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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2023

Pronounced on : 03.11.2023

CORAM: JUSTICE N.SESHASAYEE

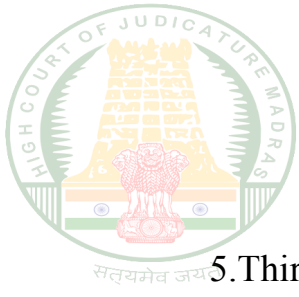
W.P. No.7920 of 2022

K.R.Jayagopi

... Petitioner

Vs.

1. The Hon'ble Tamil Nadu Lokayukta
Represented by its Registrar
SIDCO Corporate Office, 6th & 7th Floor
SIDCO Industrial Estate, Guindy
Chennai - 600 032.
2. Thiru.R.Sakkarapani
Minister of Food and Civil Supplies
Co-operation, Food and Consumer
Protection Department
Secretariat, Chennai - 600 009.
3. Thiru.I.Periyasamy
Minister of Co-operative Societies Co-operation,
Statistics and Ex-servicemen Welfare
Fort St.George, Chennai - 600 009.
4. Thiru.Md.Nasimudeen, I.A.S
Additional Chief Secretary to Government
Co-operation, Food and Consumer Protection Department
Secretariat, Chennai - 600 009.



5.Thiru. Dr.S.Prabhakar, I.A.S.
Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road
Kilpauk, Chennai - 600 010.

6.Thiru.V.Rajaraman, I.A.S.,
Commissioner of Civil Supplies
and Consumer Protection Department
'Ezhilagam, Annexe
Chepauk, Chennai - 600 005.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the first respondent in R.No.3 of 2022 dated 02.03.2022 and quash the same and consequently direct the first respondent to take the complaint on record and conduct a detailed enquiry by issuing notice to all respondents by following the due process of law laid under the Tamil Nadu Lokayukta Act 2018 in letter and spirit.

For Petitioner : Mr.V.Raghavachari
Senior Advocate
Assisted by Mr.S.T.Bharath Gowtham

For Respondents : Mr.R.Shanmugasundaram
Advocate General for R2 to R4, R6

Ms.S.Meenakshi for R1

Ms.M.Sneha for R5



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ORDER

The petitioner herein challenges the order of the Lokayukta, the first respondent herein, dated 02.03.2022, passed in R.No.3 of 2022, by which it refuses to take cognizance of the complaint which the petitioner had preferred against respondents 2 to 6.

2. The case of the petitioner is that :

(a) The petitioner had preferred a complaint to the Lokayukta, alleging corruption, acts of malfeasance and impropriety committed by respondents 2 to 6 vis-a-vis the gift hampers distributed to the under privileged citizens throughout the State, during Pongal festival in January, 2022. As per the announcement made by the Hon'ble Chief Minister, it was to benefit around 2.10 crore ration card holders at the cost of Rs.1,296.88 crores of public money.

(b) The gift hamper was to contain 21 food items, and they are as follows:



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S.No.	Particulars	Quantity
1	Raw Rice	1 kg.
2	Jaggery	1 kg
3	Cashew	50 grams
4	Dry Grapes	50 grams
5	Cardamom	10 grams
6	Moong Dal	500 grams
7	Ghee	100 grams
8	Turmeric Powder	100 grams
9	Chilli Powder	100 grams
10	Coriander Powder	100 grams
11	Mustard	100 grams
12	Cumin	100 grams
13	Pepper	50 grams
14	Tamarind	200 grams
15	Toor Dhal	250 grams
16	Urad Dhal	500 grams
17	Rava	1 kg
18	Wheat Flour	1 kg
19	Salt	500
20	Cloth Bag	1 piece
21	Sugarcane	1 piece

(c) The scheme however, was infested with serious irregularities and illegalities, and visited with corruption and administrative malfeasance, and the details as could be gathered by the petitioner are as below :



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- i. Only a short e-tender notice was issued for procuring the items for a total sum of Rs.1,296.88 crores, and in the process, the Tamil Nadu Transparency in Tenders Act, 1998, and the Rules made therein were deliberately ignored;
- ii. The articles procured were of sub-standard quality. Most of the items distributed had crossed their expiry date, and smartly the expiry dates were not mentioned in any of the hampers;
- iii. While the list of 21 items are easily available within the State, the Government had gone for procurement from the North Indian businessmen at exorbitant prices. Even the sugarcanes were offered by our own farmers at the market price of Rs.12/- to Rs.15/- per cane, to the co-operative societies, the Government went on to purchase it at Rs.33/. The scheme, valued at Rs.1,296.88 crores, was to benefit 2,15,48,060 beneficiaries, and this means that the per capita cost of a gift hamper is Rs.602/-. However, if the same was procured in the open market, it would be around



