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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve :11.02.2009

Pronounced on : 13.03.2009

W.P. (C) 699/2009

GOVT. OF NCT DELHI

..... Petitioner

Through: Mr. Goolam Vahanwati, Solicitor
General of India with Mr. Najmi Waziri
and Mr. Rajiv Nanda, Advocates.

versus

OFFICE OF LOKAYUKTA & ANR.

.... Respondents

Through: Mr. Parag P. Tripathi, ASG with
Ms. Priya Kumar, Advocate.
Mr. Bipin Bihari Singh and Mr. Balendu Shekhar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J.

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1. The Government of National Capital Territory, which has preferred these proceedings, under Article 226 of the Constitution of India, claims to be aggrieved by an order of the Lokayukta, Delhi, calling upon it to produce certain files.

2. The essential facts necessary to decide the controversy in this case are set out as follows. The second respondent in these proceedings (hereafter “the complainant”) lodged a

complaint with the Lokayukta, alleging embezzlement of public money through improper and corrupt means, in regard to the purchase of non-airconditioned Low Floor buses, for the Delhi Transport Corporation. The complainant also claimed action against the Chief Minister of the Govt. of NCT of Delhi, the Minister of Transport and other officials as well as functionaries. This complaint was registered as C-76/LOK/2008/1176; by order dated 17-11-2006, the Lokayukta directed production of records relating to *"issuance and processing of tender for purchase of 625 Non AC low floor buses including the record including the decision making process"*. The NCT was asked to produce such records in the hearing scheduled on 17-12-2008.

3. The NCT relies on the proceedings recorded by the Lokayukta, which reflect its contention that buses acquired by the DTC were not comparable with the semi low floor buses purchased by the Chennai Metropolitan Corporation Ltd. The Lokayukta also noticed that the complainant was unrepresented; it stated that:

"Last and final opportunity is given to the complainant to be present to substantiate his complaint failing which it will be proceeded on the basis of the record. The record shall be made available to the office of the Lokayukta two days before the next date of hearing. The matter will be put on 9th January, 2009 at 11: AM"

4. The proceedings held on 9-1-2009, the next date of hearing disclose that the NCT did not produce the record; its counsel pressed several contentions, including the untenability of the complaint, and urged that the substratum of the allegations was false. The NCT also urged that the complainant was liable to be prosecuted for falsehood. It also contended that the Low floor buses procured for the DTC were better than the semi low floor buses acquired by the Chennai Corporation. The Lokayukta recorded that the complainant was unrepresented on that day, viz. 9-1-2009; it also noted that arguments would be continued on 15-1-2009. On the said

latter date, the complainant's counsel appeared, and urged that he could not be present on the previous two dates of hearing due to personal problems emanating from "*his visit home town*" and that he would move an appropriate application. The Lokayukta further recorded the complainant's submission that court fee of Rs. 500/- had been paid on 20-11-2008; yet no receipt date was evident on the record. On that date, i.e. 15-1-2009, the proceedings further recorded the justification for acquiring the Low floor buses, as well as the judgment of this court in WP 16565/2006, *in the context of jurisdiction of the Lokayukta under Section 16 of the Act*. The Lokayukta recorded that an annexure listing out some of the questions on which information would be helpful in assisting it in discharging its functions under Section 16 of the Act, was handed over to the NCT's counsel. It further drew the attention of NCT to the order dated 17-11-2008, concerning production of documents and files.

5. The NCT alleges that on 22-1-2009, the complainant moved an application seeking permission to join the proceedings; the application was unsupported by any affidavit. It urges that though it should not have been taken on record, the Lokayukta did so, and required it (NCT) to respond to it. The NCT contends having filed an application urging the Lokayukta to dismiss or reject the complaint, on 22-1-2009, on grounds that it was baseless, malicious and frivolous. The Lokayukta issued notice to the complainant, which was objected to by the NCT, which urged that the complainant's application to join the proceedings had not been decided. The NCT also pointed to some errors, said to have been reflected in the previous order of the Lokayukta, dated 15-1-2009, about the date when the complainant's counsel had submitted, the court fee was deposited. The Lokayukta corrected the date, preferring the complainant's claim to have deposited the court fee, on 20-11-2009. NCT further contends that the Lokayukta

was requested to first rule on maintainability of the complaint; it says that the submission was that unless such a ruling was given, the records “need not be produced”. According to the NCT, the Lokayukta was told that if the proceedings were to be treated as *suo motu*, the documents could be produced.

6. On 22-1-2009, the Lokayukta recorded as follows:

“In this connection it may be recapitulated that on 17.11.2008 itself while issuing notice to the Govt. of NCT directions for production of records relating to issuance and processing of tender for purchase of 625 Non AC low floor CNG buses, including the record containing the decision making process, were given and the complaint was posted for hearing on the next date.

