

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17245 of 2015

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Mithilesh Kumar Singh Son of Late Dinesh Kumar Singh, Resident of Village -
Ramo Bariya, P.S. - Industrial Area Buxar, District - Buxar.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Selection Committee through its convener Chairman, Bihar Legislative Council, Bihar Vidhan Parishad.
4. The Principal Secretary to the Hon'ble Governor, Raj Bhawan, Patna, Bihar.
5. Mr. Justice Shyam Kishore Sharma (Retired), Judge, Patna High Court, Patna, Son of Not Known to the petitioner, r/o Village - Mein, P.S. - Mein, District - Gaya, at present Chairman, Arbitration Tribunal, Patna.
6. Sri Kriti Chandra Saha, Son of not known to the petitioner, through Principal Secretary, General Administration Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner :	Mr. Dinu Kumar, Advocate
	Mr. Ritu Raj, Advocate
	Mr. Rajesh Kumar Singh, Advocate
For the State :	Mr. Pushkar Narain Shahi, AAG-10
	Mr. Dhirendra Kumar, AC to AAG10
For respondent no.3 :	Mr. Surendra Kumar Singh, Advocate
	Mr. Sunil Kumar Singh, Advocate
For respondent no.4 :	Mr. Rajendra Kumar Giri, Advocate
For respondent no.5 :	Mr. Alok Kumar Sinha, Senior Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 05-04-2016

The recommendation for appointment of respondent
Nos. 5 and 6 as Members (Judicial and Non-Judicial respectively) of
the “*Institution of Lokayukta*” established under Section 3(1) of the



Bihar Lokayukta Act, 2011 (Bihar Act 22, 2011) (*hereinafter referred to as 'the Act of 2011'*), has been put to challenge in the present proceeding under Article 226 of the Constitution of India in the nature of Public Interest Litigation.

2. Despite valid service of notices upon respondent No.6, he has not entered appearance. No Vakalatnama has been filed on behalf of respondent No.5, though a learned Senior Counsel of this Court has addressed the Court defending selection of respondent No.5 and recommendation for appointment as a Member (Judicial) of the "*Institution of the Lokayukta*".

3. The petitioner of the present application, under Public Interest Litigation, has described himself to be a social worker claiming to have consistently taken up public causes against corruption in the State of Bihar. There is a declaration in the writ application to the effect that he has neither any direct nor indirect interest in the matter nor any animus with respondent Nos. 5 or 6, whose selections and recommendations to the said post have been put to challenge in the present case.

4. Respondent No.5 is a retired Judge of this High Court, whereas respondent No.6 was a Member of Indian Administrative Service and has also served as Chairman of the Bihar Public Service

Commission.

5. We have heard Mr. Dinu Kumar, learned counsel appearing on behalf of the petitioner, and Mr. Pushkar Narain Shahi, learned Additional. Advocate General No. 10, on behalf of the State of Bihar. We have also heard Mr. Surnedra Kumar Singh, learned Counsel representing respondent No.3, i.e., the Selection Committee, through its Convener-cum-Chairman of the Bihar Legislative Council, Bihar Vidhan Parishad (respondent No.3) and Mr. Rajendra Kumar Giri, learned Counsel, who has entered appearance on behalf of respondent No.4.

6. In order to appreciate the controversy involved in the present case and the nature of grievances raised in the present proceeding, we had directed the respondents, by our order, dated 29.10.2015, to produce the relevant records pertaining to selection/ recommendation for appointment to the said posts, in question, for our perusal. The records have accordingly been produced.

7. At the outset, we must mention that there is no dispute over the facts of the case, which have remained uncontroverted, un-rebutted and substantiated by the original relevant records produced by the respondents before us for our perusal. We will be dealing with, and making observations on, those facts, which are relevant for



present adjudication. However, for better appreciation of the issues involved in this case, we have considered it befitting to take note of the statutory provisions elaborately, which govern constitution of the “*Institution of Lokayukta*” as a body consisting of three persons, i.e., a Chairperson and two Members, under the Act of 2011, before delving into the factual details.

8. Before the said Act of 2011 came into being, Bihar Lokayukta Act, 1973 (*hereinafter referred to as the “Act of 1973”*), was in vogue, which contained provisions for appointment of a person as Lokayukta under Section 3 of the said Act of 1973. The Act of 1973 stood repealed by operation of Section 59 of the Act of 2011. Whereas, under the Act of 1973, a person to be known as Lokayukta was to be appointed, Lokayukta means, under the present Act of 2011, an Institution, consisting of a Chairperson and two Members, established under Section 3 of the Act of 2011.

9. The Act of 2011 provides, *inter alia*, for establishment of a Lokayukta institution, its powers and functions, for expeditious investigation and prosecution relating to the allegations of corruption against the public servants in all grades.

10. Section 3 of the Act of 2011 contemplates establishment of Lokayukta as an institution consisting of a



Chairperson and two Members. It unambiguously provides that out of the three persons constituting the body of Lokayukta, i.e., “Chairperson and two Members”, two persons shall, at least, be Judicial Members.

Proviso to sub-section (2) of Section 3 is significant for the purpose of the present adjudication as would be clear from further discussions in the present judgment, which postulates that Lokayukta, appointed prior to commencement of the Act of 1973, shall continue as the first Chairperson, under the Act of 2011, till completion of his term.

11. Sub-section (3) of Section 3 of the Act lays down the eligibility criteria for appointment as Chairperson or a Member of the Lokayukta. For appointment as Chairperson/Member of the Lokayukta, one is required to be a person of impeccable integrity, outstanding ability and standing having special knowledge of, and professional experience of, not less than twenty five years in public affairs, administrative law and policy, academics/law/finance or management and should not be less than fifty years of age. For appointment as a Judicial Member of Lokayukta, the persons should have been Chief Justice or a Judge of High Court or qualified to be appointed as a Judge of High Court and should be of not less than

fifty years of age.

12. For the benefit of the quick reference, Section 3 of the Act of 2011 is being extracted hereinbelow:

“3. Establishment of Lokayukta.- (1) As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of complaints made under this Act, an institution to be called the “Lokayukta”.

(2) The Lokayukta shall consist of-

(a) a Chairperson; and

(b) two Members, provided that out of “Chairperson and two Members” at least two persons shall be Judicial Members:

Provided further that the Lokayukta appointed prior to the commencement of this Act shall continue as the first Chairperson till the completion of his term.

(3) A person shall be eligible to be appointed-

(a) as the Chairperson or a Member if he is a person of impeccable integrity, outstanding ability and standing having special knowledge of, and professional experience of not less than twenty five years in public affairs, administrative law and policy, academics, law, finance or management and not less than fifty years of age.

(b) as a Judicial Member if he is or has

been Chief Justice or a Judge of a High Court or qualified to be appointed as Judge of a High Court and not less than 50 years of age.

(4) The Chairperson or Member shall be a person who is/ was not a member of the Parliament or a member of the Legislative of the State or Union territory and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or not attached with any political party or carry on any business or practice any profession.

(5) The Chairperson and every Member shall, before entering upon his office, make and subscribe before the Governor an oath or affirmation in the form set out in the First Schedule.”

13. Section 4 of the Act of 2011 deals exhaustively with the procedure for selection of Chairperson and Members of Lokayukta and their appointments. From a careful reading of Section 4 of the Act of 2011, it can be easily noticed that the Chairperson and the Members of Lokayukta are required to be appointed by the Governor upon obtaining recommendations of a Selection Committee constituted under Section 4(1) of the Act of 2011. Sub-section (3) of Section 4 of the Act of 2011 prescribes that for the purpose of selecting Chairperson and other Members of the Lokayukta and for preparing a panel of persons to be considered for

appointment as such, the Selection Committee, within the meaning of Sub-section (1) of Section 4, is required to constitute a Search Committee.

