Supreme Court of India
Institution Of Andhra ... vs T. Rama Suhba Reddy & Anr. Etc. Etc on 13 December, 1996
Author: S Majmudar.
Bench: N.P. Singh, S.B. Majmudar

PETITIONER:
INSTITUTION OF ANDHRA PRADESHLOKAYUKTA/UPA-LOKAYUKTA, A.P. E

Vs.

RESPONDENT:
T. RAMA SUHBA REDDY & ANR. ETC. ETC.

DATE OF JUDGMENT: 13/12/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar. J.

These five appeals arise on certificates of fitness granted by the High Court of Andhra Pradesh at Hyderabad under Article 100(1) of the Constitution of India. They bring in challenge on behalf of the Institution of Andhra Pradesh Lokayukta/Upa-Lokayukta and the State of Andhra Pradesh respectively, a common judgment rendered by the said High Court in five writ petitions moved by the writ petitioners who are contesting respondents in these appeals. A common question of jurisdiction of the Lokayukta/Upa- Lokayukta functioning under the Andhra Pradesh Lokayukta Act, 1983 (hereinafter referred to as `the Act') to entertain complaints regarding the impugned actions of the writ petitioners falls for consideration in these appeals.

For appreciating the aforesaid question the background facts leading to these proceedings deserve to be noted. Civil Appeal No.2020 of 1986 moved by Lokayukta and Upa- Lokayukta, Andhra Pradesh arises out of the decision of a Division Bench of the High Court in Writ Petition No.16716 of 1984. The original writ petitioner who is the contesting respondent in this appeal was at the relevant time Chief Executive Officer of Andhra Pradesh State Cooperative Union Limited duty registered under the provisions of the Andhra pradesh Cooperative Societies Act, 1964. A complaint was filed against his functioning as Chief Executive Officer by one A. Pratap Reddy. It was received by the Lokayukta

functioning under the Act on 6th March 1984. The contesting writ petitioner's objection before the Lokayukta that he had no jurisdiction to entertain the complaint was rejected by order dated 17th November 1984. The said order was brought in challenge by the respondent-writ petitioner before the High Court in the aforesaid writ petition, A Division Bench of the High Court took the view that the Lokayukta had no jurisdiction to entertain the said complaint. Accordingly the writ petition was allowed and proceedings before the Lokayukta were quashed giving rise to the present appeal.

Civil Appeal No.2021 of 1986 is moved by the State of Andhra Pradesh being aggrieved by similar decision rendered by the very same Division Bench of the High Court in Writ Petition No.1883 of 1995. That writ petition was moved by the contesting respondent who was Divisional Manager of Andhra Pradesh State Road Transport Corporation constituted by the State of Andhra Pradesh under the Road Transport Corporation Act, 1950 (hereinafter refereed to as `the Corporations Act') which is a Central Act. The said writ petitioner challenged the proceedings before the Lokayukta resulting from a complaint filed against his working as such. He raised an identical contention that the Lokayukta had no jurisdiction to entertain such a complaint against him end to pass any orders thereon. This contention was accepted by the Division Bench by the aforesaid common judgment and that is how the State of Andhra Pradesh being aggrieved by the said decision of the High Court has prosecuted this appeal.

In Civil Appeal No.2022 of 1988 the State of Andhra Pradesh has brought in challenge the very same common decision of the Andhra Pradesh High Court in Writ Petition No.4502 of 1985 moved by the original writ petitioner- contesting respondent herein who was at the relevant time working as a doctor in the dispensary run by Andhra Pradesh State Road Transport Corporation. It was contended by the writ petitioner that proceedings initiated against him before the Lokayukta could not be entertained by the Lokayukta having no jurisdiction to proceed with such a complaint against him. The Division Bench upheld that contention of the respondent-writ petitioner. That has been the subject-matter of challenge in this appeal by the State.

Civil Appeal No.2023 of 1988 is also moved by the State of Andhra Pradesh being aggrieved by the decision rendered by the same Division Bench in Writ Petition No.10217 of 1985 whereunder the writ petition of the second petitioner, namely, G. Prakash was allowed, Said writ petitioner no.2 was a clerk in Andhra Pradesh State Wool Industrial Cooperative Society Limited, Hyderabad. The said society was registered under the Andhra Pradesh Cooperative Societies Act, 1994, The said writ petitioner was working in the pay scale of Rs.600-900 at the relevant time when complaint was filed against him regarding his alleged action before the Lokayukta. Writ petitioner contended that Lokayukta had no jurisdiction to entertain the complaint against him and to pass any order thereon. This contention appealed to the Division Bench of the High Court and the proceedings before the Lokayukta were quashed. The State of Andhra Pradesh feeling aggrieved by the said order has filed the aforesaid appeal.

