

(2013) 11 AHC CK 0068
In the Allahabad High Court
Case No : Writ-C No. 57260 of 2013

Dr. Krishna Kumar Sachan

APPELLANT

Vs

U. P. Lokayukta and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 707 : (2014) 1 ALJ 433

Hon'ble Judges : V.K. Shukla, J;Suneet Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Petitioner Dr. Krishna Kumar Sachan son of Jai Narain Sachan, resident of House No. 1, Nand Lal Chauraha, Govind Nagar, Kanpur Nagar is before this Court questioning the validity of the report submitted by the Lokayukta of Uttar Pradesh dated 27th June, 2013 with a further prayer not to implement the recommendations as have been made therein. Brief background of the case as is reflected that petitioner has been elected as Member of Legislative Assembly (hereinafter referred as "MLA") for a period of five years in the year 2007 and it appears that he completed his tenure as MLA. One Archana Singh has filed a complaint before the Lokayukta under the provisions of the Uttar Pradesh Lokayukta & Up Lokayuktas Act, 1975 (hereinafter referred as "1975 Act") and in the said complaint dated 23rd December, 2011 specific mention was made that petitioner Dr. Krishna Kumar Sachan has misused his authority as MLA and along with the said complaint the complainant appended 29 sale-deeds which have been directly or indirectly executed to benefit the petitioner. As per the aforementioned sale-deeds in question the same had been executed in between the year 2007 to 2011 and in lieu of the same, sale consideration stamp duty for a sum of Rs. 1,04,64,490/- has been paid whereas the market value of the said property is Rs. 3,21,51,000/-. The allegations have come forward that petitioner has formed a society known as Gynaodya Shikshan Evam Manav Utthan Sewa Samiti and all the properties had been sought to be purchased in the name of

aforementioned society, wherein his wife is the Secretary of the said society. On the said complaint being made, the complaint in question was registered u/s 10(1)(a) of the 1975 Act. On the said complaint being made, copy of the complaint was forwarded to the petitioner and petitioner has submitted his reply on 2nd February, 2012. After the said reply in question has been submitted by the petitioner the complainant filed rebuttal to the same on 14.02.2012 and, thereafter, vide letter dated 30th March, 2012, various information had been asked for and in return petitioner vide letter dated 15th January, 2013, petitioner has submitted copy of income tax return in regard to himself and his wife and submitted that he has resigned from the society and is not at all in possession of the records of the society. Thereafter, in between 12.04.2012 to 01.04.2013, on nine occasions petitioner sought for time but never came forward with the specific reply in question, and petitioner at no point of time proceeded to submit full details of accounts maintained by the society and the sources from which properties have been purchased. Thereafter, the investigation in question has been concluded on the basis of evidence available on record and it has been found that petitioner has misused his official position and, accordingly, recommendations have been made by Lokayukta of Uttar Pradesh for taking necessary action, as per recommendations so made, and petitioner at this juncture is before this Court.

2. Supplementary affidavit has been filed in the present case and it has been sought to be contended that as per income tax return petitioner's income for the assessment years 2008 to 2013 goes to Rs. 38,67,414/- and the income of his wife for the said assessment years goes to Rs. 22,79,503/- and as per income tax return filed by the society, income of the society goes to Rs. 26,88,970/-. It has also been sought to be mentioned therein that the properties in question have been validly purchased through 29 sale-deeds and that some of the properties have been put to sale and income from the sale of three property Nos. 1874, 1875 and 1884 situated at village Bag, tehsil Akbarpur, district Kanpur Nagar, arazi Nos. 203 and 203 (N) situated at village Setupur, police station Akbarpu, district Kanpur Nagar, have not been included in the income of society and further property shown at Item No. 26 and Item No. 27 of the chart, are properties, that have been donated, their value should have been ignored and, accordingly, income assessed by the Lokayukta is incorrect and all these aspects of the matter have been ignored by the Lokayukta and, accordingly, no action should be taken on the basis of report submitted by the Lokayukta of Uttar Pradesh.