14. The constitution of the Search Committee has been provided in Sub-section (6) of Section 4, which shall consist of five persons of impeccable integrity and eminence in public life. The Members of the Search Committee are required to be selected from amongst the retired Chief Justices of India, the retired Judges of the Supreme Court, the retired Judges of the High Courts, the retired Chief Election Commissioners of India, the retired Chief of Central/ State Information Commissions, the retired Chairperson of the Union Public Service Commission/Bihar Public Service Commission, the retired Cabinet Secretaries, Chief Secretaries, Secretaries to the Government of India and the retired Comptroller and Auditor Generals of India, with reputation of impeccable integrity and who have not joined any political party after retirement and who are not holding any office under any Government. Proviso to Sub-section (6) of Section 4 prescribes that, at least, two of the five Members of the Search Committee shall be retired Judges of the Supreme Court or retired Chief Justices or Judges of the High Court.

15. Sub-section (7) of Section 4 lays down the procedure



to be followed by the Search Committee for preparation of the panel of persons for making recommendations for appointment of Chairperson/ Members of Lokayukta. We notice, on careful reading of sub-section (7) of Section 4, that the process of selection commences with invitation of nominations from individuals or organizations through *website* and, at least, two widely circulated newspapers. Once the Search Committee receives nominations under sub-section 7(a), it is expected that the Committee shall make endeavour to collect informations about achievements and full details of the backgrounds of such persons, nominated by the individuals or organizations. Suggestions and informations are also required to be invited from the public in respect of nominations so received by placing them on *website* and/or any other sources, as may be deemed fit and proper, by the Search Committee. Under Clause (d) of Sub-section (7) of Section 4, the Search Committee, after taking into consideration information and suggestions so received with respect to nominations received under Section 7(a), is required to prepare a panel of persons, which is to be three times the number of persons to be appointed.

16. The second Proviso to Clause (d) of Section 7 is of immense relevance for determination of one of the major disputes in



the present case, which prescribes, in clear terms, that any person/ persons, whose name (s) has/have not been received pursuant to the invitation for nomination, as provided under Sub-section (7) (a) of Section 4, shall not be considered by the Search Committee.

17. Clearly, thus, a person, whose name has not been received pursuant to the invitation for nomination as provided under Clause (a) of sub-Section (7) of Section 4, shall not be considered by the Search Committee. Clause (e) of Sub-section (7) of Section 4 prescribes that before making recommendations of panel of names for the post of Chairperson and/or Member or both, the Search Committee shall obtain the consent of nominees for appointment to the post against which his name is under consideration. Clause (f) of sub-section (7) of Section 4 mandates completion of the entire procedure by the Search Committee by sending shortlist within three months of initiation of the procedure. Sub-section (8) of Section 4, thereafter, requires the Selection Committee to finalize the recommendations within a month of receiving recommendation from the Search Committee.

18. The statutory prescription, under Section 4, can be, thus, concisely summarized by saying that a Chairperson/Members of Lokayukta is to be appointed by the Governor of Bihar on the

basis of recommendations received from a Selection Committee constituted in terms of Section 4(1) of the Act. The Selection Committee, for the purpose of making recommendations for appointment, is required to constitute a Search Committee for preparation of panel of persons, who are fit and suitable for recommendations. The Selection Committee is required, thereafter, to make recommendations for appointment from the panel prepared by the Search Committee.

19. Section 4 of the Act, which is germane for the present purpose, is being extracted hereinbelow:

“4. Appointment of Chairperson and other Members and Selection Committee.- (1) The Chairperson and Members shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of-

(a) the Chairman, Bihar Legislative

Council - Convener;

(b) the Speaker, Bihar Legislative

Assembly - Member;

(c) two sitting Senior Judges of the

Patna High Court to be nominated

By the Chief Justice - Member;

(d) Immediate surviving outgoing

Lokayukta - Member;

Provided that while considering

selection of Members of the Lokayukta, the existing Chairperson shall also be the Member of the Selection Committee.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

(3) The selection Committee shall for the purposes of selecting the Chairperson and other members of the Lokayukta and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee.

(4) The term of the search committee referred to in sub-section (3) and fee and another allowances payable to member of search committee shall be such as may be prescribed under rules.

(5) The selection committee shall regulate its own procedure for selection of the Chairperson and Members of the Lokayukta which shall be transparent.

(6) The search committee shall consist of five persons of impeccable integrity and eminence in public life. They will be selected from amongst the retired Chief Justice of India, the Retired Judges of Supreme Court, the Retired Chief Justices of High Courts, the Retired Judges of the High Courts, the Retired Chief Election Commissioners of India, the retired Chief of Central/ State Information Commissions, the retired Chairperson of Union Public Service Commission/ Bihar Public Service Commission,



the retired Cabinet Secretaries/ Chief Secretaries/ Secretaries to Government of India and the retired Comptroller and Auditor Generals of India with reputation of impeccable integrity, who have not joined any political party after retirement and who are not holding any office under any government.

Provided that at least two members of the Search Committee should be retired judges of the Supreme Court or retired Chief Justices or Judges of High Court.

(7) The Search Committee shall adopt the following procedure for preparation of panel of persons for the recommendations:-

(a) The Search Committee shall invite nominations from individuals or organizations through website and at least two widely circulated newspapers.

(b) The Search Committee shall also endeavour to collect information about the achievements and full details of background of such persons nominated by individuals or organizations.

(c) The Search Committee shall invite suggestions and information from the public in respect of nominations so received by placing the same on website and/or from any other sources as may be deemed fit and proper by the Search Committee.

(d) The Search Committee after taking into consideration informations and suggestions so received with respect to nominations received, shall prepare a

panel of persons which shall be three times the number of persons to be appointed.

Provided that if two members of the Search Committee have any objection in respect of any nomination that shall not be included in the panel prepared by the Search Committee:

Provided further that names of any such person/ persons whose name has/ have not been received pursuant to the invitation for nomination as provided under sub-section (7)(a) shall not be considered by the Search Committee.

(e) The Search Committee before making recommendations of the panel of names for the post of Chairperson and/or Member or both shall obtain the consent of nominees for the appointment to the post against which his name is under consideration.

(f) The Search Committee shall complete the above procedure and send the shortlist within three months of initiation of procedure under sub-section (7)(a).

(8) The Selection Committee shall finalize the recommendations within a month of receiving recommendation from the Search Committee.”

20. The provisions, as contained in Article 319 of the Constitution of India, which places certain prohibition on holding of the offices by the Chairman/Members of the Union Public Service

Commission/ State Public Service Commission on ceasing to be searched Members/Chairman, has been heavily relied upon by the learned Counsel for the petitioner to question the selection/ recommendation of respondent No.6 for his appointment as a Member of the “*Institution of Lokayukta*” since he had earlier served as a Chairman of the Bihar Public Service Commission.

21. Article 319 (b) of the Constitution of India reads thus:

“319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members –

(a) x x x x x x x x x

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.”

x x x x x x x x x

x x x x x x x x x

22. After having referred to the constitutional/statutory provisions, which are applicable and have been pressed into

arguments in the present case, let us, now, come to the facts of the present case.

23. The petitioner of the present application had earlier filed an application before this Court, under Article 226 of the Constitution of India, in the nature of Public Interest Litigation, which had given rise to C.W.J.C. No. 8848 of 2013, seeking a direction to the respondents to take steps for filling up vacancies in the “*Institution of Lokayukta*” of the State of Bihar under the Act of 2011.