The complainant was not present on the next date when the matter was adjourned to 9th January 2009 giving the last and final opportunity to be present to substantiate the complainant. However, on 09.01.2009 Ld. Counsel for Respondent was heard on his submission that the buses ordered by the M/s. Metropolitan Transport Corporation Ltd., (Chennai) were the Semi Low floor Buses and not the Low Floor Buses. Mr. Waziri was also heard on the professed benefits and advantages of Low Floor Buses over the ordinary and the Semi Low Floor Buses, to justify the acquisition of the said Low Floor Buses in their entirety. On 15.1.2009 the attention of the counsel had been drawn on the direction given for production of records which had not been complied with. The respondent had prior to 09.10.2009 placed a 92 pages compilation of documents which included articles, copies of the judgments in writ petition, photo copies of the complaint, terms and conditions of supply of passenger buses etc., Mr. Waziri states that he would file appropriate list of documents giving the particulars of the compilation. Let this be done. This is not however, a substitute for the records directed to be produced.

The case be come up for further proceedings and hearing on 28.01.2009 at 2.00 PM and for appropriate orders and directions with regard to non compliance of the directions for production of records for which orders are reserved.”

7. On 28th January, 2008, the Lokayukta heard counsel for the NCT and ruled that if the records were not produced on 2nd February, proceedings under Section 175, IPC were to be initiated. The extracts of portions of that order, impugned in these proceedings, without reproducing inessential details are as follows:

"On 17.11.2008, a notice was issued to the Govt. of NCT, requiring it to produce the record relating to issuance of tenders for purchase of 625 non AC low floor and CNG buses, including the record containing decision making process. The respondent entered appearance on 09.01.09 through Shri Nazmi Waziri, Advocate. Officials of the Transport Department along with Chief General Manager, DTC have been appearing in the proceedings. The respondent through counsel stated that the buses ordered by the Metropolitan Transport Corporation, Chennai were not Low Floor Buses and thus were not by the unsuccessful Tenderer failed. Writ Petition and SLP have been dismissed. The complaint was alleged to be false & vexatious.

(3) On 17th December, 2008 and 9th January '09 the complainant was not present. Last and final opportunity was accorded to the complainant to substantiate the complaint failing which it would be decided on the basis of record as available and matter was posted for 15.01.2009. However, the complainant's counsel appeared on 15.01.2009. He sought permission to join in the proceedings for which an application has been given to the respondent and the same is pending for reply if any respondent & disposal.

(4) The Respondent also moved an application seeking dismissal of the complaint as not being maintainable. Respondent also prayed for penalizing and punishing the Complainant for making false complaint u/s 9 (2) of the Delhi Lokayukta & Upalokayukta Act 1995 hereinafter referred to as the Act. The said submission had also been made on 09.01.09. The aforesaid two applications are pending disposal.

(5) The respondents seek dismissal of the complaint and also action u/s 9(2) of the Act against the complainant. The complainant of necessity, therefore, has to be heard on the said relief. Moreover, the Complainant's application for joining in the proceedings to substantiate his complaint is still pending. Records have accordingly to be seen for both these purposes. It does not lie in the mouth of the respondent to decline to produce the records and insist what they term as preliminary objection to the maintainability of complaint being decided, first without production of records.

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(9) The Ld. Counsel for the respondents argues that they need not produce the records in proceedings emanating from the complaint while they would produce the said records in suo moto proceedings after directions are given. The above plea and stand as taken to say the least is wholly ill advised. In this connection, reference is made to Section 10 and 11 of the Act which are reproduced for facility of reference...

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The Lokayukta is fully conscious of the ambit and scope and limitation of the jurisdiction under Section 16 of the Act which purely recommendatory containing

suggestions for improvement etc. In fact the Respondents have to be fully heard on the said aspect.

(11) Non compliance of the directions for production of records tantamounts to defiance and non cooperation by an administration professed to be committed to efficiency and transparency. It does not certainly augur well. In the interest of justice, another opportunity is given to the Secretary, Department of Transport or the Officer holding charge of the said Department to produce the records relating to the calling of tenders for 625 Low Floor Buses and the decision making process as also any other relevant records wherein a decision is proposed to be taken for acquisition of Low floor buses or similar low floor buses keeping in mind the total requirement of buses.

(12) Secretary, Department of Transport or the Officer holding charge of the said Department personally to produce the above relevant records on 02.02.09 at 2.00 PM failing which proceedings under Section 175 IPC shall be initiated against the persons committing the offence."

8. The NCT attacks the above order. It argues that the Lokayukta should not have proceeded further with the matter without first determining the maintainability of the complaint. It is contended that the Lokayukta should have first considered the preliminary objection urged by it, and, if the need arose, proceeded to examine the matter further. In this connection, it is contended that Section 10 of the Delhi Lokayukta and Upalokayukta Act, 1995 (hereafter "the Act") mandates that the Lokayukta has to formulate its procedure. In this case, the Lokayukta did not formulate any procedure, and without determining whether the complaint could be entertained, straightaway proceeded to direct production of documents. It is contended that the procedure sought to be followed is contrary to the Act and Rules framed under it.

