

(1997) 12 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1861 of 1997

Gautam Bandopadhyay and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Indira Kala Sangeet Vishwavidyalaya Act, 1956 — Section 3
Jawaharlal Nehru Krishi Vishwa Vidyalaya Act, 1963 — Section 3
Madhya Pradesh Special Police Establishment Act, 1947 — Section 2, 4
Madhya Pradesh Vidhan Mandal Neta Pratipaksha (Vetan Tatha Bhatta) Adhiniyam, 1980 — Section 2
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 5
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 13, 13(1), 19
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 20, 23
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (1998) 1 JLJ 168

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : S.K. Gangele, for the Appellant; P.P. Rao, Advocate and S.L. Saxena, General and S.K. Agnihotri, for Respondent No. 2, J. Choudhary, for Respondent No. 3, A.M. Mathur, R.K. Thakur and M.L. Jaiswal, for Respondent No. 4, S.C. Datt and Manish Datt for Respondent No. 5, K.S. Wadhwa and N.S. Kale and V.S. Shrotri, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—This is a Public Interest Litigation which has brought forth a serious and a debatable issue as to what value is to be attached to the recommendations of the Lokayukta in the matter of corruption in the high places.

2. Petitioners are public spirited persons and they have sought a writ of mandamus directing the State Government to give sanction for filing a charge-sheet as proposed by the Special Police Establishment (for short hereinafter

referred to as the SPE) Lokayukta before the Special Court against Respondent No. 4 Shri Pyarelal Kanwar, Deputy Chief Minister, Government of Madhya Pradesh and Respondent No. 5 Shri B.R. Yadav, Minister, Government of Madhya Pradesh.

3. There is a land situated in the Jabalpur township called Madhotal which was allotted to Jabalpur Motor Parts dealers' Welfare Association (for short hereinafter referred to as the Association) measuring 23,00,500 square feet for a consideration of Rs. 16,03,620/- on 16.6.1994. An agreement was entered into by the Collector Jabalpur on behalf of the Respondent State. Copy of lease-deed has been placed on record as Annexure-P1. It is alleged that this land was given to the Association for a paltry sum of Rs. 16,03,620/-, although the market rate of the said land in 1993, as per the guidelines issued by the Collector, was Rs. 120/- per square foot on the road side and Rs. 60/- per square foot on the other side. Therefore, it is alleged that even if it is taken to be Rs. 60/- per square feet, then too the total value of the land would be Rs. 13,80,00,300/- though if the market value is ascertained it would be around Rs. 30,00,00,000/- (Thirty crores rupees). It is therefore alleged that the State Government has been put to a loss of Rs. 13.50 crores as per the rate of the State Government and around Rs. 29.00 crores as per the market value.

4. It is alleged that some of the citizens of Jabalpur submitted a complaint before the Lokayukta, Madhya Pradesh with regard to registration of criminal cases against persons involved. Lokayukta ordered an enquiry and after the order of the Lokayukta, Shri P.P. Tiwari, legal Advisor in the Lokayukta Organisation, sent notices to various affected persons and also called for all the files. After receiving replies from the concerned persons, the Legal Advisor of the Lokayukta Organisation found a prima facie case against Shri Pyarelal Kanwar, Shri B.R. Yadav, Shri Hoshiyar Singh Ex-Revenue Secretary, Shri R.P. Bajpai, Shri R.S. Sirohe, Shri A.N. Asthana, Shri G.P. Singhal, Shri I.D. Khatri, Shri A.N. Tiwari, Shri S. Iqbal Hussain, Shri Subhash Dubey, Shri P.P. Singh, Shri S.P. Shukla and about 22 other Government Officers responsible for practising the fraud and causing loss to the Government.

5. Learned Lokayukta by his order dated 30.12.1996 held that the Deputy Chief Minister Shri Pyarelal Kanwar, Minister Shri B.R. Yadav, alongwith other officers were responsible for the aforesaid fraud and directed the SPE to register a criminal case and further directed investigation of the matter u/s 4 of the M.P. Special Police Establishment Act, 1947 (hereinafter referred to as the Act of 1947). Copy of order of the Lokayukta dated 30.12.1996 is on record as Annexure-P2. The learned Lokayukta further observed in his order that there was violation of Urban Land (Ceiling and Regulations) Act and policy decisions/guidelines u/s 23. Learned Lokayukta also observed that the reasons for allotment of land to the Association are not satisfactory and the decision of the Inter-Departmental Committee (hereinafter referred to as the IDC) was ignored. It was also observed that the decision for allotment of the land in the year 1984

was without jurisdiction because at that time, there was no application for allotment by the Association. Copy of order issued by the Additional Secretary dated 29.9.1984 with regard to allotment of the land is on record as Annexure-P3.

