

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC[WP(C)] No. 199 of 2023 In
WP(C) No. 363 of 2021
MC[WP(C)] No. 208 of 2023 In
WP(C) No. 120 of 2021

Date of Decision: 31.05.2024

MC[WP(C)] No. 199 of 2023 In
WP(C) No. 363 of 2021

1. State of Meghalaya Represented by
Home Political Department,
Meghalaya.
2. Director General of Police,
Meghalaya.
3. Superintendent of Police, East Garo
Hills District, Meghalaya.
4. Additional Superintendent of Police,
East Garo Hills District, Meghalaya.

::::: **Petitioners**

-Vs-

1. Chairperson Meghalaya Lokayukta,
Shillong, Meghalaya Shillong
Meghalaya.
2. Secretary, Meghalaya Lokayukta,
Shillong, Meghalaya.
3. Shri. Nilberth Ch. Marak,
S/o (L) Nangsin T. Sangma
R/o Dawagittingre

P/O & P/S Williamnagar, East Garo
Hills District, Meghalaya-794111

::::: **Respondents**

MC[WP(C)] No. 208 of 2023 In
WP(C) No. 120 of 2021

Shri. Withing N. Sangma

::::: **Petitioner**

-Vs-

1. State of Meghalaya represented by the
Director General of Police, Meghalaya,
Shillong.
2. Chairperson Meghalaya Lokayukta, Shillong
Meghalaya.
3. Secretary Meghalaya Lokayukta, Shillong
Meghalaya
4. Shri. Nilberth Ch. Marak,
R/o Rongram, P.O & P.S Rongram,
West Garo Hills District, Meghalaya.

5. Superintendent of Police, East Garo Hills
District, Meghalaya, Williamnagar.

::::: **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

MC[WP(C)] No. 199 of 2023 In
WP(C) No. 363 of 2021

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Kumar, AG. with
Mr. A.H. Kharwanlang, Addl.Sr.GA.

For the Respondent(s) : Mr. S. Jindal, Adv. for R 1 & 2.
Mr. P.T. Sangma, Adv. for R 3.

MC[WP(C)] No. 208 of 2023 In
WP(C) No. 120 of 2021

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. A. Kumar, AG. with
Mr. A.H. Kharwanlang, Addl.Sr.GA.
For R 1.
Mr. S. Jindal, Adv. for R 2 & 3.
Mr. P.T. Sangma, Adv. for R 4.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

COMMON ORDER

1. This Court vide order dated 06.09.2023, on the prayer of the learned Advocate General appearing for the State/petitioners to amend the main petition, that is, WP(C) No. 363 of 2021 by effectively striking off the names of the respondents/Chairperson and the Secretary, Meghalaya Lokayukta, respectively, has allowed the same to be brought up by way of a separate application, with liberty to the respondents to respond to the same, which was done so in due course.

2. It may be mentioned that in the main petition, the case of the State/petitioner is that the respondent No. 3 herein has filed a complaint

before the Lokayukta under Section 20(1) of the Meghalaya Lokayukta Act, 2014 with allegations made therein. This complaint was then registered as Complaint Case No. 5 of 2020.

3. The Hon'ble Chairperson, Lokayukta having taken cognizance of the said complaint has inter alia, directed for an inquiry to be made thereon and in the process, had passed several related orders dated 23.06.2020, 30.07.2020, 26.02.2021 and 18.03.2021. Being aggrieved with such orders passed by the Chairperson, Meghalaya Lokayukta, this Court was accordingly approached with an application under Article 226 of the Constitution of India with a prayer to quash all consequential orders and the entire proceedings therein.

4. Mr. A. Kumar, learned Advocate General, has submitted that the State/petitioners has preferred the said application under Article 226 of the Constitution of India to challenge the process conducted by the Hon'ble Lokayukta who has ordered investigation to be initiated on the said complaint filed, which act is beyond the purview of the powers and functions of the Lokayukta under the Meghalaya Lokayukta Act, 2014.

5. However, while filing the said writ petition, the State/petitioners has realized that inadvertently, the Hon'ble Chairperson

Lokayukta and the Secretary, Lokayukta have been arrayed as party respondents in the proceedings, when in fact, only the complainant, that is, the respondent No. 3 ought to have been impleaded as respondent.

6. It is the submission of the learned AG that the Lokayukta being a quasi-judicial body, is neither a proper nor a necessary party to the lis since the Lokayukta is not bound to defend its own order in a related proceeding.

