SUPREME COURT OF INDIA

Mr. Justice Chandrashekaraiah (Retd.)

Vs.

Janekere C.Krishna

C.A.Nos.197-199 of 2013

(Madan B. Lokur and K.S.Radhakrishnan JJ.)

11.01.2013

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. The sentinel issue that has come up for consideration in these appeals is whether the views expressed by the Chief Justice of the High Court of Karnataka has got primacy while making appointment to the post of Lokayukta or Upa Lokayukta by the Governor of Karnataka in exercise of powers conferred on him under Section 3(2)(a) and (b) of the Karnataka Lokayukta Act, 1984 (for short 'the Act').

3. The Division Bench of the Karnataka High Court took the view that under the Act the opinion expressed by the Chief Justice of the High Court of Karnataka has primacy while tendering advice by the Chief Minister of the State to the Governor. The Court held since, the order passed by the Governor of Karnataka, appointing Justice Chandrashekaraiah as Upa Lokayukta on 21.1.2012, was without consulting the Chief Justice of the High Court, the same was illegal. The High Court also issued various directions including the direction to the State and the Principal Secretary to the Governor to take steps for filling up the post of Upa Lokayukta in accordance with the directions contained in the judgment. Aggrieved by the Judgment of the High Court, these appeals have been preferred by Justice Chandrashekaraiah and the State of Karnataka.

Facts

4. The notification dated 21.1.2012 issued in the name of the Governor was challenged by two practicing lawyers in public interest contending that the institution of Lokayukta was set up in the State for improving the standard of public administration by looking into complaints against administrative actions including cases of corruption, favouritism and official indiscipline in administrative machinery and if the Chief Minister's opinion has primacy, then it would not be possible for the institution to work independently and impartially so as to achieve the object and purpose of the Act.

5. The office of the Karnataka Upa Lokayukta fell vacant on the resignation of Justice R. Gururajan and the Chief Minister initiated steps for filling up that vacancy. Following that, the Chief Minister on 18.10.2011 addressed separate letters to the Chief Justice of the High Court of Karnataka, Chairman of the Karnataka Legislative Council, Speaker of the Karnataka Legislative Assembly, Leader of the Opposition in the Legislative Council and Leader of the Opposition in the Legislative Assembly requesting them to suggest a panel of eligible persons for appointment as Upa Lokayukta on or before 24.10.2011.

6. The Chief Justice suggested the name of Mr. H. Rangavittalachar (Retd.), the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly suggested the names of Mr. Justice K. Ramanna (Retd.) and Mr. Justice Mohammed Anwar (Retd.). The Chairman of the Karnataka Legislative Council and the Speaker of the Karnataka Legislative Assembly suggested the name of Justice Chandrashekaraiah (Retd.). The Chief Minister then advised the Governor to appoint Justice Chandrashekaraiah as Upa Lokayukta. The Governor, accepting the advice of the Chief Minister, passed the order dated 20.1.2012 appointing Justice Chandrashekaraiah as the Upa Lokayukta.

7. The Chief Justice on 21.01.2012 received an invitation for attending the oath taking ceremony of Justice Chandrashekaraiah as Upa Lokayukta in the morning which, according to the Chief Justice, was received only in the evening. The Chief Justice then addressed a letter dated 04.02.2012 to the Chief Minister stating that he was not consulted in the matter of appointment of Justice Chandrashekaraiah as Upa Lokayukta and expressed the opinion that the appointment was not in conformity with the constitutional provisions and requested for recalling the appointment.

8. The stand taken by the Chief Justice was widely published in various newspapers; following that, as already indicated, two writ petitions were filed in public interest for quashing the appointment of Justice Chandrashekaraiah as Upa Lokayukta. A writ of quo warranto was also preferred against the functioning of Justice Chandrashekaraiah as Upa Lokayukta.

Arguments

9. Shri K.V. Viswanathan, learned senior counsel appearing for the State of Karnataka took us extensively to the objects and reasons and to the various provisions of the Act and submitted that the nature and functions of the office of Lokayukta or Upa Lokayukta are to carry out investigation and enquiries and the institution of Lokayukta, as such, does not form part of the judicial organ of the State. Learned senior counsel also submitted that the functions and duties of the institution of Lokayukta, as such, cannot be compared with the functions and duties of the Judiciary, Central Administrative Tribunals, State Administrative Tribunals or Consumer Disputes Redressal Forums etc.

10. Learned senior counsel, referring to the various provisions such as Sections 3, 7, 9 etc. of the Act, submitted that Lokayukta or Upa Lokayukta are appointed for the purpose of conducting investigations and enquiries and they are not discharging any judicial functions as such and their reports are only recommendatory in nature. Consequently, the Act never envisaged vesting any primacy on the views of the Chief Justice of the High Court in the matter of appointment of Lokayukta or Upa Lokayukta. In support of his contentions, reference was made to the various judgments of this Court, which we will discuss in the latter part of this judgment. Shri Viswanathan, however, has fairly submitted that, as per the Scheme of the Act, especially under Section 3(2)(a) and (b), before making appointment to the post of Lokayukta and Upa Lokayukta, it is obligatory on the part of the Chief Minister to consult the Chief Justice of the State High Court, even though the views of the Chief Justice has no primacy. Learned senior counsel submitted that the Governor has to act on the advice of the Chief Minister for filling up the post of Lokayukta and Upa Lokayukta.

11. Shri P.V. Shetty, learned senior counsel appearing for Justice Chandrashekaraiah (retd.) submitted that the primacy in terms of Section 3 of the Act lies with the Chief Minister and not with the Chief Justice. In support of his contention, reference was made to the various judgments of this Court, which we will discuss in the latter part of the judgment. Learned senior counsel submitted

that the judgment delivered by the High Court holding that the views of the Chief Justice has primacy relates to cases pertaining to appointment of the Judges of the Supreme Court and High Courts, appointment of the President of State Consumer Forum, Central Administrative Tribunal and so on and the ratio laid down in those judgments is inapplicable while interpreting Section 3(2)(a) and (b) of the Act. Learned senior counsel also submitted that the reasoning of the High Court that there should be specific consultations with regard to the names suggested by the Governor with the Chief Justice, is unsustainable in law. Shri P.V. Shetty also submitted that the expression 'consultation' cannot be understood to be consent of the constitutional authorities as contemplated in the section.

12. Learned senior counsel submitted that the Chief Minister advised the name of Justice Chandrashekaraiah, suggested by some of the Consultees to the Governor who appointed him as Upa Lokayukta. Learned senior counsel submitted that assuming that the Chief Justice had not been consulted, the views of the Chief Minister had primacy and the Governor rightly accepted the advice of the Chief Minister and appointed Justice Chandrashekaraiah as Upa Lokayukta. Learned senior counsel submitted that in any view the failure to consult the Chief Justice would not vitiate the decision making process, since no primacy could be attached to the views of the Chief Justice. Learned senior counsel, therefore, submitted that the High Court has committed a grave error in quashing the notification appointing Justice Chandrashekaraiah as Upa Lokayukta. Learned senior counsel submitted that the various directions given by the High Court in its judgment is in the realm of rule making which is impermissible in law.

13. Shri K.N. Bhat, learned senior counsel appearing for the respondents endorsed the various directions given by the High Court which according to him are of paramount importance considering the nature and functions to be discharged by Lokayukta or Upa Lokayukta in the State of Karnataka. Learned senior counsel pointed out that the institution of Lokayukta has been set up for improving the standards of public administration so as to examine the complaints made against administrative actions, including the cases of corruption, favouritism and official indiscipline in administrative machinery. Shri Bhat compared the various provisions of the Act with the similar legislations in other States and submitted that, so far as the Karnataka Act is concerned, there is a multi-member team of consultees and also there is no indication in the Act as to whose opinion should prevail over others. Considerable reliance was placed on the judgment of this Court inJustice K.P. Mohapatra v. Sri Ram Chandra Nayak and Ors. (2002) 8 SCC 1, wherein this Court has taken the view that the opinion of the Chief Justice has got

primacy which is binding on the State. Learned senior counsel submitted that the conduct and functions to be discharged by Lokayukta or Upa Lokayukta are apparent, utmost importance has to be given in seeing that unpolluted administration of the State is maintained and maladministration is exposed. Learned senior counsel submitted that the functions of the Karnataka Lokayukta are identical to that of Lokpal of Orissa and that the principle laid down in that judgment would also apply while interpreting Sections 3(2)(a) and (b) of the Act.

14. Learned senior counsel submitted that the primacy has to be given to the views expressed by the Chief Justice, not because the persons appointed are discharging judicial or quasi-judicial functions but the source from which the persons are advised for appointment consists of former judges of the Supreme Court and Chief Justices of High Courts and judges of the High Courts in the matter of appointment of Upa Lokayukta. Learned senior counsel submitted that the Chief Justice of the High Court, therefore, would be in a better position to know about suitability of the persons to be appointed to the posts since they were either former judges of the Supreme Court or Chief Justices of the High Courts or judges of the High Courts.

15. Let us examine the various contentions raised at the bar after delving into the historical setting of the Act.

Historical Setting

16. The President of India vide notification No. 40/3/65-AR(P) dated 05.01.1966 appointed the Administrative Reforms Commission for addressing "Problems of Redress of Citizens' Grievances" inter alia with the object for ensuring the highest standards of efficiency and integrity in the public services, for making public administration a fit instrument for carrying out the social and economic policies of the Government and achieving social and economic goals of development as also one responsive to people. The Commission was asked to examine the various issues including the Problems of Redress of Citizens' Grievances. One of the terms of reference specifically assigned to the Commission required it to deal with the Problems of Redress of Citizens' Grievances, namely:

> (1) the adequacy of existing arrangements for redress of grievances; and
>
> (2) the need for introduction of any new machinery for special institution for redress of grievances.

The Commission after elaborate discussion submitted its report on 14.10.1966 to the Prime Minister vide letter dated 20.10.1966.

17. The Commission suggested that there should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the States and another authority in each State and at the Centre for dealing with complaints against administrative acts of other officials and all these authorities should be independent of the executive, the legislative and the judiciary.

The Committee, in its report, has stated as follows:

"21. We have carefully considered the political aspect mentioned above and while we recognize that there is some force in it, we feel that the Prime Minister's hands would be strengthened rather than weakened by the institution. In the first place, the recommendations of such an authority will save him from the unpleasant duty of investigation against his own colleagues. Secondly, it will be possible for him to deal with the matter without the glare of publicity which often vitiates the atmosphere and affects the judgment of the general public. Thirdly, it would enable him to avoid internal pressures which often help to shield the delinquent. What we have said about the Prime Minister applies mutatis mutandis to Chief Minister.

Cases of corruption:

23. Public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that cases coming up before the independent authorities mentioned above might involve allegations or actual evidence of corrupt motive and favourtism. We think that this institution should deal with such cases as well, but where the cases are such as might involve criminal charge or misconduct cognizable by a Court, the case should be brought to the notice of the Prime Minister or the Chief Minister, as the case may be. The latter would then set the machinery of law in motion after following appropriate procedures and observing necessary formalities. The present system of Vigilance Commissions wherever operative will then become redundant and would have to be abolished on the setting up of the institution.

Designation of the authorities of the institution:

24. We suggest that the authority dealing with complaints against Ministers and Secretaries to Government may be designated “Lokpal” and the other authorities at the Centre and in the States empowered to deal with complaints against other officials may be designated “Lokayukta”. A word may be said about our decision to include Secretaries actions along with those of Ministers in the jurisdiction of the Lokpal. We have taken this decision because we feel that at the level at which Ministers and Secretaries function, it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of demarcation between the responsibilities and influence of the Minister and Secretary is thin; in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved.

25. The following would be the main features of the institutions of Lokpal and Lokayukta:-

(a) They should be demonstrably independent and impartial.

(b) Their investigations and proceedings should be conducted in private and should be informal in character.

(c) Their appointment should, as far as possible, be non- political.

(d) Their status should compare with the highest judicial functionaries in the country.

(e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favourtism.

(f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.

(g) They should not look forward to any benefit or pecuniary advantage from the executive Government.

