

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITIONS NO.871, 877 & 878 OF 2016****WRIT PETITION NO. 871 OF 2016****1. Ms. Bhumika Cleantech Services Pvt. Ltd.,**

A company registered under the Indian Companies Act, having its registered office at C-1001, Mayfair Meridian, Ceaser Road, Amboli, Andheri (West), Mumbai, 400058, Maharashtra-India, represented by its Director Shri Manish R. Mohata, 40 years of age, Son of Ramnarayan Mohata, having office at: C-1001, Mayfair Meridian, Ceaser Road, Amboli, Andheri (West), Mumbai, 400058, Maharashtra – India.

2. Shri Manish R. Mohata,

40 years of age, Son of Ramnarayan Mohata, having office at: C-1001, Mayfair Meridian, Ceaser Road, Amboli, Andheri (West), Mumbai, 400058, Maharashtra – India.

..... **Petitioners**

V e r s u s

1. The Lokayukta,

Institution of Goa Lokayukta, State Guest House, Ground floor, Altinho, Panaji, Goa.

2. Mr. Dilip Parulekar,
Minister for Tourism, Goa,
Paryatan Bhavan, Patto,
Panaji, Goa.
3. Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto, Panaji, Goa.
4. Dy. Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto, Panaji, Goa.
5. M/s. Ram Cleansers and Developers Pvt. Ltd.,
A company registered under the Indian
Companies Act, having its registered
office at 202 Sai Plaza,
St. Inez, Panaji, Goa,
represented by its Director.
6. Mr. Suraj Govind Borkar,
son of Govind Borkar, Major of age,
married, Indian National,
Resident of 101, Manmohan Residency,
Dhavali, Margao Bye pass road,
Khavalem, Ponda, Goa.

..... **Respondents**

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui, Additional Govt. Advocate for respondents No.3 and 4.

Mr. Shivan Desai and Ms. K. Pednekar, Advocates for respondent No.5.

Mr. A. Kakodkar, Advocate for respondent No.6.

WRIT PETITION NO.877 OF 2016

- 1) M/s. Ram Cleansers & Developers Pvt. Ltd.,
Having office at C-1001, Mayfair Meridian,

Ceaser Road, Amboli, Andheri (W),
Mumbai – 400 058,
Represented by its Director
And Shareholder,
SHRI OM RAMESH SAWANT,
Son of Ramesh D. Sawant,
aged 38 years, married,
Indian National,
Resident of A/604,
Bhairav Apts., Veera Desai Road,
Andheri (West),
Mumbai – 400 058, Maharashtra,
India.

- 2) SHRI OM RAMESH SAWANT,
Son of Ramesh D. Sawant,
aged 38 years, married,
Indian National,
Resident of A/604,
Bhairav Apts., Veera Desai Road,
Andheri (West),
Mumbai – 400 058, Maharashtra,
India.

.... **Petitioners**

V e r s u s

1. Lokayukta,
Institution of Goa Lokayukta,
Having office at State Guest House,
Ground floor, Altinho,
Panaji, Goa.
2. Mr. Dilip Parulekar,
Minister for Tourism, Goa,
Paryatan Bhavan, Patto,
Panaji, Goa.
3. Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto,
Panaji, Goa.

4. Deputy Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto, Panaji, Goa.

5. M/s. Bhumika Cleantech Services Pvt. Ltd.,
Having office at C-1001, Mayfair Meridian,
Ceaser Road, Amboli, Andheri (W),
Mumbai – 400 058, represented by
its Director and authorized representative
MR. MANISH MOHATA,
aged 40 years, married,
Indian National, having office at
C-1001, Mayfair Meridian,
Ceaser Road, Amboli,
Andheri (West), Mumbai, 400058

..... **Respondents.**

Mr. Shivan Desai and Ms. K. Pednekar, Advocates for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Ms. P. Sawant, Additional
Govt. Advocate for respondents No.3 and 4.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for respondent No.5.

WRIT PETITION NO.878 OF 2016

1) M/s. Ram Cleansers & Developers Pvt. Ltd.,
Having office at C-1001, Mayfair Meridian,
Ceaser Road, Amboli, Andheri (W),
Mumbai – 400 058,
Represented by its Director
And Shareholder,
SHRI OM RAMESH SAWANT,
Son of Ramesh D. Sawant,
aged 38 years, married,
Indian National,
Resident of A/604,
Bhairav Apts., Veera Desai Road,
Andheri (West),
Mumbai – 400 058, Maharashtra,
India.