24. It appears from the communication, dated 5.1.2014, issued from the Bihar Legislative Council’s Secretariat that the Selection Committee, constituted, under Section 4(1) of the Act, in its meeting, held on 24.12.2013, had unanimously constituted a Search Committee of the following five members of eminence:

1. Mr. Justice B. N. Agrawal, a retired Judge of the Supreme Court of India, G-141, Vindsar Park, Vaibhav Khand, Indrapuram, Gaziabad (U.P.)- 201014.
2. Mr. Justice Sri Aftab Alam, a retired Judge of the Supreme Court of India, Dursanchar Vivad Samadhan Ewam Appeal Adhikaran (Government of India), Room No. 478, 4th Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi- 110021.

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3. Sri Anup Mukherjee, I.A.S. (retired), “Prabhu Bhakti”, 69/4 Dr. T.N.Banerjee Road, Chhajubag, Patna- 800001.
 4. Sri N. K. Agrawal, I.A.S. (retired), B/90, “Awaran” Ashokpuri, Kajpura, P.O. Bihar Veterinary Campus, Patna- 800004.
 5. Sri A. K. Upadhyaya, I.A.S. (retired), H-3, 123, Asotake Spring Fields Sector Jeta-01, Greater Noida, U.P.- 201310.

25. It is to be noted here, which is evident from the materials on record, that before coming into force of the Bihar Lokayukta Act, 2011, Bihar Lokayukta Act, 1973 (*which is being referred to as ‘the Act of 1973’*) was in vogue, which came to be repealed by operation of Section 59 by the Act of 2011. A retired Judge of this Court, Mr. Justice C. M. Prasad, was, on the date of enactment of the Act of 2011, was serving as Lokayukta, who was appointed, before coming into force of the said Act of 2011 under the earlier Act of 1973. By virtue of the proviso to Section 3 of the Act of 2011, he continued to function as the first Chairperson of the institution of the Lokayukta, under the Act of 2011, and is still continuing. Before appointment of Mr. Justice C. M. Prasad, Mr. Justice R. N. Prasad, a retired Judge of this Court, had served as

Lokayukta, who was appointed under Act of 1973, in the year 2006.

26. The Search Committee, so constituted, had invited nominations as required under Section 7(1) of the Act of 2011 and, in response thereto, it received altogether 17 names, including the name of respondent No.5, Mr. Justice Shyam Kishore Sharma, a retired Judge of this Court, for Judicial Member, and of respondent No. 6, Sri Kriti Chandra Saha, a Member of Indian Administrative Service and also former Chairman of the Bihar Public Service Commission, for non-Judicial Member. The nominations, so received, were placed on the *website*. There is specific averment in the writ application, which has remained uncontroverted, that the petitioner had downloaded the said nominations from the *website* of the General Administration Department, Government of Bihar.

27. The Search Committee had prepared a panel of two names, namely, Mr. Justice Shyam Kishore Sharma (respondent No. 5) and Mr. Justice Jayanandan Singh, retired Judges of this Court, for the Selection Committee to make recommendation against one post of Judicial Member. It is to be noted that Section 4(7)(d) of the Act of 2011 requires the Search Committee to prepare a panel of the persons, which shall be three times the number of persons to be appointed. As noted hereinbefore, the Search Committee, however,

had recommended only two names including the name of respondent No. 5. Though, respondent No. 6 was a nominee pursuant to the said advertisement/notice, his name did not find place in the panel prepared by the Search Committee.

28. It has been further averred in the writ application that preparation of panel, not being in conformity with Section 4(7)(d) of the Act of 2011, the Selection Committee did not make any recommendation. This is an admitted fact that Justice B. N. Agrawal and Justice Aftab Alam, both retired Judges of the Supreme Court of India, thereafter, had expressed their unwillingness to continue as Members of the Search Committee.

29. When the writ application, filed by the present petitioner, being C.W.J.C. No. 8848/2013, was taken up by a Division Bench of this Court, on 19.1.2015, the developments, having taken place in the meanwhile, were brought to the notice of this Court as is evident from the order, dated 19.1.2015, passed in the said case. It transpires from the said order that the respondents took the stand before this Court that since the Search Committee had prepared panel of only two names, which was not in conformity with the provisions of Section 4(7)(d) of the Act, the matter was, again, being referred to a Search Committee.



30. It is also not in dispute that another Search Committee was, accordingly, constituted under Section 4(3) of the Act of 2011 to prepare a panel of names, for consideration, to be appointed as Members of “*Institution of Lokayukta*” consisting of the following five persons:

1. Mr. Justice Sri B. P. Singh, a retired Judge of the Supreme Court of India, A-7, Niti Bag, 3rd Floor, New Delhi- 110049.
2. Mr. Justice Sri S. B. Sinha, a retired Judge of the Supreme Court of India, D-361, 2nd Floor, Defence colony, New Delhi- 110024.
3. Sri Vijay Shankar Dubey, I.A.S. (retired), 127-A, behind Sahyog Nursing Home, Near Park, Patliputra, Patna.
4. Sri N.K.Agrawal, Member, Rajaswa Parishad (retired), B/90, Awaran, Ashokpuri, Kajpura, P.O. Bihar Veterinary Campus, Patna- 800014.
5. Sri Anup Mukherjee, Principal Secretary (Retd.) “Prabhu Bhakti”, 69/4, Dr. T.N.Banerjee Road, Chhajubag Patna- 800001.

31. The General Administration Department, Government of Bihar, thereafter, again came out with an

advertisement/notice, on behalf of the Search Committee, inviting nominations for preparation of panel for two Members of “*Institution of Lokayukta*”, Bihar, in terms of Section 7(1) of the Act. The said advertisement/notice has been brought on record by way of Annexure 6 to the writ application.

32. Clause (2) of the said advertisement prescribed that nominations could be submitted by an individual or an organization and considering the high stature of this position, it was presumed that a person would not nominate himself/ herself. It was also clarified that the persons nominated, pursuant to the advertisement, dated 31.5.2014, would be considered *only if they were nominated afresh*.

33. In response to the said advertisement/notice, issued on behalf of the Search Committee, the following 17 persons came to be nominated:

1. Braj Kishore Prasad Sinha	Judicial Member
2. Amaresh Kumar Lal	Judicial Member
3. Mihir Kumar Jha	Judicial Member
4. Jayanandan Singh	Judicial Member
5. Akhilesh Chandra	Judicial Member
6. Sri Shankar	Judicial Member
7. Kirti Chandra Saha	Non-Judicial Member
8. Khagendra Nath Mahato	Non-Judicial Member



9. Venkataraman Narayan	Non-Judicial Member
10. Dr. Indra Nath Jha	Non-Judicial Member
11. Law Kumar Mishra	Non-Judicial Member
12. Pradeep Kumar	Non-Judicial Member
13. Akhil Kumar Jain	Non-Judicial Member
14. Vijay Kumar Verma	Non-Judicial Member
15. Anil Kumar Sharan	Non-Judicial Member
16. Anil Kumar	Non-Judicial Member
17. Dr. Binod Kumar Singh	Non-Judicial Member

34. Evidently, thus, there was no nomination in favour of respondent No.5. Respondent No.6 was, however, again, nominated for his appointment as a Non-Judicial Member of the “*Institution of Lokayukta*”. It is not in dispute that the Search Committee in its meeting held, on 13.9.2015, decided to recommend three names, each for selection/appointment as Judicial and Non-Judicial Members of the “*Institution of Lokayukta*”, which was handed over to the Convener of the Selection Committee on 23.9.2015.

35. It appears from the original records produced before us that the Convener of the Selection Committee, i.e., the Chairman, Bihar Legislative Council, proposed to convene a meeting on a date convenient to the Members of the Selection Committee. Through a communication, dated 29.9.2015, issued from the Bihar Legislative



Council's Secretariat, Patna, it appears that the Members of the Selection Committee were requested to suggest a convenient date for the said purpose. From the said letter, it also transpires that the following was the constitution of the Selection Committee:

1. Chairman, Bihar Legislative Council.
2. Speaker, Bihar Legislative Assembly.
3. Mr. Justice V.N.Sinha, a sitting Judge of this Court.
4. Mr. Justice Navaniti Prasad Singh, a sitting Judge of this Court.
5. The Chairperson, *Institution of Lokayukta*, Bihar, Patna.