Bearing in mind these essential features of the institutions, the Commission recommend that the Lokpal be appointed at the Centre and Lokayaukta at the State level.

The Lokayukta

36. So far as the Lokayukta is concerned, we envisage that he would be concerned with problems similar to those which would face the Lokpal in respect of Ministers and Secretaries though, in respect of action taken at subordinate levels of official hierarchy, he would in many cases have to refer complainants to competent higher levels. We, therefore, consider that his powers, functions and procedures may be prescribed mutatis mutandis with those which we have laid down for the Lokpal. His status, position, emoluments, etc. should, however, be analogous to those of a Chief Justice of a High Court and he should be entitled to have free access to the Secretary to the Government concerned or to the Head of the Department with whom he will mostly have to deal to secure justice for a deserving citizen. Where he is dissatisfied with the action taken by the department concerned, he should be in a position to seek a quick corrective action from the Minister or the Secretary concerned, failing which he should be able to draw the personal attention of the Prime Minister or the Chief Minster as the case may be. It does not seem necessary for us to spell out here in more detail the functions and powers of the Lokayukta and the procedures to be followed by him.

Constitutional amendment-whether necessary?

37. We have carefully considered whether the institution of Lokpal will require any Constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central Legislation so as to cover both the Central and State functionaries concerned. We agree that for the Lokpal to be fully effective and for him to acquire power, without conflict with other functionaries under the Constitution, it would be necessary to give a constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialize before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without the definition of his position under the Constitution. The Constitutional amendment and any consequential modification of the relevant statute can follow. In the

meantime, Government can ensure that the Lokpal or Lokayukta is appointed and takes preparatory action to set up his office, to lay down his procedures, etc., and commence his work to such extent as he can without the constitutional provisions. We are confident that the necessary support will be forthcoming from the Parliament.

Conclusion.

38. We should like to emphasise the fact that we attach the highest importance to the implementation, at an early date, of the recommendations contained in this our Interim Report. That we are not alone in recognizing the urgency of such a measure is clear from the British example we have quoted above. We have no doubt that the working of the institution of Lokpal or Lokayukta that we have suggested for India will be watched with keen expectation and interest by other countries. We hope that this aspect would also be fully borne in mind by Government in considering the urgency and importance of our recommendation. Though its timing is very close to the next Election, we need hardly to assure the Government that this has had nothing to do with the necessity of making this interim report. We have felt the need of such a recommendation on merits alone and are convinced that we are making it not a day too soon."

18. Based on the above report, the following Bill was presented before the Karnataka Legislature which reads as follows:-

"The Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of appointment of Lokayukta at the state's level, to improve the standards of public administration, by looking into complaints against the administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery.

One of the election promises in the election manifesto of the Janata Party was the setting up of the Institution of the Lokayukta.

The bill provides for the appointment of a Lokayukta and one or more Upalokayuktas to investigate and report on allegations or grievances relating to the conduct of public servants.

The public servants who are covered by the Act include:-

(1) Chief Minister;

(2) all other Ministers and Members of the State Legislature;

(3) all officers of the State Government;

(4) Chairman, Vice Chairman of local authorities, Statutory Bodies or Corporations established by or under any law of the State Legislature, including Co-operative Societies;

(5) Persons in the service 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, Co-operative Societies and Universities established by or under any law of the Legislature.

Where, after investigation into the complaint, the Lokayukta considers that the allegation against a public servant is prima facie true and makes a declaration that the post held by him, and the declaration is accepted by the Competent Authority, the public servant concerned, if he is a Chief Minister or any other Minister or Member of State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated his office, and, if an official, shall be deemed to have been kept under suspension, with effect from the date of the acceptance of the declaration.

If, after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted.

The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will be transferred to the Lokayukta."

The Bill became an Act with some modifications as the Karnataka Lokayukta Act, 1984.

Relevant Provisions

19. The matters which have to be investigated are provided in Section 7 of the Act which is extracted hereunder for easy reference:

> "7. Matters which may be investigated by the Lokayukta and an Upalokayukta.–
>
> (1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by or with the general or specific approval of.-
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> (i) the Chief Minister;
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> (ii) a Minister or a Secretary;
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> (iii) a member of the State Legislature; or
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> (iv) any other public servant being a public servant of a class notified by the State Government in consultation with the Lokayukta in this behalf; in any case where a complaint involving a grievance or an allegation is made in respect of such action.
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> (2) Subject to the provisions of the Act, an Upa-lokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant referred to in sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upa-lokayukta, the subject of a grievance or an allegation.
>
> (2-A) Notwithstanding anything contained in sub-sections (1) and (2), the Lokayukta or an Upa-lokayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the State Government.

(3) Where two or more Upa-lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by an Upa-lokayukta under this Act, and no action taken or things done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

(4) Notwithstanding anything contained in sub-sections (1) to (3), when an Upa-lokayukta is unable to discharge his functions owing to absence, illness or any other cause, his function may be discharged by the other Upa-lokayukta, if any, and if there is no other Upa- lokayukta by the Lokayukta."

20. Few matters are not subjected to the investigation of Lokayukta or Upa Lokayukta which is provided in Section 8 of the Act, which is also extracted hereunder for easy reference:

"8. Matters not subject to investigation.- (1) Except as hereinafter provided, theLokayukta or an Upa-lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action, -

(a) if such action relates to any matter specified in the Second Schedule; or

(b) 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.

(2) The Lokayukta or an Upa-lokayukta shall not investigate, -

(a) any action in respect of which a formal and public eiquiry has been ordered with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(b) any action in respect of a matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against becomes known to the complainant; or

(d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that he may entertain a complaint referred to in clauses (c) and (d) if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in those clauses.

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upa-lokayukta to question any administrative action involving the exercise of discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised."

21. Section 9 of the Act pertains to provisions relating to 'complaints' and 'investigations' which is extracted hereunder:

"9.Provisions relating to complaints and investigations.-

(1)Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokayukta or an Upa-lokayukta.

(2) Every complaint shall be made in the form of a statement supported by an affidavit and in such forms and in such manner as may be prescribed.

(3) Where the Lokayukta or an Upa-lokayukta proposes, after making such preliminary inquiry as he deemed fit, to conduct any investigation under this Act, he.-

(a) shall forward a copy of the complaint to the public servant and the Competent Authority concerned;

(b) shall afford to such public servant an opportunity to offer his comments on such complaint;

(c) may make such order as to the safe custody of documents relevant to the investigation, as he deems fit.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upa-lokayukta, as the case may be, considers appropriate in the circumstances of the case.

(5)The Lokayukta or the Upa-lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion.-

(a)the complaint is frivolous or vexatious or is not made in good faith;

(b)there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies.

(6)In any case where the Lokayukta or an Upa-lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(7)The conduct of an investigation under this Act against a Public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation."

22. Section 10 empowers Lokayukta or Upa Lokayukta to exercise certain powers in relation to search and seizure. It says that the provisions of the Code of Criminal Procedure, relating to search and seizure, would apply only for the limited purpose of investigation carried out by the incumbent, in consequence of information in his possession, while investigating into any grievance, allegation against any administrative action.

23. Section 11 deals with the producing, recording, etc. of evidence for the purpose of investigation under the Act. Sub-sections (1) and (2) of Section 11 read as follows:

> "11. Evidence.- (1) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry if any, before such investigation) under this Act, the Lokayukta or an Upa-lokahukta may require any public servant or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.
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> (2) For the purpose of any investigation (including the preliminary inquiry) the Lokayukta or Upa-lokayukta shall have all the powers of a Civil Court while trying a suit under that the Code of Civil Procedure Code, 1908, in respect of the following matters only:-
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> a) summoning and enforcing the attendance of any person and examining him on oath;
>
> b) requiring the discovery and production of any document;
>
> c) receiving evidence on affidavits;
>
> d) requisitioning any public record or copy thereof from any Court or office;
>
> e) issuing commissions for the examination of witnesses or documents;
>
> f) such other matters as may be prescribed."
>
> Sub-section (3) of Section 11 provides for applicability of Section 193 of the Indian Penal Code (Punishment for false evidence), for proceedings before the Lokayukta or Upa Lokayukta, while exercising its powers conferred under sub-section (2) of Section 11, and only for that limited extent is considered a judicial proceeding.

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

i) The Lokayukta or Upa Lokayukta can sent a report with certain recommendations and findings as envisaged in sub section (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 1 month.

iii) Failure to intimate the action taken on the report submitted under section (1) has not been dealt with specifically, however if in the opinion of 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 section (3) has not been dealt with specifically, however if in the opinion of Lokayukta / Upa Lokayukta, satisfactory action taken 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 no civil consequences follow from the direct action of the Lokayukta or Upa Lokayukta.

Section 13 prescribes when a public servant would have to vacate office, which reads as follows:

> "13. Public servant to vacate office if directed by Lokayukta etc.
>
> (1) Where after investigation into a complaint the Lokayukta or an Upalokayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lokayukta or the Upalokayukta shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, State Government or the Chief Minister, it may either accept or reject the declaration. In other cases, the competent authority shall send a copy of such report to the State Government, which may either accept or reject the declaration. If it is not rejected within a period of three months from the date of receipt of the report, or the copy of the report, as the case may be, it shall be deemed to have been accepted on the expiry of the said period of three months.
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> (2) If the declaration so made is accepted or is deemed to have been accepted, the fact of such acceptance or the deemed acceptance shall immediately be intimated by Registered post by the Governor, the State Government or the Chief Minister if any of them is the competent authority and the State Government in other cases then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or of the deemed acceptance of the declaration,
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> (i) if the Chief Minister or a Minister resign his office of the Chief Minister, or Minister, as the case may be.
>
> (ii) If a public servant falling under items (e) and (f), but not falling under items (d) and (g) of clause (12) of section 2, be deemed to have vacated his office: and

(iii) If a public servant falling under items (d) and (g) of clause (12) of section 2, be deemed to have been placed under suspension by an order of the appointing authority.

Provided that if the public servant is a member of an All India Service as defined in section 2 of the All India Services Act, 1951 (Central Act 61 to 1951) the State Government shall take action to keep him under suspension in accordance with the rules or regulations applicable to his service."

Section 14 deals with the initiation of prosecution which reads as follows:

"14. Initiation of prosecution.- If after investigation into any complaint the Lokayukta or an Upa-lokayukta is satisfied that the public servant has committed any criminal offence and should be prosecuted in a court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then, notwithstanding anything contained in any law, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order."

Investigative in nature

25. The provisions discussed above clearly indicate that the functions to be discharged by 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 Lokayukta and Upa Lokayukta, though they can initiate prosecution before a competent court. I have extensively referred to the object and purpose of the Act and explained the various provisions of the Act only to indicate the nature and functions to be discharged by Lokayukta or Upa Lokayukta under the Act.

26. The Act has, therefore, clearly delineated which are the matters to be investigated by the Lokayukta and Upa Lokayukta. They have no authority to investigate on a complaint involving a grievance in respect of any action specified in the Second Schedule of the Act, which are as follows:

a) Action taken for the purpose of powers investigating crimes relating to the security of the State.

b) Action taken in the exercise of powers in relation to determining whether a matter shall go to a Court or not.

c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complaint alleges harassment or gross delay in meeting contractual obligations.

d) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

e) Grant of honours and awards.

27. 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.

28. The Act has also been enacted to make provision for making enquiries by the Lokayukta and Upa Lokayukta into the administrative action relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution, taken by or on behalf of the Government of Karnataka or certain public authorities in the State of Karnataka, including any omission or commission in connection with or arising out of such action etc.

29. 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 Minister 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, Co-operative Societies and Universities established by or under any law of the Legislature.

30. Lokayukta and Upa Lokayukta while exercising powers under the Act, of course, is acting as a quasi judicial authority but it functions are investigative in nature. The Constitution Bench of this Court in Nagendra Nath Bora and another v. Commissioner of Hills Division and Appeals, Assam and others AIR 1958 SC 398 held whether or not an administrative body or authority functions as purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and rules framed thereunder. This Court in Indian National Congress (I) v. Institute of social Welfare and others (2002) 5 SCC 685, while dealing with the powers of the Election Commission of India under the Representation of the People Act, 1951 held that while exercising power under Section 29-A, the Commission acts quasi-judicially and passes quasi judicial orders.