2) SHRI OM RAMESH SAWANT,
Son of Ramesh D. Sawant,
aged 38 years, married,
Indian National,
Resident of A/604,
Bhairav Apts., Veera Desai Road,
Andheri (West),
Mumbai – 400 058, Maharashtra,
India.

.... **Petitioners**

V e r s u s

1. Lokayukta,
Institution of Goa Lokayukta,
Having office at State Guest House,
Ground floor, Altinho,
Panaji, Goa 403 001,
2. Mr. Dilip Parulekar,
Minister for Tourism, Goa,
Paryatan Bhavan, Patto,
Panaji, Goa.
3. Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto,
Panaji, Goa.
4. Deputy Director of Tourism,
Department of Tourism, Goa
Paryatan Bhavan, Patto, Panaji, Goa.
5. M/s. Bhumika Cleantech Services Pvt. Ltd.,
Having office at C-1001, Mayfair Meridian,
Ceaser Road, Amboli, Andheri (W),
Mumbai – 400 058, represented by
its Director and authorized representative
MR. MANISH MOHATA,
aged 40 years, married,
Indian National, having office at
C-1001, Mayfair Meridian,
Ceaser Road, Amboli,

Andheri (West), Mumbai, 400058

6. Mr. Suraj Govind Borkar,
son of Govind Borkar, Major of age,
married, Indian National,
Resident of 101, Manmohan Residency,
Dhavali, Margao Bye pass road,
Khavalem, Ponda, Goa.

..... **Respondents.**

Mr. Shivan Desai and Ms. K. Pednekar, Advocates for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. A. Prabhudessai,
Additional Govt. Advocate for respondents No.3 and 4.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for respondent No.5.

Mr. A. Kakodkar, Advocate for the respondent No.6.

**CORAM :- ANOOP V. MOHTA &
C.V. BHADANG, JJ.**

Judgment reserved on :- 01/03/2017.

Judgment pronounced on : 10th March, 2017.

J U D G M E N T :- (PER ANOOP V. MOHTA, J.)

Heard finally by consent of the parties. As the issues and the parties are common, therefore, this common Judgment.

2. The parties have raised issues for and against an interlocutory order dated 12th August, 2016, passed by the Goa Lokayukta, Institute of Goa Lokayukta, Panaji, (the Lokayukta), thereby the following directions, pending the main investigation, as contemplated under The

Goa Lokayukta Act, 2011 (The Lokayukta Act) and Rules, 2012 (Lokayukta Rules) have been issued :

“A detailed investigation shall be held as contemplated in Section 13 of the Act. The State Government is required to take an appropriate decision within 6 weeks relating to renewal/non-renewal of the contract on the basis of all available relevant materials including the notes of different authorities pertaining to performance of the contractors for the relevant period. The pending bills of the contractors may be finalized by the Director of Tourism subject to approval of the Principal Secretary (Tourism). The Principal Secretary (Tourism) while considering the question of approval, may, if he thinks appropriate, take assistance of any senior Accounts Officer of the Directorate of Accounts. This entire process may be finalised within 6 weeks. Half of the amount found payable shall be disbursed and the Balance amount shall be kept in a fixed deposit for the time being so that appropriate direction can be issued after the completion of the detailed investigation.”
(emphasis added)

3. The basic common events which led to filing of these writ petitions are relevant :

WRIT PETITIONS NO. 871/2016

On 26th August, 2014, petitioner No.1 (the contractor)

(Bhumika) was awarded the work order and subsequently, an agreement dated 28th May, 2015 was executed with respondent No.2 (the Ministry of Tourism). On 10th May, 2016 Mr. Rohan Kaunte (the complainant) filed a complaint under Section 11 of the Lokayukta Act against respondent nos. 2 to 5 and the petitioner, before respondent No.1 (The Lokayukta). On 18th May, 2016, respondent No.1 issued a notice to the complainant for preliminary hearing. On 6th July, 2016, respondent No.1 has, after observing that the complaint is not be maintainable in view of Section 11 (b) of the Act since the complainant being is a public functionary, treated the complaint as suo motu proceedings (5/2016) and directed respondent No.3 (the Director of Tourism) only to make part payment to the beach cleaning contractors.

