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2018 SCC OnLine Kar 1015 : ILR 2018 Kar 4192 : (2018) 6 Kant LJ 129 : (2018) 4 AIR Kant R 762

In the High Court of Karnataka
(BEFORE A.S. BOPANNA AND MOHAMMAD NAWAZ, JJ.)

Fayaz Ahmad Shaikh
Versus
State of Karnataka, rep., by the Secretary (Mines)-2, Department of Commerce and Industries and Another*

W.P. No. 2199/2018 (GM-KLA)
Decided on August 16, 2018

KARNATAKA LOKAYUKTA ACT, 1984 ('Lokayukta Act' for short) — SECTION 12(3) — Order passed by the Upalokayukta recommending the Competent Authority to initiate disciplinary proceedings against the petitioner — Entrustment of enquiry under Rule 14-A of the Karnataka Civil Services (Classifications, Control and Appeal) Rules, 1957 — Order passed by the 1st respondent referring the matter to Upalokayukta — I for conducting an enquiry — Challenge to —

Held :

Under Section 9(5) of the Lokayukta Act, the Lokayukta or the Upalokayukta has a discretion to refuse to investigate or cease to investigate any complaint involving a grievance or an allegation - As Section 9(5) of the Lokayukta Act deals with discretionary powers, in the instant case, considering the averments in the complaint, respondent Nos. 1 and 2

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proceeded to conduct inquiry, which action cannot be said to be illegal or without jurisdiction. The scope of enquiry is to ascertain the truth or falsehood of the allegations made in the complaint. — The report submitted by the Superintendent of Police, Lokayukta, Bagalkot cannot be said to be without jurisdiction and that itself does not affect any legal right of the petitioner and it is proper for the petitioner to face the enquiry ordered by the State Government in respect of the misconduct alleged against him. — (1) KARNATAKA LOKAYUKTA ACT, 1984 — SECTIONS 2(2), 2(8), 8, 8(1), 8(1)(b), 8(b), 9(5), 12(1), 12(3), 12(4) AND 12(c) — (2) KARNATAKA CIVIL SERVICES (CONDUCT) RULES, 1966 — RULES 3(1) AND 3(1)(ii) — (3) KARNATAKA CIVIL SERVICES (CLASSIFICATIONS, CONTROL AND APPEAL) RULES, 1957 — RULES 14-A AND 14-A (2)(a) — (4) KARNATAKA MINOR MINERAL CONCESSION RULES, 1994 — RULE 6 (3) — (5) KARNATAKA EDUCATION INSTITUTIONS (CLASSIFICATION, REGULATION, ETC) RULES, 1995 — RULE 15(2) — (6) CONSTITUTION OF INDIA — ARTICLE 226 — (7) KARNATAKA EDUCATION ACT, 1983 — SECTION 48 — DISCUSSED.

(Paras 17, 18, 20)

Writ Petition is Dismissed as devoid of merits.

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CASES REFERRED ***AT PARAS***

1. ILR 2015 KAR 5591, *Kumaraswamy Mineral Exports Pvt. Ltd.* v. *State of Karnataka* *(Ref)*

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2. W.P. No. 48876/2015 (GM-KLA), Dated 01.07.2016 *Milinda Vidyasamasthe* ® v. *The State of Karnataka* *(Ref)*

3. 2018 (2) KCCR 1457, *T.N. Ravi Prakash* v. *State of Karnataka* *(Ref)*

4. 2016 (4) KCCR 3700 (DB), *Mr. Jayaprakash K.* v. *State of Karnataka, represented by its Secretary, Panchayath and Rural Development* *(Ref)*

Advocates who appeared in this case:

Sri Bipin Hegde, Advocate for Petitioner;

Sri Y.D. Harsha, AGA for R1 and

Sri Venkatesh S. Arabatti, Advocate for R2.