31. The Court held that what distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions, under the relevant law, the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority. Noticing the above legal principles this Court held in view of the requirement of law that the Commission is to give decision only after making an enquiry, wherein an opportunity of hearing is to be given to the representative of the political party, the Election Commission is is required to act judicially.

32. Recently, in Automotive Tyre Manufactures Association v. Designated Authority and others (2011) 2 SCC 258, this Court examined the question whether the Designated Authority appointed by the Central Government under Rule 3 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on dumped Articles and for Determination of Injury) Rules, 1995 (1995 Rules) for conducting investigation, for the purpose of levy of anti dumping duty in terms of Section 9-A of the Customs Act, 1962, is functioning as an administrative or quasi judicial authority. The Court after examining the scheme of the Tariff Act read with 1995 Rules and the nature of functions to be discharged by the Designated Authority took the view that the authority exercising quasi-judicial functions is bound to act judicially. Court noticed that the Designated Authority

determines the rights and obligations of the "interested parties" by applying objective standards based on the material/information/evidence presented by the exporters, foreign producers and other "interested parties" by applying the procedure and principles laid down in the 1995 Rules.

33. Provisions of Sections 9, 10 and 11 clearly indicate that 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 any such investigation, including the preliminary inquiry 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 of 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 Indian Penal Code. Therefore, Lokayukta and Upa Lokayukta, while investigating the matters are discharging quasi-judicial functions, though the nature of functions is investigative.

Consequence of the report

34. The Governor of the State, acting in his discretion, if accepts the report of the Lokayukta against the Chief Minister, then he has to resign from the post. So also, if the Chief Minister accepts such a report against a Minister, then he has to resign from the post. Lokayukta or Upa Lokayukta, however, has no jurisdiction or power to direct the Governor or the Chief Minister to implement its report or direct resignation from the Office they hold, which depends upon the question whether the Governor or the Chief Minister, as the case may be, accepts the report or not. But when the Lokayukta or Upa Lokayukta, if after the investigation, is satisfied that the public servant has committed any criminal offence, prosecution can be initiated, for which prior sanction of any authority required under any law for such prosecution, shall also be deemed to have been granted.

Nature of Appointment

35. We are, in this case, as already indicated, called upon to decide the nature and the procedure to be followed in the matter of appointment of Lokayukta or Upa

Lokayukta under the Act for which I have elaborately discussed the intention of the legislature, objects and purpose of the Act and the nature and functions to be discharged by Lokayukta or Upa Lokayukta, its investigative nature, the consequence of its report etc. Section 3 of the Act deals with the appointment of Lokayukta and Upa Lokayukta, which reads as follows:

> 3. Appointment of Lokayukta and Upa-lokayukta-
>
> (1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-lokayukta or Upa-lokayuktas.
>
> (2)(a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.
>
> (b) A person to be appointed as an Upa-lokayukta shall be a person who has held the office of the Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the opposition in the Karnataka Legislative Council and the Leader of the opposition in the Karnataka Legislative Assembly.
>
> (3) A person appointed as the Lokayukta or an Upa-lokayukta shall, before entering upon his office, make and subscribe before the Governor, or some person appointed in that behalf of him, an oath or affirmation in the form set out for the purpose in the First Schedule.

36. The purpose of appointment of Lokayukta or Upa Lokayukta is clearly spelt out in Section 3(1) of the Act which indicates that it is for the purpose of conducting investigation and enquiries in accordance with the provisions of the

Act. The procedure to conduct investigation has been elaborately dealt with in the Act. The scope of enquiry is however limited, compared to the investigation that is only to the ascertainment of the truth or falsehood of the allegations. The power has been entrusted by the Act on the Governor to appoint a person to be known as Lokayukta and one or more persons to be known as Upa Lokayukta and Upa Lokayuktas. The person to be appointed as Lokayukta shall be a person who has held the office of a Judge of the Supreme Court of India or that of the Chief Justice of the High Court. The Governor, as per Section 3(2)(a), is empowered to appoint Lokayukta on the advice tendered by the Chief Minister, in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. It is, therefore, clear that all the above five dignitaries have to be consulted before tendering advice by the Chief Minister to the Governor of the State.

37. Section 3(2)(b) of the Act stipulates that, so far as the Upa Lokayukta is concerned, he shall be a person who has held the office of a Judge of the High Court and shall be appointed on the advice tendered by the Chief Minister. The Chief Minister has to consult the five dignitaries, the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Legislative Council and the Leader of Opposition in the Karnataka Legislative Assembly. Therefore, for the purpose of appointment of Lokayukta or Upa Lokayukta all the five consultees are common. The appointment has to be made by the Governor on the advice tendered by the Chief Minister in consultation with those five dignitaries.

Legislations in few other States.-

38. Legislatures in various States have laid down different methods of appointment and eligibility criterias for filling up the post of Lokayukta and Upa-Lokayuktas, a comparison of which would help us to understand the intention of the legislature and the method of appointment envisaged.

39. ANDHRA PRADESH LOKAYUKTA ACT, 1983

Section 3 – Appointment of Lokayukta and Upa-Lokayukta: (1) For the purpose of conducting investigation in accordance with the provisions of this

Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-Lokayukta or Upa-Lokayuktas:

Provided that,-

(a) the person to be appointed as the Lokayukta shall be a Judge or a retired Chief Justice of a High Court;

(b) the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court concerned;

(c) the Upa-Lokayukta shall be appointed from among the District Judges of Grade I, out of a panel of five names forwarded by the Chief Justice of the High Court of Andhra Pradesh.

(2) In the Andhra Pradesh Lokayukta and Upa –Lokayukta Act, 1983 (hereinafter referred to as the principal Act) for sub-section (2) of Section 3, the following shall be substituted, namely:-

> (i) Every person appointed to be the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor an oath or affirmation according to the form set out for the purpose in the First Schedule.
>
> (ii) Every person appointed to be the Upa-Lokayukta shall, before entering upon his office, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form setout for the purpose in the First Schedule.

(3) The Upa-Lokayukta shall function under the administrative control of the Lokayukta and in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special directions, as he may consider necessary, to the Upa-Lokayukta:

> Provided that nothing in this sub-section shall be construed to authorize the Lokayukta to question any decision, finding, or recommendation of the Upa-Lokayukta.

40. ASSAM LOKAYUKTA AND UPA-LOKAYUKTAS ACT, 1985

Section 3 – Appointment of Lokayukta and Upa-Lokayuktas.- 1. For the purpose of conducting investigations in accordance with the provisions of the Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as Lokayukta and one or more persons to be known as Upa-Lokayukta or Upa-Lokayuktas:

Provided that:-

(a) The Lokayukta shall be appointed after consultation with the Chief Justice of the Gauhati High Court, the Speaker and the leader of the opposition in the Assam Legislative Assembly and if there be no such leader a person elected in this behalf by the members of the opposition in that house in such manner as the speaker may direct;

(b) The Upa-Lokayukta or Upa-Lokayuktas shall be appointed after consultation with the Lokayukta

Provided further that where the Speaker of the Legislative Assembly is satisfied that circumstances exists on account of which it is not practicable to consult the leader of the opposition in accordance with Cl(a) of the preceding proviso he may intimate the Governor the name of any other member or the opposition in the Legislative Assembly who may be consulted under that clause instead of the leader of the opposition.

(2) Every person appointed as the Lokayukta or Upa-Lokayukta shall before entering upon his office, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule.

(3) The Upa-Lokayuktas shall be subject to the administrative control of the Lokayukta and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special direction, as he may consider necessary to the Upa-Lokayukta

Provided that nothing in this sub-section shall be construed to authorize the Lokayukta to question any finding, conclusion or recommendation of an Upa Lokayukta.

41. THE BIHAR LOKAYUKTA ACT, 1973:

3. Appointment of Lokayukta.-

(1) For the purpose of conduction investigations in accordance with the provisions of this Act the Governor shall by warrant under his hand and shall appoint a person to be known as the Lokayukta of Bihar;

Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the Patna High Court and the Opposition in the State Legislative Assembly or if there be no such leader a person elected in this behalf by the Opposition in the State Legislative Assembly in such manner as the Speaker may direct.

(2) The person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by the Governor, an oath or affirmation in the form set out for the purposes in the First Schedule.

42. CHHATTISGARH LOK AAYOG ADHYADESH, 2002

3. Constitution of Lok Aayog:-

(1) There shall be a Lok Aayog for the purpose of conducting inquiries in accordance with the provisions of this Ordinance.

(2) The Lok Aayog shall consist of two members, one to be known as the Pramukh Lokayukt, and the other as the Lokayukt.

(3) The Pramukh Lokayukt shall be a person who has been a Judge of a High Court or has held a judicial officer higher than that of a Judge of a High Court.

(4) The Lokayukta shall be a person with experience in administrative and quasi-judicial matters, and shall have functioned at the level of a Secretary to the Government of India or the Chief Secretary to any State Government in India.

Provided that the Pramukh Lokayukta shall have administrative control over the affairs of the Lok Aayog.

(5) Governor shall, by warrant under his hand and seal, appoint the Pramukh Lokayukta and the Lokayukta, on the advice of the Chief Minister who shall consult the Chief Justice of the High Court of Chattisgarh and the Speaker of the Chattisgarh Legislative Assembly.

(6) Every person appointed as a Pramukh Lokayukt or a L Lokayukt shall, before entering upon his office, take and subscribe before the Governor, or some person appointed in that behalf by him, an oath of affirmation in the form set out for the purpose in the First Schedule.

(7) The Pramukh Lokayukt or the Lokayukt shall not hold any other office of trust or profit or be connected with any political party or carry on any business or practice any profession or hold any post in any society, including any cooperative society, trust, or any local authority, or membership of the Legislative Assembly of any State or of the Parliament.

43. DELHI LOKAYUKTA AND UPLOKAYUKTA ACT, 1995:

Section 3 – Appointment of Lokayukta and Uplokayukta.-

(1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Lieutenant Governor shall, with the prior approval of the President, appoint a person to be known as the Lokayukta and one or more persons to be known as Upalokayukta;

Provided that-

(a) the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court of Delhi and the Leader of the Opposition in

the Legislative Assembly and if there be no such leader, a person selected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;

(b) the Upalokayukta shall be appointed in consultation with the Lokayukta.

2) A person shall not be qualified for appointment as-

(a) the Lokayukta, unless he is or has been Chief Justice of any High Court in India, or a Judge of a High Court for seven years;

(b) an Upalokayukta, unless he is or has been a Secretary to the Government or a District Judge in Delhi for seven years or has held the post of a Joint Secretary to the Government of India.

3. Every person appointed as Lokayukta or Upalokayukta shall, before entering upon his office, make and subscribe before the Lieutenant Governor or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule.

4. The Upalokayukta shall be subject to the administrative control of the Lokayukta and in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special directions as he may consider necessary to the Upalokayukta and may withdraw to himself or may, subject to the provisions of Section 7, make over any case from himself to an Upalokayukta or from one Upalokayukta to another Upalokayukta for disposal

Provided that nothing in this sub-section shall be construed to authorize the Lokayukta to question any finding, conclusion, recommendation of an Upalokayukta.

44. GUJARAT LOKAYUKTA ACT, 1986

Section 3 – Appointment of Lokayukta-

1) For the purpose of conducting investigations in accordance with the provisions of this Act, the Governor shall by warrant under his hand and seal appoint a person to be known as the Lokayukta;

> Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court and except where such appointment is to be made at a time when the Legislative Assembly of the State of Gujarat has been dissolved or a Proclamation under Article 356 of the Constitution is in operation in the State of Gujarat, after consultation also with the Leader of the Opposition in the Legislative Assembly or if there be no such Leader a person elected in this behalf by the members of Opposition in that house in the manner as the Speaker may direct.

(2) A person shall not be qualified for appointment as a Lokayukta unless he is or has been a Judge of the High Court.

(3) Every person appointed as the Lokayukta shall, before entering upon his office, make and subscribe before the Governor or some person appointed in that behalf by him an oath or affirmation in the form set out for the purpose in the First Schedule.