9. The Learned Solicitor General for India, who appeared for the NCT, urged that the Act mandated, by Section 9, that the complaint in case of alleged wrongdoing or misconduct of the Chief Minister, had to be in the prescribed form; the complaint, in the present case, was not in

that form; besides, the court fee prescribed too had not been filed. It was urged that the Lokayukta should have, in all fairness first decided the question of maintainability, since the complainant had without cause, absented himself, and his request to join proceedings had not been granted. Instead, the Lokayukta persisted in demanding production of the file.

10. It is contended that the Lokayukta is virtually conducting a roving inquiry, without first satisfying itself about the feasibility of the complaint before it. Section 10, it is urged, obliges the Lokayukta to first formulate a procedure for holding an inquiry, and thereafter, issue notice to the concerned parties. If need be, after issuance of notice, the power to direct production of documents can be exercised. It is argued that when the complainant or his representative was absent on two dates of hearing, including 9-1-2009, and later caused an application to join the proceeding, the feasibility of continuing with the proceeding had to be first examined. It was in this connection that an application, moved for rejection of the complaint, was filed on 22-1-2009; the complainant's application to join the proceeding too was filed and remained pending; no orders were made on it. In the circumstances, the Lokayukta should not have proceeded with the merits of the complaint, and directed production of the relevant records.

11. It was argued that the Lokayukta overlooked that the question of exercising powers under Section 11 would arise, if at all, after the procedure outlined under Section 10 is suitably published or made known to all; thereafter, the material has to be assessed, and subsequent to these, notices on the complaint are to be issued. In the absence of these minimum requirements, the Lokayukta would be free to adopt whatever procedure it chooses. Such an *ad-hoc* approach cannot be countenanced.

12. The NCT further contends that the Lokayukta exercises powers either *suo motu*, or further to a complaint or information; it relies upon Section 7. It is contended that if the proceedings are not *suo motu*, and if the Lokayukta proposes an inquiry, based on a complaint, it must formally take cognizance of the matter, and issue notice. The proceedings commence after the issuance of such notice and, contends the NCT, the authority (Lokayukta) derives its power to summon records and documents, under Section 11 to aid such inquiry or proceedings.

13. The Lokayukta's position, articulated through the Additional Solicitor General for India, who represented it, is that the formality of having to issue notice is not a *sine qua non* for its exercising its power under Section 11. Being invested with the duty of examining complaints and matters, although its reports are not necessarily binding, the Lokayukta possesses procedural flexibility in the conduct of its proceedings. It can, wherever appropriate, decide first to have a "look in" to see whether the complainant's allegations are merited, and for that limited purpose, call for the records, even at the preliminary stage. At such point in time, the Lokayukta may not necessarily issue notice to the opposite party or authority, in the sense that it calls upon such party to state its version.

14. The Lokayukta further argued that the NCT should not have rushed to the court with the writ petition, as it did. The Lokayukta states that the points sought to be urged as trenching upon its jurisdiction were not appropriately raised by the NCT before it, in the proceedings, or even in the writ petition. It is argued that the scheme of the enactment is such that considerable leeway is afforded to the Lokayukta to formulate its procedure, as is evident from Section 10. Dwelling further on the aspect, it is emphasized that schematically, that provision is placed before Section 11, which enables the authority concerned to summon the records; yet

the Act does not constrain the power to any particular stage of the proceedings. Having regard to the purpose of the enactment, the widest possible amplitude should be conceded to the Lokayukta in regard to its functioning, and the restricted interpretation, urged by the NCT should not be accepted by the court.

15. The complainant before the Lokayukta, though issued with notice in the writ petition, did not urge anything before the court, at the hearing. The Court had during the hearing suggested that the Lokayukta may first consider ruling upon the pending applications, to avoid further controversy. However, the learned Additional Solicitor General stated that his instructions were to submit that the Lokayukta's position was that the notice to call for the documents and files was regardless of whether notice were issued in the complaint, and that this Court should rule appropriately give its decision on the issues.

16. Before a discussion on the merits of the case, the scheme of the Act may be noticed. Section 2 (b) defines "allegation" to be "in relation" to a public functionary , "by affirmation that such public functionary in capacity as such" –

- (i) has failed to act in accordance with prescribed norms of integrity and conduct
- ii) has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person;
- iii) was actuated, while so functioning by improper/ corrupt motives or personal interest;
- iv) is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known resources of income.

17. Section 2(m) defines a “public functionary” in very broad terms; the expression extends to those holding (and who had held) the position of Chief Minister (of the Govt. of NCT); Ministers, Chairmen of Corporations, Members of Legislative Assemblies, functionaries of local bodies and Corporations, heads of Government companies and corporations, etc. Section 7 sets out the jurisdiction, as it were, of the Lokayukta. It reads as follows:

“7. Matter which may be inquired into by Lokayukta or Uplokayukta- Subject to the provisions of this Act, on receiving complaints or other information or suo moto –

(a) The Lokayukta may proceed to inquire into an allegation made against a public functionary in relation to whom either the President or Lieutenant Governor is the competent authority;

(b) The Upalokayukta may proceed to inquire into an allegation made against any public functionary other than that referred to in clause (a);

Provided that the Lokayukta may inquire into an allegation made against any public functionary referred to in clause (b).

