

COMPLAINT CASE NO. 7 OF 2021

02.07.2021

[1] At the very outset, it is made clear that the Manipur Lokayukta is not concerned with the administrative order/policy of the Government of Manipur in issuing transfer and posting order of the Medical Officers and staff of different District Hospitals. But what is concerned with Manipur Lokayukta is as to whether the allegations and assertions of committing offences punishable under the Prevention of Corruption Act, 1988 (for short PC Act) made in the present complaint by the complainant in the transfer and posting of the Medical Officers and staff is substantiated by material evidence(s) or not, if so, to proceed in accordance with law.

[2] One Mr. Seth Shatsang filed the present complaint against the Principal Secretary, Department of Health, Government of Manipur alleging some Medical Officers who were posted at Ukhrul under the order of the Government of Manipur being No. MED-402/11/2020-HS-HEALTH dated 12th April, 2021 had failed to join at their place of posting. Three Medical Officers namely, (i) Dr. M. Sanjeet, MO, (ii) Dr. Geetchandra Tongbram, MO and (iii) Dr. Tikendrajit Ningombam, Anaesthetist despite the said transfer and posting order of the Government of Manipur failed to join their place of posting at Ukhrul because of favouritism and nepotism to them by the concerned authorities of the Government of Manipur, therefore, there is practice of corruption in the Health Department in the matter of administration of the District Hospitals particularly Ukhrul District Hospital.

[3] Establishment of Manipur Lokayukta for the state of Manipur is to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. 'Complaint' Under Section 2 (1) (d) of the Manipur Lokayukta Act, 2014 (for short Act, 2014) means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988. Chapter III of the PC Act comprises of 11 Sections i.e.

- (i) 7. Offences relating to public servant being bribed.
- (ii) 7-A Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.

- (iii) 8. Offences relating to bribing of a public servant.
- (iv) 9. Offences relating to bribing a public servant by a commercial organisation.
- (v) 10. Person in charge of commercial organisation to be guilty of offence.
- (vi) 11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant.
- (vii) 12. Punishment for abetment of offences.
- (viii) 13. Criminal misconduct by a public servant.
- (ix) 14. Punishment for habitual offender.
- (x) 15. Punishment for attempt.
- (xi) 16. Matters to be taken into consideration for fixing fine.

[4] It would be pertinent to refer to Section 7 and 7-A of the PC Act. For easy reference Section 7 and 7-A of the PC Act are reproduced hereunder :

7. Offences relating to public servant being bribed. – Any public servant who.—

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1. – For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, “S” asks a person, “P” to give him an amount of five thousand rupees to process his routine ration card application on time. “S” is guilty of an offence under this section.

Explanation 2. – For the purpose of this section, --

- (i) the expression “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a terms which shall not be less than three years but which may extend to seven year and shall also be liable to fine.

[5] It would be beneficial to quote some paras of the complaint as well as Additional Affidavit/Concise Statement of the Complainant/Petitioner for better appreciation of the facts for passing the present order. Accordingly, some part of the complaint dated 10.06.2021 reads as follows :

“I would like to bring to your attention the necessitous condition of Senapati and Ukhurul District Hospital. Both were upgraded to a 100 bedded status in the year 2016. However, till date the hospitals have not met the norms of Indian Public Health Standard (IPHS) with regard to the infrastructure, manpower requirements.

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Sir, according to Guidelines for District Hospital by Indian Public Health Standards 2012 (revised), a 100 bedded district hospital should have a minimum of 105 (29 Doctors, 45 Staff nurse, 31 Paramedical) total Medical and Paramedical Manpower.

The table below is a summary of the total sanctioned post for medical and non-medical staffs, vacancies filled and post lying vacant of the two districts.

District Hospital	Total sanctioned post MEDICAL (Specialist, Doctors, Staff Nurse, Paramedical)	Staff in position MEDICAL (as on 05/06/2021)	Vacant post MEDICAL (as on 05/06/2021)
Ukhurul	103	47	56
Senapati	113	61	52

Table for non-medical staffs.

