at Para-7 reads as under:

“7. One other ground urged on behalf of the applicant is that there is non-compliance of Section 12(4) of the Lokayukta Act by the first respondent while taking further action on the recommendation made by the Hon'ble Upa Lokayukta in the report under Section 12(3) of the Lokayukta Act. Section 12(4) of the Lokayukta Act reads as follows:—

“The Competent Authority shall examine the report forwarded to it under sub-section (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upa-Lokayukta the action taken or proposed to be taken on the basis of the report.”

Inviting our attention to Section 12(4) of the Lokayukta Act, it is contended by the learned Counsel for the applicant that a reading of the impugned order dated 12.11.2013 prima facie indicates that there is non-compliance of Section 12(4) of the Karnataka Act by the first respondent, for the reason that the first respondent has failed to examine the report forwarded under Section 12(3) of the Lokayukta Act before ordering departmental enquiry in the matter. In the preamble to the Government Order dated 12.11.2013, paras-1 and 2 relate to the substance of the recommendation made by the Upa Lokayukta. In para-3 of the Government Order, it is stated that as recommended by the Hon'ble Upa Lokayukta, it has been decided to hold disciplinary proceedings against the applicant and to entrust the same to Upa Lokayukta. It has not been mentioned in the impugned order dated 12.11.2013, that the first respondent has examined the report sent under Section

12(3) of the Lokayukta Act. When the statute mandates examination of the report sent under Section 12(3) of the Lokayukta Act, it is the bounden duty of the Competent Authority to which the said report is sent, to examine the report before taking any decision on the recommendation made in the report under Section 12(3) of the Lokayukta Act. The object of examination of the report sent under Section 12(3) of the Lokayukta Act is to ensure that the public servant concerned is not subjected to any unwarranted disciplinary action. When the statute mandates examination of the report, the Competent Authority has to comply such mandate and failure in that regard invalidates the decision taken on such report. A reading of the impugned Government Order dated 12.11.2013 nowhere indicates that the first respondent has examined the report sent under Section 12(3) of the Lokayukta Act. It is only stated that as recommended by the Hon'ble Upa Lokayukta, it has been decided to hold disciplinary proceedings and to entrust the same to Upa Lokayukta concerned. It can be certainly said that the omission of the first respondent in this regard, which amounts to non-compliance of the mandatory requirement of Rule 12(4) of the Lokayukta Act, has resulted in the vitiation of the order dated 12.11.2013 passed by the first respondent. We have to note in this case that in the complaint filed before the Karnataka Lokayukta in the matter, there was no allegation against the applicant. The name of the applicant figures in this case for the first time only in the report submitted by the Technical Wing of Karnataka Lokayukta. It is submitted on behalf of the applicant that the Assistant Executive Engineer concerned was the Implementation Officer as regards the concerned work and that the applicant cannot be held liable for any irregularity in the matter. The contentions of the applicant in this regard and the above facts are required to be examined by the first respondent while considering the recommendation made by the Upa Lokayukta in the report under Section 12(3) of the Lokayukta Act. It is for the said reason, the Competent Authority concerned has been mandated to examine the report forwarded to it under Section 12(3) of the Lokayukta Act. At the cost of repetition, we may point out that nowhere in the impugned order, it is stated that the report under Section 12(3) of the Lokayukta Act has been examined by the first respondent before passing the order dated 12.11.2013 directing initiation of departmental enquiry against the applicant. The Competent Authority has blindly accepted the recommendation made in the report sent under Section 12(3) of the Lokayukta Act and directed initiation of enquiry against the applicant. Having regard to the same, the order of initiation of departmental enquiry against the applicant and entrustment of the enquiry to the Hon'ble Upa Lokayukta as per order dated 12.11.2013 will have to be quashed. Consequently, all further proceedings pursuant to the said order, particularly issuance of the articles of charge dated 20.01.2014 cannot be sustained. However, the first respondent will be at liberty to examine the report and take appropriate action in the matter."

4. It is not the case of the petitioner herein, that the State Government has independently considered the matter under Section 12(4) of the Lokayukta Act and thereafter had passed the order. But the only contention raised by the learned counsel appearing for the petitioner is that in the preamble of the order the State Government has referred to the contents of the recommendation of the Lokayukta and therefore it may be considered as deemed consideration by the State Government and resultantly compliance to Section 12(4) of the Act.

5. We are afraid that such contention can be accepted. What is required to be considered as per the provisions of 12(4) of the Act is consideration and application of mind by the Government for concurring with the opinion of Lokayukta, for initiation of the enquiry. When there is no examination of the case by the Government under Section 12(4) of the Act, it cannot be said the Tribunal has committed any error which may call for any interference by this court.

6. Apart from the above, the petition is by the Lokayukta and not by the State Government.

7. In view of the above, no case is made out for interference and hence the petition is dismissed.

† Bengaluru

¹ This Writ Petition is filed under Article 226 of the Constitution of India praying to quash the order dt.27.11.2014 passed by the hon'ble K.A.T at Bangalore as per Annx-F.

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