

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.872 OF 2015

SACHCHIDANAND GUPTA
"SACHCHEY"

...PETITIONER

VERSUS

STATE OF U.P. THROUGH
CHIEF SECRETARY & ORS.

...RESPONDENTS

AND

CONTEMPT PETITION (CIVIL) NO.733 OF 2015

IN

WRIT PETITION (CIVIL) NO.410 OF 2012

WITH

CONTEMPT PETITION (CIVIL) NO.3 OF 2016

IN

WRIT PETITION (CIVIL) NO.410 OF 2012

J U D G M E N T

RANJAN GOGOI, J.

1. By our order dated 16th December, 2015 in Writ Petition (Civil) No. 301 of 2015 we had, in exercise of our power under Article 142 of the Constitution of India, appointed Justice Virendra Singh (Retd.) as the Lokayukta of the

State of Uttar Pradesh. Pursuant to the said order the Hon'ble Governor of Uttar Pradesh had issued a consequential order dated 18th December, 2015 appointing Justice Virendra Singh (Retd.) as the Lokayukta.

2. This Writ Petition under Article 32 has been filed seeking interference with the order of the Hon'ble Governor dated 18th December, 2015 primarily on the ground that this Court was misled by the State of Uttar Pradesh into passing the order dated 16th December, 2015 in W.P.(C) No.301 of 2015 appointing Justice Virendra Singh (Retd.) as the Lokayukta.

3. The circumstances in which the appointment of Justice Virendra Singh (Retd.) as the Lokayukta of the State of Uttar Pradesh was made by this Court on 16th December, 2015 have been set out in details in the said order. The said facts may be recapitulated.

"While deciding Writ Petition No.410 of 2012 and other connected cases

decided on April 24, 2014, we had inter alia passed the following order :-

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"In the light of the above discussion, we hold that Respondent 2 is duly holding the office of Lokayukta, U.P. under a valid law enacted by the competent legislature viz the Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975 as amended by the U.P. Lokayukta and Up-Lokayuktas (Amendment) Act, 2012. However, we direct the State to take all endeavours for selecting the new incumbent for the office of Lokayukta and Up-Lokayuktas as per the provisions of the Act preferably within a period of six months from today."

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The period of six months with effect from 24th April, 2014 within which this Court had desired that the Lokayukta should be appointed is long over.

Alleging willful disobedience of the said directions of the Court Contempt Petition No.70 of 2015 was instituted before this Court which was disposed of on 23.07.2015 by observing

as hereunder:-

"The contempt petition is disposed of on the hope and expectation that the constitutional functionaries entrusted with the duty of making appointment of Lokayukta will finalize the matter and take their decision within a period of thirty days from today"

In the said order we had also observed that the above order of the Court should be brought to the notice of all the authorities concerned.

The hope and expectation of this Court expressed in the aforesaid order dated 23rd July, 2015 appears to be gone in vain and has not been heeded to by any of the constitutional functionaries associated with the process of appointment. In fact, in the above circumstances, another contempt petition being No.733 of 2015 has been filed before this Court wherein vide order dated 4.12.2015 the Court had issued notice. The present writ petition under Article 32 of the Constitution was filed on 30th April, 2015 and notice thereon was issued on 2nd July, 2015.

In the aforesaid writ petition a prayer has been made for a writ or direction commanding the State Government to immediately appoint a new incumbent as Lokayukta and dispense with the services of Justice N.K. Mehrotra (Retd.), the present Lokayukta. Apart from the above, there is a prayer for initiation of contempt proceedings against the Chief Secretary of the State of Uttar Pradesh and other consequential directions. No response to the notice issued by this Court as far as back on 2nd July, 2015 has been filed by any of the contesting parties including the Chief Secretary, though notice has been duly served.

After hearing the writ petition on 14th December, 2015, we had permitted the learned Advocate General of the State, who was present in the Court, to ensure that the situation is remedied and appropriate orders for appointment of the Lokayukta are passed on or before 16.12.2015 i.e. today. The same has also not been done.