45. THE JHARKHAND LOKAYUKTA ACT, 2001

3. Appointment of Lokayukta-

(1) For the purpose of conduction investigations in accordance with the provisions of this Act, the Governor shall by warrant under his hand and seal appoint a person to be known as the Lokayukta of Jharkhand;

> Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the Jharkhand High Court, Ranchi and the Leader of the Opposition in the State Legislative Assembly or if there be no such leader a person elected in this behalf by the Members of the Opposition in the State Legislative Assembly in such manner as the Speaker may direct.

(2) The person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed

in that behalf by the Governor, an oath or affirmation in the form set out for the purposes in the First Schedule.

46. HARYANA LOKAYUKTA ACT, 2002:

Section 3 – Appointment of Lokayukta-

(1) For the purpose of conducting investigations in accordance with the provisions of this Act, the Governor, shall, by warrant, under his hand and seal, appoint a person to be known as the Lokayukta:

Provided that the Lokayukta shall be appointed on the advice of the Chief Minister who shall consult the Speaker of Haryana Legislative Assembly, Leader of Opposition and the Chief Justice of India in case of appointment of a person who is or has been a Judge of the Supreme Court or Chief Justice of the High Court, and Chief Justice of the Punjab and Haryana High Court in case of appointment of a person who is or has been a Judge of a High Court.

Provided further that the result of consultation shall have persuasive value but not binding on the Chief Minister.

(2) A notification by the State Government about the consultation having been held as envisaged in sub-section (1) shall be conclusive proof thereof.

(3) Every person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath of affirmation in the form set out for the purpose in the Schedule.

47. KERALA LOK AYUKTA ACT, 1999

Section 3 – Appointment of Lok Ayukta and Upa-Lok Ayuktas-

1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as Lok Ayukta and two other persons to be known as Upa-Lok Ayuktas.

(2) A person to be appointed as Lok Ayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister, in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State.

(3) A person to be appointed as an Upa-Lok Ayukta shall be a person who holds or has held the office of a Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Speaker of the Legislative Assembly of the state and the leader of Opposition in the Legislative Assembly of the state.

Provided that the Chief Justice of the High Court concerned shall be consulted, if a sitting judge is appointed as an Upa- Lok Ayukta.

(4) A person appointed as Lok Ayukta or Upa-Lok Ayukta shall, before entering upon his office, make and subscribe, before the Governor or a person appointed by him in that behalf, an oath or affirmation in the form set out for the purpose in the First Schedule."

48. A brief survey of the above statutory provisions would show that State Legislatures of various States have adopted different eligibility criteria, method of selection, consultative procedures etc. in the matter of appointment of Lokayukta, Upa-Lokayukta in their respective States. For instance, in Andhra Pradesh Lokayukta Act the Chief Minister as such has no role and the only consultee for the post of Lokayukta is the Chief Justice. Upa Lokayukta is appointed not from the category of Judges of the High Court, sitting or former, but from a panel of five names of District Judges of Grade I forwarded by the Chief Justice. Further in the States of Assam, Delhi, Gujarat, etc., the Chief Ministers have no role as such. However, in the States of Chattisgarh, Haryana etc., the Governor appoints on the advice of the Chief Minister. In the State of Chhattisgarh the Act says, the Pramukh Lokayukta shall be a person who has been a judge of a High Court or has held a judicial office higher than that of a High Court Judge. Lokayukta shall be a person who has functioned at the level of a Secretary, both Government of India or the Chief Secretary to any State Government. The Chief Justice of the High Court is a consultee, in the Lokayukta Act of Assam, Bihar, Delhi, Gujarat, Jharkhand and so on. However, in the Kerala Lokayukta Act, the Chief Justice is not a consultee at all. In few States, Upa-lokayuktas are appointed from a panel of District Judges, not from the High Court Judges sitting or former. Legislatures of

the various States, in their wisdom, have, therefore, adopted different sources, eligibility criteria, methods of appointment etc. in the matter of appointment of Lokayukta and Upa-Lokayuktas. Recently, this Court had an occasion to consider the scope of Section 3(1) of the Gujarat Lokayukta Act, 1986 in State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd.) reported in 2013 (1) SCALE 7. Interpreting that provision this Court held that the views of the Chief Justice have primacy in the matter of appointment of Lokayukta in the State of Gujarat. Every Statute has, therefore, to be construed in the context of the scheme of the Statute as a whole, consideration of context, it is trite, is to give meaning to the legislative intention according to the terms in which it has been expressed.

49. Constitution of India and its articles, judicial pronouncements interpreting various articles of the Constitution confer primacy to the views of Chief Justice of India or to the Chief Justice of a High Court in the matter of appointment to certain posts the incumbents of which have to discharge judicial or quasi judicial functions.

APPOINTMENT TO THE POSTS OF DISTRICT JUDGE/HIGH COURT JUDGES:

50. The views of the High Court has primacy in the matter of appointment of District Judges. Chandra Mohan v. State of U.P. 1967 (1) SCR 77 was a case relating to the appointment of District Judges wherein this Court had occasion to consider the scope of Articles 233-236 of the Constitution. Interpreting the word "consultation" in Article 233, this Court has taken the view that the exercise of power of appointment by the Governor is conditioned by his consultation with the High Court, meaning thereby the Governor can only appoint a person to the post of District Judge in consultation with the High Court. The purpose and object of consultation is that the High Court is expected to know better in regard to the suitability or otherwise of a person, belonging either to the judicial service or to the Bar, to be appointed as a district Judge. The duties enjoined on the Governor are, therefore, to make the appointment in consultation with the body which is the appropriate authority to give advice to him. In Chandramouleshwar Prasad v. Patna High Court(1969) 3 SCC 56, Justice Mitter J. while interpreting the Article 233 held "that the High Court is the body which is intimately familiar with the efficiency and quality of officers who are fit to be promoted as District Judges. It was held that consultation with the High Court under Article 233 is not an empty formality. Further, it was also stated that consultation or deliberation is not complete or effective before the parties thereto make their respective points of

view known to the other others and discuss and examine the relative merits of their views".

51. In Samsher Singh v. State of Punjab and another (1974) 2 SCC 831, Justice Krishna Iyer, in his concurring judgment, highlighted the independence of Judiciary and held "it is a cardinal principle of the Constitution and has been relied on to justify the deviation, is guarded by the relevant article making consultation with the Chief Justice of India obligatory". In Union of India v. Sankalchand Himatlal Sheth and another (1977) 4 SCC 193 this Court high-lighted the rationale behind consulting the Chief Justice of India on matters pertaining to judiciary, in the light of Article 222 of the Constitution of India. This Court held that "Article 222(1) requires the President to consult the Chief Justice of India on the premises that in a matter which concerns the judiciary vitally, no decision ought to be taken by the executive without obtaining the views of the Chief Justice of India who, by training and experience, is in the best position to consider the situation fairly, competently and objectively".

52. In Supreme Court Advocates-on-Record Association and others v. Union of India (1993) 4 SCC 441 while interpreting the Article 217 of the Constitution, i.e. in the matter of appointment of Judges to the Higher Judiciary, it was held that the opinion of the Chief Justice of India has got primacy in the process of consultation. Primacy of the opinion of the Chief Justice of India is, in effect, the primacy of the opinion of the Chief Justice of India formed collectively, that is, after taking into account the views of his senior colleagues who are required to be consulted by him for the formation of the opinion. The Court has also proceeded on the premises that the President is constitutionally obliged to consult the Chief Justice of India in the case of appointment of Judges of the Supreme Court of India, as per the proviso to Article 124(2) and in the case of appointment of the Judges of the High Court the President is obliged to consult the Chief Justice of India and the Governor of the State in addition to the Chief Justice of the High Court concerned. In the matter of appointment of Judges of the Supreme Court as well as that the High Courts, the opinion of the collegium of the Supreme Court of India has primacy. Judgments referred to above are primarily concerned with the appointment of District Judges in the subordinate judiciary, High Court Judges and the Supreme Court. Primacy to the executive is negatived, in view of the nature of functions to be discharged by them and to make the judiciary independent of the executive.

APPOINTMENT TO THE CENTRAL AND STATE ADMINISTRATIVE TRIBUNALS

53. Central Administrative Tribunal as a Tribunal constituted under Article 323-A of the Constitution and is expected to have the same jurisdiction as that of the High Court. Such Tribunal exercises vast judicial powers and the members must be ensured absolute judicial independence, free from any executive or political interference. It is for this reason, sub-section (7) to Section 6 of the Administrative Tribunals Act, 1985 requires that the appointment of a member of the Tribunal cannot be made "except after consultation with the Chief Justice of India". Considering the nature of functions to be discharged by the Tribunal which is judicial, the views of the Chief Justice of India has primacy. In Union of India and others v. Kali Dass Batish and another (2006) 1 SCC 779 this Court has interpreted the expression "after consultation with the Chief Justice of India" as appearing in Section 6(7) of the Administrative Tribunal Act, 1985 and held that the judicial powers are being exercised by the Tribunal and hence the views of the Chief Justice of India be given primacy in the matter of appointment in the Central Administrative Tribunal. Similar is the situation with regard to the State Administrative Tribunals as well, where the views of the Chief Justice of the High Court has primacy, since the Tribunal is exercising judicial powers and performing judicial functions.

APPOINTMENT TO THE NATIONAL AND STATE CONSUMER REDRESSAL COMMISIONS:

54. This Court in Ashish Handa, Advocate v. Hon'ble the Chief Justice of High Court of Punjab and Haryana and others (1996) 3 SCC 145, held in the matter of appointment of President of the State Commissions and the National Commissions under the Consumer Protection Act, 1986, the consultation with the Chief Justice of the High Court and Chief Justice of India is in the same manner, as indicated by the Supreme Court in Supreme Court Advocates-on-Record Association case (supra) for appointment of High Court and Supreme Court Judges. This Court noticed that the functions discharged by the Commission are primarily the adjudication of consumer disputes and, therefore, a person from the judicial branch is considered to be suitable for the office of the President. The Court noticed the requirement of consultation with the Chief Justice under the proviso to Section 16(1)(a) and Section 20(1)(a) of the Consumer Protection Act, is similar to that in Article 217. Consequently, it was held that principle enunciated in the majority opinion in the Supreme Court Advocates-on-Record Association case (supra) must apply even for initiating the proposal for appointment.

55. This Court, however, in Ashok Tanwar and another v. State of H.P. and others (2005) 2 SCC 104, relying on Supreme Court Advocates-on-Record Association case (supra) disagreed with Ashish Handa only to the limited extent that for the purpose of the Consumer Protection Act, 1986 'consultation' would not be with the collegium, but would rest only with the Chief Justice. In N. Kannadasan v. Ajoy Khose and others (2009) 7 SCC 1, this Court held that primacy must be with the opinion of the Chief Justice inter alia because the appointment is to a judicial post and in view of the peremptory language employed in the proviso to Section 16(1)(a) of the Consumer Protection Act, 1986. This Court held that the word "consultation" may mean differently in different situations depending on the nature and purpose of the Statute.

56. Judgments discussed above would indicate that the consultation is held to be mandatory if the incumbent to be appointed to the post is either a sitting or a retired judge who has to discharge judicial functions and the orders rendered by them are capable of execution. Consultation, it may be noted, is never meant to be a formality, but meaningful and effective and primacy of opinion is always vested with the High Court or the Chief Justice of the State High Court or the collegium of the Supreme Court or the Chief Justice of India, as the case may be, when a person has to hold a judicial office and discharge functions akin to judicial functions.

57. The High Court, in the instant case has, placed considerable reliance on the Judgment of this Court in K.P. Mohapatra (supra) and took the view that consultation with the Chief Justice is mandatory and his opinion will have primacy. Above Judgment has been rendered in the context of the appointment of Orissa Lokpal under Section 3 of the Orissa Lokpal and Lokayuktas Act. The proviso to Section 3(1) of the Act says that the Lokpal shall be appointed on the advice of the Chief Justice of the High Court of Orissa and the Leader of the Opposition, if there is any. Consultation with the Chief Justice assumes importance in view of the proviso. The Leader of the Opposition need be consulted, if there is one. In the absence of the Leader of the Opposition, only the Chief Justice remains as the sole consultee. In that context and in view of the specific statutory provision, it has been held that the consultation with the Chief Justice assumes importance and his views has primacy.

