SUPREME COURT OF INDIA

State of Gujarat

VS.

Hon'ble Mr.Justice (Retd) Ramesh Amritlal Mehta

C.A.Nos.8814-8815 of 2012

(Dr. B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

14.03.2013

ORDER

1. The original appellants in Civil Appeal Nos.8814-8815/2012 have filed the present review petitions seeking review of our judgment dated 02.01.2013.

2. We bestowed our serious consideration to the various grounds raised in the review petition. On a detailed reading of the grounds, it is quite apparent that the provocation for filing these review petitions is mainly the subsequent decision of this Court in the case of Mr. Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishna Ors. dated 11.01.2013 in Civil Appeal Nos.197-199 of 2013 @ SLP (C) Nos.15658-15660 of 2012 which related to appointment of Upa-Lokayukta under Section 3 of the Karnataka Lokayukta Act, 1984. In the said judgment, the judgment under review reported as State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd.) - 2013 (1) SCALE 7 was also noted and the clear distinction as between Section 3 of the Karnataka Lokayukta Act and Section 3(1) of Gujarat Lokayukta Act, 1986 was spelt out.

3. By referring to the above later decision in the forefront, the sum and substance of the grounds raised for review herein is three-fold, namely,

> 1) there is divergence of views taken by this Court in the impugned judgment and in the later judgment as regards the interpretation of language of Section 3 in both the legislations,

2) the role of the constitutional authorities involved in the consultation process and;

3) regarding primacy of the opinion of the Chief Justice vis-- vis the Chief Minister of the concerned State.

4. At the very outset we find that none of the above grounds have any substance. Since, we find the whole basis for the review by relying upon the later judgment of this Court, it will be necessary to highlight the clear distinction as between the judgment under review and the said later decision of this Court.

5. The later decision of this Court considered the question about the primacy of the views expressed by the Chief Justice of the High Court of Karnataka in making appointment to the post of Lokayukta and Upa- Lokayukta by the Governor of Karnataka in exercise of power conferred on him under Section 3(2)(a) and (b) of the Karnataka Lokayukta Act, 1984 (hereinafter called as "Karnataka Act"). Section 3 of the Karnataka Act reads as under:

"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.
(Emphasis added)

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6. A reading of the sub-clauses 2(a)(b) disclose that it is for the Chief Minister to advise the Governor for appointment of a Lokayukta after consultation with the Chief Justice of the High Court of Karnataka, the Chairman of Karnataka Legislative Council, the Speaker of Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. While, as per the provision itself, it is for the Chief Minister to advice the Governor, the collegium for consultation consists of as many as five other members, including the Chief Justice of the High Court. The same is the procedure for appointment of Upa- Lokayukta under Section 3(2)(b) of the Karnataka Act.

7. In the later judgment of this Court, the above statutory stipulation, about the primary role to be played by the Chief Minister in advising the Governor and the collegium of consultation to be made, has been specifically discussed and concluded to the following effect in paragraph 37:

"……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."

8. As far as the Gujarat Lokayukta Act is concerned, the proviso to Section 3(1) of the Gujarat Lokayukta Act is relevant which is to the following effect:

"3(1) For the purpose of conducting investigations in accordance with 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 Articles 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 the Opposition in that House in such manner as the Speaker may direct."

(Emphasis added)

9. In the light of the specific stipulations contained in the proviso, it was held in the impugned judgment that Section 3(1) read along with proviso envisages the appointment of Lokayukta by the Governor based on the aid and advice of the Council of Ministers after consultation with the Chief Justice of the High Court of Gujarat who in turn to consult with the Leader of Opposition, if the Assembly is in position and in its absence even such consultation by the Chief Justice with the Leader of Opposition is also dispensed with.

10. This distinction, as between the Karnataka Act and Gujarat Act, was specifically noted in the later judgment in paragraph 48, which is to the following effect:

"……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."

11. The later judgment has also considered similar such provisions contained in Andhra Pradesh Lokayukta Act, 1983, Assam Lokayukta and Upalokayukta Act 1985, Bihar Lokayukta Act 1973, Chhattisgarh Lok Aayog Adhyadesh, 2002, Delhi Lokayukta and Upa-Lokayukta Act 1995, Gujarat Lokayukta Act 1986, Jharkhand Lokayukta Act, 2001, Haryana Lokayukta Act, 2002 and Kerala Lokayukta Act, 1999 and held that each State has adopted different eligibility criteria, method of selection, consultative procedures etc., in the matter of appointment of Lokayuktas and Upa- Lokayuktas in their respective States.

12. Apart from referring to the similar provisions relating to appointment of Lokayukta in the above referred to enactments, the later judgment also noted that

in the States of Assam, Delhi and in particular Gujarat, the Chief Ministers can participate in the process and could express their views and that the Chief Justices of the respective High Courts alone have PRIMACY in the matter of appointment of Lokayukta and Upa-Lokayukta. It was further noted that while in the States of Chhattisgarh, Haryana etc., the appointment is made by the Governor on the advice of the Chief Minister while in the State of Kerala under the Act the Chief Justice is not even a consultee at all. It, therefore, concluded as under in paragraph 48:

> "……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."

13. As regards the process of consultation, it was again held in the later judgment that consultation is not a formality but should be meaningful, 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.

14. After holding so, by referring to Section 3(1) of the Orissa Lokpal and Lokayuktas Act which is in pari materia with the Gujarat Act, this Court by making specific reference to the decision which came up to this Court in Justice K.P. Mohapatra v. Sri Ram Chandra Nayak and Ors. - (2002) 8 SCC 1 has held as under in paragraph 57:

> "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."

(Emphasis added)

15. In the light of the clear distinction in Section 3(2)(a) and (b) of the Karnataka Act and the Orissa Act, it was held that the judgment of this Court in K.P. Mohapatra (supra) was inapplicable while construing the provisions of the Karnataka Act, since, the language employed are not pari materia. It will be appropriate to state that the provisions of the Gujarat Act and the Orissa Act are identical in so far as it related to the consultation process is concerned and, therefore, it was categorically held that the role of the Chief Justice was primary by virtue of the specific provision contained in the Act. In the light of specific provision contained in Section 3(2)(a) and (b) of the Karnataka Act in the later judgment, it was held as under in paragraph 62: "Section 3(2)(a) and (b) when read literally and contextually admits of no 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."

16. In the light of the above distinctive features in the Karnataka Act and in the Gujarat Act which have been clearly spelt out in the impugned judgment under review and in the judgment of Mr. Justice Chandrashekaraiah (Retd.) (supra), the ground raised in these review petitions which have been dealt with in detail in the judgment under review and concluded by adducing adequate reasons, we are convinced that no case for review is made out and there is no apparent error in the impugned judgment. These review petitions are, therefore, dismissed.