6. After the order passed by the learned Lokayukta for investigation in the matter, the matter was investigated by the SPE and they submitted a complete investigation report holding all these persons responsible and thereafter the matter was moved to the Government. Hon. Justice G.P. Singh, Lokayukta, as he then was, wrote a letter to His Excellency the Governor of Madhya Pradesh for permission to prosecute the Ministers and other responsible officers. The Government after receipt of this letter granted sanction for prosecution of the Government officials only and informed the Lokayukta that so far as the Ministers are concerned, no case is made out against them and did not grant sanction for their prosecution. Communication dated 2.5.1997 by the Secretary, General Administration Department in this respect is placed on record as Annexure-R8/15. Copy of communication dated 27.3.1997 by the SPE to the State Government for granting sanction to prosecute the aforesaid officials and Ministers is Annexure-R8/13. Communication dated 27.3.1997 by the learned Lokayukta to his Excellency the Governor of Madhya Pradesh has also been placed on record by the Lokayukta in his return as Annexure-R8/14.

7. The Lokayukta Organisation has filed a detailed reply producing all the documents relating to the investigation made by them and the report submitted by Shri Tiwari, Legal Advisor and thereafter the investigation taken up by the SPE and the recommendations sent by learned Lokayukta to the Governor for granting sanction for prosecution of both the Ministers and the Government officials.

8. A return has also been filed by the Respondent State and the Respondent State has submitted that one Smt. Gayatri Devi was holder of certain urban lands in Madhotal, Jabalpur. Out of this land held by Smt. Gayatri Devi, 21.005 hectares of land were declared surplus under the provisions of Urban Lands (Ceiling & Regulation) Act and a notification to that effect u/s 10(1) of the Urban Lands and Ceiling Act was published on 20.3.1981. Smt. Gayatri Devi applied for exemption from ceiling u/s 20 of the Act. She entered into an agreement on 11th July 1982 with the Association for sale of 40 acres of the land at the rate of Rs. 30,000/- per acre. The competent authority referred the question of exemption for consideration of the Government recommending the grant of exemption to enable shifting of shops of the motor parts dealers from the busy locality of the city which according to him was desirable. In this communication it was pointed out that 6.221 hectares of the lands were covered under Scheme No. 14 of the Jabalpur Development Authority and 1.898 hectares were allocated to the Master Plan for purposes of bus stand and only 12.898 hectares of land was made available.

8.1. Question of grant of exemption came up for consideration before the then

Revenue Minister Shri Muni Prasadji Shukla who heard the representatives of the Association; but he agreed with the views of the Competent Authority and did not agree to grant exemption to Smt. Gayatri Devi. The Minister by order dated 3.8.1984 rejected the application of Smt. Gayatri Devi for grant of exemption in respect of 21.005 hectares of land u/s 20 of the Urban Lands Ceiling Act. He further ordered that the land vested in the Government and question of allotment of land to the Association shall be considered by the Collector.

8.2. Power to allot the surplus land vested in the IDC as per the Cabinet decision dated 28.4.1984. It is alleged that the Principal Secretary made an observation that order rejecting application should be issued and a formal order dated 11.9.1984 rejecting the application was issued. However, contrary to the order dated 3.8.1984 passed by the Minister, the then Special Secretary, Revenue Shri U.K. Samal made the following noting on the file on 21.8.1984 and placed it before the Principal Secretary, Revenue:

May kindly peruse the order of H.R.M. on previous page. Application for exemption has been rejected. However, it has been ordered that after the vesting of the land in the Government, the case for allotment of land to the Motor Parts Dealers Association will be considered. We may issue an order accordingly.

The Principal Secretary, Revenue, did not agree to the above notings and passed the following order:

Right now, we need to only issue the order relating to rejecting.

8.3. It is alleged that later part of the noting of Shri U.K. Samal, Special Secretary Revenue dated 21.8.1984 appears to be incorrect and appears to have been motivated i.e. he was interested in helping the Association. However, as directed by the Principal Secretary, order dated 11.9.1984 was issued rejecting the application.