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Rs.485.55 only, and that the difference roughly estimated at Rs.117/- per beneficiary, had been swindled and gone into the pockets of respondents 2 to 6;

- iv. In some of the places, not all the 21 items were distributed. Indeed, in most of the places, the jaggery that was supplied in the gift hampers, was found in liquid form, and in one instance the District Collector, Tiruvannamalai, has ordered to replace it.

3. The petitioner had therefore, approached the Lokayukta with his complaint dated 13.01.2022 to enquire into the above referred to allegations, but this was rejected by the Lokayukta vide its impugned proceedings dated 02.03.022, on the ground that it cannot entertain the complaint as it falls within Section 13(1)(c) of the Tamil Nadu Lokayukta Act, 2018, read with Rules 24(4) (a) to (d).

4. Turning to the order of the Tribunal, it is seen that the Registrar of Lokayukta had raised an issue on the maintainability of the complaint, and it was how the matter came before the Lokayukta. And the first respondent



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has invested its time essentially in ascertaining whether the complaint disclosed anything which it can take cognizance of. In other words, its entire focus was on ascertaining whether it has jurisdiction. Ultimately, the first respondent had concluded that the complaint raised by the petitioner fell within the exception provided under Section 13(1)(c) of the Act, and that inasmuch as the complaint did not disclose an offence by a public servant punishable under the Prevention of Corruption Act, it cannot be taken cognizance of.

5. Lokayukta is merely a statutory body and hence, it cannot be invited to defend its order. No right of the respondents 2 to 6 will be affected by any decision to be made in this case, since this court is dealing with an order of the Lokayukta rejecting the complaint at a pre-cognizance stage, while scrutinizing the complaint under Sec.24(4) of the Tamil Nadu Lokayukta Act, 2018 (hereinafter would be referred to as Act). Therefore, this Court chose not to invite any counter from these respondents, and proceeded to test the decision of the first respondent on the plane of the Act.

6. Heard Mr.V.Raghavachari, the learned senior counsel appearing for the



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petitioner, Mr.R.Shanmugasundaram, learned Advocate General for respondents 2 to 4 and 6, and Ms.S.Meenakshi for the first respondent.

7. The issue raised herein requires an understanding of Sec.12 alongside Sec.13 of the Act. While Sec.12(1) and (2) list those in relation to whom Lokayukta may proceed to hold an enquiry, Sec.12(3) provides the nature of complaint which the Lokayukta can take cognizance of. Sec.12 reads as below:

12(1) Subject to the other provisions of this Act, the Lokayukta shall have its jurisdiction on all the following categories, namely:-

- (a) any person **who is or has been a Minister of the State;***
- (b) any person who is or has been a Member of the Legislative Assembly;*
- (c) **all officers and employees of the State, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988** when serving or who has served, in connection with the affairs of the State;*
- (d) **all officers and employees referred to in clause (c) equivalent in any Body or Board or Corporation or Authority or Company or Society or Trust or Autonomous Body** (by whatever name called) established by an Act of the Parliament or the Legislative Assembly of the State or **wholly or partly financed by the Government or controlled by it.** Provided that in the case of officers and employees referred to in*



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clauses (c) and (d) but are working in connection with the affairs of the Union or in Body or Board or Corporation or Authority or Company or Society or Trust or Autonomous Body under the control of the Union, the Lokayukta and officers of its Inquiry Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the Central Government;

(e) any person who is or has been a Director, Manager, Secretary or other officer of every other Society or Association of persons or Trust (whether registered under any law for the time being in force or not) by whatever name called, wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Government may, by notification, specify.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the Legislative Assembly in respect of anything said or a vote given by him in the Legislative Assembly of the State or any committee thereof covered under the provisions contained in clause (2) of Article 194 of the Constitution. Central Act 49 of 1988.

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption.