On 20th June, 2016, respondent No.6 (another complainant) filed a complaint which was registered as proceedings bearing No.10/2016, similar to the earlier complaint. On 8th July, 2016, Director (Vigilance) filed a status report in both the proceedings.

On 11th July, 2016, respondent No.1 issued notices to the petitioner and respondent No.5 fixing the matter for a preliminary inquiry. Respondents No.3 and 4 filed their reply in the proceedings

on 19th July, 2016, on which day itself, the Lokayukta, by an Administrative Order, directed police personnel to carry out inspection of some of the beaches. On 1st August, 2016 petitioner filed reply in Proceedings No.5/2016 and on 5th August, 2016 in Proceedings No.10/2016. Written notes were also filed on behalf of respondent No.6, respondents No.3 and 4. On 12th August, 2016, the impugned interim direction/ recommendatory order was passed by the Lokayukta.

WRIT PETITIONS NO. 877 & 878/2016

In July, 2013, respondent No.2 (the Ministry of Tourism) invited tenders for comprehensive management of cleanliness at beaches in Goa in which petitioner No.1 (Ram Cleansers) (the contractor) along with others, participated and submitted bid in respect of tender for beaches in South Goa. A Tender Evaluation cum Selection Committee was constituted by the Government of Goa, which took decision regarding awarding of marks, pre-qualification of bidders and thereafter, scrutiny/evaluation of the technical bid based on eligibility criteria of the tender, petitioner No.1 was declared technically qualified along with three other bidders. Subsequently final bids were opened and the contractor was declared the lowest and was awarded the contract for the proposed work. Pursuant thereto, Work Order for the works of beach cleaning of South Goa beaches was

awarded and the agreements were extended. The petitioners commenced the work, accordingly. The contractors raised bills in accordance with the entitlements. Such bills were tendered from time to time. Respondent No.3 (Director of Tourism) was lax in payment. The total dues mounted to Rs.5,01,66,026/-. On 20th June, 2016, a complaint was filed by respondent No.6 (the complainant) (Suraj) against petitioner No.1 and respondents 3 to 5 under Section 11 of the Lokayukta Act, alleging that the comprehensive management of cleanliness of beaches in Goa tender was a conspiracy hatched by petitioner No.1 (the contractor) and respondents No.2 to 5 to siphon off crores of rupees; that the beach cleaning contract was illegally awarded to petitioner No.1 (Ram Cleansers) and respondent No.5 (Bhumika) who was common Directors; conspiracy was hatched to knock out existing contractors and bring in contractor with clear intent to cheat the State Exchequer to the tune of crores of rupees; eligibility criteria and the terms and conditions of the tender were manipulated and changed to suit two contractors; there is no justification for fixing the total cost of beach cleanliness contract of over Rs.14.00 crores per year, when actual was around Rs.2.00 crores per year. On 6th July, 2016, a complaint of similar nature was filed which was taken up as a suo motu petition No. 5/2016. In August, 2016, petitioner No.1 (the

contractor) filed reply to the complaint disputing claims made in the complaint as baseless and frivolous and stated that petitioner No.1 was awarded tender after following due process of law; there is no conspiracy of any nature in respect of award of tender in favour of petitioner No.1; and that the complaint is baseless and frivolous and there is no question of invoking jurisdiction of Lokayukta. On 12th August, 2016, the learned Lokayukta has passed the impugned order. Thereafter, on 2nd September, 2016, Director of Tourism communicated to the petitioners that for the reasons stated in the notice in the nature of change of scope of contract, the Government has decided not to renew the contract for further period and the petitioners should take necessary action in respect of the same. Contesting the petitions, respondent-complainant has filed reply dated 13th October, 2016, the petitioner (contractor) filed rejoinder dated 14th October, 2016, and reiterated the prayers.