7. To further this contention, the learned AG has referred to the various provisions of the Meghalaya Lokayukta Act, beginning with the definition part found in Section 2, then to Section 11 which speaks of the power of the Lokayukta to constitute an Inquiry Wing for the purpose of conducting preliminary inquiry into any alleged offence and Section 14(1) which specifically lists down those public servants and officials who comes within the ambit of the power to be inquired into as regard any allegation of corruption was also cited. The procedure to be followed upon receipt of any complaint as found under Section 20(1) was also pointed out.

8. The learned AG has then laid stress on the provision of Section 27(1) of the Act to say that this provision has empowered the

Lokayukta with the powers of a Civil Court with all the trappings of a regular court, such as powers to summon witnesses and for production of evidence.

9. Again, the learned AG has submitted that Section 51 of the Act states that no suit, prosecution or other legal proceedings shall lie against the Lokayukta or its officers, employees, agency or any person, in respect of any act done in good faith or intended to be done under the Act or rules and regulations made thereunder, which is clearly a bar for the petitioner to implead the Lokayukta in these proceedings.

10. In support of the above contention, the learned AG has referred to the case of Special Police Establishment v. State of Madhya Pradesh, Writ Petition No. 25917 of 2021, para 7 and the case of Additional Tahsildar & Anr v. Urmila G. & Ors, 2023 SCC Online SC 1613, para 11 & 13.

11. The learned AG has reiterated that the Lokayukta being a judicial or quasi-judicial body, it is not a necessary or proper party to the proceedings herein. The State/petitioners being the *dominus litus*, it may choose whom to implead as party respondents against such persons whom it wishes to proceed for which effective relief(s) is sought for.

12. The Lokayukta cannot come to defend its own order when in fact, it would be the aggrieved person or rather the complainant in this case who will be the best person to defend the impugned orders, it was further submitted.

13. On this aspect of the matter, the learned AG has cited the following cases:-

- i. Mumbai International Airport Private Ltd. v. Regency Convention Centre and Hotels(P) Ltd, (2010) 7 SCC 417, para 13;
- ii. Asian Hotels (North) Limited v. Alok Kumar Lodha & Ors, (2022) 8 SCC 145 para 37;
- iii. M.S. Kazi v. Muslim Education Society & Ors, (2016) 9 SCC 262, para 9

14. Mr. S. Deb, learned counsel for the petitioner in WP(C) No. 120 of 2021, who is the person affected by the impugned orders have been passed, have also filed a similar application seeking to strike off the name of the Lokayukta from the proceedings. The said application being numbered as MC[WP(C)] No. 208 of 2023, which is also an identical

application with a prayer to strike off the names of the respondents/ Chairperson and Secretary Lokayukta, respectively.

15. Accordingly, these two miscellaneous applications have been dealt with herein together with a common order passed.

16. The learned counsel has submitted that in the order dated 23.06.2020 passed by the Hon'ble Chairperson, Lokayukta, Meghalaya, on a complaint filed by the respondent No. 4/Shri Nilberth Ch. Marak, whereby certain allegations have been made against the petitioner with regard to some developmental projects on behalf of the Garo Hills Autonomous District Council(GHADC) undertaken by the petitioner, a direction was issued upon the Director General of Police(DGP) to cause a preliminary inquiry and to submit a report within four weeks. In the said order, the Hon'ble Chairperson Lokayukta has also directed the Chief Secretary and Addl. Chief Secretary, Finance to stop further payment to the petitioner in connection with the work in question.

17. By the said order dated 23.06.2020, the Hon'ble Chairperson, Lokayukta has in effect adjudicated upon the complaint of the respondent No. 4 which thereby makes the said order to have been passed in a quasi-judicial capacity.

18. In response, Mr. S. Jindal, learned counsel for the respondents/Lokayukta has addressed the twofold contention raised by the learned AG on behalf of the petitioner in MC[WP(C)] No. 199 of 2023(supra), which in effect will be sufficient to deal with the issues raised in the two miscellaneous applications(supra).

19. As to the contention that the petitioner is the *dominus litis*, that is, the master of the suit and that it is his prerogative to include any party in the suit as defendant or respondent as the case may be, the learned counsel has submitted that there is no quarrel with this proposition of law. However, the petitioner being the *dominus litis*, he has not been granted a *carte blanche* or a free license to conduct himself in any manner he wishes. In a lis between the parties, it is incumbent upon the court to apply its judicious mind and to resort to the provision of Order I Rule 10(2) of the Code of Civil Procedure as and when necessary. The said provision, in other words provides for adding of proper and necessary party or striking of unnecessary parties from the proceedings before such court.