3. Shri. Keshri Nam Tripathi, Senior Advocate assisted by Shri. Suresh Chandra Dwivedi, Advocate submitted (i) there are no allegations in the complaint within the meaning of Section 2(b) of the 1975 Act and, as such, report in question, so submitted based on said complaint, is vitiated in law, (ii) there is manifest error in the report as the correct fact and figures, which have been so submitted by the petitioner, in respect of income tax return of himself and his wife and the society in question, has not at all been relied upon and, in view of this, the report

in question is vitiated and (iii) the investigation in question has not at all been conducted in consonance with the principle of natural justice and sufficient opportunity of hearing has not at all been provided to submit papers and, accordingly, the decision taken by the Lokayukta is bad.

4. Countering the said submissions it has been submitted on behalf of respondents that in the present case on the basis of material, which was available on record, rightful view has been taken by the Lokayukta and, accordingly, no interference should be made as the basic purpose of 1975 Act is to clean the system wherein official position has been misused for personal advantages and benefits and, as such, writ petition in question is liable to be dismissed.

5. In order to appreciate the arguments, as have been advanced before this Court, this Court proceeds to take note of the fact that Apex Court in the case of Mr. Justice Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna and Others etc., has proceeded to consider at length the background of the historical setting of Lokayukta Act in following terms;

Historical Setting

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:

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 favouritism. 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:

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.

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 favouritism.

(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 Lokayukta at the State level.

The Lokayukta

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 Minister 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?

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.

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.

6. Based on the above report which has been quoted in extenso in the case of Mr. Justice Chandrashekaraiyah (Retd.) Vs. Janekere C. Krishna and Others etc., the State Legislature enacted the Uttar Pradesh Lokayukta & Up-Lokayuktas Act, 1975 known as U.P. Act No. 42 of 1975 and same received assent of the President on 07.09.1975 under Article 201 of the Constitution of India and was published in the U.P. Gazette Extra-ordinary dated 8th September, 1975. The said Act in question came into force vide notification dated 12th July, 1977. The State Legislature enacted the aforesaid Act to make provision for the appointment and functions of certain authorities for the investigation of grievances and allegations against Ministers, legislators and other public servants in certain cases and for matters connected therewith.

7. Section 2(b) of the 1975 Act defines allegation which is to the following effect:

(b) "allegation", in relation to a public servant, means any affirmation that such public servant-

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person,

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motive, or

(iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;

8. The matter which have to be investigated are provided in Section 7 of the

1975 Act which is extracted hereunder for ready reference:

SECTION-7. Matters which may be investigated by Lokayukta or Up-Lokayukta

(1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf the Lokayukta may investigate any action which is taken by or with the general or specific approval of-

(i) a Minister or a Secretary; and (ii) any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of section 2; or (iii) being a public servant of a class or subclass of public servants notified by the State Government in consultation with the Lokayukta in this behalf.

(2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Up-Lokayukta may investigate any action which is taken by or with the general or specific approval, of any public servant not being a Minister, Secretary or other public servant referred to in sub-sec.(1).

(3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Up-Lokayukta under that sub-section.

(4) Where two or more Up-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 Up-Lokayukta under this Act, and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order.

9. Few matters are not subjected to the investigation of Lokayukta/Up-lokayukta. Section 8 provides that except as provided in Section 8(1), the Lokayukta or an Up-Lokayukta shall not conduct any investigation under the Act except on a complaint made under and in accordance with Section 9. Section 9 contains provisions relating to complaints. Section 10 relates to procedure in respect of investigation. Sections 9 and 10 being relevant are extracted as below:

SECTION-9. Provisions relating to com-plaints-

(1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokayukta or an Up-Lokayukta-

(a) in the case of a grievance, by the person aggrieved;

(b) in the case of an allegation, by any person other than a public servant:

Provided that where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorized by him in this

behalf.

Provided further that in the case of grievance involving a complaint referred to in sub clause (ii) of clause (d) of section 2, the complaint may be made also by an organization recognized in that behalf by the State Government.

(2) Every complaint shall be accompanied by the complainant's own affidavit in support thereof and also and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings and affidavits respectively.

(4) Not less than three copies of the complaint as well as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

(6) Notwithstanding anything contained in sub-sections (1) to (5), or in any other enactment, any letter written to the Lokayukta or Up-Lokayukta by a person in police custody, or in goal or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other persons in-charge of such goal, asylum, or other place, and the Lokayukta or Up-Lokayukta as the case may be, may entertain it and treat it as a complaint, but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under subsection (2).