58. In that case, the Chief Justice approved the candidature of Justice K.P. Mahapatra, but the Leader of the Opposition later recommended another person, but the State Government appointed the former but the High Court interfered with

that appointment. Reversing the judgment of the High Court, this Court held that the opinion rendered by the Leader of the Opposition is not binding on the State Government.

59. I am of the view that the judgment of this Court in K. P. Mahapatra (supra) is inapplicable while construing the provisions of the Karnataka Lokayukta Act, 1984, since the language employed in that Act and Section 3 of the Orissa Lokpal and Lokayukta Act, 1985 are not pari materia.

60. We have, therefore, to interpret the provisions of Section 3(2)(a) and (b) as it stands in the Karnataka Lokayukta Act, where the language employed, in my view, is clear and unambiguous and we have to apply the golden rule of interpretation i.e. the literal interpretation which clearly expresses the intention of the legislature which I have already indicated, supports the objects and reasons, the preamble, as well as various other related provisions of the Act.

61. Tindal, C.J., as early as 1844, has said that "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such case best declare the intent of the lawgiver". In other words, when the language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself. Viscount Simonds, L.C. in Empror v. Benoarilal Sarma AIR 1945 PC 48 has said "in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used". Blackstone, in Commentaries on the Laws of England, Vol.1 page 59 has said "the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reasons of the law. In Kanailal Sur v. Paramnidhi Sadhu Khan AIR 1957 SC 907, Justice Gajendragadkar stated that, "if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act". It is unnecessary to multiply that principle with decided cases, as the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself.

62. Section 3(2)(a) and (b) when read literally and contextually admits of not doubt that the Governor of the State can appoint Lokayukta or Upa Lokayukta only on the advice tendered by the Chief Minister and that the Chief Justice of the High Court is only one of the consultees and his views have no primacy. The Governor, as per the statute, can appoint only on the advice tendered by the Chief Minister and not on the opinion expressed by the Chief Justice or any of the consultees.

Consultation

63. The Chief Minister is legally obliged to consult the Chief Justice of the High Court and other four consultees, which is a mandatory requirement. The consultation must be meaningful and effective and mere eliciting the views or calling for recommendations would not suffice. Consultees can suggest various names from the source stipulated in the statute and those names have to be discussed either in a meeting to be convened by the Chief Minister of the State for that purpose or by way of circulation. The Chief Minister, if proposes to suggest or advise any name from the source ear- marked in the statute that must also be made available to the consultees so that they can also express their views on the name or names suggested by the Chief Minister. Consultees can express their honest and free opinion about the names suggested by the other consultees including the Chief Justice or the Chief Minister. After due deliberations and making meaningful consultation, the Chief Minister of the State is free to advise a name which has come up for consideration among the consultees to the Governor of the State. The advice tendered by the Chief Minister will have primacy and not that of the consultees including the Chief Justice of the High Court.

64. I may point out that the source from which a candidate has to be advised consists of former judges of the Supreme Court or Chief Justices of the State High Courts for the post of Lokayukta and former judges of the High Courts for the post of Upa Lokayukta. Persons, who fall in that source, have earlier held constitutional posts and are presumed to be persons of high integrity, honesty and ability and choosing a candidate from that source itself is sometimes difficult. The Governor cannot appoint a person who does not fall in that source and satisfies the other eligibility criteria. Contention was raised that since the source consists of persons who have held the office of the Judge of the Supreme Court or the Chief Justice of the High Court, the Chief Justice of the High Court would be in a better position to compare the merits and demerits of those candidates. I find it difficult to accept that contention. Apart from a person's competence, integrity and character as a judge, various other information have also to be gathered since the persons who

fall in that source are retired judges. Government has its own machinery and system to gather various information about retired judges. The Chief Minister, it may be noted, cannot advise a name from that source without making a meaningful and effective consultation after disclosing the relevant materials. This, in my view, is a sufficient safeguard against arbitrary selection and advice. Further, as already noticed, the duties and functions of the Lokayukta or Upa Lokayukta are investigative in nature and their orders as such cannot be executed. In such situation, the legislature, in its wisdom, felt that no primacy need be attached to views of the consultees including the Chief Justice but on the advice of the Chief Minister.

65. In my view that this is the scheme of Section 3(2)(a) and (b) of the Act and however, much we strain, nothing spells out from the language used in Section 3(2)(a) and (b) to hold that primacy be attached to the opinion expressed by the Chief Justice of the High Court of Karnataka. I am, therefore, of the view that the various directions given by the High Court holding that the views of the Chief Justice has got primacy, is beyond the scope of the Act and the High Court has indulged in a legislative exercise which is impermissible in law. I, therefore, set aside all the directions issued by the High Court, since they are beyond the scope of the Act.

66. The Chief Minister, in my view, has however committed an error in not consulting the Chief Justice of the High Court in the matter of appointment of Justice Chandrashekaraiah as Upa Lokayukta. Records indicate that there was no meaningful and effective consultation or discussion of the names suggested among the consultees before advising the Governor for appointment to the post of Upa Lokayukta. The appointment of Justice Chandrashekaraiah as Upa Lokayukta, therefore, is in violation of Section 3(2)(b) of the Act since the Chief Justice of the High Court was not consulted nor was the name deliberated upon before advising or appointing him as Upa Lokayukta, consequently, the appointment of Justice Chandrasekharaiah as Upa Lokayukta cannot stand in the eye of law and he has no authority to continue or hold the post of Upa Lokayukta of the State.

67. Judgment of the High Court is accordingly set aside, with a direction to the Chief Minister of the State to take appropriate steps for appointment of Upa Lokayukta in the State of Karnataka, in accordance with law. Since nothing adverse has been found against Justice Chandrasekharaiah, his name can still be considered for appointment to the post of Upa Lokayukta along with other names, if any, suggested by the other five consultees under the Act. I, however, make it

clear that there is no primacy in the views expressed by any of the consultees and after due deliberations of the names suggested by the consultees including the name, if any suggested by the Chief Minister, the Chief Minister can advise any name from the names discussed to the Governor of the State for appointment of Upa Lokayukta under the Act. Appeals are allowed as above, with no order as to costs.

JUDGMENT

MADAN B. LOKUR, J.

68. Leave granted.

69. Brother Radhakrishnan has elaborately dealt with the issues raised – and I agree with his conclusions. Nevertheless, I think it necessary to express my views on the various issues raised.

The issues raised:

70. My learned Brother has stated the material facts of the case and it is not necessary to repeat them.

71. The principal question for consideration is whether the appointment of Justice Chandrashekaraiah as an Upa-lokayukta was in accordance with the provisions of Section 3(2)(b) of the Karnataka Lokayukta Act, 1984 which requires consultation, inter alia, with the Chief Justice of the Karnataka High Court. In my opinion, the Karnataka High Court was right in holding that there was no consultation with the Chief Justice specifically on the appointment of Justice Chandrashekaraiah as an Upa- lokayukta. His appointment, therefore, is void ab initio.

72. Several related questions require consideration, including whether the Upa-lokayukta is a quasi-judicial authority or is only (without meaning any disrespect) an investigator; who should initiate the process of appointment of an Upa-lokayukta; what is meant by ‘consultation’ in the context of Section 3(2)(b) of the Karnataka Lokayukta Act, 1984 (for short the Act); whether consultation is at all mandatory under Section 3(2)(b) of the Act; how is the process of consultation required to be carried out; whether the view of the Chief Justice of the Karnataka High Court regarding the suitability of a person for appointment as Upa-lokayukta has primacy over the views of others involved in the consultation and finally,

whether the Karnataka High Court was right in directing a particular procedure to be followed for the appointment of an Upa-lokayukta.

73. The interpretation of Section 3 of the Karnataka Lokayukta Act, 1984 arises for consideration. This Section reads as follows:

> "Section 3: Appointment of Lokayukta and Upa-lokayukta
>
> (1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-lokayukta or Upa-lokayuktas.
>
> (2) (a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.
>
> (b) A person to be appointed as an Upa-lokayukta shall be a person who has held the office of a judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.
>
> (3) A person appointed as the Lokayukta or an Upa-lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule."
>
> Whether the Upa-lokayukta a quasi-judicial authority:

74. Without intending to belittle the office of the Upa-lokayukta, it was submitted by learned counsel for the State of Karnataka (hereafter "the State") that the Upa-

lokayukta is essentially required to investigate complaints and inquire into grievances brought before him. In this process, he may be exercising some quasi-judicial functions, but that does not make him a quasi-judicial authority. The significance of this submission lies in the further submission that if the Upa-lokayukta is not a quasi-judicial authority then the opinion of the Chief Justice of the Karnataka High Court would not have primacy in the appointment and consultation process, otherwise it would have primacy.

(i) View of the High Court:

75. After discussing the provisions of the Act and the case law on the subject, the High Court was of the opinion that the Upa-Lokayukta performs functions that are in the nature of judicial, quasi-judicial and investigative. The High Court expressed the view that if the functions of an Upa-Lokayukta were purely investigative, the legislature would not have insisted on a person who has held the office of a judge of a High Court as the qualification for appointment and consultation with the Chief Justice as mandatory.

76. In coming to this conclusion, the High Court drew attention to N. Gundappa v. State of Karnataka, 1989 (3) KarLJ 425 wherein it was held that "the Upa-lokayukta ….while conducting investigation into a complaint and making a report on the basis of such investigation, exercises quasi judicial power. It determines the complaint made against a public servant involving a 'grievance' or an 'allegation' and the report becomes the basis for taking action against the public servant by the Competent Authority." The Division Bench of the Karnataka High Court upheld this conclusion by a very cryptic order in State of Karnataka v. N. Gundappa, ILR 1990 Kar 4188.

77. The High Court also drew attention to Prof. S.N. Hegde v. The Lokayukta, ILR 2004 Kar 3892 wherein the scope of Sections 9,11 and 12 of the Act were considered and it was held that proceedings under Section 9 of the Act are judicial proceedings, or in any event, they are quasi-judicial proceedings. It was said:

> "Therefore, the investigation to be conducted under Section 9 would be in the nature of a judicial proceeding and it would be in the nature of a suit and oral evidence is recorded on oath and documentary evidence is also entertained. Therefore, it is clear that the investigation under Section9of the Act would be in the nature of judicial proceedings or at any rate it is a quasi-judicial proceedings where the principles of natural justice had to be

followed and if any evidence is recorded the public servant has the right to cross-examine those witnesses."

(ii) Functions, powers, duties and responsibilities of the Upa-lokayukta

78. The appointment of an Upa-lokayukta is dealt with in Section 3 of the Act. This Section requires that the Upa-lokayukta must be with a person who has held the office of a judge of a High Court. The Upa- lokayukta is, therefore, expected to be impartial and having some (if not considerable) judicial experience and abilities. The reason for this, quite obviously, is that he would possibly be required to deal with complaints and grievances against public servants in the State.

79. Given the importance of the office of the Upa-lokayukta, he is appointed by the Governor of the State on the advice of the Chief Minister, in consultation with the Chief Justice of the High Court, the Chairman of the Karnataka Legislative Council, the Speaker of the Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. In other words, the appointment of the Upa-lokayukta is the concern of constitutional authorities of the State.

80. The oath of office taken by the Upa-lokayukta in terms of Section 3(3) of the Act is similar to the oath of office taken by a judge of a High Court under Schedule III to the Constitution. The only substantial difference between the two is that, in addition, a judge of the High Court takes an oath to uphold the sovereignty and integrity of India and uphold the Constitution of India and the laws.

81. The term of office and other conditions of service of an Upa-lokayukta are dealt with in Section 5 of the Act. This Section, read with Section 6 of the Act (which deals with the removal of an Upa- lokayukta), provides security of tenure to the Upa-lokayukta. He has a fixed term of five years and cannot be removed "except by an order of the Governor passed after an address by each House of the State Legislature supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting". The removal of an Upa-lokayukta can only be on the ground of proved misbehavior or incapacity and the procedure for investigation and proof of misbehavior or incapacity is as provided in the Judges (Inquiry) Act, 1968 which applies mutatis mutandis to an Upa-lokayukta.