4. Mr. S. D. Lotlikar, learned Advocate General appearing for respondents No.3 and 4 made a statement that pursuant to the interim directions issued by the Lokayukta, the balance 50% due amount is not paid to the (contractors) petitioners. The learned Counsel appearing for the respective parties make a statement that the

contracts, in question, have been already determined/terminated after the impugned order. The learned Counsel appearing for the petitioners made a statement that the (contractors) petitioners have already invoked an arbitration proceeding and the same is pending with the Arbitral Tribunal for final adjudication of the claims on merit, based upon the contract. This High Court, on 21st September, 2016, while admitting the matter has not granted any interim relief. The investigation has been permitted to proceed in accordance with law. However, the issue of jurisdiction and power of the Lokayukta to grant interim relief as reflected in the impugned order was kept open for hearing.

5. We have heard the matter accordingly by consent of the parties and noted the subsequent events, including the fact of termination of the contracts and the pendency of proceedings for further investigation. The investigation was permitted to proceed as this Court has not granted the stay. We are not inclined to grant any order obstructing the investigation. The final investigation report would be tested in accordance with law, if any challenge is raised. We are not even considering, therefore, the merits of the rival contentions so raised in this regard. However, the point of jurisdiction and the

power of the Lokayukta to pass such orders, interim recommendatory of this nature, as emphasized, thereby deciding even the civil rights by reduction of the amount due to the contractors, if any, arising out of the contracts where the concerned work already done in part, we have to decide finally.

6. The scheme and the purpose of the Lokayukta Act can be read as under :

“ to provide for the establishment of the Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provisions for the appointment of the Lokayukta and Upa-Lokayukta and for the matters connected therewith.”

The terms “action”, “allegation”, “Competent Authority”, “complaint”, “corruption”, “grievance”, “local authority”, “mal-administration”, “public functionary”, “society”, “public servant”, “State” have been defined. Section 9 of the Act specifically deals with the matters which may be investigated by Lokayukta or Upa-Lokayukta. The provisions are also made relating to the complaints and how to deal with the same. Holding of preliminary inquiry is also contemplated, so also the procedure in respect of detail investigation. Power is provided to issue warrants and call for evidence. The Rules provide for the

powers of the Lokayukta under the Code of Civil Procedure (CPC), including the power to grant injunction and/or interlocutory order and/or to review the decision or order, apart from the power to dismiss the complaint and/or to correct errors and/or to add parties.

7. The Apex Court, in ***Jagdish Narain Shukla vs. State of Uttar Pradesh and ors.***, (2016) 10 SCC 433, while dealing with public accountability, vigilance and prevention of corruption, vigilance authorities' role and implementation of Lokayukta report, based upon U.P. Lokayukta and Up-Lokayuktas Act, 1975, reiterated the position that the effect of report of the Lokayukta, being of recommendatory in nature, the State or the concerned Authorities or the enforcement agencies require to consider the recommendations and proceed with the investigation and timely inquiry in this Judgment.

8. The Apex Court in ***Rang Nath Mishra vs. State of Uttar Pradesh and ors.***, (2015) 8 SCC 117, based upon the same Act, further reiterated that recommendation of criminal investigation under the provisions of Prevention of Corruption Act and other inquiries are permissible. The power is of recommendation for an investigation to see whether the case for prosecution and further inquiry is made out or not. State to follow the process as prescribed under the Lokayukta

Act. The Apex Court in para 21 has recorded this aspect in following words :

“21. Before parting, the issue with regard to the jurisdiction of the Lokayukta to proceed in the instant matter in view of the provisions of the Third Schedule to the Act must be answered. What the Third Schedule to the Act contemplates is that the Lokayukta in the course of an investigation under the Act will not investigate a crime or determine the question as to whether the Act will not investigate a crime or determine the question as to whether the matter “shall go to, or shall continue to be prosecuted in a Court or not”.

9. In *Justice Chandrashekaraiiah (Retired) vs. Janekere C. Krishna and others*, (2013) 3 SCC 117, the Supreme Court, referring to the Karnataka Lokayukta Act, 1984, discussed the scope, object and purpose of the Act, in paras 29, 32, 34, 36, 37, 40 and 112 in following words :

“29. Section 12 deals with the reports of Lokayukta which essentially deals with the following aspects:

(i) The Lokayukta or Upa-Lokayukta can send a report with certain recommendations and findings as envisaged in sub-sections (1) and (3) of Section 12.

(ii) Under sub-section (2) of Section 12, the competent authority is required to intimate or cause to intimate the Lokayukta or the Upa-Lokayukta on

the action taken on the report as provided under sub-section (1) of Section 12, within one month.