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under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1): *Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.*

It does not stop there, and it requires to be read conjointly with Sec.13(1) and 13(2) of the Act. Sec.13 reads:

13. (1) **Except as hereinafter provided,** *the Lokayukta shall not conduct any inquiry under this Act, in the case of a complaint in respect of any action, if such action relates to any matter as follows:— Matters not subject to inquiry.*

(a) *action taken for the purpose of investigating crime relating to the security of the State;*

(b) *action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not;*

(c) *administrative action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation;*

(d) *action taken in respect of appointment, transfer and postings, removal, pay, discipline, superannuation, actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service, or other matters relating to conditions*



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of service of public servants;

(e) grant of honours and awards;

(f) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta;

(g) any action in respect of a matter which has been referred to inquiry under the Commissions of Inquiry Act, 1952; Central Act 60 of 1952. (h) any action relating to a person or Local Body which is under the purview of Ombudsman constituted under section 3 of the Tamil Nadu Local Bodies Ombudsman Act, 2014. Tamil Nadu Act 27 of 2014.

(2) In the case of any complaint, nothing in this Act shall be construed as empowering the Lokayukta to question any administrative action involving the exercise of a discretion, except where Lokayukta is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima-facie be regarded as having been improperly exercised.

Explanation.— For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.



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8. It could be derived from the above analysis that the Lokayukta has jurisdiction to enquire into any complaint:

- (a) involving allegations of actual corruption, or abetting corruption or conspiring to engage in corruption within the meaning of Sec 12(3), and includes improper exercise of discretion in administrative decisions within the meaning of Sec.13(2), unless the allegations made falls within the list of exceptions provided under Sec.13(1); and
- (b) if they are made against those who may be proceeded against under the Prevention of Corruption Act, 1988.

9.1 The complaint preferred by the petitioner is now required to be spread and tested on the plane of the criteria herein above stated. If the list of respondents to this petition is perused, respondents 2 to 6 fit in the bill, as they are either the Ministers or officials of the Government, who can be proceeded against under the Prevention of Corruption Act. This satisfies one of the criteria for the Lokayukta to act.



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9.2 The more critical part, which is contextually significant, is the nature of the allegations made. They are listed above in paragraph No.2(c) above.

These allegations in essence accuse that respondents 2 to 6 have:

- (a) expended Rs.1,296.88 crores, of the public finance on project Pongal Gift hamper and procured 21 substandard items;
- (b) in rejection of the spirit behind the Tamil Nadu Transparency in Tenders Act, 1988;
- (c) in preference to a supplier from northern part of India; and
- (d) at far above the market price and pocketed the differences.

9.3 Does not the complainant make out a case for the Lokayukta to take cognizance of? Now, even if the decision to make the procurement in the manner alleged in the complaint is presumed to involve any administrative discretion, does it not at least require the Lokayukta to examine *prima facie* whether such exercise of discretion is improperly exercised within the second part of Sec.13(2)? It is here, the first respondent invokes the exception provided under Sec.13(1)(c) of the Act.

10. It is now time to test whether the nature of allegations made in the



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complaint falls within the exception provided under Sec.13(1)(c) of the

Act.6. Sec.13(1)(c) is reproduced again:

"13(1) Except as hereinafter provided, the Lokayukta shall not conduct any inquiry under this Act, in the case of a complaint in respect of any action, if such action relates to any matter as follows:-

(c) administrative action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation;

For a better understanding of the circumstances in which Sec.13(1)(c) may have application, the same is now analysed:

- (a) there must be an administrative action, and it must arise out of a contract or terms of such contract;
- (b) and the action taken must involve purely commercial relationship between the administration and its customers or suppliers;
- (c) the only exception is that, where the customers or suppliers allege harassment or gross delay in meeting the contractual obligations, then it can become the subject matter for a complaint even under Section 13(1)(c).



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In essence, what Sec.13(1)(c) deals with is that where any administrative action relates to contract between the administration (read it as the Government or its instrumentalities) and its customers or the suppliers, then the Lokayukta will be justified in laying its hands off the complaint. To expatiate it, for Sec.13(1)(c) to apply the nature of the complaint must involve the State and its instrumentalities either as a seller of goods or services which affect the customers, or as procurer of goods and services from other suppliers, based on a contract. In short, the complaint must be against the public authorities as contemplated under Sec.12(1) and Sec.12(2) by the other contracting party.