82. On ceasing to hold office, an Upa-lokayukta is ineligible for further employment to any office of profit under the State or any other authority, corporation, company, society or university referred to in the Act. The salary of an Upa-lokayukta is equal to that of a judge of the High Court and the conditions of service cannot be varied to his disadvantage after his appointment. All the administrative expenses of the Upa-lokayukta are charged on the Consolidated Fund of the State.

83. In a sense, therefore, the Upa-lokayukta is a high dignitary in the State of Karnataka.

84. Section 7 of the Act provides for matters that may be investigated by the Upa-lokayukta while Section 8 of the Act provides for matters that may not be investigated by the Upa-lokayukta. For the purposes of this judgment, it is not necessary to refer to Section 8 of the Act. In terms of Section 7(2) of the Act, the Upa-lokayukta is entitled to investigate (upon a complaint involving a grievance or an allegation) any action taken by or with the general or special approval of a public servant other than one mentioned in Section 7(1) of the Act. Only the Lokayukta can investigate action taken by or with the general or special approval of a public servant mentioned in Section 7(1) of the Act. The power vested in an Upa-lokayukta is, therefore, quite wide though hierarchically circumscribed.

85. Section 9 of the Act relates to complaints and investigations thereon by an Upa-lokayukta. A complaint may be made to him in the form of a statement supported by an affidavit. If the Upa-lokayukta, after making a preliminary enquiry proposes to conduct an investigation in respect of the complaint, he shall follow the procedure provided in Section 9(3) of the Act which broadly conforms to the principles of natural justice by giving an opportunity to the public servant against whom the complaint is being investigated to offer comments on the complaint.

86. For the purposes of any enquiry or other proceedings to be conducted by him, an Upa-lokayukta is empowered by Section 10 of the Act to issue a warrant for search and seizure against any person or property. The warrant can be executed by a police officer not below the rank of Inspector of Police authorized by the Upa-lokayukta to carry out the search and seizure. The provisions of Section 10 of the Act also make it clear that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply.

87. By virtue of Section 11 of the Act, an Upa-lokayukta has all the powers of a Civil Court for the purpose of carrying out an investigation. These powers include summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits and other related powers. Proceedings before the Upa- lokayukta are deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code. In this context, Section 17-A of the Act is important and this Section enables the Upa-lokayukta to exercise the same powers of contempt of itself as a High Court and for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect mutatis mutandis.

88. The Upa-lokayukta is protected by virtue of Section 15 of the Act in respect of any suit, prosecution or other legal proceedings in respect of anything that is done in good faith while acting or purporting to act in the discharge of his official duties under the Act.

89. The Upa-lokayukta is statutorily obliged under Section 12(1) of the Act to submit a report in writing if, after investigation of any grievance, he is satisfied that the complainant has suffered some injustice or undue hardship. In his report to the Competent Authority, as defined in Section 2(4) of the Act, the Upa-lokayukta shall recommend that the injustice or hardship be remedied or redressed in a particular manner and within a specified time frame. Sub-section (2) of Section 12 of the Act requires the Competent Authority to submit an 'action taken report' to the Upa-lokayukta within one month on the report given by him. Sub-section (3) and sub-section (4) of Section 12 of the Act are similar to sub-section (1) and (2) thereof except that they deal with an 'action taken report' in respect of an investigation resulting in the substantiation of an allegation. In such a case, the Competent Authority is obliged to furnish an 'action taken report' within three months of receipt of the report of the Upa- lokayukta. Sub-section (5) and sub-section (7) of Section 12 of the Act provide that in the event the Upa-lokayukta is not satisfied with the action taken report, he may make a special report upon the case to the Governor of the State who shall cause a copy thereof to be laid before each House of the State Legislature together with an explanatory memorandum.

90. In short, Section 12 of the Act confers a decision-making obligation on the Upa-lokayukta in respect of grievances and complaints received by him.

91. Section 13 of the Act requires a public servant to vacate his office if so directed by the Upa-lokayukta if a declaration is made to that effect in a report under

Section 12(3) of the Act. Even though the declaration may not be accepted, it does not whittle down the authority of the Upa-lokayukta.

92. Section 14 of the Act enables the Upa-lokayukta to prosecute a public servant and if such an action is taken, sanction to prosecute the public servant shall be deemed to have been granted by the appropriate authority.

93. The conditions of service of the staff of the Upa-lokayukta are referred to in Section 15 of the Act. They may be prescribed in consultation with the Lokayukta in such a manner that the staff may act without fear in the discharge of their functions. Section 15 of the Act also enables the Upa-lokayukta to utilize the services of any officer or investigating agency of the State or even of the Central Government, though with the prior concurrence of the Central Government or the State Government. Section 15(4) of the Act makes it clear that the officers and other employees of the Upa-lokayukta are under the administrative and disciplinary control of the Lokayukta.

94. The broad spectrum of functions, powers, duties and responsibilities of the Upa-lokayukta, as statutorily prescribed, clearly bring out that not only does he perform quasi-judicial functions, as contrasted with purely administrative or executive functions, but that the Upa- lokayukta is more than an investigator or an enquiry officer. At the same time, notwithstanding his status, he is not placed on the pedestal of a judicial authority rendering a binding decision. He is placed somewhere in between an investigator and a judicial authority, having the elements of both. For want of a better expression, the office of an Upa-lokayukta can only be described as a sui generis quasi-judicial authority.

(iii) Decisions on the subject:

95. Learned counsel for the State referred to The Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi, [1950] SCR 459 to highlight the difference between a court and a tribunal. It is not necessary to go into this issue because the question is not whether the Upa-lokayukta is a court or a tribunal – the question is whether he is a quasi-judicial authority or an administrative authority. To this extent, the decision of the Constitution Bench does not add to an understanding of the issue under consideration.

96. However, the decision does indicate that an Upa-lokayukta is certainly not a court. He does not adjudicate a lis nor does he render a “judicial decision” derived

from the judicial powers of the State. An Upa-lokayukta is also not a tribunal, although he may have the procedural trappings (as it were) of a tribunal. The final decision rendered by the Upa-lokayukta, called a report, may not bear the stamp of a judicial decision, as would that of a court or, to a lesser extent, a tribunal, but in formulating the report, he is required to consider the point of view of the person complained against and ensure that the investigation reaches its logical conclusion, one way or the other, without any interference and without any fear. Notwithstanding this, the report of the Upa-lokayukta does not determine the rights of the complainant or the person complained against. Consequently, the Upa-lokayukta is neither a court nor a tribunal. Therefore, in my opinion, the Upa-lokayukta can best be described as a sui generis quasi-judicial authority.

97. Reference by learned counsel for the State to Durga Shankar Mehta v. Thakur Raghuraj Singh and Others, [1955] 1 SCR 267 also does not take us much further in determining whether an Upa-lokayukta is a quasi- judicial authority or not. That case concerned, inter alia, the competency of an appeal on special leave under Article 136 of the Constitution from a decision of the Election Tribunal. In that case, it was clearly laid down that courts and tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions".

98. However, the issue is more specifically dealt with in Associated Cement Companies v. P.N. Sharma, 1965 (2) SCR 366. In that case, Kania, C.J. held:

> "It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

99. Similarly, Das, J held, after reviewing a large number of cases where there were two disputing parties and an authority to adjudicate their dispute and where there were no two disputing parties but there was an authority to sit in judgment. I am presently concerned with the second line of cases. The learned Judge held:

> "What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are:

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

100. 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.

101. However, this is really of not much consequence in view of my conclusion on the issue of primacy of the opinion of the Chief Justice.

Initiating the process of appointment of an Upa-lokayukta:

102. Having held that the Upa-lokayukta is a sui generis quasi-judicial authority, the question for consideration is who should initiate the process for the appointment of an Upa-lokayukta. The significance of this is that it is tied up with the primacy of the views of the Chief Justice of the High Court. That in turn is tied up with not only maintaining the independence of the office but also of the Upa-lokayukta not being dependent on the Executive for the appointment.

(i) View of the High Court:

103. The High Court was of the opinion that to maintain the independence of the office of the Lokayukta and the Upa-lokayukta under the Act, the recommendation for appointment to these offices must emanate only from the Chief Justice and only the name recommended by him should be considered. The High Court opined:

> "[T]he name of the Lokayukta and Upa-Lokayukta to be appointed has to necessarily emanate from a person who is not within their jurisdiction. The only person who is outside the ambit of Lokayukta is the Chief Justice and all other Constitutional authorities mentioned in the provision come within his jurisdiction. They will not have the right to suggest the name. Only the Chief Justice would have the right to suggest the name which, of course the other Constitutional authorities can consider. Though all of them are constitutional authorities, all of them cannot be placed on the same pedestal. The Chief Justice is the head of the Judiciary in the State, and he cannot be compared with others. That is why the legislature has consciously enacted the provision in such a manner that the first person to be consulted is the Chief Justice. The intention of the legislature is clear. The name has to emanate from the Chief Justice alone. Therefore, the law laid down by the Constitution Bench of the Apex Court squarely applies to the appointment of Lokayukta and Upa- Lokayukta. Therefore, we have no hesitation in holding that under Section3of the Act, it is only the Chief Justice who shall suggest the name of the Judge for being appointed as Lokayukta or Upa- Lokayukta. Other constitutional functionaries have no such right to suggest the name. It is only one name and not panel of names as there is no indication to that effect in the provision."

(ii) Submissions and decisions on the subject:

104. Learned counsel first made a reference to Sarwan Singh Lamba v. Union of India, (1995) 4 SCC 546 in which the Chief Minister of the State initiated the process for the appointment of the Vice-Chairman and members of the State Administrative Tribunal. It was contended that their appointments were, inter alia, contrary to the procedure laid down in the decision of this Court inS.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124. The Constitution Bench noted that the State Government had initiated the process of appointment and that the Chief Minister of the State had mooted the name of one of the candidates selected by a Selection Committee headed by the Chief Justice of the High Court. However, since the appointees were duly qualified and eligible to hold the post to which they were appointed; there was no allegation regarding their suitability or otherwise;

and the appointments having been made after consultation with the then Chief Justice of India, this Court concluded that no law was violated in the appointment process. Accordingly, the Constitution Bench declined to interfere with their appointments. The issue whether the appointment process could or could not have been initiated by the Executive was not specifically discussed.

105. Ashish Handa v. Hon'ble the Chief Justice of High Court of Punjab Haryana and Others, (1996) 3 SCC 145 related to the appointment of the President of the State Consumer Disputes Redressal Commission, being a person who is or has been a judge of the High Court. This Court held that for the purposes of initiating the proposal for appointment of the President of the State Commission, the Executive is expected to approach the Chief Justice of the High Court for suggesting a candidate for appointment. In other words, the Chief Justice should initiate the appointment process. Sarwan Singh Lamba was distinguished by observing that "[I]n the facts of that case, substantial compliance of the requirement of approval by the Chief Justice of India was found proved and, therefore, the appointments were valid."

106. The appointment of the President of the State Commission again came up for deliberation in Ashok Tanwar and Another v. State of Himachal Pradesh and Others, (2005) 2 SCC 104. However, in that case, the Constitution Bench did not comment on the view expressed in Ashish Handa that the Chief Justice of the High Court must initiate the process for appointment of the President of the State Commission and not the Executive of the State. The law laid down in Ashish Handa to this extent remained unchanged. However, Ashish Handa was overruled on the modality of the consultation process, which I will consider in another section of this judgment. That Ashish Handa was overruled on the modality of the consultation process for the appointment of the President of the State Commission under Section 16 of the Consumer Protection Act was confirmed in State of Haryana v. National Consumer Awareness Group, (2005) 5 SCC 284.

107. In N. Kannadasan v. Ajoy Khose and Others, (2009) 7 SCC 1 the appointment of the President of the State Commission under Section 16 of the Consumer Protection Act once again came up for consideration. After referring to Ashish Handa, Ashok Tanwar and National Consumer Awareness Group it was held in paragraph 153 of the Report that the process of selection must be initiated by the High Court. It was observed that the Chief Justice should recommend only one name and not a panel, for if the choice of selection from a panel is left to the Executive, it would erode the independence of the Judiciary.