The facts stated above would indicate that the initial order of this Court dated 24th April, 2014 and the subsequent order dated 23rd July, 2015 in Contempt Petition No.70 of 2015 has gone unheeded. The present is a case where the Court is confronted by the failure, if not the refusal of the constitutional functionaries, to comply with the repeated orders of the highest Court of the land. The matter is deeply regrettable and to say the least is astonishing."

4. The issue that presently confronts the Court is whether the name of Shri Justice Virendra Singh (Retd.) which was one of the five names placed before the Court on behalf of the State of Uttar Pradesh with the statement that three names including the name of Shri Justice Virendra Singh (Retd.) had the concurrence of the Hon'ble Chief Minister and the Leader of Opposition (the Hon'ble Chief Justice of the High Court had not expressed his mind

on any of the said names) was a misrepresentation on the part of the State as is now sought to be contended on behalf of the petitioner. It is specifically asserted by the petitioner that in the meeting that took place on 15th December, 2015 objections being raised to the name of Shri Justice Virendra Singh (Retd.) by the Hon'ble Chief Justice of the High Court, the Hon'ble Chief Minister had agreed that his name would be dropped from the panel.

5. In this regard, we have been taken through a letter dated 16th December, 2015 of the Hon'ble Chief Justice of the High Court to His Excellency the Governor of Uttar Pradesh wherein the said fact has been recited and also the basis on which the Hon'ble Chief Justice of the High Court had opposed the name of Shri Justice Virendra Singh (Retd.) has been set out.

6. From the aforesaid letter of the Hon'ble Chief Justice, it appears that 5 names, mentioned below, were suggested by the Hon'ble Chief Justice:

- (i) Mr. Justice S U Khan
- (ii) Mr. Justice Devendra Pratap Singh
- (iii) Mr. Justice Amar Saran
- (iv) Mr. Justice Shri Kant Tripathi
- (v) Mr. Justice Sunil Hali

7. In the said letter it is further stated that there was however no unanimity on the names proposed by the Hon'ble Chief Justice of the High Court. The name of Shri Justice Virendra Singh (Retd.) was thereafter suggested by Hon'ble Chief Minister. The Chief Justice expressed his reservations as regards the name of Shri Justice Virendra Singh (Retd.). Accordingly it was agreed that the said name would be dropped. Four other names were suggested by the Hon'ble Chief Minister which are as follows:

- (i) Mr. Justice Zaki Ullah Khan
- (ii) Mr. Justice Sanjay Misra
- (iii) Mr. Justice Kalimullah Khan
- (iv) Mr. Justice Imtiyaz Murtaza

8. In the letter of the Hon'ble Chief Justice it is also mentioned that no agreement could be reached on any of the aforesaid names and the Hon'ble Chief Minister had in these circumstances suggested the name of Shri Justice A.N. Mittal, a sitting judge for appointment as Lokayukta to which the Hon'ble Chief Justice agreed to revert in the evening of 16th December, 2015. In the meantime the order of this Court was passed.

9. The names that were placed before the Court on 16th December, 2015 are as follows:

- (i) Mr. Justice Virendra Singh
- (ii) Mr. Justice Imtiyaz Murtaza
- (iii) Mr. Justice A.N. Mittal
- (iv) Mr. Justice Sanjay Misra

(v) Mr. Justice Kalimullah Khan

Out of the aforesaid names, Serial Nos. (i), (ii) and (iv) were stated to have the consensus of the Hon'ble Chief Minister and the Leader of the Opposition.

10. From the letter of the Chief Minister dated 1st January, 2016 to His Excellency the Governor of Uttar Pradesh in connection with the letter dated 16th December, 2015 of the Hon'ble Chief Justice of High Court, which letter has also been placed before us, two lists of names that were considered on 15th and 16th December, 2015 have been set out. List-A consists of 3 names whereas List-B consists of names of 51 judges of the High Court who had retired between 2011 and 2015. List-A referred to by the Chief Minister in his letter dated 01.01.2016 is extracted below:-