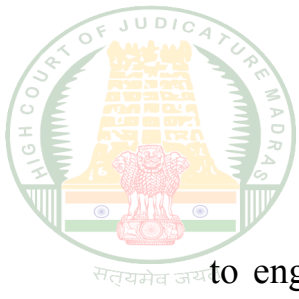
11. The allegation here, however, does not involve any terms of contract relating to the contractual relationship or contractual obligations between the State or its instrumentalities on the one hand, and its customers or suppliers on the other. The complaint, if read as a whole, only indicates that in the matter of procuring 21 items of gift hamper, there is corruption. What Sec. 13(1)(c) exempts is anything that falls within a contract or working the terms of the contract, but definitely does not include any



accusation such as the one levelled by the petitioner.

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12. The preamble to the Act reads: “*An Act for the establishment of a body of Lokayukta for the State of Tamil Nadu **to inquire into allegations of corruption** against certain public servants and for matters connected therewith or incidental thereto.*” Lokayukta may be termed as a statutory watchdog and is statutorily mandated to enquire into any complaint alleging corruption. In terms of Sec.19, if the Lokayukta does not decide to close a complaint, it may have to order enquiry into the allegations it receives either by its inquiry-wing, or by any agency of the Government, or by the vigilance commission. But before it chooses to close a complaint, the Lokayukta must adequately satisfy itself, objectively, that the allegations contained in the complaint falls squarely within any of the exceptions enumerated in Sec.13(1) of the Act. And, the standard of scrutiny required of a Lokayukta while examining a complaint is no greater than ascertaining whether the allegations made in the complaint *prima facie* disclose any acts constituting corruption, or abetment to corruption, or conspiracy to engage in corruption, and includes any improper administrative decision involving or abetting corruption, or any conspiracy

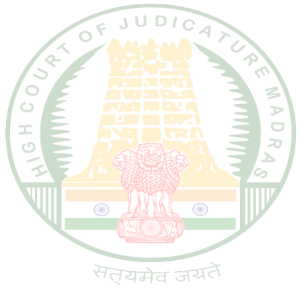


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to engage in corruption. To state it differently, where the allegations do not strictly fall within Sec.13(1), then the Lokayukta may not have too many options than resorting to the inevitable course of ordering an enquiry under Sec.19, lest the objective behind constituting a Lokayukta will be in serious peril.

13. If the impugned order of the first respondent is tested on the plane of what have been hereinabove stated, this Court has least hesitation in holding that the impugned order of the Lokayukta cannot be sustained since it has misapplied Sec.13(1)(c) of the Act to the nature of the complaint before it. Necessarily, this Court is required to interfere with the said order.

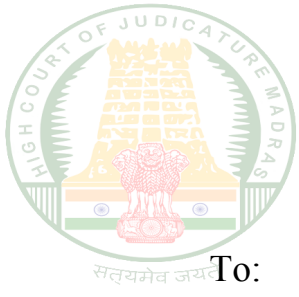
14. To conclude, this petition is allowed, and this Court sets aside the order of the Lokayukta, dated 02.03.2022, and the complaint of the petitioner dated 13.01.2022 is remanded back to the Tamil Nadu Lokayukta, the first respondent, with a direction to revisit the same in the light of what have been hereinabove stated. No costs.



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Index : Yes / No
Speaking order / Non-speaking orders



To:

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1. The Registrar
Hon'ble Tamil Nadu Lokayukta
SIDCO Corporate Office, 6th & 7th Floor
SIDCO Industrial Estate, Guindy
Chennai - 600 032.
2. The Minister of Food and Civil Supplies
Co-operation, Food and Consumer
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Secretariat, Chennai - 600 009.
3. The Minister of Co-operative Societies Co-operation,
Statistics and Ex-servicemen Welfare
Fort St.George, Chennai - 600 009.
4. The Additional Chief Secretary to Government
Co-operation, Food and Consumer Protection Department
Secretariat, Chennai - 600 009.
5. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road
Kilpauk, Chennai - 600 010.
6. The Commissioner of Civil Supplies
and Consumer Protection Department
'Ezhilagam, Annexe
Chepauk, Chennai - 600 005.



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VERDICTUM.IN



W.P. No.7920 of 2022

N.SESHASAYEE.J.,

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Pre-delivery order in
W.P. No.7920 of 2022

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