20. In support of this contention, the learned counsel has referred to the case of Mumbai International Airport Private Limited v. Regency

Convention Centre and Hotels(P) Ltd, (2010) 7 SCC 417, para 13 and also the case of Ashok Babu Lal Awasthi v. Munna Nizamuddin Khan & Anr, 2023 SCC OnLine Bom 2559, para 11 and has submitted that in the context of the case between the parties herein, the facts and circumstances would make it amply clear that the Lokayukta is a proper and necessary party in these proceedings.

21. The learned counsel has further submitted that the prayer of the State/petitioners for deletion of the names of the respondents/Lokayukta from the proceedings is self-destructive, inasmuch as, initially, when the petition was filed, only the respondent Nos. 1 and 2, that is, the Chairperson and the Secretary, Meghalaya Lokayukta respectively were made party respondents. It was only in course of proceedings that the petitioner has sought for impleadment of the complainant who had filed the complaint before the Lokayukta as respondent No. 3 which was allowed by this Court. In such a scenario, if the names of the respondents Nos. 1 and 2 are struck off from these proceedings, there will be only a private party as the sole respondent and this in itself would defeat the purpose of filing a writ petition under Article 226 of the Constitution of India since this Court would not exercise writ jurisdiction on a private party.

22. On the contention of the petitioner that under the various provisions of the Meghalaya Lokayukta Act, 2014, it is evident that the Lokayukta is a judicial/quasi-judicial body, the learned counsel has submitted that except for the provision of Section 27(1) and 27(2) of the Act which are slightly relevant provisions, nothing in the Act has clothed the entire institution of Lokayukta with judicial power to function as a Civil Court. Section 27(1) provides that the Inquiry Wing of the Lokayukta shall have all the powers of a Civil Court under the CPC while trying a suit in respect of summons, attendance and examination of any person on oath, receiving evidence on affidavits and the like. Section 27(2) has also provided that the proceedings before the Lokayukta shall be deemed to be a judicial proceeding, however, this is confined only with respect to compliance with the requirement of Section 193 of the Indian Penal Code.

23. The Lokayukta while conducting proceeding under Section 20 of the Act does not decide or adjudicate or settle any issue vis-à-vis the inter-se rights of the parties. In fact, under the provision of Section 20(7), the Lokayukta on consideration of a report received by it from any investigation agency, may decide to file charge sheet or a closure report or to direct initiation of departmental proceeding against the concerned

public servant. The power exercise by the Lokayukta in this regard are only recommendatory in nature. To buttress this point, the learned counsel has referred to the case of Additional Tahsildar v. Urmila G. & Ors, 2023 SCC OnLine SC 1613, wherein at para 9, the following is found

“9. Insofar as the jurisdiction of Lokayukta is concerned a Division Bench of the High Court in Sudha Devi K. v. District Collector, 2017 SCC OnLine Ker 1264, had opined that in terms of Section 12(1) of the 1999 Act, The Lok Ayukta, 1999, Lok Ayukta was not competent to issue positive direction. He can only submit a report with the concerned authority with its recommendations. They only have recommendatory jurisdiction. A Lokayukta or Upa Lokayukta is not appellate or supervisory authority over other competent forums created under different statutes, as each of those statutes provide its own remedial steps such as appeal, revision etc. The parties need to follow that procedure. The 1999 Act is not meant to override those procedures. The aforesaid judgment of the Division Bench of the High Court was referred to in the case in hand, however, the same was ignored.”

24. While distinguishing the case of Special Police Establishment v. The State of Madhya Pradesh(supra) relied upon by the State/petitioners, the learned counsel has submitted that the said judgment does not lay down any empirical rule that in all cases, the Lokayukta has no right to defend its own order. Facts of the said case is

that the Lokayukta has sought for sanction for prosecution from the respondent No. 3 therein which was denied and being thus aggrieved, the High of Madhya Pradesh was approached by way of a writ petition. The operative portion of the relevant order has reflected the opinion of the Hon'ble High Court that “...*once the Lokayukt has performed its duty of submitting its report to the Government, its role ends. It is the discretion of the Government to grant sanction or not. When such a sanction has been refused, the Lokayukt could not challenge the said order.*” This observation was passed in a specific context and does not apply to the present case, submits the learned counsel.

