



MIZORAM LOKAYUKTA

(Constituted under the Mizoram Lokayukta Act, 2014)

ORDER

Case No. MLC- 7/2019

In the matter of:

Pu Lalhriatrenga Chhangte

New Serchhip, Serchhip

:

Petitioner/Complainant

Versus

Pu Lal Thanhawla

Zarkawt, Aizawl

:

Respondent/OP

Date: 12.11.2021

This case emanates from an FIR dated 21.05.2018 filed by Pu Lalhriatrenga Chhangte, Serchhip before the Director, Anti-Corruption Bureau (herein after referred as ACB) against Pu Lal Thanhawla, the then Chief Minister of Mizoram alleging that Pu Lal Thanhawla acquired assets disproportionate to his known legitimate sources of income. After a year, the complainant filed a petition dated 28.05.2019 before the new Chief Minister complaining that as no action was taken on his complaint, he approached the Chief Secretary cum Chief Vigilance Officer on 08.08.2018 to expedite the matter but no action was taken and no reply was given either by the CVO or the ACB. Sometimes after the complainant sent his grievance letter, the Government transferred the FIR to the Mizoram Lokayukta on 17.06.2019 for information and necessary action. Thus, apparently nothing was done for more than a year.

2. On receipt of the FIR from the Government, the Chairperson, Lokayukta perused and examined it and considered it prima facie, a fit case for preliminary enquiry. The Lokayukta therefore passed an Order on 09.07.2019 for Preliminary Enquiry u/s 19(1) of the Mizoram Lokayukta Act, 2014 and directed the Anti-Corruption Bureau to conduct the Preliminary Enquiry. Accordingly, Case No. MLC-7/2019 was registered. The ACB obtained permission of the Government to register a case vide Memo No.

C.31016/81/2018-VIG dated 16.08.2019 and registered PE (LOK) No.13/2019 dated 20.08.2019 and appointed Pu B. Lalnghakliana, Dy. SP, ACB as Enquiry Officer.

3. As per the Act, the Preliminary Enquiry was to be completed within a period of 45 days. The ACB took a little more than 2 years to conduct the Preliminary Enquiry and submit the PE Report before the Lokayukta. In pursuance of the directions of Vigilance Department vide letter No.C.31016/81/2019-VIG dated 19.08.2021, the ACB submitted its Preliminary Enquiry Report along with the annexures to Mizoram Lokayukta on 25.08.2021.

4. The PE Report was examined and the date for hearing to afford an opportunity of being heard to the parties concerned was under consideration in the midst of Covid-19 pandemic, lockdown/ home-quarantine, etc. The PE Report did not suggest a criminal case against the respondent. In the meantime, the complainant Pu Lalhriatrenga Chhangte submitted an application to withdraw his complaint before the Lokayukta. Therefore, there was no need to conduct the hearing. Hence, the hearing was dispensed with.

5. The Enquiry Officer assessed the income of the respondent and his spouse. The income for different periods from various sources as assessed by the Enquiry Officer is as follows:

Income of Pu Lal Thanhawla:

Salary for January 2009 to 2011 August - ₹25,000/*- per month

Salary for September 2011 to November 2018- ₹70,000/- per month

Rent collected from Zarkawt building (from 29 tenements) is ₹6,08,500/- pm

Rent collected from New Market, Dawrpui building (22 tenements) is ₹1,11,200/- pm;

Total of ₹7,89,700/*- per month

Income of Pi Lalriliiani:

1. ₹1,05,000/- per month from rent and quarry (6 LSC located at Sakawrtuichhun)

2. ₹7,000/- per month rent collected from Luangmual LSC.

3. ₹19,685/- Pension (October to December 2020*)

Total of ₹1,32,185/*- per month

Their combined monthly income was at ₹9,21,885/-

The annual income was estimated at ₹1,10,62,620/-

The Respondent also took loan of ₹50,00,000/- in the year 2016.