8.4. Then again one Shiv Prakash Trivedi, the then Under Secretary wrote a note on 28.9.1984 that the then Revenue Minister desired that orders of the State Government which he passed on 3.8.1984 be issued. It was also mentioned in the noting that the Revenue Minister orally directed that in the order it may be made clear that after obtaining the possession of the land the land should be given to the Association. This note-sheet was issued to Special Secretary, Revenue Shri U.K. Samal who approved the note-sheet the same day i.e. on 28.9.1984 and an order dated 29.9.1984 was passed. Though Shri Muni Prasad Shukla, who was the then Revenue Minister, appeared before the Lokayukta, he denied to have ever passed any such order.

8.5. It is alleged that after order dated 29.9.1984 was passed, objections were received from different quarters like, Nagar Tatha Gram Nivesh, Madhya Pradesh who protested this allotment. After receiving the protests from various quarters, the Deputy Secretary and Special Secretary, Revenue proposed that the order dated 29.9.1984 be reconsidered. The then Revenue Minister Shri B.R. Yadav, by

order dated 23.4.1987, directed reconsideration of order dated 29.9.1984. It is alleged that on account of this order, Shri B.R. Yadav, the then Revenue Minister acted very fairly and took a correct decision. It is also pointed out that Shri B.R. Yadav had no desire to help the Association. However his orders were never implemented by the Department and the case was never placed for reconsideration in the light of the directions. It is alleged that Shri Yadav was kept in dark and he was not responsible for non-implementation of the order.

8.6. It is alleged that a representation was received from the Association on 23.9.1987 and a new file was opened which was marked by the Assistant to the Deputy Secretary with a remark that the Minister directed that the case be placed before the Revenue Minister. It is alleged that Shri M.L. Mittal who was the Deputy Secretary, Revenue, typed a note-sheet and marked the same to the Minister. In the said note-sheet it was pointed out that on 29.9.1984, the land was given to the Association. Shri M.L. Mittal did not disclose in the note-sheet that Shri B.R. Yadav, the then Revenue Minister had passed order on 23.4.1987 for re-consideration of order dated 29.9.1984. It is alleged that this fact was suppressed and was not mentioned in the note-sheet, nor any objection raised by various departments was taken into consideration. The note-sheet was submitted to the Minister, Respondent No. 5 and signatures were obtained on 12.2.1988. It is alleged that the Minister had signed the same in good faith placing reliance on the note-sheet of the Deputy Secretary. It is submitted that no further steps were taken and no formal orders were issued and the file remained in the Secretariat. Hence, it is contended that no offence against the Respondent No. 5 Shri B.R. Yadav is made out.

8.7. Thereafter, Bhartiya Janata Party came into power in March 1990 in the State of Madhya Pradesh. The Association again moved an application for allotment of land in terms of the Revenue Book Circular on 8.3.1991. The case again started afresh. It is alleged that a precis was prepared which was studied by the then Revenue Secretary Shri A.K. Shrivastava and he recorded that order dated 29.9.1984 was unauthorised and not binding on the State Government. This was approved by the then Principal Secretary, Revenue Shri K.K. Sethi. Shri Sethi further recorded that the Motor Parts Dealers Association is neither a Cooperative Society nor belongs to a weaker section of the Society. It is alleged that the then Revenue Minister Shri Madhukar Harne (BJP) placed reliance on the subordinates that the land was allotted under order dated 29.9.1984 and only the terms with regard to premium etc. had to be settled. Then the matter was placed before the IDC on 24.3.1992 and in the meeting of the IDC it was decided that the matter be kept pending and the list of 177 members of the Association be called from the Collector.

8.8. The matter was further processed on 13.6.1994 and a precis was prepared by the office under the direction of Shri S.C. Shukla, Under Secretary to Government of Madhya Pradesh, revenue Department. It further shows that the facts were not correctly placed. It is alleged that noting of Shri B.R. Yadav,

Respondent No. 5 dated 29.9.1984 was for reviewing and reconsideration of the order and that noting of Shri A.K. Shrivastava dated 29.9.1984 is unauthorised was also not mentioned. It is alleged that an incorrect precis was prepared by the Department and the same was produced on 16.6.1994 in the meeting. The meeting was attended by Shri A.N. Asthana, Secretary Finance, Shri Hoshiyar Singh Secretary Revenue, Shri G.P. Singhal, Additional Secretary Housing and Environment Department and Shri S.C. Jain, Principal Secretary, Revenue. This meeting was presided over by the Respondent No. 4 Shri Pyarelal Kanwar, Deputy Chief Minister. It is alleged that this precis prepared by the Department was accepted and order was passed on 16.6.1994 by the Principal Secretary, Revenue Shri S.C. Jain to place the case before the IDC and proposed allotment of land. The proposal was accepted unanimously by all the eleven members present and the Chairman as all of them were guided by the precis as explained to them by Shri S.C. Jain.