District Hospital	Total sanctioned post MEDICAL (Specialist, Doctors, Staff Nurse, Paramedical)	Staff in position MEDICAL (as on 05/06/2021)	Vacant post MEDICAL (as on 05/06/2021)
Ukhurul	24	6	18
Senapati	48	30	18

Comparison between the minimum essential number of speciality doctors in different departments recommended by IPHS with the sanctioned and current position in district hospital Ukhurul and Senapati.

SPECIALITY	IPHS GUIDELINE	UKHRUL		SENAPATI	
		SANCTIONED	IN POSITION	SANCTIONED	IN POSITION
MEDICINE	2	1	1	1	1
SURGERY	2	1	1	1	1
OBSTERIC&GYNAE	2	1	1	1	1
PAEDIATRICS	2	1	1	1	0
ANAESTHESIA	2	1	0	1	1
OPHTHALMOLOGY	1	1	0	2	1
ORTHOPAEDICS	1	1	0	1	0
RADIOLOGY	1	1	0	1	0
PATHOLOGY	1	1	1	1	0
ENT	1	1	0	1	0
DENTAL	1	1	0	1	0
MO	11	14	13	24	17
DERMATOLOGY	1	1	0	1	0
PSYCHIATRY	1	1	0	1	0
MICROBIOLOGY	1	1	1	1	0
FORENSIC SPECIALIST	1	0	0	0	0
AYUSH DOCTORS	1	1	1	4	0
TOTAL	29	29	20	43	22

Para Nos. 2, 3, 4, 5 and 6 of the Additional Affidavit/Concise Statement of the Complainant dated 28.06.2021 reads as follows :

“2. That, the complainant/petitioner humbly submits that on 12th April, 2021, the Health Department, Government of Manipur was pleased to issue an order of transfer and posting of the MHS at various places of the State in public interest. But, despite of the order dated 12th April, 2021 of the transfer and posted the Medical Health Services Officers who were posted at Ukhurul have failed to join at their posting place allotted to them. It is pertinent to mention that transfer and posting is an incident of service and as such employee is bound to obey the Government order.

A true copy of the Order dated 12-04-2021 is annexed herewith and marked as Annexure-A/1.

3. That, the complainant/petitioner further begs to submit that on 08-05-2021, the Chief Medical Officer, Ukhurul District submitted a letter to the Director of Health Services, Government of Manipur to take up necessary action against the Medical Health Services Officers for early joining allotted to them as there is acute shortage of Doctors at Ukhurul District while facing the second wave pandemic – Covid -19.

A true copy of the letter dated 08-05-2021 by the CMO Ukhurul District is annexed herewith and marked as Annexure-A/2.

4. That, on the report of the press release and CMO, Ukhurul, the Director of Health services, Manipur furnished a letter dated 19th May, 2021 to the Principal Secretary (H&FW) of action taken report stating that “Hon’ble CM has informed on telephone to cancel the stay orders of transfer in respect of the MHS Doctors mentioned in Sl. No. 2, 3, & 6 and to ensure that the MHS Doctors join for duty in Ukhurul District”

A true copy of the action taken report dated 19th May, 2021 of the Director of Health services, Manipur is annexed herewith and marked as Annexure –A/3.

5. That, it is pertinent to mention that 6 (six) MHS Officers were transferred at Ukhrul District and out of 6 (six) MHS Officers, 3 (three) MHS Officers at Sl.No.2,3 & 6 of the above annexure –A/3 transfer were stayed by vide Govt. orders dated 18th May, 2021, 15th May, 2021 and 13th May, 2021 respectively after issuing an order of transfer and posting dated 12th April, 2021 which clearly shows that the respondent has a favouritism towards the 3 (three) MHS Officers by accepting gratification in collusion with the concerned Minister.

It is further beg to submit that the respondent has failed to take up any action against the MHS Officers who failed to join and discharge their duty even after lapse of 1/2 (one/two) months of the transfer order. Therefore, it indicates that there are practices of corruption in Health Department and the officer should be booked in accordance with law for the ends of Justice.

