

State of Karnataka and ors. Vs. Kempaiah

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Court : Karnataka

Decided On : Jul-27-1998

Reported in : 1998CriLJ4070

Judge : M.K. Mukherjee and ;S.S. Mohammed Quadri, JJ.

Acts : Karnataka Lokayukta Act, 1984 - Sections 2(1), 2(2), 2(8), 7, 7(2), 8, 9 to 11, 12 and 14; Prevention of Corruption Act - Sections 13(1) and 13(2); Karnataka Lokayukta Rules, 1985 - Rules 2 and 4

Appeal No. : Criminals Appeals Nos. 722 and 723 of 1998 (Arising out of S.L.P. (Cri.) Nos. 1380-81 of 1997)

Appellant : State of Karnataka and ors.

Respondent : Kempaiah

Advocate for Def. : Ashok K. Srivastava and ;T.V. Ratnam, Advs.

Advocate for Pet/Ap. : K.R. Nagaraja and ;K.K. Tyagi, Advs.

Disposition : Appeal dismissed

Judgement :

S.S. Mohammed Quadri, J.

1. Leave is granted.

2. In these appeals, filed by the State of Karnataka against the common judgment of the Division Bench of the Karnataka High Court dated 2nd July, 1996 in Writ Petition No. 16857 of 1993 and Criminal Petition No. 1155 of 1993, only that part of the judgment is assailed; which deals with the interpretation of 'action' as defined in Section 2(1) of the Karnataka Lokayukta Act, 1984 (for short 'the K. L. Act').

3. To appreciate the contentions of Mr. K.R. Nagaraja, the learned counsel for the appellants, it would be necessary to refer to the facts giving rise to these appeals. On 17-12-92, an unsigned representation containing allegations against certain Government officers including the respondent, Kampaiah, an IPS Officer, who was working as Deputy Commissioner of Police, East, Bangalore, during the relevant period, was forwarded by the Under Secretary to the Governor of Karnataka to the Registrar, Lokayukta for taking necessary action. The Upalokayukta referred the allegations against the respondent to the police wing of the Upalokayukta for preliminary inquiry under Section 7(2) of the K.L. Act. Apropos to the preliminary inquiry the Upalokayukta, by letter dated 18-5-93, called for comments of the respondent under Section 9(3) of the Lokayukta Act. The respondent challenged, inter alia, the validity of the said letter in the said Writ Petition No. 16857/93. It appears that as a sequel of issuing orders of search by Upalokayukta, FIR was lodged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act (for short 'the P.C. Act'); in Criminal Petition No. 1155 of 1993, he prayed before the High Court to quash the proceedings under the P.C. Act. Those two cases were disposed of by the common judgment by the High Court, referred to above.

4. Mr. Nagaraja, the learned counsel for the appellants, contended that under Section 7(2) of the K.L. Act the Uplokayukta was competent to investigate into the allegation of amassing of wealth by the respondent as it would fall within the meaning of the word 'action' in Section 2(1) of that Act and that narrow construction of the word by the High Court would defeat the very purpose of the Act. Mr. T.V. Ratnam, the learned counsel for the respondent, submitted that the Preamble of the Act itself would show that the Act was confined to administrative actions taken by any public servant, therefore the allegation of amassing of wealth

could not be an administrative action for purposes of Section 7 and the High Court had rightly interpreted that word.

5. The short point that arises for consideration is : What is the true import of the definition of 'action' in Section 2(1) of the K.L. Act

6. A perusal of the provisions of the L.K. Act reveals that the object of the Act is to ensure fairness in administrative action and for that purpose it provides for investigation by Lokayukta or Upalokayukta where any complaint is made against such action by either a grievance or an allegation and for granting redress/remedy if a complainant is prejudiced by such action and for initiating departmental proceedings or prosecution against any public servant in giving effect to the recommendations or findings of the Lokayukta or Upalokayukta, as the case may be. Section 7 deals with matters which may be investigated by the Lokayukta or Upalokayukta; Section 8 enumerates matters which cannot be investigated under the Act; Sections 9 to 11 and Rules 2 and 4 of the Karnataka Lokayukta Rules, 1985 (for short 'the Rules') prescribe procedure relating to complaints and investigations. Section 12 requires that report of investigation into the action complained of together with recommendation of Lokayukta or Upalokayukta be forwarded to the competent authority who is enjoined to take action thereon and Section 14 contemplates initiation of prosecution by Lokayukta or Uplokayukta where he is satisfied that the public servant committed any criminal offence and should be prosecuted. These are the provisions relevant to the issue under consideration.