The last Civil Appeal No.2024 of 1988 in also moved by the State of Andhra Pradesh being aggrieved by the order passed by the same Division Bench in Writ petition No.12166 of 1985 moved by one 8, Prakash who is the contesting respondent herein. He was the Business Manager of Andhra pradesh State Handloom Weaver Cooperative Society Ltd., Hyderabad, A complaint was filed against him

before the Lokayukta for his working as such. Respondent-writ petitioner contended before the High Court that the Lokayukta had no jurisdiction to entertain the said complaint and to proceed with the same against him. This contention of his was accepted by the Division Bench of the High Court by the aforesaid common order. That has resulted in the present appeal by the State of Andhra Pradesh.

That the aforesaid common controversy in the present cases requires to be resolved in the light of the relevant provisions of the Act. The Act, as its Preamble shows, was enacted to make provision for the appointment and functions of Lokayukta and Upa-Lokayukta for investigation of Administrative action taken by or on behalf of the Government of Andhra Pradesh or certain Local and Public Authorities in the State of Andhra Pradesh (including any omission and commission in connection with or arising out of such potion) in certain cases and for matters connected therewith. The matters which could be investigated by the Lokayukta or Upa-Lokayukta are enumerated in Section 7 of the Act. The relevant provisions thereof road as under:

"7. Matters which may be investigated by Lokayukta or Ups-

Lokayukta:-(1) Subject to the provisions of this Act, the Lokayukta may investigate any sation which is taken by, or with the general or specific approval of, or at behest of:-

(i) a Minister or a Secretary: ; or

(ii) a Member of either House of the State Legislature or

(iii) a Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force; or

(iv) any other public servant, belonging to such class or section of public servants, as may be notified by the Government in this behalf after consultation with the Lokayukta, in any case where a complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Lokayukta, the subject of an allegation."

The contention of learned senior counsel for the appellants is that the writ petitioners concerned who are contesting respondents in these appeals are covered by the sweep or Section 7(1)(iv).

In order to see whether all the contesting respondents could be covered by the sweep of the aforesaid provision it will be necessary to find out whether they are public servants within the contemplation of the Act. The definition of `public servant' is given by Section 2(k) of the Act. The relevant provisions of the said definition read as under :

> "2(k) `public servant' means a person falling under any of the following descriptions, namely:-
>
> (i) ... ...

(ii) ... ...

(iii) every officer referred to in clause (i);

(iv) (1) every Chairman of a Zilla Parishad, and every President of a Panchayat Samithis, constituted by or under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959:

(2) Every Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force;

(3) ... ...

(v) every Chairman or President, by whatever name called of the governing body to which the Management is entrusted and every director, if any in respect of- (1) ... ...

(2) any Corporation (not being a local authority) established by or under State Act and owned controlled by the Government; (3) ... ...

(4) ... ...

(5) any co-operative society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 whose Area of operation extends tot he whole of the Estate or is confined to a part of the State extending to an Area not less than a district;"

So far as the term `officer' is concerned it is defined by Section 2(i) as under :

"2. (i) `officer' means a person appointed to a public service or post in connection with the affairs of the State of Andhra Pradesh, but does not include a person holding a post carrying a minimum scale of pay of rupees one thousand one hundred and fifty and below;" Section 2(a) defines `action' as under :

"2. (a) `action' means action taken by a public servant in the discharge of his functions as such public servant, by way of decision, recommendation or finding or in any other manner, and includes any omission and commission in connection with or arising out of such action; and all other expressions connecting action shall be construed accordingly;"

A conjoint reading of the aforesaid provisions clearly indicates that the Lokayukta or Upa-Lokayukta, as the case may be, may investigate any action of a public servant who falls within the scope and ambit of the definition of `public servant' as found in Section 2(k).

