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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 20.02.2024

+ LPA 138/2024, CAV 77/2024 & CM APPLs.10116-17/2024

SHIBU SOREN

..... Appellant

Through: Mr.Kapil Sibal, Sr.Adv. &
Mr.Arunabh Chowdhury, Sr.Adv. with Ms.Pragya
Baghel, Mr.Vaibhav Tomar, Ms.Aparajita Jamwal,
Mr.Aditya Bharadwaj, Advs.

versus

LOKPAL OF INDIA & ANR.

..... Respondent

Through: Mr.Tushar Mehta, SGI with
Mr.Apoorv Kurup, Ms.Gauri Goburdhan,
Ms.Nidhi Mittal, Ms.Muskaan Gupta, Mr.Akhil
Hasija, Advs for R-1.

Mr.Atmaram N S Nadkarni, Sr.Adv. with Mr.Rishi
K Awasthi, Mr.Piyush Vatsa, Mr.Amit Vikram
Awasthi, Mr.Rahul Kumar Gutpa, Advs for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 22.01.2024 passed by the learned Single Judge in W.P. (C) 13213/2022. Vide the impugned order, the learned Single Judge has disposed of the writ petition filed by the appellant by rejecting his prayer for quashing of the complaint bearing no. C-38/2020- Lokpal pending before the respondent by holding that the respondent no.1 is yet to take a considered decision on the material provided by the CBI as to whether an investigation against the appellant is necessary.



2. Before dealing with the rival submissions of the parties, the brief factual matrix as emerging from the record may be noted.
3. The appellant is a sitting Member of Parliament in the Rajya Sabha from the State of Jharkhand and is also the president of Jharkhand Mukti Morcha, a state political party in Jharkhand. While the respondent no.1 is the Lokpal, the respondent no.2/Mr. Nishikant Dubey is a Member of Parliament in the Lok Sabha from Godda District, State of Jharkhand.
4. On 05.08.2020, a complaint bearing No. C-38/2020 was filed with the respondent no.1 by the respondent no.2 under The Lokpal and Lokayuktas Act, 2013 (the Act) alleging therein that the appellant by abusing/misusing his official position had along with his family members and in connivance with his relatives and family friends, acquired several immovable properties in various cities of the State of Jharkhand by indulging in corrupt practices.
5. Upon receipt of the aforesaid complaint, the respondent no.1 vide its order dated 15.09.2020, directed the Central Bureau of Investigation (CBI) to initiate a preliminary inquiry against the appellant under Section 20(1) of the Act in order to ascertain as to whether a *prima facie* case for proceeding further in the matter, existed against him. The CBI was granted six weeks' time to submit its report from the date of receipt of the said order, which period was on 26.11.2020, extended upto 06.01.2021. This period was repeatedly extended at the request of the CBI and it is on 01.07.2021 that the CBI submitted its findings of preliminary inquiry along with a list of 82 properties owned by the appellant and his family members. In its report, the CBI also stated that the matter being voluminous, further time was required to analyse the legality of the assets possessed by the appellant and his family members, for which purpose the Income Tax Authorities had been



approached with a request to provide copies of returns, which were yet to be received.

6. On the same date, the CBI also sought comments from the appellant regarding the mode of acquisition and source of funds in respect of the aforesaid properties, in response where to, he replied by stating that he was not the owner of the properties referred to by the CBI. The appellant, however also sought additional time to submit his detailed comments and simultaneously also requested the respondent no.1 on 08.09.2021, to provide him with a copy of the complaint based on which the order dated 15.09.2020 issuing directions to the CBI was passed.