Explanation :- For the purposes of this section the expressions “may proceed to inquire” and “may inquire” include investigation by any person or agency at the disposal of the Lokayukta and Upalokayukta in pursuance of sub-section (2) of Section 13.

18. Section 8 prescribes what are not subject to inquiry; they are matters referred for inquiry under the Commissions of Inquiry Act, 1952; or matters relating to an allegation against a public functionary, if the complaint is made after expiration of a period of five years from the date on which the conduct complained against is alleged to have been committed. Section 9 prescribes the procedure relating to complaints. Section 9(1) prescribes that complaints have to be in the prescribed form, supported by an affidavit, also in a prescribed form; it (the complaint) has to be accompanied by a deposit of Rs. 500/-. Section 9(2), beginning with a *non-obstante* clause, enacts that every person “who willfully or maliciously

makes any false complaint under this Act,” shall, on conviction, be punished with rigorous imprisonment which may extend to three years or with fine which may extend to five thousand rupees or with both. The court concerned has also the power to award compensation; the proviso enacts that the offence can be prosecuted only upon a complaint by the Lokayukta or Upalokayukta. Sections 10 to 12 are as follows:

“10. Procedure in respect of inquiry.- The Lokayukta or Upalokayukta shall, in each case before it, decide the procedure to be followed for making the inquiry and in so doing ensure that the principles of natural justice are satisfied.

11. Applicability of Evidence Act and Code of Criminal Procedure.- (1) The provisions of the Evidence Act, 1872 (1 of 1872), and the code of Criminal Procedure, 1973 (2 of 1974), shall as nearly as may be, apply to the procedure of inquiry before Lokayukta or Upalokayukta in the matter of –

- (i) summoning and enforcing the attendance of any person and his examination on oath;*
- (ii) requiring the discovery and production of documents and proof thereof;*
- (iii) receiving evidence on affidavits;*
- (iv) requisitioning any public record or copy thereof from any court or office;*
- (v) issuing commissions for examination of witnesses or documents; and such other matters as may be prescribed;*

Provided that no proceeding before the Lokayukta or Upalokayukta shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied.

(2) Proceedings before the Lokayukta or Upalokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1960 (45 of 1960).

(3) The Lokayukta or Upalokayukta shall be deemed to be a Civil Court for the Purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

12. Report of Lokayukta and Upalokayukta -

- 1. If, after inquiry into the allegations, the Lokayukta or an Upalokayukta is satisfied that such allegation is established, he shall, by report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.*
- 2. The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report.*
- 3. If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the public functionary and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Lieutenant Governor and also inform the complainant concerned..”*

19. Section 13 provides for Staff of Lokayukta and Upalokayukta. Under Section 13 (1), the Government has to provide officers and other employees to assist the Lokayukta and Upalokayukta in the discharge of their functions under this Act. Section 13 (2) provides for placing, at the disposal of the Lokayukta and Upalokayukta, any officer or investigating agency. It reads as follows:

“without prejudice to the provisions of sub-section (1), the Lokayukta or an Upalokayukta may, for the purpose of conducting inquiries under this Act, utilize the services of :—

- i. any officer or investigation agency of the Government or the Central Government, with the concurrence of that Government,*
or
- ii. any other person or agency.”*

20. The Delhi Lokayukta and Upalokayukta (Investigation) Rules, 1998, (hereafter “the Rules”) were framed under provisions of the Act. Rule 2 contains definitions; sub rule (ii) defines complaint to mean *“an allegation made in writing to the Lokayukta or the Upalokayukta with a view to their taking action under the Act”*. Rule 2 (iv), which appears to be relevant for purposes of the present case, reads as follows:

“(iv) “Investigation” means any enquiry or other proceedings in connection with the complaint but does not include a preliminary enquiry.”

Rule 6 deals with complaint, and stipulates (6(1)) that a complaint against the Chief Minister, a Minister or a Member of Legislative Assembly “shall be in Form I accompanied by an affidavit in Form III in support of its contents.” Complaints against other functionaries on the other hand “shall be in Form II accompanied by an affidavit in Form III in support of its contents.” Rule 7 prescribes that the fee of five hundred rupees shall be paid in judicial stamps. Rules 15 and 16 stipulate as follows:

“15. Powers to regulate proceedings and investigations. - The Lokayukta or the Upalokayukta shall have the powers, subject to the provisions of the Act, to regulate the conduct of proceedings, investigations and enquiries in all matters not provided for in these rules.

16. Procedure to be adopted at the investigation. – When the Lokayukta or the Upalokayukta conducts an investigation under the Act, he shall after a copy of the complaint or the statement of the grounds of the investigation has been served on the public functionary concerned, afford reasonable opportunity to him or his authorized representative to inspect or copy the affidavit of the complaint and other documents which may have been filed in support of such complaint, affidavit or a statement.

Explanation .- “Copy” includes preparation of a copy in manuscript or typewriting machine.”