25. The learned counsel has again submitted that the controversy or dispute between the parties herein has been answered by the Hon'ble Supreme Court in the case of Office of the Odisha Lokayukta v. Dr. Pradeep Kumar Panigrahi & Ors reported in 2023 SCC OnLine SC 175, the judgment was rendered in the context of Section 20(1) of the Odisha Lokayukta Act, 2014 which is *para materia* with Section 20(1) of the Meghalaya Lokayukta Act, 2014. The relevant paras of the case being 25, 27, 39 and 42 which are reproduced herein below as:

“25. Mr. Ranjan Kumar Das, Deputy Superintendent of Police, Vigilance Cell Unit,

Bhubaneswar was not a person interested but as an informant submitted a complaint against respondent No. 1 (MLA Gopalpur Constituency) to Odisha Lokayukta regarding possession of disproportionate assets and intentionally enriching himself illicitly adopting mal-practices. On the said complaint being received, the appellant directed the Directorate of Vigilance, Cuttack to conduct a preliminary inquiry against respondent No.1 in exercise of his power under Section 20(1) of the Act, 2014 by an order dated 11th December, 2020. Before any action could have been taken by the Directorate of Vigilance in conducting a preliminary inquiry, a writ petition was filed by respondent No.1 before the High Court and on the first motion stage, the High Court, without affording an opportunity of hearing to the appellant, set aside the order dated 11th December, 2020 passed by the appellant for conducting a preliminary inquiry. The action of the Division Bench of the High Court indeed was in violation of the principles of natural justice.

27. In the first instance, the Division Bench of the High Court has committed a manifest error in passing of the order impugned dated 3rd February, 2021 while setting aside the order of the appellant dated 11th December, 2020 to conduct a preliminary inquiry against respondent No.1 in exercise of powers under Section 20(1) of the Act, 2014 which is in violation of the principles of natural justice.

39. The further objection raised by the respondents is in reference to the locus standi of the appellant in filing appeal in this Court and in support of his submission, counsel placed reliance on the judgments of this Court in National Commission for Women v. State of Delhi and another, (2010) 12 SCC 599 and M.S. Kazi v. Muslim Education Society and others, (2016) 9 SCC 263. In our considered view, the submission is wholly bereft of merit for the reason

that the action of the appellant initiated pursuant to order dated 11th December, 2020 for conducting a preliminary inquiry in exercise of powers conferred under Section 20(1) of the Act, 2014 was a subject matter of challenge before the High Court at the instance of respondent No.1 and if that is being interfered with and the action of the appellant is being set aside under the impugned judgment dated 3rd February, 2021, the appellant, indeed, was a person aggrieved and has a locus standi to question the action interfered with by the Division Bench of the High Court and the only remedy available with the appellant is to question the order of the Division Bench of the High Court by filing an special leave petition in this Court under Article 136 of the Constitution.

42. *Both the judgments relied upon are not even remotely concerned with the facts and circumstances of the present case. To say in other words, if the order of the appellant directing the Directorate of Vigilance to conduct the preliminary inquiry in exercise of power under Section 20(1) of the Act, 2014 dated 11th December, 2020 has been set aside by the High Court, obviously, the appellant is a person aggrieved and can certainly question the legality/validity of the judgment of the High Court impugned by invoking jurisdiction of this Court under Article 136 of the Constitution.”*

26. The learned counsel has submitted that in the said case of Odisha Lokayukta (supra), the factual matrix is that the Odisha Lokayukta having passed an order for conducting a preliminary inquiry against the respondent No. 1 therein, the same was challenged before the High Court of Odisha by the respondent No. 1 following which the

Hon'ble High Court set aside the order of the Lokayukta. The Lokayukta then carried the issue before the Hon'ble Supreme Court following which an order was passed quashing the impugned order of the High Court on the ground that the same have been passed without hearing the Lokayukta. On the issue of locus standi, the Hon'ble Supreme Court has held that since the Lokayukta was not heard by the High Court of Odisha, the Lokayukta is a person aggrieved and has necessary locus standi. The judgments relied upon by the respondents before the Supreme Court, including the judgment in the case of M.S Kazi(supra) also relied upon by the State/petitioners herein were held to be *“not even remotely concerned with the facts and circumstance of the present case.”*

27. The learned counsel has then submitted that the facts and circumstances of the case in hand are similar to those raised in the case of Odisha Lokayukta(supra) and as such, is squarely covered by the judgment of the Hon'ble Supreme Court passed in this regard. The respondents/Lokayukta being necessary parties cannot be struck off from the array of parties herein. This application is therefore liable to be rejected.

28. This Court in dealing with the issues raised by the parties

herein, is of the opinion that it would be prudent to look into the assertion made by the learned AG who has referred to a number of provisions from the Meghalaya Lokayukta Act, 2014 to convince this Court that the body of the Lokayukta is a functioning quasi-judicial one with powers to adjudicate disputes between the parties before it, since a finding in this regard would effectively settle the controversy raised herein.