7. It is the appellant's case that though he was on 14.10.2021, provided with a copy of the order dated 15.09.2020 by the CBI, he was not given a copy of the complaint, compelling him to make a request to the respondent no.1 on 28.12.2021 for providing him a copy of the complaint. Pursuant to the orders passed by respondent no.1 on 27.01.2022, the appellant was provided with a copy of the complaint on 17.02.2022. Soon thereafter, the respondent no.1 directed the appellant to give his reply to the comments to the complaint, in response where to, the appellant vide his communication dated 01.04.2022, raised a preliminary objection qua the jurisdiction of respondent no.1 to inquire into the matter, for which purpose, he relied on Section 53 of the Act. In his response, the appellant also urged that since the CBI had sought his comments after expiry of the 180 day time limit stipulated under Section 20 (4) of the Act, all the subsequent steps taken by the CBI were also without jurisdiction.

8. Simultaneously, the appellant also submitted his reply to the CBI on 01.04.2022, whereafter the CBI submitted its final report of preliminary



inquiry on 29.06.2022. Upon consideration of the same, the respondent no.1 passed an order on 04.08.2022 observing that proceedings under Section 20(3) of the Act should be initiated in order to determine whether a *prima facie* case existed to proceed against the appellant, for which purpose, notice was directed to be issued to him. On 25.08.2022, the respondent no.1 found that appellant had requested for deferment of six weeks to enable him to study the documents, which request for deferment was rejected but the matter was still adjourned to 12.09.2022 granting last opportunity to the appellant to make submissions.

9. It is at this stage that the appellant had approached this Court by way of W.P (C) 13213/2022, whereby the learned Single had, while issuing notice in the petition, stayed the operation of further proceedings before the respondent no.1. However, vide the impugned order dated 22.01.2024, the learned Single Judge has rejected the appellant's writ petition leading to the filing of the present appeal.

10. In support of the appeal, Mr. Kapil Sibal, learned senior counsel for the appellant submits that the impugned order is liable to be set aside as the learned Single Judge has failed to appreciate that the complaint filed by the respondent no.2 was on the face of it barred under Section 53 of the Act. By drawing our attention to Section 20 (1) of the Act, he submits that even to order a preliminary inquiry under 20(1)(a), which preliminary inquiry in terms of Section 2(m) is an inquiry under the Act, it is incumbent upon the respondent no.1 to consider whether it has necessary jurisdiction to entertain the complaint. He contends that once on a bare reading of the complaint, it was evident that except for two properties, all other properties, which the appellant and his family members are alleged to have acquired by unfair



means, were acquired more than seven years ago, the complaint was barred by limitation. The two properties, which as per the complainant were acquired by the appellant and his family members in 2014, are owned by the Jharkhand Mukti Morcha as is now clear from the report dated 06.01.2021 filed by the CBI and therefore the respondent no.1 does not have the jurisdiction to proceed with the complaint, which it is persisting to do, despite this factual position having being brought to its notice by the appellant vide his detailed representation dated 01.04.2022.

11. Mr. Sibal next draws our attention to the Lokpal (Complaint) Rules, 2020 and submits that the complaint, as filed by the respondent no.2, was not even fully compliant with the requirements under these rules as the same neither contained any details of the witnesses nor contained any certification that the alleged offences committed by the appellant were within limitation. Furthermore, the respondent no.1 has also ignored the mandate under Rule 4(c) (v), which casts an obligation on respondent no.1 to dispose of the complaint *in limine*, when it is found that the same has not been filed within the period of limitation. He submits that despite it being evident from the order dated 04.08.2022 passed by the respondent no.1 that it has already made up its mind to proceed with the matter without considering the appellant's plea of the complaint being barred under Section 53, the learned Single Judge has erroneously presumed that a decision is yet to be taken by the respondent no.1 as to whether an investigation is necessary or not. He, therefore, prays that the impugned order be set aside and the respondent no.1 be restrained from proceeding further with the complaint.

12. Per contra, Mr. Tushar Mehta, the learned Solicitor General and Mr. Nadkarni, Senior Advocate, appearing on behalf of respondent nos. 1 & 2



respectively, support the impugned order. The learned Solicitor General submits that merely because a preliminary inquiry by the CBI was ordered on 15.09.2020, does not imply that the respondent no.1 will not examine the objections raised by the appellant before taking a considered decision as to whether it was a fit case for directing investigation by any agency or the Delhi Special Police Establishment under Section 20 (3) of the Act. He submits that that the Act is a self contained code which entitles the respondent no.1 to adopt any of the three options as contained in clauses (a) to (c) of Section 20 (3). He, therefore, contends that the learned Single Judge has rightly rejected the writ petition by holding that the writ petition was premature as the respondent no.1 is yet to take a decision as to proceed under which of these three clauses.