21. The schematic arrangement of various provisions and the powers conferred would show that the Lokayukta (a term used collectively to include Upalokayukta in regard to such matters, in the present judgment) can exercise jurisdiction on “complaint”; “information” or “*suo motu*”, under Section 7. However, each of these should refer to some “allegation” – a term expressly defined in Section 2(b). The Lokayukta’s jurisdiction extends only to defined functionaries, and not to members of the public services, in view of Section 17. It also cannot proceed in respect of matters referred to Commissions of Inquiry (Section 8(1)) and allegations which are stale and beyond a period of five years (Section 8(2)). Section 7, besides classifying the powers of the two functionaries- the Lokayukta and Upalokayukta, also enacts, in the explanation that “inquiry” includes “*investigation by any person or agency at the disposal of the Lokayukta and Upalokayukta in pursuance of sub-section (2) of Section 13.*” The latter provision enables for provision of an officer or agency to assist the Lokayukta, “for the purpose of inquiries” under the Act. Rule 2(iv) defines “investigation” as

“any enquiry or other proceedings in connection with the complaint but does not include a preliminary enquiry.”

22. The Act and Rules facially appear to use the terms “inquiry” and “investigation” synonymously; both are “proceedings”. However, an investigation does not include “a preliminary enquiry”. Rule 16 reinforces this dichotomy and states that after a Lokayukta conducts an investigation under the Act, he shall after a copy of the complaint or the statement of the grounds of the investigation has been served on the public functionary concerned, afford reasonable opportunity to him or his authorized representative to inspect or copy the affidavit of the complaint and other documents which may have been filed in support of such complaint,

affidavit or a statement.

23. The above provisions have to be kept in mind, when construing Section 10 (and the corresponding Rule 15) which confers flexibility to the Lokayukta in procedural matters, at the same time obliges it to, in each case before it, decide the procedure to be followed for making the inquiry and in so doing ensure that the principles of natural justice are satisfied.

24. The only decision on this issue by the Supreme Court was from the State of Andhra Pradesh, i.e. *Ch. Rama Rao v. Lokayukta* 1996 (5) SCC 304. The question was whether at the stage of preliminary inquiry, notice had to be issued. The court held that:

“Considered from the operational conspectus of the above provisions, it would not be necessary to issue any notice or give opportunity to a public servant at preliminary verification or investigation. When the Lokayukta or Upa-Lokayukta, as the case may be, conducts a regular investigation into the complaint, it would be necessary to give prior opportunity to the public servant etc. By implication, such an opportunity stands excluded when preliminary verification or investigation is conducted. The object appears to be that the preliminary verification or investigation is required to be done in confidentiality to get prima facie evidence so that the needed evidence or material may not be got suppressed or destroyed...”

(emphasis supplied)

25. Although the precise nature of questions, which this court is called upon to decide did not arise in the case, cognate issues were considered vis-à-vis the aspect of procedure followed by Lokayukta in Karnataka, by the Karnataka High Court, in *Professor S. N. Hegde v. The Lokayukta* ILR 2004 KAR 3892. Sections 9 and 12 of the Karnataka Act are similar to Sections 10 and 12 of the Delhi Act. If anything, Section 9 outlines the steps in detail, in Karnataka. The High Court held that:

"92. A reading of Section 9 of the Act makes it clear that the Legislature took care to insist upon the observations of the principles of natural justice even before the Lokayukta decides to conduct an investigation under the Act after making preliminary enquiry. If the intention was that without hearing the public servant the Lokayukta should not embark upon an investigation and took care to specifically provide for the observance of principles of natural justice as contained in Section 9(3), it cannot be said after satisfying the aforesaid provision, the Lokayukta is under no obligation to follow the principles of natural justice while actually conducting an investigation into the complaint after the public servant offered his comments, denying the allegations made against him. The principles of natural justice and the necessities for its observance in any manner of investigation or enquiry is sine qua non of every judicial or quasi-judicial act.

93. It is true that there is no express provision in Section 9 requiring that audi alteram partem rule should be followed after the Lokayukta or Upalokayukta decides to proceed with the investigation under subsection (4) of Section 9 of the Act. Absolute discretion is conferred on them. Such procedure for conducting any such investigation which they consider appropriate in the circumstances of the case. Merely because it is not so stated it cannot be said that the law does not require the Lokayukta not to follow the principles of natural justice. On the contrary, it is settled law that in the absence of an express prohibition contained in the statute exempting the authorities from following the principles of natural justice, the principles of natural justice is engrafted into the provision of law by implication.... When absolute discretion is conferred on the Lokayukta and Upalokayukta because of their past judicial status the Legislature with due respect to the high office held by them thought it fit to confer on them absolute discretion with the fond hope that the procedure which will be followed by them will never be attacked on the ground of not following the principles of natural justice."

