

Synopsis

That this Hon'ble Court while allowing Writ Petition No.245 of 2014 vide judgment dated 27.04.2017 had specifically observed that the Lokpal and Lokayutas Act, 2013 as it stands today was a perfectly workable legislation and there was no justification on the part of the Government to keep the enforcement of the said Act under suspension till the amendments, as proposed, are carried out. Thus, this Hon'ble Court had made it very clear in the said judgment that the Government must implement the said Act at the earliest and any delay on the part of the Government in implementing the Act would be unjustified. However, almost ten months since the judgement was passed, the Respondent/ Alleged Contemnor has not implemented the said judgement. Therefore, the Applicant above named is filing the instant application seeking the initiation of contempt proceedings against the above named Contemnor/ Respondent as he has willfully and deliberately failed to fully comply with the aforementioned judgment of this Hon'ble Court delivered in Writ Petition No.245 of 2014 titled *Common Cause v UOI*.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
CONTEMPT PETITION (C) NO. _____ OF 2018
IN
WRIT PETITION (CIVIL) NO.245 of 2014

IN THE MATTER OF:

COMMON CAUSE A REGISTERED SOCIETY
THROUGH ITS DIRECTOR
SHRI VIPUL MUDGAL
5, INSTITUTIONAL AREA
NELSON MANDELA MARG
VASANT KUNJ, NEW DELHI – 110070

APPLICANT

Versus

MR. AJAY MITTAL
SECRETARY (PERSONNEL)
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE & PENSIONS
DEPARTMENT OF PERSONNEL AND TRAINING
NORTH BLOCK
NEW DELHI – 110001

...ALLEGED CONTEMNOR

CONTEMPT PETITION ON BEHALF OF THE APPLICANTS U/S 12 OF THE CONTEMPT OF COURTS ACT, 1971 READ WITH RULE 3 (c) OF THE RULES TO REGULATE PROCEEDINGS FOR CONTEMPT OF THE SUPREME COURT, 1975 FOR INITIATING CONTEMPT PROCEEDINGS AGAINST THE RESPONDENT ABOVE NAMED FOR WILLFULLY AND DELIBERATELY NOT COMPLYING WITH THE JUDGMENT DATED 27.04.2017 OF THIS HON'BLE COURT IN WRIT PETITION (CIVIL) NO. 245 OF 2014.

To,

The Hon'ble the Chief Justice of India
And his other Companion Judges of
The Hon'ble Supreme Court of India.

Humble Application of the Applicant above named:

MOST RESPECTFULLY SHOWETH:

1. That this Hon'ble Court while allowing Writ Petition No.245 of 2014 vide judgment dated 27.04.2017 had specifically observed that the Lokpal and Lokayutas Act, 2013 as it stands today was a perfectly workable legislation and there was no justification on the part of the Government to keep the enforcement of the said Act under suspension till the amendments, as proposed, are carried out. Thus, this Hon'ble Court had made it very clear in the said judgment that the Government must implement the said Act at the earliest and any delay on the part of the Government in implementing the Act would be unjustified. However, almost ten months since the judgment was passed, the Respondent/Alleged Contemnor has not implemented the said judgment. Therefore, the Applicant above named is filing the instant application seeking the initiation of contempt proceedings against the above named Contemnor/ Respondent as he has willfully and deliberately failed to fully comply with the aforementioned judgment of this Hon'ble Court delivered in Writ Petition No.245 of 2014 titled *Common Cause v UOI*.

(A copy of the judgment dated 27.04.2017 passed in Writ Petition (Civil) 245 of 2014 is annexed as **Annexure P1 (pages _____ to _____)**).

2. The applicant is Mr. Vipul Mudgal who is the Director of the petitioner organisation, Common Cause A Registered Society.
3. Alleged Contemnor herein is the Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievance & Pensions, Government of India.

4. In the writ petition the petitioner had approached this Hon'ble Court questioning the entire selection process of Chairperson and Members of the Lokpal, initiated under the "Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of names for appointment of Chairperson and Members of Lokpal) Rules, 2014, framed under the Lokpal and Lokayuktas Act, 2013. The challenge was made mainly on the grounds that Rules 10 (1) & 4 (i) are ultra vires the main provisions of the Act. Subsequently the government filed an affidavit stating that the said rules have been amended.
5. Despite the fact that the impugned Rules had been amended in terms of the prayers made in the writ petition and thus there was no further impediment in proceeding further to make the appointment of Lokpal, the Government took no steps to make the appointment of the Lokpal. This despite the fact that the Lokpal and Lokayuktas Act, 2013 was passed by the Parliament on 18th December 2013.
6. Considering the developments in the amendments of the impugned Rules, the petitioner on 29.02.2016, sought to amend the writ petition with prayers to direct the Government to make the appointment of Chairperson and Members of the Lokpal as per the amended rules framed under the Lokpal and Lokayuktas Act, 2013 and to issue a direction to ensure that the procedure for selecting the Chairperson and Members of the Lokpal must be transparent as envisaged under S. 4 (4) of the Lokpal and Lokayuktas Act, 2013.
7. This Hon'ble Court held vide its order dated 27th April 2017, as follows:

“20...In this regard, all that the Court would like to say and observe is that such attempts at achieving better results in the working of any statute is a perpetual and ongoing exercise dictated by the experiences gained on the working of the Act. Such attempts cannot halt the operation and execution of the law which the Executive in its wisdom has already given effect to...”

22...the Act as it stand today is an eminently workable piece of legislation and there is no justification to keep the enforcement of the Act under suspension till the amendments, as proposed are carried out.”

8. Notwithstanding these observations of the court, the provisions of the Lokpal and Lokayuktas Act, 2013 are yet to be implemented and the Selection Committee/Search Committee under the Act are yet to be constituted so as to further the appointment of the Chairperson and Members of the Lokpal.

9. The Act had been brought into force on 16th January 2014 by a notification issued in the Official Gazette by the Government of India. But despite the passing of three years and despite the orders of this Hon’ble Court, the provisions of the Act have not been implemented. This Hon’ble Court held vide its judgment dated 27.04.2017 rejected the government claims that certain amendments to the Act need to be passed to make the Act workable. The very fact that the Amendment Bill [Lokpal and Lokayuktas and Other Related law (Amendment) Bill, 2014] has been gathering dust from the date of its introduction in the Parliament (18th December, 2014) would sufficiently demonstrate the lack of executive/legislative will to give effect to a salutary enactment on accountability of the political executive to an independent Lokpal.

10. Besides the Court held that the Amendment Bill was introduced in the Lok Sabha on 18th December 2014 and the Parliamentary Standing Committee Report was submitted on 3rd December 2015. The Amendment Bill sought the inclusion of Leader of the largest Opposition Party in the Lok Sabha in the Selection Committee, in lieu of the Leader of Opposition. Besides there is explicit mention that the absence of any member of the Selection Committee (or a vacancy in the post of any Member) will not invalidate the recommendations of the Selection Committee for appointment of the Chairperson or Member of the Lokpal or the appointment of the eminent jurist.
11. Further rejecting the government's contention that the said Report of the Parliamentary Committee is under scrutiny of the Government, this Hon'ble Court vide the impugned judgment stated:

"If the Act, as it exists, is otherwise workable and the amendment sought to be introduced by the Legislature is aimed at a more efficient working of some of the provisions of the Act, the wholesome principle that a law duly enacted and enforced must be given effect to will have to prevail and appropriate directions will have to be issued by the Court to the said effect."

12. This Hon'ble Court in the impugned order quoted from Utkal Contractors and Joinery Pvt. Ltd and Others vs. State of Orissa and Others (1987) 3 SCC 279,

"Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; no can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is

unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important.”

13. Further rejecting the government’s contention that the Selection Committee is incomplete without a Leader of Opposition, this Hon’ble Court held:

“We also do not see any legal disability in a truncated Selection Committee to constitute a Search Committee for preparing a panel of persons for consideration for appointment as the Chairperson and Members of the Lokpal and also for such a truncated Selection Committee to make recommendations to the President of India for appointment of the Chairperson and Members of the Lokpal.”

14. This Hon’ble Court further observed that there are no legal hindrances to operationalising the provisions of the Act. The Court held:

“A consideration of the other provisions of the Act in respect of which amendments have been proposed, as indicated in the Chart extracted above, and the views of the Parliamentary Standing Committee in this regard which are available in its report, in our considered view, are attempts at streamlining the working of the Act and in no way constitute legal hindrances or bars to the enforcement of the provisions of the Act as it stands today.”

15. Common Cause, in an RTI application dated 12th December 2017, to the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, sought to ascertain the details of the selection of Search Committee members and Chairperson and the details of the deliberations and recommendations of the meetings of the Inter-Ministerial Committee. In the RTI reply from the department

dated 12th January 2018, it was informed that two meetings of the Selection Committee were held in February 2014. At the second meeting on 21st February 2014 the Search Committee members were nominated. Eight persons were nominated for the Search Committee, two of whom declined the nomination. No details of the deliberations or the recommendations of the Inter-Ministerial Committee were provided in the RTI reply stating reasons that the decisions of the Committee have not been finalized and the information at this preliminary stage was refused under sections 8(1)(c) and (i) of the Right to Information Act, 2005.