13. Mr. Tushar Mehta next submits that even the appellant's plea that the complaint was barred by limitation under Section 53 is also misplaced. The complaint not only refers to properties acquired by the appellant and his family members but also refers to shell companies created by the appellant and his family members. He, therefore, submits that it will be pre-mature at this stage to claim that the complaint was barred by limitation and a decision in this regard will be taken by the respondent no.1 after granting an opportunity of hearing as envisaged under Section 20(3) of the Act. He, therefore, prays that the appeal be dismissed.

14. Mr. Nadkarni, appearing on behalf of respondent no.2, while adopting the submissions of the learned Solicitor General, submits that the appellant is selectively reading only parts of the complaint filed by the respondent no.2 to urge that the offences alleged to have been committed by him were beyond the limitation provided under Section 53 of the Act. He submits that



a bare perusal of the complaint would show that the same is not confined to acquisition of properties but also refers to other offences committed by the appellant. He further contends that the learned Single judge has rightly observed that the appellant, during the hearing under Section 20(3) will have adequate opportunity to raise all grounds before the respondent no.1 including his plea of the complaint being barred under Section 53.

15. Having considered the rival submissions of the parties and perused the record, we find that the primary and in fact the sole submission of the learned senior counsel for the petitioner is that before setting the process into motion under Section 20(1) of the Act, it was incumbent upon the respondent no.1 to ensure that the complaint was not hit by Section 53 of the Act. It is his plea that in the present case, it was evident from a perusal of the complaint read with the CBI's report dated 06.01.2021 that the allegations leveled by the respondent no. 2 pertained to offences purportedly committed by the appellant more than seven years ago and therefore, the complaint ought to have been rejected *in limine* as envisaged under Rule 4(c)(v) of the Lokpal (Complaint) Rules, 2020 without directing the CBI to conduct a preliminary inquiry under Section 20(1) (a) of the Act.

16. On the other hand, it is the respondent's case that the question whether a prima facie case for directing investigation against a public servant is made out or not is to be decided under Section 20(3) of the Act after granting an opportunity of being heard to the concerned public servant. It is, therefore, their case that at this stage is yet to arrive as the appellant has already been issued a notice by respondent no. 1 for determination of this aspect. It is only after the respondent no. 1 considers the stand of the appellant that a decision will be taken as to whether a prima facie case exists



for directing investigation by any agency or the Delhi Special Police Establishment. The respondents have thus urged that the learned Single Judge was therefore right in holding that the writ petition was premature.

17. Since, it is the appellant's case that complaint, as filed by the respondent no. 2, was barred under Section 53 of the Act, we may begin by noting this provision, which reads as under:

“Section 53. Limitation to apply in certain cases.

The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.”

18. From the aforesaid, it is evident that under Section 53 of the Act, there is a complete embargo on inquiring or investigating into any complaint if the same is made after expiry of 7 years from the date on which the offences mentioned in the complaint are alleged to have been committed. In the light of this plain language of Section 53, there can be no doubt that a complaint which is made in respect of offences committed more than 7 years ago cannot be entertained and would liable to be rejected under Rule 4(c)(v) of the Lokpal (Complaint) Rules, 2020. The question which, however, needs to be determined is as to at what stage is the respondent no. 1 enjoined to decide this issue regarding the complaint being barred by Section 53 of the Act.

19. While the appellant has vehemently urged that this question ought to be determined by respondent no. 1 at the very initial stage, the respondents have urged otherwise. It would, therefore, be apposite to note herein below the provisions of Sections 20(1) to 20(3) of the Act, which lay down the



procedure in respect of preliminary inquiry and investigation, which are reproduced herein under-

“(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order--

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special



Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.”