36. It also appears from the original records so produced that as directed, a letter, dated 06.10.2015, was sent by the Secretary of Mr. Justice Navaniti Prasad Singh, one of the Members of the Selection Committee, to the Deputy Secretary, Bihar Legislative Council's Secretariat, Patna, in response to the aforesaid communication, dated 29.9.2015, mentioning therein that the Bihar Assembly elections had been announced and as one of the Members of the Selection Committee was contesting the election, the Election Code of Conduct being in force, a clarification should be sought for, from the Election Commission of India, as to whether the meeting of the Selection Committee of this nature for selecting Members of the



“Institution of Lokayukta” could be appropriately held. It was suggested in the said letter that steps, in this regard, should be taken only after receipt of the clarification from the Election Commission of India. The General and Administration Department, Government of Bihar, through a communication, dated 14.10.2015, sought for a clarification from the Chief Election Officer, Bihar, as to whether meeting of the Selection Committee could be held, when Election Code of Conduct was in force, particularly, as one of the Members of the Selection Committee, i.e., the then Speaker, Bihar Legislative Assembly, himself was contesting the election. The Department referred to the statutory prescription under the Act of 2011, which required the Selection Committee to finalize the recommendation of the Search Committee within one month from the date of receiving the recommendations.

37. We must point out here that the Search Committee had made its recommendation on 13.9.2015, which was handed over to the Convener of the Selection Committee on 23.09.2015. The Bihar Legislative Council’s Secretariat, Patna, thereafter, came out with a communication issued, vide letter No. 23(LS), dated 16.10.2015, addressed to the Members of the Selection Committee, convening a meeting of the Selection Committee on 19.10.2015 at

5.00 P.M..

38. On a reading of the said communication, we find that the decision to convene the meeting of the Selection Committee, on 19.10.2015, was taken on the ground that the polling of votes, to the extent it related to Assembly Election for the Constituency, against which the then Speaker of the Legislative Assembly was contesting, was going to be held on 16.10.2015. Noticing the requirement of Section 4(8) that the Selection Committee should finalize recommendation within a month, the said letter, dated 16.10.2015, was issued convening the meeting of the Selection Committee on 19.10.2015.

39. We have noticed from the original records produced before us that the Selection Committee held a meeting, on 23.10.2015, at 10.30 A.M. We have not been able to find out from the records produced before us as to how the date of the meeting of the Selection Committee was, subsequently, shifted to 23.10.2015. A copy of the proceedings of the meeting of the Selection Committee, held on 23.10.2015, is there with the original records. The Selection Committee, in its meeting, held on 23.10.2015, recommended the name of respondent No. 5 for appointment as Judicial Member and of respondent No. 6 as Non-Judicial Member of the "*Institution of*

Lokayukta”.

40. For the purpose of better appreciation of the grievance raised in the writ application and the submissions advanced at the Bar, it would be apposite to quote the relevant portion of the proceedings of the meeting of the Selection Committee, which run as follows:

“खोजबीन समिति की अनुशंसा दिनांक 24.9.2015 को प्राप्त हुई थी और आज एक महीना पूरा होने को है। तदनुसार आज की बैठक सम्पन्न हुई। बैठक हेतु सभी माननीय सदस्यों को अनुरोध पत्र भेजा गया था, परन्तु आज एक माननीय सदस्य माननीय न्यायमूर्ति श्री नवनीति प्रसाद सिंह अनुपस्थित हैं और उनकी अनुपस्थिति के संबंध में आज की बैठक हेतु भेजे गए अनुरोध के बावत अलग से कोई सूचना प्राप्त नहीं हुई है।

आज चयन समिति की बैठक में खोजबीन समिति द्वारा समर्पित अनुशंसाओं एवं संबंधित अभिलेखों पर विचार विमर्श किया गया और विचारोपरान्त— न्यायिक सदस्य के लिए —

श्री श्याम किशोर शर्मा (अ0 प्रा0) न्यायमूर्ति

एवं

गैर न्यायिक सदस्य के लिए— श्री कीर्ति चन्द्र साहा
(अ0प्रा0) भा0प्र0से0

के नामों की समिति अनुशंसा करती है। अनुशंसा सीलबंद लिफाफे में बिहार लोकायुक्त अधिनियम, 2011 की धारा-4 की उपधारा-8 के अंतर्गत समर्पित की जाती है।”

तत्पश्चात् धन्यवाद सहित बैठक स्थगित हुई।

(अवधेश नारायण सिंह) माननीय सभापति बिहार विधान परिषद्	(श्री उदय नारायण चौधरी) माननीय अध्यक्ष बिहार विधान सभा	(मा0 न्यायमूर्ति चन्द्रमोहन प्रसाद) माननीय अध्यक्ष लोकायुक्त संस्था, बिहार	(मा0 न्यायमूर्ति श्री वी0एन0सिन्हा) पटना उच्च न्यायालय पटना।”
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41. If translated into English, the above extract would read thus:

“The recommendation of the Search Committee was received on 24.9.2015 and one month is about to be complete today. Accordingly, today’s meeting concluded. The request letter for the meeting, had been sent to all the Hon’ble Members, but one Member Hon’ble Mr. Justice Navaniti Prasad Singh is absent today and no separate information has been received with regard to his absence and the request letter sent to him for today’s meeting.

Today, the recommendations and concerned records submitted by the Search Committee were discussed in the meeting of Selection Committee and after due consideration, the Committee recommends the name of Sri Shyam Kishore Sharma (retired Judge) for Judicial Member and Sri Kirti Chandra Saha (retired I.A.S.) for Non-Judicial Member. The recommendation is submitted in a sealed envelope under sub-section (8) of Section 4 of the Bihar Lokayukta Act, 2011.

Therefore, the meeting concluded with the vote of thanks.

(Awadesh Narayan Singh)

Hon’ble Chairman

Bihar Legislative Council

(Sri Uday Narayan Chaudhary)

Hon’ble Speaker

Bihar Legislative Assembly

(Hon’ble Mr.J.Chandra Mohan Prasad)

Hon’ble Chairman

Institution of Lokayukta

(Hon’ble Mr.J. V.N.Sinha)

Patna High Court

Patna”



42. It surfaces from the aforesaid proceedings of the Selection Committee, dated 23.10.2015, that the following Members of the Selection Committee were present on that day:-

1. The Chairman, Bihar Legislative Council.
2. The Speaker, Bihar Legislative Assembly.
3. The Chairperson, *Institution of Lokayukta*, Bihar.
4. Mr. Justice V.N. Sinha, a Judge of this Court.

43. Apparently, Mr. Justice Navaniti Prasad Singh, a Judge of this Court and a Member of the Selection Committee, was not present in the meeting of the Selection Committee. Before respondent Nos. 5 and 6 could be appointed, in the light of the recommendation of the Selection Committee, as Members of the “*Institution of Lokayukta*”, the present writ application came to be filed on 27.10.2015. The matter was taken up on 30.10.2015.

44. In the absence of any dispute that the Selection Committee had recommended the name of respondent No. 5 for his appointment as a Judicial Member of the *Institution of Lokayukta*, despite the fact that his name was not recommended by the Search Committee, nor was he a nominee pursuant to the advertisement/notice issued at the instance of the Search Committee, the recommendation, so made, was found to be *prima facie* in breach

of Rule 4 of the Act of 2011. Accordingly, this Court passed an interim order, on 30.10.2015, to the following effect:

"Heard Mr. Dinu Kumar, learned counsel appearing for the petitioner, and Mr. P.N.Shahi, learned AAG 10, appearing for the respondent Nos. 1 and 2. Heard also Mr. K.K.Jha, learned counsel appearing for respondent No.3, and Mr. Rajendra Kumar Giri, learned counsel for respondent No.4.