SECTION-10. Procedure in respect of investigations -

(1) Where the Lokayukta or an Up-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he-

(a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned;

(b) shall afford to the public servant concerned an opportunity to offer his comments on such complaints; and

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

(2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:

Provided that, the Lokayukta or an Up-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.

(3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Up-Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta or an Up-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; or

(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 of such remedies.

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

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

10. Section 11 provides that for the purposes of investigation Lokayukta 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. Section 11(1) and 11(2) are extracted below:

SECTION-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 Up-Lokayukta 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 documents.

(2) For the purpose of any such investigation (including the preliminary enquiry) the Lokayukta or an Up-Lokayukta shall have all the powers of a civil court while trying a suit under the code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matter, namely-

(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.

11. Section 12 contains a provision of submission of Reports of Lokayukta and Up-Lokayuktas after investigation is over. Section 12 is extracted below:

(1) If, after investigation of any action in respect of which a complaint involving a grievance has been made, the Lokayukta or an Up-Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta or Up-Lokayukta shall be a report in writing, recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1), shall within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokayukta, or as the case may be, the Up-Lokayukta, the action taken for compliance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lokayukta or an Up-Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by report in writing, communicate his findings and recommendation along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Up-Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokayukta or the Up-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-section (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the Governor and also inform the complainant concerned.

(6) The Lokayukta and Up-Lokayukta shall present annually a consolidated report on the performance of their functions under this Act to the Governor.

(7) On receipt of a special report under subsection (5) or the annual report under subsection (6), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

(8) Subject to the provisions of sub-section (2) of section 10, the Lokayukta may at his discretion make available, from time to time, the substance of cases closed

or otherwise disposed of by him or by an Up-Lokayukta, which may appear to him to be of general, public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

12. A bare perusal of the provisions quoted above would go to show that the functions to be discharged by the Lokayukta under the 1975 Act are primarily investigative in nature and the Lokayukta for the purposes of such investigation has all the powers of Civil Court while trying a suit under the CPC and the proceedings are deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. This particular provision under the 1975 Act as per Section 23 of the 1975 Act are in addition to the provisions of any other enactment or any rule of law under which remedy in any other manner is available to a person making a complaint under this Act, and nothing in this Act limits or affects the right of such person to avail of such remedy. Thus under the scheme of things provided for against high functionaries such as Ministers, Legislators and other public servants, in addition to common law remedy, as is provided for, a specific mechanism has been provided for investigation by the Lokayukta under the 1975 Act on complaint being made involving a grievance or an allegation.

13. Apex Court in the case of Institution of Andhra Pradesh lokayukta/UPA-Lokayukta, A.P. Vs. T. Rama Subba Reddy and Another, considered the akin provisions of A.P. Lokayukta Act, 1983 and clearly proceeded to mention that legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court, so that these statutory authorities can work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. It has also been mentioned therein that such authorities consist of high judicial dignitaries and such authorities should be armed with appropriate powers and sanction so that their orders and opinions do not become mere paper directions. In the aforementioned judgment it has clearly been noted that the authority of Lokayukta is only to investigate and make recommendations and under the scheme of things provided for the recommendations so made is not at all binding and it has also been mentioned therein that there is nowhere provided that the Government will be bound to comply with the recommendations of the Lokayukta or Up-Lokayukta and it would be appropriate for Legislature itself to make a clear provision for due compliance with the report of Lokayukta so that public confidence in the working of system does not get eroded and these institution can effectively justify their creation under the statute. Paragraph 14 of the aforementioned judgment is quoted below;

17. Before parting with these matters, it may be necessary to note that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in

appropriate cases to the Upa-Lokayukta who is a District Judge of Grade-I as recommended by the Chief Justice of the High Court, so that these statutory authorities work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to cater to the need of public at large with a view to seeing that public confidence in the working of public bodies remains intact. When such authorities consist of high judicial dignitaries it would be obvious that such authorities should be armed with appropriate powers and sanction so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the concerned disciplinary authorities. When we turn to Section 12, sub-section (3) of the Act, we find that once report is forwarded by the Lokayukta or Upa-lokayukta recommending the imposition of penalty of removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such servant from his office and for making him ineligible for being elected to any office etc. Even if it may be lawful for the Government to act on such recommendation, it is nowhere provided that the Government will be bound to comply with the recommendation of the Lokayukta or Upa-lokayukta. The question may arise in a properly instituted public interest litigation as to whether the provision of Section 12(2) of the Act implies a power coupled with duty which can be enforced by writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Up-lokayukta system does not get eroded and these institutions can effectively justify their creation under the statute.