LIST A

Sr. No.	Applicant	Date of Application /Letter	Present Designation
1.	Hon'ble Mr. Justice Virendra Singh	28.05.2014	President, State Consumer Dispute Redressal Commission, Uttarpradesh
2.	Hon'ble Justice Zaki Ulla Khan	02.07.2014	Retired
3.	Hon'ble Justice Sabha Jeet Yadav	07.11.2014	Retired

11. Though there appears to be some common names in the lists mentioned in the letters of the Hon'ble Chief Justice of the High Court and the Hon'ble Chief Minister, the reaching of any agreement between the Chief Minister and the Leader of the Opposition on any of the three names furnished to the Court i.e. (i) Mr. Justice Virendra Singh; (ii) Mr. Justice Imtiyaz Murtaza; and (iii) Mr. Justice Sanjay Mishra is not borne out from the record. In para 7 of the letter dated

1.1.2016 of the Hon'ble Chief Minister though there is mention of a consensus between the Chief Minister and the Leader of the Opposition on some names, details thereof are not mentioned. However, in the list laid before this Court three names on which there was reportedly an agreement between the Chief Minister and the Leader of the Opposition has been mentioned. Para 7 of the said letter may therefore be reproduced below:

"7. It is material to point out that the five names of Hon'ble Judges were given by the State to the Hon'ble Supreme Court on 16.12.2005. Out of them, on few names, there were consensus between me and the Leader of Opposition, Legislative Assembly, wherein the name of Retired Justice Mr. Virendra Singh was included, on which Chief Justice had no consensus."

In fact from para 7, extracted above, it is clear that the Hon'ble Chief Justice of the High Court had reservations on the name of Shri Justice Virendra Singh (Retd.). In this regard, there is a subsequent letter dated 6th January, 2016 of the Leader of Opposition which clearly belies the fact that any agreement was reached on any name between the Hon'ble Chief Minister and the Leader of Opposition.

12. In the facts stated above, we are persuaded to hold that our order appointing Shri Justice Virendra Singh (Retd.) as Lokayukta was on the basis of the statement made on behalf of the State of Uttar Pradesh which now appears to be somewhat inaccurate. The picture that emanates from the above narration of facts is hazy, unclear and uncertain and we are left in serious doubt as to whether the

constitutional/statutory functionaries or at least two of them had, at all, agreed on any name or names. It is unfortunate that constitutional/statutory functionaries, inspite of prolonged and extended meetings, continued to have serious differences on a relatively simple issue i.e. appointment of the Lokayukta.

13. However, we now have on record the subsequent reservation of the Hon'ble Chief Justice of the High Court with regard to the suitability of Shri Justice Virendra Singh (Retd.) as Lokayukta as expressed in the Hon'ble Chief Justice's letter dated 16th December, 2015 to His Excellency the Governor of Uttar Pradesh. We can only wish that the above reservation of the Hon'ble Chief Justice had been placed before us before we had passed our earlier order dated 16th December, 2015 in Writ Petition (Civil)

No. 301 of 2015 particularly when the High Court was represented before us on the said date.

14. In view of the above reservations and having regard to the fact that this Court in Justice K.P. Mohapatra versus Sri Ram Chandra Nayak and others [(2002) 8 SCC 1 (paragraph 12 and 16)] had accorded primacy to the opinion of the Hon'ble Chief Justice in the consultative process for appointment of Lokayukta, we are inclined to recall our order dated 16th December, 2015 and instead appoint Shri Justice Sanjay Misra (Retired Judge of Allahabad High Court) as the Lokayukta of Uttar Pradesh. In making the aforesaid appointment we have taken note of the fact that the name of Justice Sanjay Misra appears in the common list of names that were discussed as mentioned in the letters of the Hon'ble Chief Justice of the High

Court and the Hon'ble Chief Minister referred to above.

15. Consequential orders in terms of the above direction may be issued by the authority/functionary without delay, and compliance report be sent to the Registry of this Court within a week.

16. With the aforesaid direction and observation, the writ petition and the contempt petitions as also all other pending applications are disposed of.

....., J.
(RANJAN GOGOI)

....., J.
(PRAFULLA C. PANT)

NEW DELHI
JANUARY 28, 2016