(iii) Failure to intimate the action taken on the report submitted under sub-section (1) has not been dealt with specifically, however if in the opinion of the Lokayukta/Upa-Lokayukta satisfactory action is not taken by the competent authority under Section 12(2), he is at liberty to send a “special report” to the Governor as provided for under sub-section (5) of Section 12.

(iv) Findings and recommendations to be given by the Lokayukta or Upa-Lokayukta under sub-section (3) of Section 12, include those as contemplated under Section 13 of the Act.

(v) Sub-section (4) of Section 12 requires the competent authority to examine the report forwarded under sub-section (3), within three months and intimate the Lokayukta or the Upa-Lokayukta on the action taken or proposed to be taken on the basis of the report.

(vi) Failure to intimate the action taken on the report submitted under sub-section (3) has not been dealt with specifically, however if in the opinion of the Lokayukta/Upa-Lokayukta, satisfactory action is not taken by the competent authority under Section 12(4), he is at liberty to send a “special report” to the Governor as provided for under sub-section (5) of Section 12.

(vii) If any special report as contemplated

under sub-section (5) is received and the annual report of the Lokayukta under sub-section (6), would have to be laid before each House of the State Legislature along with an explanatory note of the Governor.

(viii) It is important to note that the Act neither binds the Governor nor the State Legislature to accept the recommendations or findings of the incumbent, thereby ensuring that no civil consequences follow from the direct action of the Lokayukta or Upa-Lokayukta.

“32. The provisions discussed above clearly indicate that the functions to be discharged by the Lokayukta or Upa-Lokayukta are investigative in nature and the report of Lokayukta or Upa-Lokayukta under sub-sections (1) and (3) of Section 12 and the special report submitted under sub-section (5) of Section 12 are only recommendatory. No civil consequence as such follows from the action of the Lokayukta and Upa-Lokayukta, though they can initiate prosecution before a competent court. emphasis added

34. Further if the complainant has or had any remedy by way of appeal, revision, review or other proceedings before any tribunal, court officer or other authority and has not availed of the same, the Lokayukta and Upa-Lokayukta shall not conduct any investigation under the Act, in other words, they

have to act within the four corners of the Act.

36. The Lokayukta or Upa-Lokayukta under the Act are established to investigate and report on allegations or grievances relating to the conduct of public servants which includes the Chief Minister; all other Ministers and Members of the State Legislature; all officers of the State Government; Chairman, Vice-Chairman of local authorities, corporations, owned or controlled by the State Government, a company in which not less than fifty-one per cent of the shares are held by the State Government, societies registered under the Societies Registration Act, cooperative societies and universities established by or under any law of the legislature.

37. The Lokayukta and Upa-Lokayukta while exercising powers under the Act, of course, is acting as a quasi-judicial authority but his functions are investigative in nature. The Constitution Bench of this Court in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals* AIR 1958 SC 398 held: (AIR p. 408, para 14)

“ 14. ... Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder.”

40. The provisions of Sections 9, 10 and 11 clearly indicate that the Lokayukta and Upa-Lokayukta are discharging quasi-judicial functions while conducting the investigation under the Act. Sub-section (2) of Section 11 of the Act also states that for the purpose of any such investigation, including the preliminary inquiry the Lokayukta and Upa-Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in the matter of summoning and enforcing the attendance of any person and examining him on oath. Further they have also the power for requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office, issuing commissions for examination of witnesses or documents, etc. Further, sub-section (3) of Section 11 stipulates that any proceedings before the Lokayukta and Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Penal Code. Therefore, the Lokayukta and Upa-Lokayukta, while investigating the matters are discharging quasi-judicial functions, though the nature of functions is investigative.” emphasis added

“112. As mentioned above, an Upa-Lokayukta does function as an adjudicating authority but the Act places him short of a judicial authority. He is much

more “judicial” than an investigator or an inquisitorial authority largely exercising administrative or executive functions and powers. Under the circumstances, taking an overall view of the provisions of the Act and the law laid down, my conclusion is that the Upa-Lokayukta is a quasi-judicial authority or in any event an authority exercising functions, powers, duties and responsibilities conferred by the Act as a sui generis quasi-judicial authority.”