ORDER

MOHAMMAD NAWAZ, J.:— In this writ petition, the petitioner has sought to issue a writ in the nature of certiorari, quashing the impugned Order bearing No. CI 05 MGS 2017, Bengaluru dated 19.10.2017 passed by the

1st respondent, produced at Annexure- 'A' to the writ petition and the Order bearing No. Compt/Uplok/BGM-964/2016/ARE-5, dated 31.12.2016 passed by the 2nd respondent, produced at Annexure-'B' to the writ petition.

2. The 2nd respondent by Order dated 31.12.2016 vide Annexure-'B' while responding to the complaint filed by one Sri. Sangamesh Basappa Jangli and having called for a report from the Superintendent of Police, Lokayukta, Bagalkot and after receiving the report, passed the order holding that the facts and materials on record prima facie show that the petitioner herein, a Geologist, Mining and Geology Department, Bagalkot had committed misconduct under Rule 3(1) of the Karnataka Civil Services (Conduct) Rules, 1966 ['1966 Rules' for short] and recommended the Competent Authority under Section 12(3) of the Karnataka Lokayukta Act, 1984 ['Lokayukta Act' for short], to initiate disciplinary proceedings against him and to entrust the enquiry under Rule 14-A of the Karnataka Civil Services (Classifications, Control and Appeal) Rules, 1957 ['1957 Rules' for short]. Further, as per Section 12(4) of the Lokayukta Act, directed the Competent Authority to intimate within one month from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

3. The 1st respondent by its Order dated 19.10.2017 vide Annexure- 'A' considering the complaint and report and the further report submitted by the Director, Department of Mines and Geology,

decided to handover the case to the Upalokayukta-1 for conducting enquiry as per Rule 14 -A of the 1957 Rules and Section 12(4) of the Lokayukta Act and passed the order accordingly.

4. We have heard Sri. Bipin Hegde, Learned Counsel appearing for the petitioner, Sri. Y.D. Harsha, Learned Addl. Government Advocate for respondent No. 1 and Sri. Venkatesh S. Arabatti, Learned Counsel appearing for respondent No. 2.

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5. The petitioner was working as a Geologist at Bagalkot in Mines and Geology Department, Government of Karnataka since 25.09.2014 and prior to taking charge at Bagalkot, he was working as geologist at Ballary. One Sangamesh Basappa Jangli, Ilakal, Hungunda Taluk, Bagalkot, filed a complaint dated 31.04.2016 vide Annexure-'R' to the Hon'ble Registrar of the Karnataka Lokayukta. The translated copy of which reads as under:

"To:

Hon'ble Registrar,

Karnataka Lokayukta,

Multi Storied Building,

Dr. Ambedkar Veedhi,

Bengaluru-560 001.

I Sangamesh B Jangli, undersigned, Ward No. 1, Ambedkar Colony, Elakal-587 125, Hunagunda Taluk,

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Bagalkot District, Occupation-Business, giving complaint as hereunder:

Sub : Regarding to prevent illegal stone mining.

Sir,

That S.Y. Bandi, who is the owner of land bearing Sy. No. 1 measuring 1 acre 20 guntas of S.B. Gudoor Village, Hunagund Taluk is carrying on illegal mining by violating the Government rules as can be seen from the records furnished by geologist Fayaz Ahamed Sheik. That the above said S.Y. Bandi is extracting stone blocks illegally without following the rules. The Government has granted permit to mining only to an extent of 1-20 acres, but he is carrying on illegal mining in 8 to 10 acres of land. As per Rule 6(2) of the Karnataka Mines and Minerals Rules 1954, the mining area should be far away from public buildings, but the present mining area is very close to public buildings it is close to a school and the children are facing lot of problem. Due to blasting of stones, the school building and the houses have developed cracks and hence I am bringing said fact to your notice along with the agreement of mining lease to take action against the illegal mining and to prevent the problems to school going children and public.