14. In the case of Mr. Justice Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna and Others etc., Apex Court has taken note of various provisions of the Lokayukta Act in reference of Karnataka Lokayukta Act, 1984 and the provisions of the Karnataka Lokayukta Act, 1984 are akin to the provisions of the 1975 Act and after taking note of the various provisions of the aforementioned Act, which are akin to the 1975 Act, the Apex Court has clearly ruled that the functions to be discharged by the Lokayukta are investigative in nature and report of the Lokayukta or Up-Lokayukta are only recommendatory and no civil consequences as such follows from the action of Lokayukta and Up-Lokayukta though they can initiate prosecution before a competent court and therein it has also been mentioned therein that the Lokayukta discharges quasi-judicial authority under the aforementioned Act but its functions are investigative in nature. Relevant extract of the aforementioned judgment is quoted below;

32. 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.

35. 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.

36. The Lokayukta or Upa-Lokayukta under the Act are established to investigate and report on allegations or grievances relating to the conduct of public servants which includes the Chief Minister; all other 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.

37. The Lokayukta and Upa-Lokayukta while exercising powers under the Act, of course, is acting as a quasi-judicial authority but its functions are investigative in nature. The Constitution Bench of this Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, held;

14. 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.

40. The 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.

15. Thus, as already noted above, under the provisions of the 1975 Act such an institution of Lokayukta is established to investigate and submit report and no civil consequence as such follows from the action of Lokayukta, the same being recommendatory in nature. Such situation is also fortified on the parameters of the provisions as have been quoted above and the view point as has been expressed by the Apex Court, under the scheme of things provided for Section 12 of the 1975 Act clearly provides after investigation of any action in respect of which a complaint involving a grievance has been made, the Lokayukta or an Up-Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta or Up-Lokayukta is empowered to send a report in writing, recommend to the public servant and the competent authority that such injustice or undue hardship be remedied or redressed in such manner and within such time as may be specified in the report. The competent authority to whom report is sent under sub-section (1) of Section 12 is obliged within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokayukta, or as the case may be, the Up-Lokayukta, the action taken for compliance with the report. Under sub-section (3) of Section 12 it has been provided that if after investigation of any action in respect of which a complaint involving an allegation has been made, the Lokayukta or an Up-Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, by report in writing communicate his findings and recommendation along with the relevant documents, materials and other evidence to the competent authority. Under sub-section (4) of Section 12 the competent authority is to examine the report forwarded to it under subsection (3) and intimate within three months of the date of receipt of the report, the Lokayukta the action taken or proposed to be taken on the basis of the report. Sub-section (5) of Section 12 clearly proceeds to mention that if Lokayukta or Up-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-section (1) and (3) he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the Governor and also inform the complainant concerned. Sub-section (7) of Section 12 clearly proceeds to mention that on receipt of a special report under sub-section (5) or the annual report under sub-section (6) the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature as per subsection (7) of Section 12.

16. Thus, this much is clear under the scheme of things provided for that the authority of Lokayukta is merely investigative in nature and on his own he has no authority to take any action and the action is to be taken by the respective

competent authority and in absence of no action being taken by the competent authority, the Lokayukta can always resort the matter to the Governor who thereafter shall proceed in consonance with the provisions as contained under sub-section (7) of Section 12 of the 1975 Act by placing the same before House of State Legislature. The inevitable conclusion is that functions to be discharged by Lokayukta are investigative in nature and the recommendation made by the Lokayukta has no civil consequence, as such, under the scheme of things provided for, the matter has to be seen in the said perspective as to whether the Lokayukta has rightly submitted the report or not in the facts of case as is available on record.