29. To the extent of repetition, in the main petition, the challenge of the petitioners herein was against the orders passed by the Hon'ble Chairperson, Lokayukta, Meghalaya, purportedly passed in exercise of the provision of Section 20 of the Meghalaya Lokayukta Act, 2014, whereby, on a complaint filed by a private person wherein an allegation was made, inter alia, that in the process of execution of certain projects undertaken by the Garo Hills Autonomous District Council(GHADC), there is evidence of corrupt practice and taking of bribe from the complainant therein. The Lokayukta has then directed the DGP, Meghalaya to cause a preliminary inquiry to be conducted. Thus, being aggrieved by such direction and other consequential orders, the petitioners have approached this Court by way of a writ petition.

30. It can be safely said that for proceedings under Section 20 of the said Act conducted by the respondents/Lokayukta, the petitioners have filed the writ petitions making the Chairperson and Secretary, Lokayukta as party respondents, which is now sought to be undone by the prayer made in these instant applications.

31. In the case of Dr. Pradeep Kumar Panigrahi(supra) as has been pointed out, on the basis of a complaint filed before it, the Lokayukta, Odisha has directed for a preliminary inquiry to be conducted. Being aggrieved by such direction, the Hon'ble High Court of Orissa was approached by way of a writ petition with the Lokayukta as party respondent. The High Court vide relevant order dated 03.02.2021, has set aside the order of the Lokayukta, Odisha, which has then compelled the Lokayukta to file appeals before the Hon'ble Supreme Court.

32. Again, as has been mentioned hereinabove, the Hon'ble Supreme Court has allowed the appeal and has set aside the order of the Hon'ble High Court dated 03.02.2021. In the said judgment dated 23.02.2023, the Hon'ble Supreme Court has discussed in details the scope and ambit of the Odisha Lokayukta Act, 2014 and at para 39 of the

same, has also held that the Lokayukta has locus standi to prefer the appeal before it against the order of the High Court since the appellant (Lokayukta) was a person aggrieved.

33. Before proceeding further, this Court has perused the two Acts in question, that is, the Meghalaya Lokayukta Act, 2014 and the Odisha Lokayukta Act, 2014. On comparison, it is found that the contents of the two Acts are almost identical and similar. This similarity is seen while comparing Sections, 11, 12, 14, 25, 26, 27, 28 and other sections, which though not identically numbered, in essence, the meaning and purport are the same. This illustration is given only to come to a finding as to whether the facts and circumstances of this case are squarely covered by the Odisha Lokayukta case (supra).

34. Evidently, there exists a similar situation as far as this case and the case of Odisha Lokayukta is concerned as in both cases, the exercise of power by the Lokayukta under Section 20 of the Act to direct for preliminary inquiry was questioned and in the final analysis, the Hon'ble Supreme Court in the case of the Odisha Lokayukta has held that the Lokayukta is a person aggrieved who has locus standi to come before the High Court. In this case, too, the presence of the Lokayukta,

that is, the Chairperson and Secretary, Lokayukta are necessary and proper party for adjudication of the dispute between the parties.

35. The case of Mumbai International Airport Private Ltd.(supra) para 13, incidentally cited by both the petitioner and the respondents/Lokayukta as also the case of Alok Kumar Lodha(supra) as well as the case of Ashok Babulal Awasthi(supra) cited by the respondents/Lokayukta all speaks of the plaintiff as the *dominus litis*, however, the provision of Order 1 Rule 10(2) CPC was also referred to say that this general rule is subject to this proviso, which has been duly noted by this Court in these proceedings.

36. Without looking into any other aspects of the matter, suffice it to say that once it is established that the Lokayukta is a proper and necessary party in the case before this Court, the other contentions of the State petitioner as well as the petitioner in MC[WP(C)] No. 208 of 2023 pales into insignificance.

37. In view of the above, this Court finds that the presence of the respondent Nos. 1 & 2 in MC[WP(C)] No. 199 of 2023 and respondent Nos. 2 & 3 in MC[WP(C)] No. 208 of 2023 that is, the Chairperson and Secretary, Meghalaya Lokayukta are necessary as far as these

proceedings herein are concerned.

38. The objection raised by the petitioners respectively are hereby rejected. MC[WP(C)] No. 199 of 2023 and MC[WP(C)] No. 208 of 2023 are accordingly dismissed as devoid of merits.

39. Applications disposed of.

Judge

Meghalaya
31.05.2024
"D. Nary, PS"