Perused the record of Selection Committee submitted by Mr. P.N.Shahi, learned AAG 10, appearing for the respondent Nos. 1 and 2.

Let notices be issued to the respondents.

No formal notices are required to be served on the respondent Nos. 1 to 4 as they have already entered appearance and accepted notices through their engaged counsel.

Issue notices to the respondent Nos. 5 and 6 by registered post with AD as well as by ordinary process making the same returnable on 06.11.2015.

Let the steps for service of notices be taken by the petitioner within four days from today.

Having regard to the nature of grievances which have been expressed in this writ petition, made under Article 226 of the Constitution of India, in the form of PIL, particularly, the fact that it has been brought to our notice, which has not been disputed on behalf of the State, that the Search Committee, which had been constituted, did not recommend the name of



Mr. Justice Shyam Kishore Sharma (respondent No.5) nor was he a nominee pursuant to the advertisement, which had been issued by the Search Committee, we are of the view that the recommendation made by the Selection Committee in favour of Mr. Justice Shyam Kishore Sharma (respondent No.5) is prima facie in breach of Rule 4 of the Bihar Lokayukta Act, 2011.

Considering, therefore, the matter in its entirety and in the interest of justice, we, as an interim measure, hereby direct that the recommendations, which have been made by Selection Committee, for appointment of respondent Nos.5 and 6, be not acted upon, until further orders, without leave of this Court. Let this PIL come up, for orders, on 06.11.2015.”

45. Notices were issued to respondent Nos. 5 and 6, who have not entered appearance. Mr. Alok Kumar Sinha, a learned Senior Counsel of this Court, appeared, on 8.01.2016, and submitted that he had instructions from respondent No. 5 to appear on his behalf and advance arguments before this Court in support of the recommendation made in favour of respondent No. 5. He has accordingly made his submissions on behalf of respondent No.5. However, we do not find any Vakalatnama on record, executed by respondent No.5.

46. In the background of the facts, as referred to above,



which are not in dispute, Mr. Dinu Kumar, learned Counsel appearing on behalf of the petitioner, has questioned the recommendations made by the Selection Committee for appointment of respondent Nos. 5 and 6 as Judicial Member and Non-Judicial Member respectively of the “*Institution of Lokayukta*” of Bihar mainly on the following grounds:-

(i) Questioning the constitution of the Selection Committee itself, it is his submission that in terms of Clause 4(1) of the Act of 2011, “*immediate surviving outgoing Lokayukta*” was mandatorily required to be included in the Selection Committee. According to him, this expression would mean, in the present facts and circumstances, such person, who held the office of Lokayukta immediately before coming into force of the Act of 2011 and was no more a part of the “*Institution of Lokayukta*”. It is his plea that Mr. Justice Chandra Mohan Prasad was appointed as Lokayukta of Bihar under the Act of 1973 and, upon coming into force of the Act of 2011, he continued as the first Chairperson by operation of the proviso to Sub-section (2) of Section 3 of the Act of 2011. He has contended that Mr. Justice R. N. Prasad, who was the immediate surviving outgoing Lokayukta, ought to have been included in the Selection Committee by operation of Section 4(1) of the Act of

2011. The constitution of the Selection Committee itself being illegal, the recommendations, made by such Committee, cannot be sustained; so contends Mr. Dinu Kumar.

(ii) Questioning the recommendation made in favour of respondent No. 5 for his appointment as Judicial Member, he asserts that it is in breach of the mandatory statutory provisions, contained in Section 4 of the Act of 2011. Explaining his contention, in this regard, it is his argument that the Selection Committee can make recommendations only from the panel prepared by the Search Committee and not otherwise. He further contends that in absence of any nomination having been made in favour of respondent No. 5 against the advertisement/notice, dated 30.6.2015, there was no occasion for the Search Committee to have considered the case of respondent No. 5 for recommending his name to the Selection Committee and no wonder, therefore, that the Search Committee did not recommend the name of respondent no. 5 for appointment as a Judicial Member. He also submits that the recommendation of respondent No. 5 is, in teeth of the advertisement/notice inviting nominations for preparation of the panel for the two Members of "*Institution of Lokayukta*", is bad and invalid inasmuch as it was specifically clarified that the persons, nominated pursuant to the

earlier advertisement, dated 31.5.2015, could be considered only if they were nominated afresh. Respondent No. 5 having not been nominated afresh, his name could not have been considered by the Selection Committee by any stretch of imagination.

(iii) Questioning the recommendation of respondent No. 6 for his appointment as a Non-Judicial Member of the "*Institution of Lokayukta*", Mr. Dinu Kumar, learned Counsel, has argued that respondent No. 6 had earlier held the office of the Chairman of Bihar Public Service Commission and, therefore, he is, in view of the bar put under Article 319 (b) of the Constitution of India, ineligible for further employment under the Government of India or under the Government of any State. He has additionally submitted that the name of respondent No. 6 was earlier under consideration by the Search Committee pursuant to the process initiated through the advertisement/notice, dated 5.1.2014. Though his name was nominated pursuant to the said advertisement too, the Search Committee, at that point of time, had not found him fit to be recommended. He has, accordingly, submitted that by the earlier Search Committee, respondent No. 6 having been found unfit to hold the post of Non Judicial Member of the "*Institution of Lokayukta*", his name ought not to have figured amongst the persons

fit for recommendation/appointment for the said post in the panel prepared by the Search Committee.

47. Mr. Pushkar Narain Shahi, learned Additional Advocate General No.10, appearing on behalf of the State of Bihar, has not disputed the fact that respondent No. 5 was not nominated pursuant to the Advertisement/Notice, dated 30.06.2015. He has, however, submitted that pursuant to the previous Advertisement, dated 31.05.2015, respondent No. 5 was nominated for appointment as Judicial Member, but he was not nominated afresh as required under Clause-III of the Advertisement/Notice, dated 30.06.2015, issued at the instance of the Search Committee by the General Administration Department, Government of Bihar.

48. Countering the challenge made on behalf of the petitioner to the constitution of very Selection Committee, Mr. Shahi has contended that “*outgoing Lokayukta*” would mean the person, who is holding the Office and would be leaving or retiring from his position or Office in future. The word “*outgoing Lokayukta*”, as occurring in Section 4 (1) (d) of the Act, certainly does not mean a person, who has already left the Office of Lokayukta, contends Mr. Shahi. He further submits that the said expression needs to be read harmoniously bearing in mind the fact that whereas under previous



Act of 1973, there used to be a Lokayukta, Lokayukta has been replaced, under the new Act of 2011, by “*Institution of Lokayukta*”, comprising of a Chairperson, a Judicial Member and a Non-Judicial Member. He accordingly submits that the expression “*outgoing Lokayukta*”, under Section 4 (1) (d) of the Act, means a person, who held the post of Lokayukta under the Act of 1973, which was in vogue immediately before coming into force the Act of 2011. He has, therefore, argued that there is no infirmity in constitution of the Selection Committee with Mr. Justice Chandra Mohan Prasad, as a Member, in terms of Section 4 (1) (d) of the Act of 2011.

49. Controverting the submissions advanced on behalf of the petitioner that respondent No. 6, having already held the Office of Chairman, Bihar Public Service Commission, was not eligible for appointment, as a Non-Judicial Member of the *Institution of Lokayukta*, Mr. Shahi has heavily relied upon a Supreme Court decision in case of ***Hargovind Pant vs. Dr. Raghukul Tilak and Others***, reported in ***1979 (3) SCC 458***.