8.9. It is alleged that the SPE did not order any prosecution against Shri Hoshiyar Singh, A.N. Asthana and Shri G.P. Singhal who were holding various posts of Principal Secretary, Secretary and Deputy Secretary. Therefore, it is submitted that the Respondent No. 4 alone cannot be held responsible for being picked up for prosecution whereas all these persons are equally responsible. In this background it is stated by the Respondents in their return and in reply to paragraph 5.4 that sanction has not been accorded against the Respondent Nos. 4 and 5 as it was found that no case was made out against them. However, sanction has been accorded against rest of the officers. The State Government replied in this regard as under:

...The State Government, after examining the case and seeking legal opinion, came to a conclusion that no case worth prosecution is made out against Respondents No. 4 & 5. The State Government did not agree with the recommendations of the Special Police Establishment, and took a decision not to accord sanction for prosecution of the Respondents No. 4 & 5, but granted sanction for prosecution of 4 officers who were actually responsible for the order dated 16.6.1994, based on an order dated 29.9.1994, which was an unauthorised and illegal order within the knowledge of the 4 officers concerned.

8.10. It is also submitted that the investigation was made by the SPE and not by Lokayukta. It is also pointed out that the report of the SPE is not binding on the State Government and the State can examine the same before according sanction for prosecution of a public servant. It is stated that the State Government had discharged its duty after taking into consideration all facts and legal opinion. It is also pointed out by the State in their return that the State Government has cancelled the lease deed by order dated 25th April 1997 and the same has been placed on record as Annexure-R3.

9. A return has also been filed on behalf of the Respondent No. 5 Shri B.R. Yadav. He has also contested the matter and pleaded his innocence and supported the contention of the State Government that granting of sanction for

prosecution is the discretion of the Governor and the discretion has rightly been exercised by the Governor and that he has not acted in any manner prejudicial to the interest of the State.

10. Respondent No. 4 Shri Pyarelal Kanwar has also filed a reply to the petition and he has also supported the reply filed by the State and stated that His Excellency the Governor of Madhya Pradesh is the competent authority to decide whether to accord sanction or not. It has also been pointed out that the institution of Lokayukt finds its origin from the Sweden Scandinavian System, French System, Denmark, England and with variation it has been adopted in India. It is submitted that the office of the Lokayukta is similar to that of Ombudsman. It is pointed out that in France, the institution is called as "Conseil D'Etat". It is an advisory body on the question of policy and administration in general. In Sweden the system is called "system of Ombudsman" which means the "grievance man" or a "Commissioner of Administration". However, in France, the institution "Conseil D' Etat" can enforce a decision, whereas in Sweden, it has no such powers and it is a mere investigating agency which can recommend actions to Parliament, which has a power of supervision and prosecution. In Denmark, the Danish Ombudsman has comprehensive power under the statute. It has no power to quash a decision or give any remedy to the complainant. His substantial function is only to publish a report calling attention of the Government and the public. In Norway, it is called an office of the Commissioner. He has no powers at all to institute any criminal or disciplinary proceedings or to demand that they be instituted. It is only investigating agency and make his own findings for the sole purpose of information. In New Zealand, the system is called as a "Parliamentary Commissioner" under a statute called as Parliamentary Commissioner (Ombudsman) Act 1962. It is investigating agency. It can recommend for action by way of filing report to Parliament. The investigation conducted by it has to be submitted to the Parliament. In England, the system is called as Parliamentary Commissioner of the Scandinavian type. Here it can entertain the complaint but not directly from the citizen. It has to come through the members of the house of Commons. Its only function is to report to Parliament and it is for the Parliament to decide as to what action can be taken on the report. It is an investigating agency. In India also, report is to be sent to the Government and the action is to be taken by the Government. In case the action is not taken in the manner advised by the Lokayukta, then the matter has to be brought to the floor of the Assembly.

In the detailed return filed by the Respondent No. 4, he has also tried to justify his action and has submitted that it is the competent authority which alone can grant a sanction and the Government after considering the matter found that no case is made out against him. Therefore, the action not to launch prosecution against him is quite justified.

11. Respondent No. 6 has also filed his reply and has denied all the allegations. He has submitted that no prosecution has been ordered by the Lokayukta against

him and he has been wrongly made a party in the writ petition.