10. The Division Bench of this Court in ***Dattatraya and ors., vs. The State of Maharashtra and ors.***, MANU/MH/2256/2016 while considering the provisions of Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 recorded the affidavit filed by the Office of Lokayukta by observing at para 7 as under :

“7. It is thus clear that the Hon'ble Lokayukta has not taken any independent inquiry/investigation and has merely made recommendation on the basis of report of Mr. Asim Gupta, a one-man committee. The position is further clarified in view of the statement as made in para 13 of the affidavit filed by the Assistant Registrar of the Hon'ble Lokayukta which reads thus :--

“13. As per the statute as stands today, Hon'ble Lok-Ayukta being Ombudsman can make only recommendation to the competent authority. It is for the competent authority to execute the recommendations meaningfully, so as to take

action against the erring public servant. The recommendations of Hon'ble Lok-Ayukta are in consonance with the rules of Law”.

11. The Apex Court in *Ch. Rama Rao vs. Lokayukta and others*, (1996) 5 SCC 304, has elaborated the similarly placed Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983, and observed at para (5),thus :

“5. ...Suffice it to state that the Lokayukta has power to submit a preliminary report to take further action so as to enable the Lokayukta to conduct further investigation. The power to submit final report with recommendation to take punitive or penal action includes power to submit interim report with recommendation to suspend an officer or to transfer him pending further investigation or the preliminary verification itself. The object of the recommendation is only to enable smooth enquiry or the investigation conduct without being hampered with by the persons concerned or to prevent an opportunity to tamper with the record or to destroy the record. Under these circumstances, we think that the Lokayukta was well justified in not issuing any notice or giving any opportunity to the petitioner at preliminary verification”

12. A Division Bench of this Court in *Dr. Viswasrao*

Chudaman Patil vs. Lok Ayukta, State of Maharashtra and ors.,

AIR 1985 Bom 136, has dealt with Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 and elaborated that the very object of the Act is to ensure an independent investigation of administrative action and further that the investigation results in a recommendation under the provision. It has also recognized that the power conferred is coupled with duty to investigate. It is also observed that such provisions are enacted for eradication of the evil of corruption and mal-administration and therefore, should be liberally construed so as to advance the remedy. It specifically held that the Lokayukta has jurisdiction to issue any interim order, even in the nature of a recommendation as it would render his final recommendation a barren success. The interim recommendation, in tune with their power to make a final recommendation is, therefore, permissible. It is held that the Court will not entertain any such challenge so as to throttle the investigation itself. It is relevant to note the observations made by the Division Bench at paras 12, 13 and 20 the said Judgment which read thus :

“12. The power conferred is coupled with duty to investigate. The investigation is carried out by eminent persons holding the high positions of Lokayukta or Upa-Lokayukta. The powers conferred on the Lokayukta are advisedly very wide. These powers are

wider than of any Court of law. Notwithstanding remedies to be found in Courts of law and in statutory appeals against administrative decisions there still remains a gap in the machinery for the redress of grievances of the individual against administrative acts or omissions. As observed by conference of Jurists representing Asian and Pacific regions :-

"This gap should be filled by an authority which is able to act more speedily, informally and with a greater regard to the individual justice of a case than is possible by ordinary legal process of the Courts, it should not be regarded as a substitute for, or rival to, the legislature or to the Courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion".

The fight between an individual citizen and the State is unequal in nature. Therefore, the very existence of such an institution will act as a check and will be helpful in checking the canker of corruption and maladministration. More so when it has been repeatedly asserted that the canker of corruption, in the proportions it is said to have attained, may well dig into the vitals of our democratic State, and eventually destroy it (See Corruption - Control of Maladministration by John B. Monteiro).

13. The million dollar question before our democracy is as to who will watch the watchman? This seems to be the object behind the present legislation. It is no doubt true that the Lokayukta is invested with the power of investigation and to make a recommendatory report. However, it is not an exercise in futility. The

competent authority to whom the report is sent is duty bound to intimate or cause to be intimated to the Lokayukta the action taken. In the case of the report qua allegation, submitted under section [12\(3\)](#), the competent authority is obliged to intimate the Lokayukta the action taken or proposed to be taken on the basis of the report. ...