In the first instence it was contended before the High Court on behalf of the appellants that these writ petitioners were public servants as defined by Section 2(k)

(iii) as they were officers. In support of this contention reliance was placed on the definition of the word `officer' as found in Section 2(i). Now a mere look at the said provision shows that before a person can be said to be a public servant because he is an officer it must be shown that he was appointed to a public service or post in connection with the affairs of the State of Andhra Pradesh. The concerned writ petitioners were either working in Andhra Pradesh State Road Transport Corporation or in Co-operative Societies registered under the Andhra Pradesh Co-operative Societies Act, 1964. They could not be said to be persons appointed to a public service or post in connection with the affairs of State of Andhra Pradesh and they were not full fledged government servants we would be entitled to enjoy the protection of Article all of the Constitution of India. Therefore, the attempt on the part of the appellants to attract the jurisdiction of the Lokayukta against the writ petitioners concerned on this ground was rightly found to be unsustainable by the High Court.

Learned senior counsel then invited our attention to other relevant parts of the definition of the term `public servant' as found in Section 2(k). So far as the respondent- writ petitioners in Civil Appeal Nos.2020 of 1988; 2023 of 1986 and 2024 of 1988 were concerned it was submitted that they would be covered by the definition of `public servant' as found in Section 2(k)(v)(5) of the Act as they were working in Cooperative Societies registered under the Andhra Pradesh Co-operative Societies Act, 1984 whose area of operation extended to the whole of the State. It is not in dispute between the parties that respondent in Civil Appeal No.2022 of 1986 at the relevant time was working as Chief Executive Officer of Andhra Pradesh Cooperative Union Ltd., Hyderabad. The said Union was an apex Union registered under the Andhra Pradesh Cooperative Societies Act, 1964 and its area of operation extended to the whole of the State of Andhra Pradesh. Similarly in Civil Appeal No.2023 of 1986 the original second writ petitioner C. Prakash was also working in a Co-operative Society, namely, Andhra Pradesh State Wool Industrial Co-operative Society Ltd. Which was also duly registered under the Andhra Pradesh Co-operative Societies Act, 1984 and whose area of operation extended to the whole of the State. In the same manner respondent-writ petitioner in Civil Appeal No.2024 of 1986 S. Prakash was working in a Co-operative Society registered under the Andhra Pradesh Co-operative Societies Act, 1964 whose area of operation extended to the whole of the State, Thus on that count sub-clause (5) of Clause (v) of Section 2(k) got attracted in the case of the aforesaid concerned writ petitioners in these appeals. However this conclusion of ours cannot advance the case of the appellants any further against them. The reason is obvious. Before Section 2(k)(v)(5) can apply the concerned public servant must also be shown to be working either as a Chairman or President by whatever name called who should be at the helm of affairs of the Governing Body of the Society concerned to which its Management is entrusted, So far as the respondent in Civil Appeal No.2020 of 1986 is concerned he was no doubt working as Chief Executive Officer of the Andhra Pradesh Cooperative Union Limited. Our attention was invited by learned counsel for respondent in the said appeal to the bye-laws of the said Union which were applicable at the relevant time when the dispute arose. The formation of the Managing Committee of the Union was to be made as per by-law 25 and as per bye- law 26 the elected members of the Managing Committee had to elect, amongst others, the following officers, namely, the President, two

Vice-Presidents, General Secretary and two Joint Secretaries. Under bye-law 28 the Managing Committee had power to appoint - (i) a Chief Executive Officer and an Assistant Chief Executive Officer and to fix their pay and allowances and (ii) a paid Editor. These bye-laws, therefore, make it clear that a Chief Executive Officer is the creature of the Managing Committee and is not a member thereof, Obviously the President of the Managing Committee as elected under bye-law 26 and who will head the said Managing Committee is a person different from the Chief Executive Officer. It is no doubt true that anyone who is the Chairman or President of the Governing Body of the concerned Society by whatever name called, to whom the management of the society is entrusted would be covered by the sweep of Section 2(k)(v). But so far as respondent-Chief Executive Officer in Civil Appeal No.2020 of 1986 is concerned he cannot be said to be either the Chairman or President or his equivalent having any other nomenclature who was at the helm of affairs of the Managing Committee or the Governing Body of the said Society. Consequently the contesting respondent in this Civil Appeal was outside the sweep of Section 2(k)(v)(6) of the Act.