17. Once it is the investigation and report is recommendatory, then on these parameters, it is being examined as to whether in the present case the allegations in the complaint are within the meaning of Section 2(b) of the 1975 Act and the report, which has been so submitted, is incorrect in the facts of the case. The definition of "allegations" given in section 2(b) includes any affirmation which is covered by sub-sections (i) (ii) and (iii). One of the affirmation as provided in Section 2(b)(iii) is "guilty of corruption, or lack of integrity in his capacity as such public servant." Thus, the affirmation by complainant that a public servant is guilty of corruption is included in the definition of allegations. The word "corruption" has not been defined in the 1975 Act or the Rules framed thereunder. The word "corruption" finds place under the Prevention of Corruption Act, 1988, which Act was enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Chapter III of the Act defines offences and Penalties Section 13 of the Act, 1988 is to the following effect:

13. Criminal misconduct by a public servant. (1) A public servant is said to commit the offence of criminal misconduct,-

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he,-

- (i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation-For the purposes of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance, With the provisions of any law, rules or orders for the time being applicable to public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

18. Section 13(1)(e) clearly provides that offences of criminal misconduct is committed, if the public servant or any person on his behalf, is in possession or, at any time during the period in his office, of assets or property which is disproportionate to his known sources of income. The main allegation in the complaint against the petitioner is that he, his family members created society, and during his continuance as MLA, purchased 29 properties in the name of society and said purchase and possession of assets are disproportionate to the known source of income. The above allegation mentioned in the complaint are fully covered within the meaning of definition of Section 2(b) and the submission of the learned counsel for the petitioner that complaint does not contain any allegation within the meaning of Section 2(b), has no substance and is accordingly turned down.

19. The submission that has been made before this Court that Lokayukta has acted in the present case with perversity and the materials submitted by the petitioner have not at all been considered, is also being examined by this Court and record in question is clearly reflective of the fact that petitioner has been elected as MLA and after he has been elected as MLA, he along with his family members, proceeded to establish a society known as Gynaodya Shikshan Evam Manav Utthan Sewa Samiti wherein his wife is the Secretary of the society in question and in between the period starting w.e.f. the year 2007 to 2011 in all 29 properties in question has been acquired by the petitioner in the name of the aforementioned society in question. The Lokayukta of Uttar Pradesh in all fairness, in the present case, after receiving the said complaint gave opportunity to petitioner to file his reply and petitioner has submitted his reply on 2nd

February, 2012 but the said reply was not at all satisfactory and, as such, on 30th March, 2012, various information had been asked for and to the said information, which had been asked for, petitioner on 15th January, 2013, proceeded to submit income tax return of himself and his wife and submitted that he has no concern with the society and he has with him no records of the society and same should not be asked for from him. It has also been reflected that w.e.f. 12th April, 2012 upto 1st April, 2013 on nine occasions petitioner sought for adjournment after adjournment but at no point of time cared to submit reply to various queries, as have been asked for by means of letter dated 30th March, 2012, petitioner has been put to specific query as to what were the sources of income of society in question and in what way and manner such a transactions had been made by the society in question. The petitioner at no point of time ever proceeded to submit adequate reply to the said queries, which were being made by the Lokayukta and had been avoiding the said queries, then opinion was formed on the basis of evidence available on record that total income from all the three sources i.e. of the society, of the petitioner and his wife is Rs. 53,67,217/- and the property in question, which has been so acquired has been shown to be worth Rs. 1,00,19,365/- whereas the market value of the same is approximately Rs. 3 Crore. Coupled with this it has also been found that on the recommendation of petitioner Gaon Sabha of village Chaktondarpur has proceeded to allot the land in favour of Sanjay Kumar and Vijay Kumar and the said allotment was also contrary to the provisions of U.P. Zamindari Abolition & Land Reforms Act, 1950 and the most surprising feature of the said transaction is that the land, which has been allotted in favour of aforementioned incumbents on the recommendation of petitioner, has been transferred through sale-deed in favour of petitioner's society totally by-passing the statutory provisions holding the field.