Signature of Complainant

Ilakal

Sd/-

31.4.2016

[Sangamesha B Jangali]"

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6. The Assistant Registrar, Karnataka Lokayukta, Bengaluru by letter dated 13.05.2016 directed the Superintendent of Police, Karnataka Lokayukta, Bagalkot to conduct an enquiry and submit a report. Accordingly, an enquiry was conducted. During the enquiry, the statement of the petitioner as well as statements of the nearby residents and school teachers were recorded. After conducting the enquiry, the Deputy Superintendent, Karnataka Lokayukta, Bagalkot submitted a report dated 04.10.2016 to the Assistant Registrar, Karnataka Lokayukta, Bengaluru. In the said report, the allegations of

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encroachment, not maintaining safe distance and damage caused to the houses were reiterated holding that the same have been established but, the remaining allegations of using blasting materials and the school children suffering from illegal mining etc. was held to be not proved. A notice dated 01.12.2016 was issued to the petitioner, to which the petitioner filed his objection. However, it is the case of the petitioner that without properly considering the objections filed by him, the 2nd respondent has mechanically proceeded to hold that the petitioner committed misconduct under Rule 3(1) of the 1966 Rules and made recommendation under Section 12(3) of the Lokayukta Act to the Competent Authority to initiate disciplinary proceedings and to entrust the enquiry under Rule 14-A of the 1957 Rules. On receiving the said report dated 31.12.2016, the 1st respondent sought for a report from the Director of Mines and Geology, Bengaluru, who in turn by his report dated 14.06.2017 stated that though it is not established that the explosives are used in mining activity, however, the pink granites were illegally extracted which amounts to dereliction of duty as the

petitioner has not taken any action on illegal mining activity. However, according to the petitioner, the said report is without verification of the facts since the encroachment and excess extraction of pink granites did not happen during the tenure of the petitioner and hence, he cannot be held responsible and therefore, the 1st respondent, who has recommended action as per the Report dated 19.10.2017 against the petitioner entirely relying on the report of the Director of Mines and Geology is illegal and liable to be set aside.

7. The core contention of the petitioner is that, in the complaint filed by Sangamesh Basappa Jangli, there is no allegation against him about any misconduct or his involvement in any illegality and he was not provided sufficient opportunity to put-forth his case in detail highlighting all the issues. Further, the 1st respondent has not acted in accordance with Section 12(4) of the Lokayukta Act. The petitioner, placing reliance on Section 8 of the Lokayukta Act contends that the 2nd respondent has no jurisdiction to entertain the complaint as the complainant has the remedy under the Karnataka Minor Mineral Concession Rules, 1994 ['KMMC Rules' for short]. According to the petitioner, under Section 8 of the Lokayukta Act, the Lokayukta or an Upalokayukta shall not conduct any investigation in the case of a complaint involving a grievance in respect of any action contemplated therein and in the present case, the complainant had a remedy under Rule 6 (3) of the KMMC Rules and as per Section 8(1)(b) of the Lokayukta Act, if the complainant has or had any remedy by way of

appeal, revision, review or other proceedings before any Tribunal, etc., and until and unless, the said remedy is availed, such complaint could not have been entertained.

8. In support of the above contention, the Learned Counsel for the petitioner relied upon a decision of this Court in *Kumaraswamy Mineral Exports Pvt. Ltd.* v. *State of Karnataka*[1] and an unreported Division Bench decision of this Court passed in the case of *Milinda Vidyasamasthe* ® v. *The State of Karnataka*[2].

9. The Learned Counsel for respondent No. 2 while supporting the action taken by the respondents relied on the decision of this Court reported in the case of *T.N. Ravi Prakash* v. *State of Karnataka*[3] and the decision in the case of *M.R. Jayaprakash K.* v. *State of Karnataka Represented by Its Secretary, Panchayath and Rural Development*[4].

10. Section 8 of the Lokayukta Act reads as under:

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"8. Matters not subject to investigation:—

1) Except as hereinafter provided, the Lokayukta or

an Upa-lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,-

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any tribunal, [Court officer or other authority and has not availed of the same."