On the other hand the expenditure was estimated as follows:

Sale deed and Registration - ₹17,61,760/-

Estimated Cost of construction - ₹98,21,603/-

6. The Enquiry Officer claimed to assess the total income of Pu Lal Thanhawla and his wife for a period of 10 years from 2008 to 2018 or upto date, but specific amount of

estimated income from all known sources of income for the whole period was not mentioned. Incomes on monthly basis or multiple months were randomly mentioned in different parts, making it very difficult to calculate the actual total estimate. Figures for individual items and the totals often do not tally. For instance, the total of Pu LalThanhawla's income does not include his (monthly) salary for the period from January 2009 to August, 2011. The pension received by him as ex MLA has completely been omitted which is unfair to the Respondent. The EO mentioned that the respondent, during enquiry, stated that he was allotted a plot of land A1-178 at New Town, North 24 Parganas District, Kolkata under the discretionary quota of the Chairman of West Bengal Housing Infrastructure Development Corporation Ltd. (HIDCO) and spent ₹17,61,760/- for sale deed of conveyance and for registration on 30.08.2013. He further stated that he took housing loan amounting to ₹50,00,000/- from Vijaya Bank, Aizawl Branch in 2016 for construction of G+4 building in the said plot of land. The respondent constructed G+4 building at the said plot and Pi B. Vanlalhrui, EE submitted assessment report that the probable expenditure of the said building is ₹98,21,603/- as per SOR 2014 for West Bengal. As per the record/documents submitted by Enquiry Officer, a total amount of ₹1,15,83,303/- was spent for the purchase and construction of the said building. A prima facie case to substantiate the allegation of minimum expenditure incurred by the respondent for his property i.e., ₹4,27,04,292/- is not established in the Preliminary Enquiry.

7. According to law, any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 4 years but which may extend to 10 years and shall also be liable to fine. Section 13 of The Prevention of Corruption Act, 1988 discusses criminal misconduct as follows:

- (1) A public servant is said to commit the offence of criminal misconduct –
 - (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
 - (b) if he intentionally enriches himself illicitly during the period of his office

Explanation 1- A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for

Explanation 2- The expression “known sources of income” means income received from any lawful sources.

8. The oft repeated Disproportionate Asset (DA) cases relate to this section of the Prevention of Corruption Act, 1988. If a public servant or any person on his behalf is in

possession of pecuniary resources or property disproportionate to his known sources of income which he cannot satisfactorily explain, he is considered to own disproportionate asset. In order to find out whether a person owns disproportionate assets, his entire income received from lawful sources during the relevant period has to be first calculated, then the normal maintenance expenditure of the family such as food, rent, electricity charges, water charges, clothing, maintenance of health, assets, wages of maids and household helpers, educational fees, travel expenses, etc. have to be set off and the remaining money/asset has to be compared with the assets acquired during the relevant period. If the sum thus arrived, after giving allowance of 10% or so, is more than the asset, DA case cannot be sustained and on the other hand, if the sum thus arrived at is less than the value of assets acquired during the same period, that person is said to have acquired disproportionate asset beyond his known sources of income and DA case has to be carried on to the logical conclusion.

9. However, the Enquiry Officer did not appear to follow the set pattern of enquiry into disproportionate asset cases. He did not go into the sources of income as well as the application of fund for creation of assets which generates income. He also did not look into the estimated amount of expenditure for the maintenance of family and income generating assets etc. For example, rent from shops (about ₹ 7 lakh per month) constitute the main source of the income which is considered to be legitimate but the sources of income from which the shop buildings were constructed or acquired, and the expenses for repair-maintenance etc were not taken into consideration. At the same time, acquisition of any other asset during the period under consideration (i.e., 10 years) if any, is kept out of purview. The EO also confined himself to see whether the figures given by the complainant is sustained or not. Therefore, the Enquiry cannot be treated as enquiry into the sources of fund and application of the said fund. The PE Report cannot be, strictly speaking, treated as PE Report of a Disproportionate Asset (DA) case. Besides these, the Sr. Superintendent of Police, ACB with the approval of Director, ACB suggested that the Enquiry may be closed without proceeding further enquiry. As the Mizoram Lokayukta still does not have an Enquiry Wing as provided under the Mizoram Lokayukta Act, 2014, there is hardly any option for the Lokayukta other than to close the case.

10. Hence, the case is hereby closed.


(C.LALSAWTA)
Chairperson
Mizoram Lokayukta