20. From a perusal of the aforesaid, it is evident that once a complaint is received by the respondent no. 1 on which it decides to proceed further, it may adopt one of the two courses; the respondent no. 1 may either direct a preliminary inquiry against the public servant by its own inquiry wing or by any other agency including the Delhi Special Police Establishment under Section 20(1)(a). In the alternative, the respondent no. 1 may, in a case where it finds that a prima facie case exists, direct investigation by any agency by resort to Section 20(1)(b). We find that in a case where the respondent no. 1 wants to ascertain whether a prima facie case exists for proceeding in the matter, it may direct a preliminary inquiry against the concerned public servant. This inquiry can be got conducted either by the inquiry wing of the respondent no.1 itself or by any other agency, including the Delhi Special Police Establishment. The purpose of this inquiry, therefore, is to ascertain as to whether a prima facie case exists at all for proceeding in the matter. Resort to Section 20(1)(a) is, therefore, envisaged when the respondent no. 1 is yet to decide whether a prima facie case exists or not.

21. On the other hand, Section 20(1)(b) which envisages an investigation by an outside agency is resorted to when the respondent no. 1 is already of the view that a *prima facie* case exists against the concerned public servant. This provision is, therefore, applicable in a situation where the respondent



no. 1 instead of getting the preliminary inquiry conducted straightaway, directs investigation by an outside agency, upon being satisfied that a prima facie case exists. However, in a situation where this opinion regarding existence of a prima facie case is yet to be formed by the respondent no. 1, the procedure to be adopted commences with Section 20(1)(a) and ends with an order to be passed under Section 20(3). Once the report from the inquiry wing or the agency, as the case may be, is received by the respondent no. 1, it will proceed under Section 20(3) to decide whether it is a fit case for directing investigation by any agency or by the Delhi Special Police Establishment. After the report is received, the respondent no. 1 is required to grant an opportunity of being heard to the concerned public servant and then decide which course of action to adopt; whether to direct investigation by an agency or to direct initiation of departmental proceedings or to direct closure of proceedings initiated against the public servant. In the light of the aforesaid scheme of the Act, we are of the view that the stage at which the question as to whether the complaint is barred under Section 53 is required to be decided, will depend on facts of each case. In our considered opinion, the same need not necessarily be decided at the time of ordering a preliminary inquiry under Section 20(1)(a), but may be decided after the inquiry report is received.

22. Now turning to the facts of the present case. From the factual matrix noted hereinabove, it is evident that upon receiving the respondent no. 2's complaint, the respondent no. 1, on 15.09.2020, decided to take recourse to Section 20(1)(a) by directing preliminary inquiry by the CBI. The purpose of this inquiry was only to ascertain whether a *prima facie* case existed for proceeding in the matter. Now that a report from the CBI has been received,



the respondent no. 1 is obligated to proceed under Section 20(3) of the Act, after giving an opportunity of hearing to the appellant and then take a considered decision as to under which of the clauses i.e. clauses (a) to (c) of Section 20(3), should action be taken. Thus, it is clear to us that as urged by the learned senior counsel for the respondents and held by the learned Single Judge, a decision as to whether an investigation by an agency including the CBI is warranted against the appellant is yet to be taken by the respondent no.1.

23. At this stage, we may also be usefully to refer to the following observations made by the learned Single Judge in para nos. 46, 48 & 50 of the impugned order:

“46.The Lokpal is yet to apply its mind on the material provided by the CBI as to whether an investigation is necessary or not. It is well settled that while conducting an inquiry, the material that can be unearthed is limited compared to the material that is unearthed when an investigation is conducted by a competent authority.

48. It is also well settled that the writ courts while exercising jurisdiction under Article 226 of the Constitution of India should not impinge on the mechanism provided under the Act unless as stated earlier when there is a patent lack of jurisdiction or that the complaint is vexatious which requires interference. Writ Courts cannot substitute themselves as an authority which has been vested with a duty under the Statute to consider as to whether there is material in it or not for ordering investigation. The writ petition, therefore, is premature in nature.