(A copy of the RTI application filed by Common Cause with the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions dated 12th December 2017 and the reply from the department dated 12th January 2018 is annexed as Annexure P - 2 (Pages _____ to _____))

16. The then Attorney General for India had submitted before this Hon'ble court on March 28, 2017, that the report of the Parliamentary Standing Committee was under scrutiny of the Government and the same may be taken up for consideration by Parliament in the Monsoon Session of the same year. In a separate RTI application dated 21st December 2017, in view of the above statement, information was sought regarding the timeline when the Lokpal and Lokayukta and Other Related Law (Amendment) Bill, 2014 is expected to be brought before the Parliament. Common Cause did not receive a reply to this application after more than 30 days of filing it.

(A copy of the RTI application filed by Common Cause with the Department of Personnel & Training, Ministry of Personnel, Public Grievances &

Pensions dated 15th December 2017 is annexed as Annexure P – 3 (Pages _____to _____)

17. On 27 December 2017, Shri Anto Antony, Member of Parliament (INC) from Pathanamthitta constituency in Kerala raised the following questions in the Parliament with respect to the status of the Lokpal- Will the Prime Minister be pleased to state-
- (a) the present status of establishment of Lokpal in the country;
 - (b) whether there is a long delay in setting up of Lokpal;
 - (c) if so, the details thereof and the reasons therefor;
 - (d) whether the Government has any plan to set up Lokpal immediately; and
 - (e) if so, the details thereof and the action taken in this regard?

The reply by Dr. Jitendra Singh, the Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Prime Minister's Office, was as follows:

“(a)to(e): The Lokpal and Lokayuktas Act, 2013 came into force w.e.f. 16.01.2014. The Government initiated the process for appointment by convening the Selection Committee meeting on 03.02.2014. The Selection Committee under section 4(1) of the Act, also constituted an eight Member Search Committee on 21.02.2014 in terms of section 4(3) of the Act. Two members of the Search Committee declined the offer of appointment. Looking into such difficulties experienced and to remove certain difficulties in the operationalisation of the Act including issues relating to appointment of Chairperson and Members of Lokpal, etc. in the absence of a Leader of Opposition recognized as such in the Lok Sabha, the Government introduced the Lokpal and Lokayuktas and other related law (Amendment) Bill, 2014 in Lok Sabha on 18.12.2014. The Bill was referred to the Department –related Parliamentary

Standing Committee on Personnel, Public Grievance, Law and Justice for examination and report. The said Committee has submitted its report in the Parliament on 07.12.2015. The recommendations of the said Committee were presented before an Inter-Ministerial Committee (IMC) comprising seven Union Ministers. The recommendations of the IMC are under consideration of the Government.”

(A copy of the Lok Sabha question and response dated 27.12.2017 is annexed as Annexure ___)

18. This Hon'ble Court had declared the Lokpal Act of 2014 an “eminently workable” piece of legislation even without the amendment in April 2017. The government is neither moving forward with the amendment, nor respecting this Hon'ble Court's finding that there is no justification to keep the enforcement of the Act under suspension. The above responses to the RTI query and the Parliamentary questions raised by Mr. Antony expose a willful apathy on the part of the government to enforce and implement the Lokpal Act. According to the information given above, the Government has not progressed in either the implementation of the Lokpal Act as it stands since the judgement dated 27 April 2014 of this Hon'ble Court nor in the introduction of the Amendment Bill before the Parliament since the submission of the Inter-Ministerial Committee Report in the Parliament on 7 December 2015.
19. The inaction of the Government in operationalising the Selection and Search Committees and appointing a Lokpal, constitute a willful contempt of this Hon'ble Courts orders. It is a direct violation and contempt of the judgment/order dated 27.03.2017 in the aforesaid writ petition wherein it was made clear that there is no justification to keep the enforcement of the Act under suspension.

20. That this Hon'ble Court has unequivocally stated that, it is completely unjustified to halt the operation and execution of the law which the executive in its wisdom has already given effect to and has brought into force.
21. That the petitioner herein has not filed any other petition in this Hon'ble Court, or any High Court or any other Court throughout the territory of India regarding the matter in dispute. The petitioner has no better remedy available.

PRAYERS

In view of the above mentioned facts it is respectfully submitted that this Hon'ble Court may be pleased to:

- a) Initiate contempt proceeding against the alleged contemnor for willfully and deliberately disobeying the directions of this Hon'ble Court vide judgment dated 27.04.2017 passed in the Writ Petition (Civil) 245 of 2014
- b) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Petitioner Through:

(PRASHANT BHUSHAN)
Counsel for the Petitioner

Drawn by:

Filed on: January 2018

New Delhi