20. Petitioner is contending before this Court that they were donated properties and value of the same could not have been included under petitioner's or his wife income and further three properties being property Nos. 1874, 1875 and 1884 situated at village Bag, tehsil Akbarpur, district Kanpur Nagar, arazi Nos. 203 and 203 (N) situated at village Setupur, police station Akbarpur, district Kanpur Nagar, have been put to sale and sale consideration of Rs. 11,30,330/- has been included in the income of society and, as such, income assessed by the Lokayukta is incorrect. The petitioner at no point of time produced any document before the Lokayukta to show and substantiate, as to in what way and manner in all 29 properties were acquired, and what were resources of the society, on the pretext that the has nothing to do with the society, as he has resigned. Whatever documents, as have been produced before Lokayukta, have been considered and this is accepted position that on nine occasions time had been sought for but requisite queries had never been supplied by the petitioner, in view of this, the opinion, which has been formed by the Lokayukta of Uttar Pradesh in the facts of the case, especially when a person holds public office his/her dealings should be fair and transparent and once in the present case during the course of

investigation petitioner has not extended any cooperation and then on the basis of material evidence available on record opinion has been formed that petitioner has misused his official position and has acquired properties in the name of society, controlled by his wife as Secretary of the society, and said acquisitions are disproportionate to the known income of petitioner, his wife and society and such a recommendation has been made, after affording full opportunity of hearing, including nine chances, then this Court in exercise of its authority of judicial review, as discussed in the Civil Misc. Writ Petition No. 62471 of 2011 [Rang Nath Mishra v. The Lokayukta of U.P. and others] decided on 11.11.2011, will not at all interfere, with the said finding so returned in the shape of recommendation as the same can either be termed to be unreasonable or perverse, as this Court is not at all acting as the Court of Appeal, rather is exercising its authority of judicial review.

21. At last it has been sought to be contended by Shri. Keshri Nath Tripathi, Senior Advocate, that on account of making such recommendations there are civil consequences as reputation of an incumbent is at stake and such reports lower down the prestige of an incumbent in the eyes of general public and thus affects his reputation.

22. Considering the matter from this point of view, as has been raised, this Court proceeds to take note of the judgment of Apex Court in the case of Deepak Bajaj Vs. State of Maharashtra and Another, wherein Apex Court has proceeded to mention that the reputation of a person is a valuable asset and facet of right under Article 21 of the Constitution of India. Apex Court in the case of Kishore Samrite Vs. State of U.P. and Others, has proceeded to consider as to what is the meaning of the word "Character" and "Reputation" viz. a viz. the term "Person" and has held as follows;

The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. {Ref. Smt. Kiran Bedi Vs. Committee of Inquiry and Another, and Nilgiris Bar Association Vs. T.K. Mahalingam and Another, .

23. There is no quarrel on this fact that every incumbent has a right to save his reputation and right of enjoyment of good reputation is a valuable privilege and

necessary to human society. Reputation is a perception/opinion formed by another. The enquiries that are conducted under the 1975 Act are primarily investigation about the misconduct committed by one holding the position of trust and position of privilege and the credibility and reputation of such an incumbent depends upon the manner in which he/she conducts himself/herself. In all such matters wherein investigation is carried out and same subserves public interest and there is material collected during the course of investigation, in support of the complaint and apparently there is no intent to harm the reputation, then to say that reputation of one has been harmed in such matters by submission of report, cannot be accepted by this Court. One can complain of his reputation being lowered in case one has grossly abused his legal power to destroy reputation of an incumbent. Here that is not at all the case, as the statutory authority, empowered to carry out investigation has carried out investigation, by affording full opportunity to petitioner, and then has formed opinion that the complaint has substance, then to say that based on said report, reputation has been lowered cannot be accepted, as the authority of investigation has been bonafidely exercised.

24. Here in the present case there is no question of reputation being tarnished or harmed for the simple reason that investigation has been conducted about the misconduct committed by the petitioner during his continuance as MLA and whatever enquiry has been conducted, same reflects the way and manner in which petitioner has conducted himself during the aforementioned period. Once public authorities misuse their official position and an independent forum headed by a person, who has been High Court Judge, has been provided for by the Act of 1975 to investigate the matter and make recommendation in public interest and there is no intent to cause harm to the reputation of anyone nor there is any endeavor to destroy the reputation of an incumbent rather the endeavor is to expose the public functionary, on the basis of material available, the said action has to be accepted as an action fully in consonance with Article 21, then plea of reputation being marred cannot be accepted by this Court and the petitioner will have to introspect himself. Writ Petition is dismissed, accordingly.