According to the petitioner, the complainant had a grievance and therefore, under Section 8 of the Lokayukta Act, the 2nd respondent could not have proceeded in respect of the complaint involving such grievance since under Rule 6(3) of the KMMC Rules, it is the Competent Authority alone, who is empowered to take action by following the procedure contemplated therein and it is the Director of Mines and Geology, who is the Competent Authority empowered to take action.

11. Rule 6(3) of the KMMC Rules is extracted as under:

"6. General conditions of quarrying lease and licence.-

(3) In case of breach by the lessee or licensee or his transferee or assignees of any of the conditions specified in these rules or in the quarrying lease deed or licence, the Competent Authority shall require by notice in writing the lessee or licencee to remedy the breach within thirty days from the date of notice and if the breach is not remedied within such period the Competent Authority may levy a fine not exceeding two thousand rupees in the case of non-specified minor minerals and rupees ten thousand in case of specified minor minerals and the Competent Authority may without prejudice to any other action that may be taken against such lessee, licensee, transferee or assignee determine the lease or licence after providing an opportunity of being heard."

To fall under the category of the word 'grievance', it is relevant to consider the definition of grievance as provided under Section 2(8) of the Lokayukta Act. Under the said provision, the 'grievance' is defined as a "claim by a person that he sustained injustice or undue hardship in consequence ofmal-administration".

12. By looking into the complaint produced at Annexure-'R', the complainant had made certain allegations with respect to extraction of stone blocks illegally without following the rules and also with regard

to the illegal mining by encroaching the land which was not permitted for mining etc. During the enquiry, it was found that the petitioner herein who was a Geologist in the Mining and Geology Department, Bagalkot, had failed in his duty to inspect the mining area and he has failed to prevent such illegal activity as it was a duty of the concerned Geologist to take action about such encroachment etc.

13. Section 2(2) of the Lokayukta Act defining 'allegations' is as under:

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"2. Definitions.- In this Act, unless the context otherwise requires, —

(2) "allegation" in relation to a public servant means any affirmation that such public servant,-

(a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;

(c) is guilty of corruption, favoritism, nepotism, or lack of integrity in his capacity as such public servant; or

(d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs;

14. In the above background, in the instant facts the nature of averments made in the complaint does not fall within the definition of 'grievance' but goes to show that the same are in the nature of allegations as defined under Section 2(2) of the Lokayukta Act. If that is so, the contents of Section 8 of the Lokayukta Act will not come to the aid of the petitioner to hold that the 2nd respondent had no jurisdiction to conduct an investigation. In so far as the petitioner is concerned, it cannot be said that the Competent Authority alone was empowered to take action by following procedure as contemplated under Rule 6 (3) of the KMMC Rules.

15. In the decision relied upon by the petitioner in the case of *Kumaraswamy Mineral Exports Pvt. Ltd.* v. *State of Karnataka* (Supra), it is a case wherein a report was made under Section 12(c) of the Lokayukta Act, where a recommendation was made to the Competent Authority, who addressed the grievance of the complainant. In the said case,

the complainant had applied for grant of mining lease which came to be rejected as the said applied area overlapped with area already granted in favour of the petitioner therein. There were several rounds of litigation. After availing of all the remedy, the complainant therein approached the Lokayukta by filing a complaint contending that there was an illegal mining in the area. The Lokayukta passed an Order under Section 12(3) of the Lokayukta Act holding that the Directors of Department of Mines and Geology in Karnataka failed to maintain absolute devotion to duty and thereby committed misconduct under Section 3(1) (ii) of the 1966 Rules etc. This Court on considering the facts of the said case and emphasizing on Section 8(1)(b) of the Lokayukta Act held that the complainant therein after having exhausted his remedy under the KMMC Rules and also before this Court could not have agitated the same right under the guise of lodging a complaint to the authorities and therefore, the Lokayukta could not have embarked upon an enquiry to find out the legality or otherwise of the lease in favour of the petitioner therein. Hence, it was concluded that when once the complainant had remedy by way of review/revision etc. and lost the battle, Lokayukta should not have conducted any investigation under the Act in respect of so called 'grievance' of the complainant. In the present case, the complaint being in the nature of allegation, it cannot be said that there was no jurisdiction vested on the 2nd respondent to conduct an investigation/enquiry. The facts of the case cited supra are entirely different from the one on hand.