108. One significant fact may be noticed from a reading of the cases cited above, namely, that for the appointment of the Vice Chairman or Member of the State Administrative Tribunal or the President of the State Consumer Disputes Redressal Commission, only the Chief Justice of India or the Chief Justice of the High Court is required to be consulted, and not several persons. It is this context that it was held that the Chief Justice of the High Court must initiate the process of appointment. Sarwan Singh Lamba is perhaps the only exception to this rule and was, therefore, confined to its own facts. A situation where more than one person is required to be consulted was not dealt with in any of the decisions referred to above. That question arises in this case.

109. A reading of the cited decisions also suggests that the Chief Justice must recommend only one name and not a panel of names. The purpose of this is to ensure the independence of the persons appointed and to obviate any possibility of executive influence. The acceptance or non- acceptance of the candidate recommended by the Chief Justice is a different matter concerning the consultation process.

110. What are the mechanics of initiating the process of appointment? Is the Chief Justice expected to inform the State Government that a statutory judicial position is lying vacant and that someone is being recommended to fill up that position? Or does it imply that the State Government should bring it to the notice of the Chief Justice that there is a statutory judicial position lying vacant and that it needs to be filled up and to then request the Chief Justice to make a recommendation? No clear answer is available from the cited cases, but it does appear that the responsibility is of the Executive to inform the Chief Justice of the existence of a vacancy and to request him to recommend a suitable person for filling it up. However, this would not preclude the Chief Justice from initiating the appointment process, particularly in the event of the failure of the Executive to take necessary steps.

111. What would happen if the Executive, while initiating the process of appointment were to recommend the name of a person? Would it vitiate the process or would the process be only irregular? Again, no clear- cut answer is available. Sarwan Singh Lamba seems to suggest that the procedure would not be vitiated but would, at best, only be irregular. But, Ashok Tanwar seems to suggest, sub silentio, that the appointment procedure would be vitiated.

112. Would these principles laid down by this Court apply to initiating the process of appointment of the Upa-lokayukta under the Act? I think not. In the appointment of the Upa-lokayukta, the Chief Minister must consult not only the Chief Justice but several other constitutional authorities also and given the fact that the Upa-Lokayukta is not a purely judicial authority, it hardly matters who initiates the process of appointment of the Upa-Lokayukta. Ordinarily, it must be the Chief Minister since he has to tender advice to the Governor and, in a sense, the appointment is his primary responsibility. But this does not preclude any of the other constitutional authorities who are required to be consulted from bringing it to the notice of the Chief Minister that the post of the Upa-Lokayukta needs to be filled up and that the appointment process ought to commence – nothing more than that. None of them ought to suggest a name since constitutional courtesy would demand that only the Chief Minister should initiate the appointment process. There is no reason to hold that merely because the Upa-Lokayukta is a sui generis quasi-judicial authority, only the Chief Justice must initiate the process of appointment. It must not be forgotten that the selection of the Upa-lokayukta is a consultative process involving several constitutional authorities and in the context of the Act, no constitutional authority is subordinate to the other.

113. In the present case, the process of appointment of the Upa-lokayukta commenced with a letter written by the Chief Minister to the Chief Justice of the Karnataka High Court on 18th October 2011 for suggesting "a panel of eligible persons for appointment as Karnataka Upa Lokayukta on or before 24th October, 2011 so as to fill up the post of Upa Lokayukta". I cannot fault the Chief Minister for this. He did not initiate the appointment process as understood in the decisions referred to above by recommending any candidate for appointment – he merely invited recommendations. He also did not err in law in inviting a panel of names since the consultation process involved more than one person. It was for the persons concerned to recommend a panel of names or make one recommendation or make no recommendation at all. As far as the Chief Justice was concerned, in keeping with the general view expressed by this Court in Kannadasan it was proper and appropriate for him to have recommended only one name to the Chief Minister and, as required by propriety, he correctly did so by recommending only one person for appointment as the Upa- lokayukta.

114. I am, therefore, not in agreement with the High Court that the recommendation for appointing the Upa-lokayukta under the Act must emanate only from the Chief Justice and only the name recommended by him should be

considered. To this extent, the decision of the High Court is set aside. It is made clear that this view does not apply to judicial appointments.

Consultation in the appointment of an Upa-lokayukta:

115. What does ‘consultation’ occurring in Section 3(2)(b) of the Act postulate? Learned counsel for the State, as well as learned counsel for Justice Chandrashekaraiah and the writ petitioner in the High Court firstly referred to the above decisions of this Court to explain the meaning of ‘consultation’ in the context of the appointment process and secondly in the context of the issue whether the view of the Chief Justice of the Karnataka High Court would have primacy in the process of consultation.

(i) View of the High Court:

116. The High Court gave a realistic meaning to ‘consultation’ generally and, in my opinion, specifically to the meaning of the word as occurring in Section 3(2)(b) of the Act. This is what the High Court had to say:

> “The word 'consult' implies a conference of two or more persons or impact of two or more minds in respect of a topic/subject. A person consults another to be elucidated on the subject matter of the consultation. Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or atleast satisfactory solutions. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. A consultation may be between an uninformed person and an expert or between two experts. In either case, the final decision is with the consultor, but he will not be generally ignoring the advice except for good reasons. The consultation is not complete or effective before the parties thereto making their respective points of view known to the other or others and discuss and examine the relative merits of their views. In order for two minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration fully and identical facts, which can at once constitute both the source and foundation of the final decision. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. If there are more than one person to be consulted, all the persons to be consulted should know the subject with reference to which they are consulted. Each one should

know the views of the other on the subject. There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved. The consultor cannot keep one consultee in dark about the views of the other consultee. When consultation is prescribed with more than one person, there cannot be bilateral consultations or parallel consultations, behind the back of others, who are to be consulted in the process. Consultation is not complete or effective before the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views. They may discuss, but may disagree. They may confer but may not concur. However, consultation is different from consentaneity."

(ii) Consultation in the appointment process:

117. Sarwan Singh Lamba did not deal with the issue of consultation, but Ashish Handa, Ashok Tanwar and Kannadasan did. That being so, reference may be made to the relevant portion of Section 16(1) of the Consumer Protection Act which relates to the President of the State Commission. This extract reads as follows:-

"16. Composition of the State Commission.— (1) Each State Commission shall consist of—

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) xxx"

118. It was observed in Ashish Handa that the function of the State Commission is primarily to adjudicate consumer disputes and therefore a person from the judicial branch is considered suitable for the office of the President of the State Commission under Section 16 of the Consumer Protection Act. Given this context, prior consultation with the Chief Justice of the High Court is obvious since the Chief Justice is the most appropriate person to know the suitability of the person to be appointed as the President of the State Commission. Further elaborating on this, it was held that the procedure of consultation should be the same as laid down in

Article 217 of the Constitution as interpreted in Supreme Court Advocates on Record Association v. Union of India, AIR 1994 SC 268.

119. In Ashok Tanwar the Constitution Bench considered the dictum laid down in Ashish Handa and categorically distinguished the process of the appointment of a judge of a superior court under Article 217 of the Constitution from that of the President of the State Commission. It was observed in paragraph 16 of the Report as follows:-

> "The process of consultation envisaged under Section 16 of the Act can neither be equated to the constitutional requirement of consultation under Article 217 of the Constitution in relation to appointment of a Judge of a High Court nor can it be placed on the same pedestal. Consultation by the Chief Justice of the High Court with two senior most Judges in selecting a suitable candidate for appointment as a Judge is for the purpose of selecting the best person to the high office of a Judge of the High Court as a constitutional functionary. Consultation with the Chief Justice of the High Court in terms of Section 16 of the Act is a statutory requirement."

120. Further, while referring to Aruna Roy v. Union of India, (2002) 7 SCC 368 it was observed that:

> "… the words and expressions used in the Constitution, …. have no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution. The same thing cannot be said in relation to interpreting the words and expressions in a statute."

121. This Court categorically rejected the view that 'consultation' postulated in Article 217 of the Constitution in relation to the appointment of a High Court judge be read in the same way as 'consultation' as contemplated under Section 16 of the Consumer Protection Act.

122. In Kannadasan it was noted that the collegium of judges of the Supreme Court had found N. Kannadasan unfit to continue as a judge of the High Court. In this context, it was observed that the expression "retired judge" would mean a person who has retired without blemish and not merely a person who has been a judge and, therefore, attention was drawn to the conclusion of Fazal Ali, J in S.P. Gupta v. Union of India, 1981 Supp SCC 87 (after referring to Union of India v.

Sankalchand Himmatlal Seth, (1977) 4 SCC 193) that both the "consultor" and the "consultee" must have before them full and identical facts.

123. It follows from the decisions placed before us that there is a clear distinction between 'consultation' in the appointment of a judge of a superior court and 'consultation' in the appointment to a statutory judicial position. For the former, the Chief Justice must consult the collegium of judges, while it is not necessary for the latter. In both cases, consultation is mandatory.

124. The further question that arises is whether the law laid down in these decisions would be applicable to the appointment of an Upa-Lokayukta who is not a judicial or a constitutional authority but is a sui generis quasi-judicial authority? In my opinion, the answer to this question must be in the affirmative.

125. At this stage, it is necessary to mention that on a plain reading of Section 3(2)(b) of the Act, there can be no doubt that consultation with all the constitutional authorities, including the Chief Justice of the Karnataka High Court, is mandatory. There was no dispute on this – the controversy was limited to the meaning of 'consultation'. I have already held that an Upa-lokayukta is not a judicial authority, let alone a constitutional authority like a judge of a High Court. Therefore, on reading of the above decisions, it is clear that the mandatory consultation in the appointment process as postulated by Section 3(2)(b) of the Act is with the Chief Justice in his individual capacity and not consultation in a collegial capacity.

(iii) The process of consultation:

126. How is this 'consultation' to take place? There are absolutely no 'consultation' guidelines laid down in the Act. But the High Court seems to endorse the view that consultation ought take place across a table or through correspondence. It was also suggested by learned counsel for the State that it would be more appropriate that all constitutional authorities have a meeting where the suitability of the person recommended for appointment may be discussed.

127. I do not think it necessary to circumscribe the manner of consultation. The Chief Minister may consult the other constitutional authorities collectively or in groups or even individually – this hardly matters as long as there is meaningful and effective consultation. Similarly, I do not think it necessary to restrict the mode of consultation. It may be in a meeting or through correspondence. Today, with

available technology, consultation may even be through a video link. The form of consultation or the venue of consultation is not important - what is important is the substance of the consultation. The matter has to be looked at pragmatically and not semantically. It is important, as held by the High Court, that no constitutional authority is kept in the dark about the name of any candidate under consideration and each constitutional authority mentioned in Section 3(2)(b) of the Act must know the recommendation made by one another for appointment as an Upa-Lokayukta. In addition, they must have before them (as Fazal Ali, J concluded in S.P. Gupta) full and identical facts. As long as these basic requirements are met, 'consultation' could be said to have taken place.

(iv) Consultation in this case:

128. Was there 'consultation' (as I have understood it) between the various constitutional authorities before the Chief Minister recommended the name of Justice Chandrashekharaiah? I think not. In response to the letter of the Chief Minister, the Chief Justice recommended the name of Justice Rangavittalachar; the Speaker of the Legislative Assembly recommended Justice Chandrashekharaiah; the Chairman of the Legislative Council recommended Justice Chandrashekharaiah; the Leader of the Opposition in the Legislative Assembly recommended Justice Mohammed Anwar and Justice Ramanna; the Leader of the Opposition in the Legislative Council recommended Justice Mohammed Anwar and Justice Ramanna. Therefore, as many as four retired judges were recommended for appointment as Upa- lokayukta. It is not clear whether the names of all these judges were disclosed to all the constitutional authorities. The name of Justice Chandrashekharaiah was certainly not disclosed to the Chief Justice, as is evident from his letter dated 4th February 2012 wherein he stated four times that he was not consulted on the appointment of Justice Chandrashekharaiah. This is what he stated:

> "I was not consulted on the said name (Shri Justice Chandrashekaraiah) for the position of Karnataka Upa Lokayukta.
>
> … … …
>
> "I had not recommended the name of Shri. Justice Chandrashekaraiah for consideration for appointment as Karnataka Upa Lokayukta. Thereafter, I have not heard anything from you. I emphasise that the appointment of Shri.