So far as the respondent-writ petitioner in Civil Appeal No.2023 of 1988 is concerned he was a mere clerk. Hence he would not be covered by Section 2(k)(v)(6). Learned senior counsel for the appellants in this connection submitted that even though he may not be covered by the aforesaid provision he would still remain a public servant being an officer as defined by Section 2(k) (iii) read with Section 2(i). It is not possible to agree with this contention for two obvious reasons. Firstly before the said respondent could be said to be an officer of the Co- operative Society it should be shown that he was appointed to public service or post in connection with the affairs of the State of Andhra Pradesh. He was not so appointed. He was appointed to a post in connection with the affairs of the Co-operative Society which was an independent corporate body. The second reason is that even assuming that he was working on a post in connection with the affairs of the State of Andhra Pradesh he was not holding a post carrying a minimum scale of pay of Rs.600-900. Therefore, he was excluded from the sweep of the definition of officer as found in clause 2(i). For both three reasons, therefore, he could not be said to be an officer. Neither Section 2(k)

(iii) nor Section 2(k) (v) applied in his page. He was, therefore, outside the sweep of definition of `public servant'. Consequently, his action could not be investigated by the Lokayukta on the combined operation of Section 7(i)(iv) and Section 2(a), 2(i) and 2(k) of the Act as rightly held by the High Court.

So far as the contesting respondent in Civil Appeal No.2024 of 1986 is concerned he was a Business Manager of the Co-operative Society whose area of operation extended to whole of the State of Andhra pradesh, Therefore, second part of Section 2(k)(v)(5) applied in his case. However, the main part of Section 2(k)(v)(5) did not apply as he was neither the Chairman nor the President of the Governing Body of the Committee of Managing Committee of the said Society much less its head being Chairman or President thereof. Consequently as he was a Business Manager of Andhra Pradesh State Handloom Weavers' Cooperative Society, Hyderabad, he was outside the sweep of Section 2(k)(v). No other provision of the Act could be pressed in service by the learned senior counsel for the appellant for roping him in for the purpose of subjecting him to the jurisdiction of the Lokayukta. Therefore, the decision rendered by the High Court in the case of the aforesaid three writ petitioners in these appeals cannot be found fault with from any angle.

Now remains the consideration of the applicability of the Act in the case of remaining two contesting respondents in Civil Appeal No.2021 of 1988 and 2022 of 1988. So far as these two respondents are concerned learned senior counsel for the appellants submitted that Section 2(k)(v)(2) would apply provided the concerned public servant is attached to any Corporation established by or under the State Act and owned and controlled by the Government. It was submitted before the High Court by these writ petitioners that they were working in Andhra Pradesh State Road Transport Corporation which was not established by the State of Andhra Pradesh under any State Act but under Central Act, namely, the Corporations Act, even though that Corporation was established by the State of Andhra Pradesh and was mainly owned and wholly controlled by the State Government. Learned senior counsel for the appellants joined issue on this aspect and submitted for our consideration that on a proper construction of the aforesaid provision it can be seen that Section 2(k)(v)(2) consists of two types of corporations -

(i) any corporation established by and owned and controlled by the State Government; and (ii) any corporation established under any State Act. She submitted, placing reliance on various provisions of the Corporations Act especially Sections 3, 5, 8, 17, 25, 31, 34 and 37 thereof, that Andhra Pradesh State Road Transport Corporation which was established by the Andhra Pradesh State under the aforesaid Central Act was under the comprehensive and pervasive control of the Andhra Pradesh State and the Central Government had no such control over it. That the entire affairs of the Corporation including appointment of officers and the control of its working were in the hands of the State of Andhra Pradesh. Therefore, it could be said that it was a corporation established, owned and controlled by the State. She also contended that there are many corporations or boards established by the States in exercise of powers conferred on the States by Central Acts like State Financial Corporation Act, Indian Electricity Act etc., but once they are established by the States concerned they work under their supervision and control and the Central Government would have nothing to do with them. That if a view is taken that public servants working in such corporations are outside the purview of Lokayukta functioning under the Act isudable purpose of appointing such Lockayuktas to apt as ombudsman and vigilance authorities for supervising and controlling their sections and bringing them to back would get frustrated and, therefore, a more beneficial construction may be placed on the aforesaid provision with a view to subserve the purpose and legislative intent underlying the enactment of this provision which is for the benefit of the society at large and any construction which frustrates the legislative intent underlying this beneficial provision should not be resorted to.

On the other hand learned counsel for the respondent submitted that on the express language of Section 2(k)(v)(2) any corporation which is established by or under the State Act would require the establishment of such corporation only in the light of State Act. That the phrase `under the State Act' cannot be divorced or isolated from the preceding phraseology employed by the Legislature, namely, `any Corporation established by or under.' That the phrase `by or under' has a direct nexus with the State Act. For highlighting this legislative intent our attention was invited to identical phraselogy employed by the Legislature in the same Section 2(k) in clauses (iii) and (iv) as well as sub-clause (2) of clause (iv).