12. In the above background, the whole controversy has to be examined. There are two enactments which need to be specially mentioned - one is known as the The Madhya Pradesh Lokayukta Evam Up-Lokayukta Adhiniyam 1981 (hereinafter called the Act of 1981) and the other known as The Madhya Pradesh Special Police Establishment Act, 1947 (hereinafter referred to as the Act of 1947). So far as the Act of 1981 and the Rules framed thereunder are concerned, the institution of Lokayukta functions in accordance with them.

Act of 1981

Section 2(a) defines "officer" which means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh. Section 2(b) defines "allegation". Section 2(b) reads as under:

(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 to any person.

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption; or

(iv) is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf.

Explanation - For the purpose of this sub-clause "family" means husband, wife, sons and unmarried daughters living jointly with him.

Section 2 (e) defines Minister as under:

"Minister" means a member of the Council of Ministers by whatever name called for the State of Madhya Pradesh that is to say (Chief Minister), Deputy Chief Minister, Minister, Minister of State, Deputy Minister and Parliamentary Secretary and shall include Neta Prati Paksha as defined in Clause (a) of Section 2 of the Madhya Pradesh Vidhan Mandal Neta Pratipaksha (Vetan Tatha Bhatta) Adhiniyam, 1980 (No. 8 of 1980)." Section 2 (g) defines "Public Servant" which reads as under:

(g) "public servant" means person falling under any of the following categories, namely:

(i) Minister;

(ii) a person having the rank of Minister but shall not include Speaker and Deputy

Speaker of the Madhya Pradesh Vidhan Sabha and Neta Pratipaksha;

(iii) an officer referred to in Clause (a);

(iv) an officer of an Apex Co-operative Society or District Co-operative Society within the meaning of Clause (u) of Section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961);

(v) Any person holding any office in or any employee of:

(i) a Government company within the meaning of Section 617 of the Companies Act, 1956; or

(ii) a Corporation or local authority established by State Government under a Central or State enactment.

(vi) (a) Up-Kulpati, Adhyacharya and Kul-Sachiva of the Indira Kala Sangeet Vishwavidyalaya constituted u/s 3 of the Indira Kala Sangeet Vishwavidyalaya Act, 1956 (No. 19 of 1963);

(b) Kulpati and Registrar of the Jawaharlal Nehru Krishi Vishwavidyalaya constituted u/s 3 of the Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963 (No. 12 of 1963);

(c) Kulpati, Rector and Registrar of the Vishwavidyalaya constituted u/s 5 of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (No. 22 of 1973). Clause (h) of Section 2 defines "Competent Authority" as under:

(h) "Competent Authority" in relation to a public servant, means,-

(i) in the case of Minister or Chief Minister or during the Secretary period of operation of proclamation issued under Article 356 of the Constitution of India, the Governor. (ii) in the case of any other Such authority as may be public servant. prescribed.

Clause (i) of Section 2 defines "Secretary" as under:

(i) "Secretary" means the Chief Secretary a Principal Secretary, an Additional Chief Secretary, and a Secretary to Government of Madhya Pradesh and includes an Additional Secretary and a Special Secretary.

Section 3 of the Act deals with appointment of Lokayukta and Up-Lokayukta. Section 4 provides that Lokayukta or Up-Lokayukta shall not hold any other office. Section 5 deals with term of office and other conditions of service of Lokayukta and Up-Lokayukta. Section 6 deals with removal of Lokayukt. Section 7 deals with matters which may be enquired into by Lokayukta or Up-Lokayukta. Section 7 reads as under:

7. Matters which may be enquired into by Lokayukta or Up-Lokayukta - Subject to the provisions of this Act, on receiving complaint or other information,-

(i) the Lokayukta may proceed to enquire into an allegation made against a

public servant in relation to whom the Chief Minister is the competent authority;

(ii) the Up-Lokayukta may proceed to enquire into an allegation made against any public servant other than that referred to in Clause (i):

Provided that the Lokayukta may enquire into an allegation made against any public servant referred to in Clause (ii).

Explanation : For the purpose of this section the expressions "may proceed to enquire" and "may enquire" include investigation by police agency put at the disposal of Lokayukta and Up-Lokayukta in pursuance of Sub-section (3) of Section 13.