> Justice Chandrashekaraiah has been made without consultation with the Chief Justice. Therefore, it is in violation of mandatory requirements of law.

… … …

> "To put the matter plainly, there is no gainsaying the fact that there never ever was any consultation on the name of Shri Justice Chandrashekaraiah for appointment to the position of Upa Lokayukta between you and myself.

… … …

> "I reiterate that in this particular case, not even the name was shared by you (the Chief Minister) with me (the Chief Justice), leave alone eliciting my views on the suitability of the person for holding the post of Upa Lokayukta."

129. The contents of this letter are not denied by the State and are quite obviously admitted. Significantly, the Chief Minister did not reply to this letter. Clearly, the Chief Justice was kept in the dark about the name of a candidate and there was no full and complete disclosure of facts. Ergo, the Chief Minister did not recommend the name of Justice Chandrashekharaiah in consultation with the Chief Justice. This was contrary to the mandatory requirement of Section 3(2)(b) of the Act and so, it must be held that the appointment of Justice Chandrashekharaiah was void ab initio.

130. In this context, reference was made to Indian Administrative Service (S.C.S.) Association U.P. and Others v. Union of India and Others, 1993 Supp. (1) SCC 730 to contend that since the views of the constitutional authorities are not binding on the Chief Minister, the process of consultation is not mandatory. In that case, this Court was considering Section 3(1) of the All India Service Act, 1951 which reads as follows:

> "Regulation of recruitment and conditions of services.- (1) The Central Govt. may, after consultation with the Governments of the States concerned (including the State of Jammu and Kashmir), (and by notification in the Official Gazette) make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service."

131. The fifth conclusion mentioned in IAS Association was relied on in support of this contention. This conclusion reads as follows:

> "When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action 'after consultation'."

132. This conclusion must not be read in isolation but along with the other conclusions arrived at in IAS Association. This Court referred to 'prior consultation' in the context of the "subject of consultation" as mentioned in the first conclusion. This 'prior consultation' is not always mandatory. Then there is 'consultation' as a part of "fair procedure" as mentioned in the second conclusion. This is mandatory. Finally, there is the conclusion arrived at which is 'after consultation'. In some cases the 'consultor' may be bound to accept the conclusion arrived at and in some cases he may not. That is a matter of interpretation of the statute and the purpose of the consultation process. But to say that since the 'consultor' is not bound by the conclusion arrived at, he need not go through the consultation process would be stretching the law laid down in IAS Association to the vanishing point.

133. This Court held in IAS Association, with reference to the above provision, that 'prior consultation' was not mandatory as long as the relevant rules were made 'after consultation'. The present case is not concerned with the issue of 'prior consultation'. All that is of concern in the present case is whether the Chief Minister acted in consultation with the constitutional authorities referred to Section 3(3)(b) of the Act and the answer to this is in the negative.

134. 'Consultation' for the purposes of Section 3(2)(b) of the Act does not and cannot postulate concurrence or consent. This is quite obvious given the large number of constitutional authorities involved in the consultation process. There is always a possibility of an absence of agreement on any one single person being recommended for appointment as an Upa-lokayukta, as has actually happened in

the present case. In such a situation, it is ultimately the decision of the Chief Minister what advice to tender to the Governor, since he alone has to take the final call.

135. Can the Chief Minister advice the Governor to appoint a person not recommended by any of the constitutional authorities? I see no reason why he cannot, as long as he consults them – the 'consultation' being in the manner postulated above. The Chief Minister can recommend a completely different person, other than any of those recommended by any of the constitutional authorities as long as he does not keep them in the dark about the name of the candidate and there is a full and complete disclosure of all relevant facts. Kashmir, (1982) 3 SCC 412 this Court explained 'consultation' in the matter of judicial appointments in the following words (which apply equally to the present case):

> "It is well settled that consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his minds which is not communicated to the proposer, the direction to give effect to the counter proposal without anything more, cannot be said to have been done after consultation."

136. On the facts of this case, I hold that there was no consultation between the Chief Minister and the Chief Justice on the appointment of Justice Chandrashekharaiah as an Upa-lokayukta. His appointment was, therefore, void ab initio.

(v) Primacy of the view of the Chief Justice:

137. The High Court was of the opinion that primacy is required to be given to the view of the Chief Justice of the Karnataka High Court in the matter of the appointment of the Upa-lokayukta. In fact, it was said that since the Chief Justice is the best person to know the suitability or otherwise of a retired judge of a High Court. It was also said that, "Requesting the Chief Justice to suggest a name and on receipt of the same, ignoring the said name and tendering advice to the Governor to appoint somebody else, would make the consultation a farce."

138. In Ashok Tanwar the Constitution Bench did make a reference to the primacy of the Chief Justice of India in the context of the appointment of a judge of the

superior court and noted that the Chief Justice is best equipped to know and assess the work of the candidate and his suitability for appointment. However, the Constitution Bench did not express any opinion on the question of primacy of the opinion of the Chief Justice in regard to the appointment of the President of the State Commission under Section 16 of the Consumer Protection Act, although I think it would naturally follow.

139. In any event, in Kannadasan it was held that for the appointment of the President of the State Commission, the view of the Chief Justice was final and for all intents and purposes decisive, and except for very cogent reasons, his recommendation must be accepted. It was held in paragraph 156 of the Report that:

> "For the appointment as President of the State Commission, the Chief Justice of the High Court shall have the primacy and thus the term "consultation" even for the said purpose shall mean "concurrence" only."

140. As noted above, the Chief Justice of India or the Chief Justice of the High Court is the only constitutional authority required to be consulted in the appointment of a Vice Chairman or Member of the State Administrative Tribunal or the President of the State Consumer Disputes Redressal Commission. In that context, it is quite understandable that the recommendation of the Chief Justice must be accepted, unless there are strong and cogent reasons for not doing so. The reasons would, naturally, have to be disclosed to the Chief Justice as a part of the process of consultation. It is also quite understandable that the Chief Justice would be the best person to assess the suitability of a person for appointment to such a position. But, the situation is rather different in the appointment of an Upa-lokayukta where the constitutional authorities to be consulted include not only the Chief Justice of the Karnataka High Court but several other constitutional authorities as mentioned in Section 3(2)(b) of the Act. Can their views be subordinated to the views of the Chief Justice, and if so, why?

141. In this regard, reliance was placed on Justice K.P. Mohapatra v. Sri Ram Chandra Nayak,(2002) 8 SCC 1. In that case, the provisions of Section 3 of the Orissa Lokpal and Lokayuktas Act, 1999 were under consideration. That Section reads as follows:

> "3. Appointment of Lokpal and Lokyktas.-(1) For the purpose of conducting investigations in accordance with the provisions of this Act, the Governor

shall appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas:

Provided that--

(a) the Lokpal shall be appointed after consultation with the ChiefJustice of the High Court of Orissa and the Leader of the Opposition, if there is any;

(b) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) A person shall not be qualified for appointment as—

(a) (sic) unless he is or has been a Judge of the Supreme Court or of a High Court;

(b) A Lokayukta unless he is qualified to be a Judge of a High Court."

142. This Court took the view that primacy is to be accorded to the opinion of the Chief Justice in the matter of appointment of the Lokpal since his opinion would be totally independent and he would be in a position to find out who is the most or more suitable for that office. It was also held that consultation with him is a sine qua non, and if there is a Leader of the Opposition then he "is also required to be consulted". But if there is no Leader of the Opposition, obviously consultation with him is not possible. This Court then said, "This would indicate nature of such consultation and which is to apprise him [the Leader of the Opposition] of the proposed action but his opinion is not binding to the Government." With respect, this does not follow. If the law requires consultation then it must take place; whether the opinion expressed during the consultation process is binding or not is a different matter altogether. This Court went a bit further in Justice Mohapatra and held that though the Leader of the Opposition is entitled to express his views but he cannot suggest any other name for consideration.

143. I am afraid, however uncomfortable one may feel about it, Section 3 of the Orissa Lokpal and Lokayuktas Act, 1999 as I read it, simply does not prohibit the Leader of the Opposition from suggesting some other name for consideration for appointment as a Lokpal. This restriction is not warranted by the words of the statute and would, even otherwise, give that Section far too restricted a meaning.

As concluded in IAS Association "The object of the consultation is to render consultation meaningful to serve the intended purpose." Giving 'consultation' a constricted meaning in Section 3 of the Orissa Lokpal and Lokayuktas Act, 1999 would defeat this. It was observed inMaharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals, (1991) 2 SCC 637:

> "It is a settled rule of interpretation of statutes that if the language and words used are plain and unambiguous, full effect must be given to them as they stand and in the garb of finding out the intention of the Legislature no words should be added thereto or subtracted therefrom."

144. I would, therefore, confine the law laid down in Justice Mohapatra to the facts of that case only. In any event, the view expressed in Justice Mohapatra is not helpful in interpreting Section 3(2)(b) of the Karnataka Lokayukta Act, 1984 and I leave the matter at that.

145. As far as Section 3(2)(b) of the Act is concerned, the primary 'responsibility' for the appointment of the Upa-Lokayukta rests with the Chief Minister who has to advice the Governor. Since the Chief Justice is only one of the constitutional authorities required to be consulted by the Chief Minister before advice is tendered to the Governor, it cannot be said that only his view would prevail over the views of other constitutional authorities. If that were so, then (to rephrase the High Court) consultation with the other constitutional authorities including the Chairman of the Karnataka Legislative Council, the Speaker of the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Council and in the Karnataka Legislative Assembly would be reduced to a farce. It must be appreciated that these constitutional authorities also have an equal say in the executive governance of the State and there is nothing to suggest that their opinion should be subordinated to the opinion of the Chief Justice or that the Chief Justice can veto their views. On the other hand, since it is ultimately the Chief Minister who has to advice the Governor, it is he alone who has to take the final call and shoulder the responsibility of correctly advising the Governor in the matter of appointing the most suitable person as an Upa-lokayukta.

146. The mechanics of the working of a statute has to be decoded from the contents of the statute and the words used therein; otherwise there is a possibility of committing a serious error. If, as a general principle, it is held (as has been argued before us) that the view of the Chief Justice must have primacy over the views of everybody else, how would one explain the omission of the Chief Justice

in the consultation process in the Kerala Lokayukta Act, 1999? Similarly, if as a general principle, it is held that the view of the Chief Minister must have primacy over the views of everybody else, how would one explain the omission of the Chief Minister in the consultation process in the Orissa Lokpal and Lokayuktas Act, 1995? It is for this reason that I would hold that a statute must be considered and understood on its own terms. In so construing the Act, I see no reason to accord primacy to the views of the Chief Justice in the appointment of an Upa-lokayukta under the Karnataka Lokayukta Act, 1984. The judgment of the High Court, to this extent, is set aside.

Other contentions:

147. It was submitted that the practice followed for the appointment of the Upa-lokayukta in the present case is the same or similar to the practice followed in the past and, therefore, this Court should not interfere with the appointment already made. If at all interference is called for, the doctrine of 'prospective overruling' should be applied.

148. I am not inclined to accept either contention. Merely because a wrong has been committed several times in the past does not mean that it should be allowed to persist, otherwise it will never be corrected. The doctrine of 'prospective overruling' has no application since there is no overwhelming reason to save the appointment of the Upa-lokayukta from attack. As already held, in the absence of any consultation with the Chief Justice, the appointment of Justice Chandrashekharaiah as an Upa-lokayukta is void ab initio. However, this will not affect any other appointment already made since no such appointment is under challenge before us.

149. It was also contended that the High Court ought not to have laid down any procedure for the appointment of the Upa-lokayukta. In the view that I have taken, it is not necessary to comment on the procedure proposed by the High Court.

Conclusion:

150. The appointment of Justice Chandrashekharaiah as the Upa-lokayukta is held void ab initio. Since some of the contentions urged by the appellants are accepted, the appeals are partly allowed to that extent only.