50. Building his argument on the observations made in ***Hargovind Pant*** (supra), Mr. Shahi contends that appointment against the post of Members of the *Institution of Lokayukta*, under the Act of 2011, cannot be said to be an employment, either under



the Government of India or under the State Government, within the meaning of Article 319 (b) of the Constitution of India. He has put substantial emphasis on his submission that the question as to whether an appointment to a public post is an employment, under the Government of India or under the State Government, would depend upon the test as to whether the holder or the incumbent of the employment is under the control of the Government of India or the State Government. Referring to Section 7 of the Act of 2011, he submits that the said provisions lay down the procedure for removal of Chairperson and other Members of Lokayukta, which requires that the Chairperson and the other Members of Lokayukta cannot be removed by the Governor except by an order passed after an address made in each House of the State Legislature, supported by a majority of the total Membership of the House and majority of not less than 2/3rd of the Members of that House present and the vote has been presented to the Governor, in the same session for such removal. He has, thus, submitted that keeping in mind the procedure prescribed for removal of Chairperson and other Members of the “*Institution of the Lokayukta*”, the said post cannot be treated to be an employment under the Government of Bihar.

51. Mr. Alok Kumar Sinha, learned Senior Counsel, has



submitted before us that he is appearing on the instructions of respondent No. 5 to defend the recommendation made for the appointment of respondent No. 5 as a Judicial Member of the *Institution of Lokayukta*. Mr. Sinha has contended that the name of respondent No. 5 was nominated pursuant to the previous advertisement/notice and he had given his consent for his appointment. According to Mr. Sinha, once respondent No. 5 had given his consent for the same post for appointment as a Judicial Member of the “*Institution of Lokayukta*”, recommendation, made in his favour, cannot be nullified on the ground of lack of nomination afresh in his favour.

52. We, will, first examine the merit of the objection taken on behalf of the petitioner to the constitution of the Selection Committee, since a plea has been taken that “*immediate surviving outgoing Lokayukta*” was not included in the Selection Committee. As has been noticed, the Selection Committee comprised of the Chairman, Bihar Legislative Council, the Speaker, Bihar Legislative Assembly, two senior sitting Judges of this Court, nominated by the Chief Justice, and the existing Chairperson of the “*Institution of Lokayukta*”. Section 4 (1) of the Act of 2011 requires that “*immediate surviving outgoing Lokayukta*” shall also be a Member

of the Selection Committee.

53. It has been argued, on behalf of the respondents, that the existing Chairperson of the “*Institution of Lokayukta*”, under the Act of 2011, is to be treated as “*outgoing Lokayukta*” within the meaning of Section 4 (1) of the Act. It has been contended that Mr. Justice Chandra Mohan Prasad, the existing Chairperson of the “*Institution of Lokayukta*”, fulfilled the requirement of having “*immediate surviving outgoing Lokayukta*”, as a Member of the Selection Committee. On the other hand, it is not in dispute that Mr. Justice R. N. Prasad was Lokayukta, under the Act of 1973, and after he demitted the office of Lokayukta, Mr. Justice Chandra Mohan Prasad was appointed as Lokayukta under the Act of 1973. Mr. Justice Chandra Mohan Prasad continued to function as first Chairperson of the “*Institution of Lokayukta*” by operation of the proviso to Section 3 (2) of the Act of 2011. In this background, the term “*immediate surviving outgoing Lokayukta*” requires interpretation by us for holding as to whether the presence of Mr. Justice Chandra Mohan Prasad satisfied the requirement of Category (d) of Section 4 (1) of the Act of 2011.

54. It is a fundamental rule of statutory interpretation that the Court is required to examine every word of a Statute as a



whole in its context and the legislative intent is required to be gathered from the language used in the statute. Subject to certain exceptions, the Courts, while interpreting statutory provisions, do not add or substitute a word nor reject a word as meaningless unless it becomes essential to save the constitutionality of a statutory provision or if plain reading of the statute leads to some absurdity in which situation, the courts may construe the wordings of statutory provisions even by reading it down. At the same time, if the language of a statute is plain, every word of it must be given effect to by the courts in construing statutory provisions.

55. In the Act of 2011, the word “*Lokayukta*” has been defined under Section 2(i), which reads thus:-

“Lokayukta” means the institution established under Section 3 of this Act.”

Would it mean that Lokayukta, as an Institution, surviving on the relevant date with its Chairperson and Members, would form the Selection Committee in Category (d) of sub-Section (1) of Section 4 of the Act of 2011? If this construction is given to the word Lokayukta, occurring in Category (d) of the Selection Committee, the proviso to sub-Section (1) of Section 4, which requires that existing Chairperson shall also be a Member of



Selection Committee, shall become redundant, because being a Chairperson of the “*Institution of Lokayukta*”, he would be automatically included in Category (d) of the Selection Committee. The word “*surviving*”, used in Section 4 (1) in Category (d) of the Members of the Selection Committee, is crucial and quite significant for construing the provisions in question. The word “*outgoing*”, in view of the fact that it is qualified by the word “*surviving*”, cannot mean “*Institution of Lokayukta*” within the meaning of Section 2 (i) of the Act of 2011. Had that been so, there would have been no need of the proviso to sub-Section (1) of Section 4, which requires that for considering selection of Members of Lokayukta, “*the existing Chairperson shall also be the Member of the Selection Committee.*”

56. The “*immediate surviving outgoing Lokayukta*”, as occurring in Section 4 (1) of the Act, thus, refers to, in our view, none other than the person, who had held the post of Lokayukta, immediately, before commencement of the Act of 2011. But it certainly does not refer to Lokayukta, appointed under the Act of 1973, who became Chairperson of the “*Institution of Lokayukta*”, under the Act of 2011, by operation of the proviso to Section 3 (2) of the Act.

57. In our considered view, the expression “*immediate surviving outgoing Lokayukta*”, would mean “*immediate surviving former Lokayukta*”, who was appointed prior to commencement of the Act of 2011 and no more a part of the “*Institution of Lokayukta*”.

58. At the cost of repetition, it is to be pointed out that if the word “*outgoing Lokayukta*” is given an interpretation that it would mean existing Chairperson of the “*Institution of Lokayukta*” or the “*Institution of Lokayukta*”, who will be outgoing, upon appointments being made under Section 4 of the Act, such an interpretation would render the proviso meaningless. Had it been the legislative intent to mean “*outgoing Lokayukta*” as “*Institution of Lokayukta*”, within the meaning of Section 2 (i) of the Act, there would have been no need of adding the proviso to sub-Section (1) of Section 4 requiring the existing Chairperson to be a Member of the Selection Committee.

59. In our view, therefore, since an *outgoing surviving Lokayukta* was there on the date of constitution of the Selection Committee, he ought to have been included in the Selection Committee. Mr. Shahi, learned Additional Advocate General No.10, has referred to sub-Section (2) of Section 4 of the Act of 2011 in order to contend that no appointment or selection of a Chairperson

or Member can be held to be a invalid merely by reason of any vacancy in the Committee. This, in our view, is not a question of vacancy in the Selection Committee; rather, it involves a question of legal and valid constitution of a Selection Committee.

60. We have, thus, no hesitation in arriving at the conclusion that the word "*Lokayukta*", occurring in Category 'd' of the Members of the Selection Committee, does not refer to "*Institution of Lokayukta*" within the meaning of Section 2 (i) of the Act; rather, it refers to a person, who had served as "*Lokayukta*" before commencement of the Act of 2011 and has not continued as Chairperson by operation of the proviso to Section 3 of the Act of 2011. If there is no "*immediate surviving outgoing Lokayukta*", the constitution of the Selection Committee shall stand saved by applying Section 4 (2) of the Act of 2011.

61. We, accordingly, hold that Mr. Dinu Kumar, learned Counsel for the petitioner, has rightly contended that the *immediate surviving outgoing Lokayukta* was wrongly excluded from the constitution of the Selection Committee.