20. In this context, our attention was drawn by Shri Setalvad towards the decision of the Supreme Court in I.T. O. v. Mohd. Kunhi, AIR 1969 SC 430 and The Asstt. Collector v. N.T. Co. [MANU/SC/0377/1972](#) : 1978(2)ELT416(SC) . It is also not correct to say that only judicial or quasi-judicial bodies have implied powers. Even the investigating agencies have such implied powers. In this context, Shri Setalvad rightly draws our attention to section [250](#) of the Companies Act which empowers the Central Government to restrain certain actions pending an investigation into certain facts. The very power to investigate, which may result in a recommendation, would become barren or futile if, in the meanwhile, administrative action is taken or implemented. If it is held that the Lokayukta has no implied power to make an interim recommendation, then to borrow the expression from John B. Monteiro's book on Corruption. " It will amount to applying the brakes after the accident." In that case the report or the recommendation made by the Lokayukta will amount to post-mortem report. It will

be an academic luxury. Therefore, in our view, it will have to be held that the Lokayukta, during the course of an inquiry or investigation has power to make any interim recommendation which will have to be in consonance with his power to make a final report under section [12](#) of the Act. Therefore, the principle of reading down the provision will have to be applied to Rule 35 of the Rules.”

13. Reliance is also placed on a Division Bench Judgment of Hyderabad High Court in ***Rajkumar Bharatlal vs. Govt. of A.P.***, AIR 214 Hyd 30. Referring to similar provision, including Section 7 of the Andhra Pradesh Lokayukta Act, 1983, which empowers the Lokayukta to investigate the matter/complaint, it is observed in para 5 thus :

“ 5. From the above, it is clear that the Hon'ble Lokayukta has been invested with power of investigation, and while do so, as required under Section 12 of the Act, a report has to be prepared, by recording findings and recommendations, and be communicated to the competent authority. Thus, it is manifest that Hon'ble Lokayukta has no power to issue any mandate either interim or final. We therefore accept the contention raised by the learned counsel for the petitioner that the Hon'ble Lokayukta is not empowered to do what has been

done by it.”

14. Reference is also made to the order passed by a Division Bench of this Court in *The Middle Income Group Co-op. Housing Society Bandra East Group V. Limited vs. The State of Maharashtra and ors.*, Writ Petition (L) No.2100 of 2016 whereby after considering *Dr. Viswasrao Chudaman Patil vs. Lok Ayukta, State of Maharashtra and ors.* (supra), it has been observed at interim stage at para 4 thus :

“ 4. Prima facie, we are of the view that Loka Ayukta does not have jurisdiction to pass the interim order, directing the public or the government authorities to act or prevent them from acting under any of the provisions of the said Act, the impugned order is, therefore, stayed.”

15. Considering the totality of the scheme, and power to investigate and further obligation to submit a report so that the concerned authority/Government would take appropriate action/decision based upon the said recommendations, itself requires to pass appropriate interlocutory and/or injunctive order, if necessary. However, the nature of order which amounts to taking final civil decision on the claim of private parties in the matter of commercial transactions with the Government and/or local authorities, is a bone of

contention. We are inclined to observe that there is no bar to pass interim/interlocutory orders in aid to the proposed final order pending recommendation after due inquiry, investigation/inquiry if bonafide and genuine grievance/complaint is made out and with specific material to support the same. However, it is necessary to note that once the Government or local authority enters into any commercial contract, they are also bound to act within those terms and conditions of the contract unless the contract is declared by competent Court/Tribunal bad or illegal. Any breach by the Government or the Local Authority would entail into unnecessary litigation on the foundation of breach of contract and/or the terms and conditions, including the liability of damages. It is in such type of cases, if breach is on the part of the Government and/or its authorities, would result into unnecessary litigations and the claim for compensation.

16. In the present case, the investigation is not yet final. It is in progress. We are not inclined to interfere with the same. Let it take its own course, but expeditiously. The directions so issued in the matter, which is definitely the right and entitlement of the contractors as they have already invoked arbitration clause, pending the investigation and the writ petitions. The contracts have been

determined. They are wrongly determined and/or illegally terminated is again a matter of arbitration and/or dispute resolution proceedings or the competent Court/Tribunal. Based upon the provisions of law, the parties will have to be given full opportunity to make their claims and defences, if any. The concerned Authority/Tribunal/Arbitrator requires to pass orders, accordingly.