7. It would be useful to refer to Section 7 of the K.L. Act here :

7(1). Matters which may be investigated by the Lokayukta and an Upalokayukta

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

(i) the Chief Minister;

(ii) a Minister or a Secretary;

(iii) a member of the State Legislature; or

(iv) any other public servant being a public servant of a class notified by the State Government in consultation with the Lokayukta in this behalf;

In any case where a complaint involving a grievance or an allegation is made in respect of such action.

(2) Subject to the provisions of this Act, an Upalokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant referred to in Sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been in the opinion of Upalokayukta, the subject of a grievance or an allegation.

A plain reading of this section, makes it evident that Sub-section (1) envisages investigation by the Lokayukta and Sub-section (2) by Upalokayukta. Lokayukta is empowered to investigate any action which is taken by or with the general or specific approval of (i) the Chief Minister; (ii) Minister; (iii) Member of the Legislature; and (iv) any other public servant being a public servant of a class notified by the State Government in consultation with the Lokayukta in this behalf. Under Sub-section (2) Upalokayukta is enabled to investigate any action which is taken by or with the general or specific approval of any public servant (other than those enumerated in Sub-section (1)). However, Upalokayukta may also, suo motu, investigate an action which in his opinion can be or could have been the subject-matter of grievance or an allegation. In other words, the subject-matter of investigation by the Upalokayukta, whether at the instance of an aggrieved person or suo motu, is an action of any public servant which does not fall within the scope of investigation of Lokayukta; under Sub-section (1). The words 'action', 'allegation' and 'grievance' are defined in Sub-sections (1), (2) and (8) of Section 2 respectively. The word 'complaint' is, however, not defined in the Act or the Rules though in Rule 2(b) 'complainant' is defined to mean a person who makes a complaint under Section 9 of the Act.

8. The definition of the word 'action' in Section 2(1) reads as under :

'action' means administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions (relating to such action shall be construed accordingly).

A perusal of the definition indicates that it encompasses administrative action taken in any form whether by way of recommendation or finding or in any other manner e.g., granting licenses or privileges, awarding contract, distributing Government land under statutory Rules or otherwise or withholding decision on any matter etc. The expression 'in any other manner' takes it in fold the last mentioned categories of administrative actions. Mr. Nagaraja has argued that the expression 'in any other manner' will have to be given a wider meaning so as to include other actions of the public servants such as the action of the respondent in amassing wealth otherwise the very purpose of the Act will be frustrated. We are afraid we cannot accede to the contention of the learned counsel as it would not only be contrary to the principle of construction of statutes but will also be repugnant to the object of the Act, pointed out above. The expression 'in any other manner' contains general words which construed literally should receive their full and natural meaning but when they follow specific and particular words of the same genus, it will be presumed that the legislature has used the general words in a limited sense to convey the meaning implied by specific and particular words. This follows from application of Rule of ejusdem generis. That rule which is an exception to the rule of construction that general words should be given their full and natural meaning was enunciated by Lord Campbell in *R. v. Edmundson* (1859) 28 LJMC 213, '...where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified'. ('Craies on Statute Law' 6th Edn. p. 179). These rules of interpretation are so well-settled that they hardly need any authority to support our conclusion. Now in the definition of action the expression 'in any other manner' follows 'decision', 'recommendation' or 'finding' so it connotes other categories of administrative action; it cannot be interpreted to mean actions which have no nexus to any administrative action.

9. Our attention was invited to the definition of 'allegation' in Section 2(2) which is couched in very wide terms but, as noticed above for purposes of Section 7(2) the scope of investigation is confined to a grievance or allegation made in respect of an action within the meaning of Section 2(1) of the Act, no support can be had from the definition of 'allegation'.

10. Inasmuch as Upalokayukta initiated investigation against the respondent on the basis of an unsigned letter forwarded by the Under Secretary to the Governor of Karnataka to the Registrar, Lokayukta, the scope of investigations by the Upalokayukta under Section 7(2) has to be limited to 'action' as explained above.

11. In this view of the matter, we are in entire agreement with the view expressed by the High Court. The appeals are devoid of any merit so they are dismissed.

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