26. In an earlier decision, *N. Gundappa v. State of Karnataka and Ors.* ILR 1990 Kar. 228, dealing with the question, it was held that-

"10. It is relevant to notice that on the basis of the investigation conducted by the Lokayukta or Upalokayukta as the case may be into a complaint made before him involving a 'grievance' or an 'allegation', he has to make a report under Section 12 of the Act to the Competent Authority. The Competent Authority, if satisfied, can also make a declaration in his report as per Sub-section (1) of Section 13 of the Act that the public servant concerned should not continue to hold the post held by him, The Competent Authority is required to take action within the period prescribed in Section 12 and intimate to the Lokayukta the

action taken or proposed to be taken on the report. If that Lokayukta or the Upalokayukta, as the case may be, is not satisfied with the intimation regarding the action taken or proposed to be taken by the Competent Authority, it is open to him to make a special report upon the case to the Governor and also inform the Competent Authority concerned and the complainant under Sub-section (5) of Section 12 of the Act. Therefore, it is clear that investigation into a complaint and the report made by the Lokayukta or Upalokayukta to the Competent Authority will have a serious impact on the public officer concerned. It will affect his service very seriously as the Competent Authority has to examine the report forwarded to it and report the action taken thereon to the Lokayukta or Upalokayukta with in the period stipulated in Section 12 of the Act. If a declaration is made in the report in terms of Section 13(1) of the Act and on acceptance of the same by the Competent Authority, the public officer concerned will have to be placed under suspension. That being so, the Lokayukta or the Upalokayukta as the case may be is required to follow the procedure laid down in Sub-section (3) of Section 9 of the Act. It is not open to the Lokayukta or the Upalokayukta, as the case may be, to disregard or overlook Clauses (a) and (b) of Sub-section (3) of Section 9. The procedure laid down in Clauses (a) and (b) for conducting investigation into a complaint is required to be followed scrupulously and it is essential to the validity of the report made by the Lokayukta or Upalokayukta as the case may be. "When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done are called directory" (see page 62 of Craies on Statute Law -- 1971 Edition).

In addition to this, it is also relevant to notice that the Lokayukta or the Upalokayukta as the case may be, while conducting investigation into a complaint and making a report on the basis of such investigation, exercises quasi-judicial power. It determines the complaint made against a public servant involving a 'grievance' or 'allegation' and the report becomes the basis for taking action against the public servant by the Competent Authority. It is an established principle of natural justice that while exercising quasi-judicial power or performing quasi-judicial function, the Authority has to act according to the Rules of Natural Justice in coming to a decision and give all parties an opportunity of being heard and of dealing with the evidence, He must not act on ex parte statement. Clauses (a) and (b) of Sub-section (3) of Section 9 of the Act incorporate the rules of natural justice. They provide that a copy of the complaint shall be forwarded to the public servant and the Competent Authority concerned and afford to the public servant an opportunity to offer his comments on such complaint. These things are required to be complied with failing which it will led to invalidity of the report made by the Lokayukta or the Upalokayukta inasmuch

as one of the rules of natural justice is that no party shall be condemned unheard".

27. The above judgment was affirmed by a Division Bench of the Karnataka High Court in *State of Karnataka v. N. Gundappa* ILR 1990 Kar. 4188 (DB), where it was observed that-

"We have not the slightest hesitation in holding that the proceedings under Section 9 of the Karnataka Lokayukta Act, 1984 are quasi-judicial in nature. Our reasons are as under: Firstly, there is a complaint. Secondly, there is a preliminary enquiry to conduct investigation. Thirdly, a copy of the complaint is forwarded to the public servant and the Competent Authority concerned. Fourthly, the public servant is afforded an opportunity to offer his comments on such complaint. Thereafter should the Lokayukta submit a report as to what consequences follow are delineated under Section 13 of the Act. Having regard to the serious consequences contemplated thereunder, the conclusion is inescapable that it is quasi-judicial in nature. Not only that, Section 14 of the Act also contemplates initiation of prosecution".

28. The Kerala High Court, in a recent decision (*Nithin Norbert v. The University of Kerala & Ors* 2008 (3) KJ843) had to consider the powers of the State Lokayukta to permit amendment of a complaint; while conceding that the power of allowing such amendments was available, the Court observed that complaints have to be precise, and allegations specific. Moreover, the amendments have to pertain to matters, which the Lokayukta can inquire into, and not "excluded" matters.

"30. For the purpose of making a preliminary enquiry, the Lok Ayukta or Upa-Lok Ayukta has to necessarily take into account the averments in the complaint. If a complaint is forwarded to the public servant and the competent authority, the recipient of the same must be able to understand the "allegation" or "grievance" put forward in the complaint. The importance of the necessary pleadings could not be lost sight of in the matter of a complaint."

29. The origin of the Office of Lokayukta may be traced to the report of the Administrative Reforms Commission, appointed on January 5, 1966 by the President of India.

While dealing with a term of its reference, namely, considering “*the problems of citizens’ grievances*”, it recommended that an Ombudsman type of machinery should be established, in India. The recommendation was of two types of Ombudsmen i.e. *Lokpal* at the Central level and *Lokayukta* at the State level, to inquire into allegations of corruption against public functionaries as well as for investigation of administrative actions taken by or on behalf of the Government or certain public authorities in certain cases and for matters connected with them. The Commission stated that these bodies had to be set up with dispatch, due to inadequacies in the existing system and for addressing the specific issues in that regard since agencies like the Courts and Tribunals were not always within the reach of the common people due to factors like cumbersome procedures, long delays, litigation costs etc. The Commission additionally found a vast area of instances of unjust exercise of executive power, which were remediless.