62. Coming to the next aspect of the recommendations made by the Selection Committee for appointment of respondent No. 5, as a Judicial Member, we are required to come back to



Section 4 (3) of the Act of 2011, which mandates that the Selection Committee shall constitute a Search Committee for the purpose of selecting Chairperson and other members of Lokayukta and for preparing a panel of persons to be considered for appointment. Sub-section (7) prescribes the procedure to be adopted by the Search Committee for making recommendations on the basis of nominations received from individuals in this regard.

63. It is evident from Sub-section (6) of Section 4 that the Search Committee is to consist of persons of eminence with reputation of impeccable integrity and have held high positions in their respective fields. The very purpose of constitution of High Level Search Committee is to filter out the most suitable person from amongst the nominations received for appointment as Members of the *Institution of Lokayukta*. Sub-section (8) of Section 4 mandates that the Selection Committee "*shall finalize the recommendations*" within a month of receiving recommendations from the Search Committee. There can be no iota of doubt that the Selection Committee can finalize recommendations only on the basis of the panel of names prepared by the Search Committee. The Selection Committee cannot, in any circumstance, go beyond the panel prepared by the Search Committee for appointment of

Chairperson/Members of the *Institution of Lokayukta* of Bihar.

64. It is not in dispute, if we may reiterate, that the Search Committee had not recommended the name of respondent No. 5 for his appointment as Judicial Member of the *Institution of Lokayukta* inasmuch as his name did not figure in the panel prepared by the Search Committee. Further, no dispute has been raised over the fact that pursuant to the subsequent advertisement/notice, dated 30.6.2015, inviting nominations, brought on record by way of Annexure 6 to the writ application, respondent No. 5 was not nominated afresh. Again, at the cost of repetition, it is to be mentioned that the said advertisement/notice, in most unambiguous terms, mentioned that the persons, nominated pursuant to the earlier advertisement, dated 31.5.2015, would be considered only if they were nominated afresh. Since the name of respondent No. 5 was, admittedly, not nominated afresh, there would have been no occasion for the Search Committee to have considered the suitability of respondent No. 5 for recommending his name to the Selection Committee for appointment as Member Judicial of the *Institution of Lokayukta*, Bihar.

65. As has already been noticed, Sub-section (7) of Section 4 of the Act of 2011 lays down exhaustive procedure to be



followed by the Search Committee for the purpose of preparation of panel of persons for making recommendations for appointment of Chairperson and Member of the *Institution of Lokayukta*. The procedure begins with inviting nominations from the individuals or organizations through notice on *website* and, at least, two widely circulated newspapers. The Search Committee is, thereafter, required to collect informations about achievements and full details of the background of such persons, who have been nominated by the individuals or organizations. The Search Committee is also required to invite suggestions and information from the public in respect of nominations so received by placing the same on *website and/or from any other sources*, as may be deemed fit and proper by the Search Committee.

66. Since endeavour of the Search Committee, as required under Sub-section (7) of Section 4 of the Act of 2011, to collect information and invite suggestions, is confined to persons, who have been nominated by any individual or organization, evidently there would have been no occasion for the Search Committee to collect information and invite suggestions as contemplated, under Sub-section (7) of Section 4 of the Act of 2011, with respect to respondent No. 5. Clause (d) of Sub-section (7) of



Section 4 of the Act of 2011 requires the Search Committee to take into consideration informations and suggestions so received with respect to nominations received and prepare a panel of persons, which shall be three times the number of persons to be appointed.

67. It is the mandate of the Act of 2011 that the Search Committee has to consider informations and suggestions received by it only with respect to nominations received (Emphasis added). It is not in dispute that the nominations, in favour of respondent No. 5, was not received by the Search Committee pursuant to the advertisement/notice in question inviting nominations. Second proviso to Clause (d) of Sub-section (4) of Section 7 of the Act of 2011 makes it clear that the names of any such person/ persons, whose name has/have not been received, pursuant to invitation for nominations, as provided under Sub-section (7)(a), shall not be considered by the Search Committee (Emphasis added). This makes the legislative intent clear and beyond the scope of any doubt that such person/persons, whose name has/have not been received, pursuant to invitation for nomination, cannot be considered for recommendation for appointment as Chairperson or Member of the *Institution of Lokayukta*.

68. We have so far not come across any precedent of



similar nature, where the Selection Committee consisting of such high level functionaries, has recommended the name of a person for appointment, whose name was not under consideration at all, as he was not nominated afresh in accordance with the requirement of the advertisement/notice in question. The very purpose of requirement of selection through high level Search Committee in accordance with statutorily prescribed procedure shall stand defeated if such recommendation made by the Selection Committee is permitted to be acted upon.

69. We are, as a matter of fact, at a complete loss as to how the Selection Committee recommended the name of respondent No.5, who was not nominated for his appointment pursuant to the advertisement/ notice inviting nominations and whose case certainly was not placed before the Search Committee for considering his suitability for appointment to the post.

70. We are sad than surprised for the manner in which the Selection Committee, consisting of top most functionaries of the important wings of the State of Bihar, recommended the name of respondent No. 5 for his appointment.

71. It is, rather, disturbing to discover from the original records produced before us that none of the Members of the



Selection Committee raised any objection over the recommendation of respondent No.5, whose case was not there for consideration before the Selection Committee and the decision to make recommendation in favour of respondent No.5 is unanimous by all the Members of the Selection Committee present in the meeting. We have hesitantly made these observations keeping in our mind high positions, which the Members of the Selection Committee held, at the meeting of the Selection Committee, as has been noticed above; but we are constrained to express our views on what we have found.

72. Recommendation, made in favour of respondent No. 5 for his appointment as Judicial Member of the *Institution of Lokayukta*, therefore, cannot be sustained being *ultra vires* in the teeth of mandatory statutory requirements of the Act of 2011.

73. Coming to the third aspect, i.e., eligibility of respondent No. 6 for his appointment as Non-Judicial Member, because of the bar put by Article 319(b) of the Constitution of India, we are required to take note of Section 7 of the Act of 2011, which reads thus:-

"7. Removal of Chairperson and other Members of Lokayukta.- (1) The Chairprson or Members may be removed from his office by the Governor on the ground of misbehaviour or incapacity

and on no other ground.

Provided that inquiry required to be held before such removal shall be held by a sitting High Court Judge to be nominated by the Chief Justice of Patna High Court.

(2) A person appointed under the proviso to sub-section (1) shall submit the report within three months to the Governor who shall, as soon as may be, cause it to be laid before each House of the State Legislature.

(3) Notwithstanding anything contained in sub-section (1) the Governor shall not remove the Chairperson or Members except by an order passed after an address by each house of the State Legislature supported by a majority of the total membership of that House and majority of not less than two thirds of the Members of that House present and voting has been presented to the Governor in the same session for such removal.

(4) The State Legislature may regulate the procedure for presentation of an address and conclusion of the proceeding as mentioned in sub-section (3) above.

(5) Notwithstanding any other definition of misbehaviour in any other law inforce for the time being, "Misbehaviour" amongst others means, if the Chairperson or any other Member is or becomes in any way associated or interested in any contract or



agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a Member and in common with the other Members of an Corporate Company or has abused his position in any way so as to obtain any gain or favour to himself or to any other person to cause undue harm or hardship to any other person or was actuated in the discharge of the functions by any personal interest or for improper gain, corrupt practices.

(6) Notwithstanding any other definition of incapacity in any other law in force for time being, "Incapacity" amongst others means if the Chairperson or any other members is declared or adjudged an insolvent by a court of competent jurisdiction or is unfit to continue in office by reason of infirmity of mind or body."

