

WP (PIL) No. 01/2020

MR. CHARLES L. LUCKSOM & ANR.

PETITIONER (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Petitioners : Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Advocate.

For Respondents : Dr. Doma T. Bhutia, Senior Advocate and Addl. Advocate General with Mr. Yadev Sharma, Govt. Advocate and Mr. Sujan Sunwar, Asst. Govt. Advocate.
No.1, 2 & 3

For Respondent No.4 : Mr. Tashi Norbu Basi, Advocate.

Date: 23/05/2023

CORAM:

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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JUDGMENT : (per the Hon'ble, the Chief Justice)

On 18th April, 2023, this Court had passed the following order:-

"Having heard the learned Advocates for the parties and upon perusing the instant application, which is pending for the last three years, we are of the view that a simple clarification from the State of Sikkim can resolve the issue.

We, therefore, direct the learned Additional Advocate General of State of Sikkim to take necessary instructions in the matter and apprise the Court accordingly on the next date.

List this matter on 23rd May, 2023, for further consideration."

Pursuant thereto, a clarificatory affidavit has been filed before this Court on behalf of the State respondents affirmed by one Marcus Prabal Rai, who has described himself as the Additional Director, Law & Parliamentary Affairs Department, Government of Sikkim.

In paragraph 2 of the clarificatory affidavit, the following statements have been made (apart from quoting section 14 of the Sikkim Lokayukta Act, 2014):-

"2. That vide order dated 18.04.2023, the clarification was sought by this Hon'ble Court whether the complaint can be filed directly before the Lokayukta by any individual regarding any allegations of Corruption under Prevention of Corruption Act, 1988. In answer to the said queries, it is humbly submitted that u/s-14 of Sikkim Lokayukta Act, 2014, any

individual who desires to file complaint before the Lokayukta could do so. It is the choice of any individual either to file complaint regarding allegation of corruption before Lokayukta or to the Vigilance Department.

.....”

In paragraphs 3 and 4 of the affidavit, the following statements appear:-

- “3. It is further submitted that under Regulation-3 of the Sikkim Lokayukta Regulations, 2016 makes it amply clear the process regarding the filing of complaint by an individual either to Lokayukta or to Vigilance Department.
4. It is further submitted that vide order dated 21.11.2022 it is clearly reflected that challenge in the instant case is only with regard to Section 9 and 45 of the amendment of Sikkim Lokayukta Act, 2014. With respect to Section 9 and 45, it is submitted that, in fact the amendment of the provisions of the said Act, 2014 is within the domain of the State legislature since the certain amendment was carried out in the public interest as a policy decision of the Government.”

We also take note of paragraph 5 of the clarificatory affidavit, which reads as follows:

- “5. It is pertinent to bring to the notice of this Hon’ble Court that all the allegations of corruption pending inquiry before Vigilance Wings of the State Government had been transferred to the Lokayukta by the Vigilance Department.”

We find that the clarification provide by the State is self-explanatory in nature and we do not notice any arbitrariness on the part of the legislature while amending section 9 and section 45 of the Sikkim Lokayukta Act, 2014, which would warrant any interference by the writ Court.

The State Government, as it appears, has adopted a uniform practice of transferring all pending enquiries, which are before the Vigilance Wing of the State Government to the Lokayukta. The terms of Regulation 3 of the Sikkim Lokayukta Regulations, 2016, are clear and unambiguous. Section 45 of the Sikkim Lokayukta Act, 2014, earlier made it mandatory for the State Government to transfer any allegation of corruption pending before the Vigilance Wing of the State Government or any other body or authority or the Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952, as the case may be, to the Lokayukta.

After amendment of Section 45, the statutory mandate has been modified from the initial, “shall stand transferred” to “may transfer”. This modification cannot be held to be arbitrary at all since it is always open to a complainant to

either approach the concerned Vigilance Wing of the State Government or directly before the Lokayukta.

That apart and in any event, as observed hereinbefore, the policy that has been adopted till now by the State Government makes it clear that it has been transferring all pending cases to the Lokayukta. This has been reiterated by the learned Additional Advocate General during her submissions. The apprehension of the writ petitioner, therefore, is totally unfounded.

For reasons stated above, we do not find any merit in the instant Public Interest Litigation, which is liable to be dismissed and is accordingly dismissed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ds/avi