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16. In the unreported Division Bench decision of this Court passed in the case of *Milinda Vidyasamasthe* ® v. *State of Karnataka* (Supra), relied upon by the petitioner, the legality and validity of the report issued under Section 12(1) of the Lokayukta Act was questioned, wherein the excess fees collected by the petitioner- Vidyasamsthe from the parents of the students was ordered to be recovered as it was in contravention of Section 48 of the Karnataka Education Act. In that case, the aggrieved parents had already approached the District Regulating Authority headed by the Deputy Commissioner. This Court after noticing that Rule 15(2) of the Karnataka Education Institutions (Classification, Regulation, Etc) Rules, 1995 is applicable to the facts of the said case and since a definite remedy was available to the aggrieved parents which was availed therein, has held that though Section 9(5) of the Lokayukta Act mainly deals with discretionary powers of the Lokayukta, however, Section 8(b) of the Lokayukta Act bars investigation in the case of complaint involving a grievance and in view of the same and as the aggrieved parents of the school had already approached the relevant authority, allowed the petition directing respondent No. 6(a)-the District Regulating Authority therein to hold enquiry, as required under law.

17. No-doubt under Section 9(5) of the Lokayukta Act, the Lokayukta or the Upalokayukta has a discretion to refuse to investigate or cease to investigate any complaint involving a grievance or an allegation; Section 9(5) of the Lokayukta Act reads as under:

> *9. Provisions relating to complaints and investigations.—*
>
> *(5) The Lokayukta or the Upa-lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion,-*
>
> *(a) the complaint is frivolous or vexatious or is not made in good faith;*
>
> *(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or*
>
> *(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies."*

18. As Section 9(5) of the Lokayukta Act deals with discretionary powers, in the instant case, considering the averments in the complaint, respondent Nos. 1 and 2 proceeded to conduct inquiry, which action cannot be said to be illegal or without jurisdiction. The scope of enquiry is to ascertain the truth or falsehood of the allegations made in the complaint.

19. In the case of *T.N. Ravi Prakash* v. *State of Karnataka*, (Supra), considering the similar question, this Court has held that the complaint amounts to an allegation

as defined in Section 2(2) of the Lokayukta Act and sub-Section (1) of Section 8 of the Act will have no application in respect of any complaint involving an allegation.

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20. In the case of *M.R. Jayaprakash K* v. *State of Karnataka Represented by Its Secretary, Panchayath and Rural Development* (Supra), this Court while examining the report of the Upalokayukta communicated under Section 12(3) of the Lokauyukta Act recommending to hold a disciplinary enquiry in respect of the misconduct alleged against the petitioner/Govemment servant and the further report under Rule 14-A(2)(a) of the 1957 Rules, to hold an enquiry, held that the report cannot be said to be without jurisdiction and that itself does not affect any legal right of the petitioner and concluded that it is proper for the petitioner to face the enquiry ordered by the State Government in respect of the misconduct alleged against him.

21. In the light of the discussion made supra, we find no ground warranting interference so as to exercise the jurisdiction of this Court under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed as devoid of merits.

There is no order as to costs.

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* W.P. No. 2199/2018 (GM-KLA), Dated : 16th day of August, 2018.

1. ILR 2015 KAR 5591.

2. W.P. No. 48876/2015 [GM-KLA] dated 01.07.2016

3. 2018 (2) KCCR 1457

4. 2016 (4) KCCR 3700 (DB).

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