74. Section 7 of the Act of 2011 lays down the procedure for removal of Chairperson or Members of Lokayukta from his office by the Governor of the State on the ground of misbehaviour or incapacity and no other ground. Proviso to sub-section (1) of Section 7 of the Act of 2011 prescribes that an enquiry will be required to be held by a sitting High Court Judge, in this regard, to be nominated by the Chief Justice of Patna High Court,



who, in turn, will be required to submit a report to the Governor. Thereafter, the Act provides that the Governor shall cause the said report to be laid before each House of the State Legislature. Even the Governor, who is the appointing authority of the Chairperson and Members of the *Institution of Lokayukta*, does not have the jurisdiction to remove the Chairperson or a Member of Lokayukta except by an order passed after an address by each House of the State Legislature supported by a majority of the total membership of that House and majority of not less than two-third of the Members of that House present and such voting has been presented to the Governor in the same session for such removal.

75. Mr. Pushkar Narain Shahi, learned Addl. Advocate General, appearing for the State of Bihar, is, in our considered view, right in his submission that considering rigorous procedure prescribed for removal of the Chairperson and Members of Lokayukta, as noticed above, their appointments cannot be said to be falling within the meaning of "*employment under the Government of a State*", the Government having no control over the appointees.

76. Mr. Shahi has rightly placed, in this regard, reliance on the decision of the Supreme Court, in the case of ***Hargovind Pant v. Raghukul Tilak (Dr.) & Ors.***, reported in (1979) 3 SCC 458,



wherein the Supreme Court introduced the test of "*administrative control of the State Government or Central Government*" for deciding as to whether an employment can be said to be under the Government of India or under the Government of a State. We find from the process of removal, as prescribed by Section 7 of the Act of 2011, that the State Government does not have at all any disciplinary or administrative control over the Chairperson or Members of Lokayukta.

77. Further, considering the jurisdiction in respect of inquiry vested in the "*Institution of Lokayukta*" under Chapter- VI of the Act of 2011, the appointment of Members and Chairperson cannot be termed as employment under the State Government. Section 16 of the Act of 2011 being relevant, for the present purpose, is being extracted hereinbelow:

"16. Jurisdiction of Lokayukta.- (1) Subject to other provisions of this Act, Lokayukta shall inquire into any matter involved in, or arising from, or connected with any allegation or grievance against any public servant made in the complaint in respect of the following, namely:

- (a) any person who is or has been a Chief Minister of the State,*
- (b) any person who is or has been a Minister of the State,*

(c) any person who is or has been a Member of either house of the State Legislature,

(d) every officer referred to in clause (m) of Section 2,

(e) every officer referred to in clause (m) of Section 2 who on deputation or on transfer to foreign service is in the service or pay of-

(i) any Local Authority, Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies;

(ii) any Corporation (not being the local authority) established by or under the State Act and owned or controlled by the State Government;

(iii) any Government Company within the meaning of Section 617 of the Companies Act, 1956 (Act 1 of 1956) in which not less than fifty-one percent of the paid up share capital is held by the State Government of any Company which is a subsidiary of a company capital is held by the State Government;

(iv) any Society registered under the Societies Registration Act, 1860 (Act 21 of 1860) which is subject to the control of the State Government and which is notified by the State Government in this behalf in the Official gazette;

(f) every Head or his Deputy by whatever designation he may be known and other employees of Local Authority, the Local Self Government including the Panchayati Raj Institutions



and the Urban Local Bodies, the Corporation, the Government Company or a Society or Association of Persons or Trust or Non-Governmental Organizations (whether registered under any law for the time being in force or not) having received a donation of more than Rs. five lakhs from any other source including foreign sources, or any other institution or organization or authority, subsidized or being given grant by the State Government or receiving payment of more than the prescribed amount from the Government.

(g) any Chairperson or Member or Officer {referred to in clause (e) of sub-section (1)} or equivalent/ above in any body/ Board/ Corporation/ Authority/ Company/ Society/ Autonomous Body (by whatever name called) established or constituted under an Act of State Legislature or wholly and partly financed by the State Government or controlled by it,

Provided that no investigation or prosecution shall be initiated without obtaining permission from a full bench of Lokayukta against, persons named in clause (a), (b) and (C) of sub-section (1) of Section 16 of the Act.

(2) The Lokayukta may inquire into any or conduct of any person other than those referred to in sub-section (1) of Section 16, if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988."



78. Evidently, in view of Section 16 of the Act of 2011, Lokayukta has jurisdiction to enquire into the matter with respect to any allegation or grievance against the public servants enumerated therein including the Chief Minister of the State, Ministers of the State and Members of either house of the State Legislature. These facts, as discussed above, take us to a definite conclusion that the appointments of Chairperson or Member of Lokayukta, under the Act of 2011, cannot be termed as employment under the Government of India or the State Government as contemplated under Article 319(b) of the Constitution of India. We are, therefore, of the view that the recommendation, made in favour of respondent No. 6 by the Selection Committee, does not require interference on the ground of the bar put by Article 319(b) of the Constitution of India.

79. Mr. Dinu Kumar, learned Counsel appearing for the petitioner, has attempted to convince us that respondent No.6 was nominated for the post of Non-Judicial Member pursuant to the earlier advertisement issued in the year 2015; but his name did not figure in the panel of the Search Committee as he was not found suitable. According to Mr. Dinu Kumar, learned Counsel, once respondent No. 6 was not found suitable for appointment to the post

by the earlier Search Committee, his name ought not to have figured in the panel prepared by the later Search Committee.

80. We do not find any substance in the submissions so advanced. A search committee runs the statutory limitation of not recommending more than three names for one post of a Member of the *Institution of Lokayukta*. In a given case, there may be more than three persons found suitable for a post of Member of the *Institution of Lokayukta*. As the statutory limitations debar a Search Committee from recommending more than three names for a post, the non-inclusion of the name of the fourth candidate/nominee would not mean that the fourth candidate/nominee was found unsuitable to hold the given post in the *Institution of Lokayukta* and/or the nomination of the fourth candidate stands rejected.

81. In the case at hand, the panel, prepared by the earlier Search Committee, was found to be containing less number of persons than required under the Act of 2011 and, thereafter, a new Search Committee was constituted. The new Search Committee, on the basis of relative merits of the nominees, prepared a panel of the names for appointment as Non-Judicial Member and recommended their names to the Selection Committee for further recommendation and appointment as Members. Respondent No. 6 cannot be said to



be disqualified or lacking in eligibility for his appointment on the ground that the earlier Search Committee had not recommended his name for appointment as Non-Judicial Member. The plea, advanced on behalf of the petitioner to this extent, is rejected.

82. Considering the facts and circumstances, as discussed above, we are constrained to hold, and we do hold, that the recommendation, made by the Selection Committee for appointment of respondent No. 5 as Judicial Member of the “*Institution of Lokayukta*”, Bihar, which is under challenge in the present writ application, is not sustainable being beyond jurisdiction and *ultra vires* the provisions of Bihar Lokayukta Act, 2011. We, at the same time, hold that respondent No. 6 cannot be said to be disqualified for being appointed as Non-Judicial Member of the “*Institution of Lokayukta*”, Bihar, on the ground of the bar created by Article 319(b) of the Constitution of India.

83. In view of the facts and circumstances of the present case, we direct the Selection Committee, within the meaning of Section 4(1) of the Act of 2011 (respondent No. 3) constituted in terms of our interpretation of Section 4(1) of the Act of 2011 in the present judgment, to take decision afresh and make recommendations for appointment to the posts of Member of the

Institution of Lokayukta within a period of 15 days from today, on the basis of the panel prepared by the Search Committee.

84. With the above observations and directions, this application is allowed to the extent as mentioned above.

85. Let original records, produced for our perusal, relating to selection, in question, be returned to Mr. Pushkar Narain Shahi, learned Additional Advocate General 10.

86. Let a copy of this judgment and order be handed over to the learned counsel for respondent No. 3, forthwith, for its prompt compliance.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, ACJ : I agree.

A.F.R.
Surendra/-

(I.A. Ansari, ACJ.)

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