30. The Delhi enactment, modeled perhaps on other enactments of various states, stems from a similar sensed need to establish a permanent institution to process, inquire into and suggest remedies in respect of complaints of administrative excesses, abuse of power, misfeasance and corruption objectively and in a non-partisan manner. To lend credibility to the institution, the Act requires – by Section 3(2) that the office of the Lokayukta can be filled only by a person who “is or has been Chief Justice of any High Court in India, or a Judge of a High Court for seven years”. The independence of the Lokayukta is reflected in the security of tenure afforded; he can be removed by a procedure analogous to that for removal of a High Court judge, by Section 6(1); the latter prescribes that

“the Lokayukta or Upalokayukta shall not be removed from his office except by an order of the Lieutenant Governor passed, with the prior approval of the

President and after an address by the Legislative Assembly supported by a majority of the total membership of the legislative Assembly and by a majority not less than two thirds of the members thereof present...”

31. Discernable from these explicit provisions is the serious concern that inquiries of the kind the Lokayukta could be entrusted, had to be dealt with in a judicial manner. Safeguards against vexatious complaints were enacted, by providing for penalties and offences – this was also aimed at ensuring that public officials were not baselessly harassed. At the same time, the Lokayukta was not deemed a “court” so as to be constrained by the very procedures, which the Administrative Reforms Commissions alluded to as causes for delay in curing injustices stemming out of executive abuse of power or corruption. It was therefore empowered with specific powers of the court; at the same time left with considerable procedural flexibility, provided however, it followed principles of natural justice.

32. The Lokayukta’s jurisdiction, under the Act is set into motion through a complaint, which sets out an “allegation”; it has to be against a “public functionary”. More importantly, the allegations are to be affirmed. The procedure for a complaint is detailed in distinct provisions, such as Section 9; even forms are prescribed for the purpose. Sections 10 and 11 specifically use the expression “inquiry”; in fact, the latter provision prefaces the mention of various specific powers under the Criminal Procedure Code and the Evidence Act, in relation to inquiries held by the Lokayukta. Now, investigations can be also conducted by the Lokayukta – however, the Explanation to Section 7 seems to suggest that such procedure can be carried out by agencies supporting the Lokayukta. If the matters were left at that, undoubtedly the Lokayukta’s contention that its powers, even at the threshold, to call for the records at the preliminary stage, would have been feasible. Perhaps such a stand would also have been in

tune with the Supreme Court ruling in *Ch. Rama Rao (supra)*. However, the court cannot ignore Rule 2(iv), which states that investigations are also inquiries or other proceedings in relation to complaints, but “do not include preliminary inquiry”. Therefore, inquiries – a term, which overlaps to a certain extent with investigations – do not extend to preliminary inquiry. This necessarily means that the powers alluded to in Section 11, *sans* a definitive outlined procedure under Section 10, structuring the Lokayukta’s manner of dealing with each “matter” are not available at what may be termed as the “pre-notice” or “pre-cognizance” stage. The case law cited earlier – though not strictly applicable, but nevertheless pointing to how similar bodies have been viewed by courts – also establishes that a certain of modicum of formality is expected to be followed by Lokayuktas, who are not courts strictly speaking, but creatures of statute, clothed with specific powers. Of course, these observations would not apply if a matter is taken up by the Lokayukta *suo motu*; perhaps even if it concludes that something referred to in the course of a complaint, cannot be gone into as a complaint, it may nevertheless treat the matter as “information” and decide to convert the proceeding into a *suo motu* one, drawing on its powers under Section 7 to inquire into the matter.

33. That this court’s understanding is logical, is also apparent from the Lokayukta’s perception of its powers, and the manner in which it presents its functioning to the public on the website http://www.delhi.gov.in/wps/wcm/connect/doit_lokayukta/Lokayukta/Home/Right+to+Information/. In the relevant page (Manual III), (http://www.delhi.gov.in/wps/wcm/connect/doit_lokayukta_/Lokayukta/Home/Right+to+Information/Manual+3) it is stated as follows:

“Procedure followed in decision making process [SECTION 4(1)(b)(iii)]

STEP-I On receipt of a complaint, it is marked to the Dealing Asstt. by the Registrar through the Asstt. Director. The Dealing Asstt. examines the complaint and ascertains as to whether it has been filed in the prescribed manner and in this regard the following points are broadly checked:-

- a. In case the complaint is against the Chief Minister, a Minister or a Member of Legislative Assembly, it is checked whether the complaint has been filed in Form I and is accompanied by an affidavit in Form III in support of its contents.*
- b. In case the complaint is against other public functionaries, it is checked whether the complaint has been filed in Form II and is accompanied by an affidavit in Form III in support of its contents.*
- c. Further, it is also checked whether a Court fee of five hundred rupees has been paid in the form of Judicial stamps for filing the complaint.*

STEP-II After scrutinizing the application, as detailed above, the Dealing Asstt. puts up the file before the Asstt. Director who further examines the matters and also check as to whether the complaint falls under the jurisdiction of this office keeping in mind the following points:-

