

Lokpal of India
Plot No.6, Vasant Kunj Institutional Area – Phase-II
New Delhi – 110070

Complaint No. : **226/2024**

Date : **09.01.2025**

Coram : **Shri Justice A.M. Khanwilkar**
Chairperson

Shri Justice L. Narayana Swamy
Member

Shri Justice Sanjay Yadav
Member

Shri Sushil Chandra
Member

Shri Justice Ritu Raj Awasthi
Member

Shri Pankaj Kumar
Member


Shri Ajay Tirkey
Member

ORDER

1. This complaint (dated 14.09.2024) is against a former Member of Parliament (Lok Sabha) - RPS. It is alleged that the RPS had approached the complainant for money to meet his election expenses; and also demanded a loan from him, which the complainant paid partly

through cash and partly through cheques. He has further alleged that the RPS has cheated and defrauded him and has refused to return the loaned money.

2. While analyzing the complaint, we have dilated on the factual matters in our order dated 14.11.2024. The same need not be repeated for the sake of brevity.
3. Suffice it to mention that after considering the complaint and the accompanying documents, as it contained allegation of corruption in the form of demanding money for incurring election expenditure, we deemed it appropriate to call upon the RPS to offer his explanation before proceeding further in the matter in terms of third proviso of Section 20(1) of the Lokpal and Lokayuktas Act, 2013 (for short, the Act of 2013).
4. The RPS after receipt of notice has finally submitted his explanatory affidavit sworn on 17.12.2024. The RPS has raised a foundational issue, touching upon the jurisdiction of the Lokpal to entertain this complaint in respect of acts of commission and omission pertaining to the period before the RPS had been elected and assumed the office of Member of Parliament - in particular during the election period. In that, the RPS was not a sitting Member of Parliament when the alleged act of corruption was performed. The RPS has relied on the plain construct of Section 14 of the Act of 2013, which bestows jurisdiction upon the Lokpal. It is only in respect of a person, who is or has been a Member

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of Parliament of either House of Parliament - as per clause (c) of Section 14(1) of the Act of 2013.

5. The central issue which needs to be dissected before analyzing the allegations in detail, is whether the Lokpal can assume jurisdiction in respect of the offending activities, which relate to a period when the named person was not a Member of Parliament and had occurred before the incumbent had assumed the status of public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 (for short, PC Act 1988) and in particular, Section 2(1)(o) of the Act of 2013.
6. Indubitably, the provision is not attracted to a situation where the named person is on his way to become a Member of Parliament. It is applicable only when the facts would reveal that he is or has been a Member of Parliament at the given point of time. In other words, until the person assumes the office of being a Member of either House of Parliament, he cannot be regarded as a public servant within the meaning of the stated provisions. This plea of the RPS is irrefutable. As a matter of fact, this plea is reinforced by the "Explanation" at the end of Section 14(4) of the Act of 2013, which reads thus:

"Explanation.— For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity."

7. *A priori*, unless we were to elongate the meaning of the term public servant in the respective Acts (PC Act, 1988 or Act of 2013) to the



extent that a person who is on his way to become a public servant can also be proceeded with under the PC Act 1988 and as a sequel thereof under the provisions of the Act of 2013 or *vice-versa*, it is not open to bring such person within the ambit of Section 14 of the Act of 2013. To do so would be doing violence to the legislative intent and also against the tenet of interpretation of criminal statute.

8. Accordingly, in our view, the RPS has made out a formidable defence which involves question of jurisdiction of the Lokpal. *A fortiori*, this complaint is untenable.
9. The RPS in his affidavit has placed on record that there is civil dispute pending between his wife and the complainant and his wife in respect of the amounts allegedly paid by the complainant to RPS or his wife. It is not necessary for us to examine those issues, which are already *sub judice*. We may not be understood to have expressed any opinion one way or the other, in respect of those proceedings.
10. The fact remains that the thrust of the allegations articulated in the complaint to name the RPS, as having indulged in corruption is about the demand of the RPS to finance his election expenses, which



pertains to the period before the RPS had assumed the office of Member of Parliament.

11. Accordingly, we dispose of this complaint, as the allegations even if accepted as it is, *in arguendo*, the same cannot be linked to person being a public servant at the relevant point of time.

12. Ordered accordingly.

Sd/-
(Justice A.M. Khanwilkar)
Chairperson

Sd/-
(Justice L Narayana Swamy)
Member

Sd/-
(Justice Sanjay Yadav)
Member

Sd/-
(Sushil Chandra)
Member

Sd/-
(Justice Ritu Raj Awasthi)
Member

Sd/-
(Pankaj Kumar)
Member

Sd/-
(Ajay Tirkey)
Member


(Court Master)

/SN/