17. The findings so given by the learned Lokayukta in the present case and the inquiry so directed are as per law is settled, is to be treated as interlocutory/interim recommendations. The issues, as per the contract terms and conditions, have to be tested in the Court of Law and/or arbitral proceedings, after due inquiry and trial. We are inclined to observe that the arbitral tribunal and the Court proceedings need to be proceeded with in accordance with law, uninfluenced by the observations so made by the learned Lokayukta. This direction of stopping or withholding of payment though the amount is already crystallized and as the State is under obligation to make payment for the works done, it is unacceptable part of the interim order. This would unnecessarily cause injustice and hardships to the third party/petitioners/contractors and the State would even face the consequences for non-payment of amount though due and payable and

which will be followed by commercial interest, if claimed before the appropriate authority/Court/Tribunal.

18. It is also made clear that when the order was passed by the learned Lokayukta, the contracts were in existence. Now, when the matters are called out for final hearing, all those contracts are determined/terminated pending investigation. This in no way takes away the right of parties to challenge such determination and/or termination of the contract through the available forum/Court, based on the terms and conditions of the commercial contract. The State or its Authorities are also bound by the same. This is in the background that the petitioners based upon the contract have already acted upon and completed the job in part, but under supervision of the State or its Authorities. The entitlement of the petitioners has been crystallized through the approved final bills and even otherwise, they are entitled for the works they have done already as noted, even by the Lokayukta and the State Government.

19. A statement is made by the learned Advocate General that they have already based upon the directions withheld the amount. The investigation is still pending. Final report will take its own

course, if Government accepts the recommendations. However, these observations so made and specifically the directions, in our view, there should not be any hurdle and/or should not affect the proceedings so initiated for settlement of their disputes before the Arbitral Tribunal. The Court and/or the arbitral Tribunal to act in accordance with law, uninfluenced by the directions so issued. Merits of the matter, the leaned Arbitrator requires to consider based upon the material and the evidence placed by the parties.

20. Taking overall view of the reasons so recorded above, we are inclined to observe that the Lokayukta Act and the Rules, and its object, purpose and scheme cannot be different. This also includes the powers and jurisdiction to deal with the complaints and/or initiate proceedings and investigation. Even, as per the Lokayukta Act, there are various steps and procedure required to be complied with by the Lokayukta, after completion of investigation, as even contemplated under the provisions of the Lokayukta Act and the Rules, including the amended Section 16A. The provision of Section 27 of the Lokayukta Act, including taking steps against the concerned functionaries, is required to be kept in mind. The provisions nowhere take away the crystallized right of the private parties.

21. In the present case, in view of the above Supreme Court Judgments whereby it is clear that the interim orders/recommendations through the report should not result into deciding and concluding the civil consequences and/or rights of the parties. By an interim order/direction/recommendation, the learned Lokayukta has decided the civil rights/consequences of the third parties/private parties at an interim stage, pending the investigation and directed to withhold the due amount which is against the scheme and power of the Lokayukta. To pass an interim order/injunction and/or interlocutory order in aid to the main investigation/inquiry is within the frame-work of law. But the direction to deduct the amount would amount to deciding the civil rights and/or passing the final judicial order in breach of the State Government's terms and conditions with the contractors. For the work done, and as expected from the State Government, the contractors need to be compensated in accordance with law. Withholding of such amount at the interim stage, by the interim recommendation, in our view, therefore is unacceptable. The impugned Order, therefore, to that extent as emphasized requires to be quashed and set aside. However, it is made clear that we are, not in any way, stopping the investigation which is stated to be in progress. The final recommendation/report

will take its own course. Defence of the claims needs to be considered at an appropriate stage by the concerned Tribunal/Court. We are not expressing anything on merits of the matter. The Arbitral Tribunal to deal with the claims and counter claims of the parties in accordance with law, uninfluenced by the observations and directions so issued.

22. Therefore, following order :

(1) The following part of the impugned order and related finding dated 12th August, 2016 is quashed and set aside.

“Half of the amount found payable shall be disbursed and the Balance amount shall be kept in a fixed deposit for the time being so that appropriate direction can be issued after the completion of the detailed investigation.”

(2) The investigation to continue, as ordered.

(3) The petitions are partly allowed.

(4) No costs.

C.V. BHADANG, J.

ANOOP V. MOHTA, J.

ssm.