A true copy of the stayed order 18th May, 2021, 15th May, 2021 and 13th May, 2021 by the Deputy Secretary (Health&FW), Manipur is annexed herewith and marked as Annexure-A/4.

6. That, it is further beg to submit that the corruption by the public servant has become a gigantic problem. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties to his post. Therefore, the fore stated of the stayed order assessed the shortfall of the respondent.

It is, therefore, prayed that the Hon'ble Manipur Lokayukta be pleased to take up necessary action against the respondent for the ends of justice.”

[6] Under Section 20 (1) of the Act, 2014 Lokayukta on receipt of a complaint has to decide by passing an order to ascertain whether there exists a prima facie case for proceeding in the matter or investigation by any agency where there exists a prima facie case. No doubt, during the Preliminary Inquiry, the Inquiry Wing or any Agency on the basis of the material, information and documents collected may seek the comment on the allegations made in the complaint from the public officers or competent authority against whom the complaint has been filed. Further, under Section 20 (3) of the Act, 2014, Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant shall decide whether there exists a prima facie case for investigation by any agency. On conjoint reading of Section 2 (1) (d) and Section 20 of the Act, 2014 keeping in view of the aim and object for establishing the Manipur Lokayukta, Manipur Lokayukta on receipt of a complaint is bound to decide as to whether there exists a prima facie case for proceeding in the matter or not. At the same time, Manipur Lokayukta cannot blindly pass order, by accepting whatever the allegations made in the complaint, for the purpose of conducting Preliminary Inquiry against the public officer/servant against whom the complaint has been filed.

[7] By invoking the jurisdiction of Manipur Lokayukta under Section 20 (1) of the Act, 2014, Manipur Lokayukta has to see as to whether there are some materials to our satisfaction to substantiate the allegations made in the complaint even before passing order for conducting a Preliminary Inquiry by its Inquiry Wing. Therefore, a complete, fair and transparent proceeding in the present case would be the calling of comment(s) from the Principal Secretary, Department of Health, Government of Manipur to the allegations and assertions made in the present complaint and additional affidavit/concise statement of fact of the complainant, relevant portion of which had already been quoted above. The Principal Secretary, Department of Health, Government of Manipur shall not lose sight of Section 27 of the Act, 2014 while dealing with the proceedings before Manipur Lokayukta as proceeding before the Manipur Lokayukta is not an administrative proceeding but the proceeding before Manipur Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code (IPC). Proceeding before Manipur Lokayukta shall be taken as time bound as the period has been prescribed under the Act, 2014 to complete the different stages of the complaint. For better appreciation, Section 27 of the Act, 2014 is reproduced hereunder :

27. (1) Subject to the provisions of this section , for the purpose of any preliminary inquiry, the inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:--

- (i) summoning and enforcing the attendance of any person and examining him on oath;**
- (ii) requiring the discovery and production of any document;**
- (iii) receiving evidence on affidavits;**
- (iv) requisitioning any public record or copy thereof from any court or office;**
- (v) issuing commissions for the examination of witnesses or documents:**

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and
(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokayukta shall be deemed to be a Judicial proceeding within the meaning of section 193 of the Indian Penal Code.”

[8] For the foregoing reasons, Principal Secretary, Department of Health, Government of Manipur shall submit his comment to the allegation and assertions made in the complaint and additional affidavit/concise statement of the complainant on or before 19th July, 2021.

[9] Deputy Registrar, Manipur Lokayukta is directed to furnish a copy of this order, complaint, additional affidavit/concise statement of the complainant and annexures thereto to the Principal Secretary, Department of Health, Government of Manipur for necessary compliance.

[10] Deputy Registrar, Manipur Lokayukta is further directed to furnish a copy of this order to the complainant.

[11] Fix this case on **19.07.2021**.

Sd/-
MEMBER

Sd/-
CHAIRPERSON