- a. Whether the allegations made in the complaint is against a public functionary as defined in section 2(M) of the Act i.e. in respect of the following persons:*
 - i. the Chief Minister or a Minister;*
 - ii. a Member of Legislative Assembly;*
 - iii. a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Legislative Assembly;*
 - iv. a Chairman, Vice-Chairman or Managing Director or a Member of a Board of Directors (by whatever name they be called) in respect of-*
 - 1. an Apex Co-operative Society or any Co-operative Society constituted or registered under the Delhi Co-operative Societies Act, 1972, which is subject to the control of the Government;*
 - 2. a Government company within the meaning of section 617 of the Companies Act, 1956, engaged in connection with the affairs, and is under the control of the Government;*

3. a Local Authority established under any law in relation to Delhi ;
- b. Whether the complaint has been made within a period of 5 years from the date on which the conduct complained of against is alleged to have been committed.
- c. Whether the complaint has been made against the under mentioned category of officers who do not come under the purview of this Act as specified in section 17-
- i. any member of the judicial Services who is under the administrative control of the High Court under Article 235 of the Constitution;
 - ii. any person who is a member of a Civil Service of the Union or an All India Service or Civil Service of a State or holds a Civil post under the Union or a State in connection with the affairs of Delhi.

STEP-III The file is thereafter put up before the Registrar who further examines the matter and also checks that the said complaint has not been referred to for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952).

STEP-IV After giving his opinion as to whether the complaint is to be admitted or filed or whether additional information is to be collected, the file is put up before the Hon'ble Lokayukta for his orders.

STEP-V In case the complaint is admitted for enquiry, notices are issued to the complainant and respondent for appearance before Hon'ble Lokayukta and thereafter the proceedings start for hearing of the case before the Hon'ble Lokayukta.

STEP-VI On conducting the inquiry into the allegations, if the Hon'ble Lokayukta is satisfied that such allegations is established, he shall, by report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority (In the case of Chief Minister and Minister, the competent authority is President whereas in the case of MLA, the competent authority is Lt. Governor/President. However, in the case of any other public functionaries, the competent authority is any such authority as may be prescribed)"

(emphasis supplied)

The first few steps indicate ministerial processing, to verify whether complaints comply with prescribed procedures and provisions; thereafter the matter is placed before the Lokayukta, which issues notices to the “complainant and respondent for appearance”, in Step V. This indicates that inquiry commences upon issuance of notice. The precondition for invoking the powers under Section 11, is the existence of an inquiry.

34. To summarize the discussion, it is held that:

(a) The Lokayukta and Upalokayukta have the power to inquire into complaints, and if necessary, use the services of investigative agencies deputed for the purpose. During the course of such inquiry, investigation is possible; so also, the power to call for documents, have evidence recorded through commission, etc, is exercisable. However, the power of inquiry does not include a preliminary inquiry.

(b) In a complaint procedure, the Lokayukta or Upalokayukta has to, after satisfying itself about the compliance with procedural formalities, prescribed by the statute, issue notice to the respective parties. The inquiry begins thereafter and the powers under Section 11 are available, to aid the process of inquiry. At the “pre-inquiry” stage, or processing of the complaint, there is no question of the Lokayukta calling for the records from an authority. The power to do so is available after issuance of notice; the Lokayukta may, in a given case, issue notice and also call for the records, having regard to the circumstances, and the need to ensure that the documents are preserved or secured.

(c) In a *suo motu* proceeding, the Lokayukta does not have to satisfy itself about compliance regarding the complaint –it can straightaway proceed to issue notice, and exercise powers under Section 11;

(d) Section 10 enacts procedural flexibility, in regard to holding of inquiries. Yet, it sets out the standard of fairness, i.e. compliance with principles of natural justice. This provision underlines that the Lokayukta, though a judicial or quasi judicial body, is not really a court. It can evolve a fair procedure, having regard to the peculiar needs of a given case, or given class of cases which may present a common feature or peculiarity.

35. Before issuing the consequential directions, the court is constrained to record a postscript. This litigation was wholly unnecessary. Once the NCT felt that the complaint was no longer maintainable and sought to urge on the issue, the Lokayukta could have ruled on the applications made before it. At the same time, the NCT too need not have stood on prestige; its stated position is that it has nothing to hide. Such being the sentiment, the truth of the matter should have been its primary concern, rather than insisting on a ruling on procedure, before disclosure of the records, which all citizens are reasonably expected to have access to, under the right to information *regime*. The upshot of all this has been a wholly avoidable debate, that can have the potential of undermining the public interest in an objective inquiry into such matters.

36. As a result of the above discussion, it is held that the Lokayukta shall first decide the applications pending before it, (after hearing the parties) on the question of maintainability of the complaint. It is open to it to rule on maintainability of the complaint, or that the matter

would be proceeded with *suo motu*. In case it decides to proceed with the matter, a formal notice shall be issued. All rights and contentions of the parties are kept open.

37. The writ petition is disposed of in the above terms. No costs.

March 13, 2009

S.RAVINDRA BHAT,
(JUDGE)