In our view the aforesaid rival contentions canvassed by learned counsel for the contesting parties regarding the applicability of Section 2(k)(v)(2) would have required closer scrutiny by us but for the fact that the concerned respondent-writ petitioners in these appeals would get out of the sweep of Section 2(k)(v)(2) even assuming that they were corporations covered by the second part of the said provision and that it was not necessary for the corporation in which they worked to have been established under a State Act and could be established under a Central Act. Therefore, on the facts of the present case it is not necessary for us to decide the question whether a public servant working in any corporation established by the State not under a State Act but under a Central Act but which is owned and controlled wholly or partially by the State Government would satisfy the requirements of the definition Section 2(k)(v)(2) or not. We leave that question open for decision in an appropriate case. We may note that learned Advocate General appearing for the State of Andhra Pradesh had conceded before the High Court that as the Andhra Pradesh State Road Transport Corporation is established by the State of Andhra Pradesh not under State Act but under the Central Act, namely, the Corporations Act, Section 2(k)(v)(2) would not cover in its sweep such a corporation. Even leaving aside the question whether such a concession on a pure question of law could bind the appellant-State, as we will presently see this question is not required to be resolved in the present proceedings.

Even assuming that the Andhra Pradesh State Road Transport Corporation in which the concerned respondents in these two appeals were working at the relevant time would be covered by the sweep of the latter part of sub-clause (2) of clause (v) of Section 2(k), still the question remains whether any of them was a Chairman or President of the Governing Body to which the Management of this Corporation was entrusted. So far as the respondent-writ petitioner in Civil Appeal No.2021 of 1986 is concerned at the relevant time he was working as a Divisional Manager. A Divisional Manager working in a Division cannot be said to be in charge of the Managing Committee which is the apex Managing body of the State Road Transport Corporation. The Chairmen of the Managing Committee of the Corporation would be very much above in the hierarchy as compared to the Divisional Manager who has to work even under the General Manager. Consequently the said respondent-writ petitioner cannot be said to be at the helm of affairs of the Managing Committee of the State Road Transport Corporation. He would, therefore, not be covered by the first part of Section 2(k)(v)(2) on that score. So far as respondent writ petitioner in Civil Appeal No.2022 of 1986 is concerned his case is on a still stronger footing as at the relevant time he was working as a doctor attached to the dispensary run by the Andhra Pradesh State Road Transport Corporation. He had nothing to do with the Management of the Corporation from any viewpoint. Consequently he would obviously not be covered by the sweep of Section 2(k)(iv)(2) of the Act. The Division Bench of the High Court was, therefore, right in taking the view that actions of all these respondent-writ petitioners could not be looked into by the Lokayukta under the relevant provisions of the Act.

Before parting with these matters, it may be necessary to note that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in appropriate cases to the Upa-Lokayukta who is a District Judge of Grade-I as recommended by the Chief Justice of the High Court, so that these statutory authorities work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken.

These statutory authorities are meant to catre to the need of public at large with a view to seeing that public confidence in the working of public bodies remains in tact. When such authorities consist of high judicial dignitaries it would be abvious that such authorities should be armed with appropriate powers and sanction so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the concerned disciplinary authorities. When we turn to Section 12, sub-section (3) of the Act, we find that once report is forwarded by the Lokayukta or Upa-lokayukta recommending the imposition of penalty of removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such servant from his office and for making him ineligible for being elected to any office etc. Even if it may be lawful for the Government to act on such recommendation, it is nowhere provided that the Government will be bound to comply with the recommendation of the Lokayukta or Upa-lokayukta. The question may arise in a properly instituted public interest litigation as to whether the provision of Section 12(2) of the Act implies a power coupled with duty which can be enforced by writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Up-lokayukta system does not get eroded and these institutions can effectively justify their creation under the statute.

As a result of the aforesaid discussion, it must be held that all the original writ petitioner whose writ petitions same to be allowed by the High Court were rightly held to be outside the purview and jurisdiction of the Lokayukta functioning under the Act. These appeals are liable to fall and are accordingly dismissed. In the facts and circumstances of the case, however, there will be no order as to costs in all these appeals.