50. The Lokpal will examine the entire matter independently and shall take a decision as to whether an investigation has to be ordered or not which order is always amenable for challenge under Article 226 of the Constitution of India. The CBI has submitted a preliminary inquiry and the Lokpal has to take a decision as to whether to proceed further in the case or not.”



24. Since we also find that a final decision under section 20(3) is yet to be taken by respondent no. 1, we have no hesitation in concurring with the learned Single Judge that the respondent no. 1 is yet to decide whether a prima facie case exists for directing investigation by any agency against the appellant, which decision will be taken after granting an opportunity of hearing to the appellant, as envisaged under Section 20(3) of the Act.

25. We have also considered the plea of the appellant that the respondent no. 1 ought to have rejected the complaint *in limine* under Rule 4(c)(v) of the Lokpal (Complaint) Rules, 2020. For this purpose, learned senior counsel for the appellant has by drawing our attention to the annexures filed along with the complaint, vehemently urged that except for two properties which as per the CBI are owned by the Jharkhand Mukti Morcha, all other properties are all alleged to have been purchased more than 7 years prior to the date of the complaint. In order to appreciate this plea, we have carefully perused the complaint, but find that in his complaint the complainant/respondent no. 2 has not only levelled allegations against the appellant of purchasing properties in his and his family members' name by using unfair means, but has also raised a grievance that the appellant and his family members were consistently misusing the funds of the public exchequer for their personal and political gains, with the assistance of one Mr. Amit Aggarwal, who was constructing a 22 storeyed building in Salt Lake, Kolkata. It has been further alleged by the respondent no. 2 that the appellant was purchasing land around Ranchi through various shell companies. It would, therefore, be apposite to refer to para nos. 17 to 19 of the complaint, which read as under:



“17. It is further submitted Mr. Shibu Soren and his family members have been consistently misusing the funds of the public exchequer for their personal and political gain with the assistance of Mr. Amit Agarwal, who is constructing a 22 storey building in Salt Lake, Kolkata, wherein Mr. Shibu Soren and his family members have invested huge amounts of money. Further, the said person through various shell companies has been benefiting from various donations made to the accounts of Jharkhand Mukti Morcha, of which Mr. Shibu Soren is the president.

18. It is further noteworthy that Mr. Shibu Soren and his family members in association with the aforesaid Mr. Amit Agarwal and his paternal cousin Mr. Vineet Agarwal have been purchasing lands around Ranchi through various companies for and on behalf of Mr. Shibu Soren and his family members and the said fact can be ascertained from the sale deeds of the purchase of land around Ranchi in Jharkhand.

19. Further, Mr. Shibu Soren and his family members by abusing their as public servants and by corrupt means have obtained pecuniary advantages from various persons and companies, thereby committed various persons and companies, thereby committed various criminal offences not only under the provisions of Prevention of Corruption Act but also under the provisions of Indian Penal Code Benami Property Act and several local land related laws including the CNT and Santhal Pargana Tenancy Act etc.”

26. From the aforesaid specific allegations levelled by the respondent no. 2, it is evident to us that the complaint pertains not only to purchase of properties, which the appellant claims were purchased more than 7 years ago, but also pertains to ongoing incidents of amassing wealth by misuse of power by the appellant. In the light of these allegations, we are unable to accept the appellant’s plea that it was a fit case where the respondent no. 1 ought to have at the very first instance rejected the complaint as being barred by limitation. In fact, as held hereinabove, the respondent no. 1 is yet to take a decision as to



whether or not a *prima facie* case exists for directing investigation against the appellant by any agency including the Delhi Special Police Establishment. In this factual matrix, we find no infirmity with the approach adopted by the respondent no.1.

27. For the aforesaid reasons, we find absolutely no reason to interfere with the impugned order, holding that the writ petition filed by the appellant was premature. The appeal being meritless is, accordingly, dismissed with all accompanying applications.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 20, 2024
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