Section 8 deals with the matters which are not to be enquired into by the Lokayukta or Up-Lokayukta. Section 9 deals with the provisions relating to complaint which says that every complaint involving an allegation shall be made in such form as may be prescribed and shall be accompanied by a deposit of twenty five rupees and then the matter can be dealt with as per distribution of work of Lokayukta or Up-Lokayukta. Section 10 deals with the procedure in respect of enquiry and says that the Lokayukta or Up-Lokayukta shall, in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. Section 11 lays down that general principles of Evidence Act, 1872 and Code of Criminal Procedure, 1973 shall be followed as far as possible in inquiry by Lokayukta and Up-Lokayukta. Section 12 deals with the reports of Lokayukta and Up-Lokayukta. Section 12 reads as under:

12. Reports of Lokayukta and Up-Lokayukta -- (1) If, after enquiry into the allegations the Lokayukta or an Up-lokayukta is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations alongwith the relevant documents, materials and other evidence to the competent authority.

(2) 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.

(3) If the Lokayukta or the Up-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the Public Servant and the competent authority concerned. In any other case, 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.

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

(5) If in any special report under Sub-section (3) or the annual report under Sub-

section (4) any adverse comment is made against any public servant, such report shall also contain the substance of the defence adduced by such public servant and the comment made thereon by or on behalf of the State Government or department concerned of the State Government or the public authority concerned, as the case may be.

(6) On receipt of a special report under Sub-section (3), or the annual report under Sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the State Legislative Assembly.

(7) Subject to the provisions 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.

As per provisions of this Section 12, after report of enquiry is received from Lokayukta or Up-Lokayukta, the competent authority shall examine the report forwarded to it under Sub-section (3) and intimate, within three months from the date of receipt, 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. If the Lokayukta or Up-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the public servant and the competent authority concerned. In case he feels that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned. It is further laid down in Clause (5) that in case any special report under Sub-section (3) or the annual report under Sub-section (4) any adverse comment is made against any public servant, such report shall also contain the substance of the defence adduced by such public servant and the comment made thereon by or on behalf of the State Government or Department concerned of the State Government the public authority concerned, as the case may be. Sub-section (6) says that on receipt of a special report under Sub-section (3), or Sub-section (4), the Governor shall cause a copy thereof together with explanatory memorandum to be laid before the State Legislative Assembly.

Section 12 A provides that the Lokayukta shall send his report in respect of a complaint against the Chief Minister or the Neta Pratipaksha with his recommendations to the Governor who shall take such action as he may deem fit or expedient on the report. Section 13 deals with the staff of Lokayukta and Up-Lokayukta. Section 13-A deals with the constitution of District Vigilance Committee Act of 1947

14. The Madhya Pradesh Special Police Establishment Act, 1947 is an act for investigation of certain offences affecting public administration, for the superintendence and administration of the said force and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 2 of

the Act deals with the constitution and powers of the SPE. Section 3 deals with offences to be investigated by SPE. Section 3 reads as under:

3. Offences to be investigated by Special Police Establishment - The State Government may, by notification, specify the offences or classes of offences which are to be investigated by Madhya Pradesh Special Police Establishment.

Under this Section (3), offences as notified are to be investigated by the SPE. Section 4 deals with the superintendence and administration of special police establishment. This establishment has been placed at the disposal of the Lokayukt. Section 4 reads as under:

4. Superintendence and administration of Special Police Establishment:

(i) The Superintendence of the Madhya Pradesh Special Police Establishment shall vest in the Lokayukta appointed under the Madhya Pradesh Lokayukta Evam Up-Lokayukta Adhiniyam, 1981 (No. 37 of 1981).

(1a) Without prejudice to the generality of the power of Superintendence the Lokayukta may call from Director of Special Police Establishment returns and may issue general directions for regulating practice and procedure to be adopted by Special Police Establishment.

(ii) The administration of the said police establishment shall vest in the Inspector General of Police, (Madhya Pradesh), who shall exercise in respect of that police establishment such of the powers exercisable by him in respect of the police force in the State as the State Government may specify in this behalf.

The power of superintendence of the SPE is with the Lokayukta. In fact, the Lokayukta discharges dual functions as Lokayukta under the Act of 1981 and exercises power of superintendence over the SPE also.

15. The main challenge of the learned Counsel for the Petitioners is that refusal to grant sanction to prosecute the two Ministers (Respondents 4 and 5) is arbitrary and the State has in this way shielded dishonest persons. Hence, the decision of the Government in not launching the prosecution against the aforementioned two Ministers is arbitrary and mala fide. The learned Counsel also submitted that the Respondents 4 and 5 have committed grave misconduct causing immense loss to the State exchequer. The Petitioners have prayed that a mandamus be issued to the State to grant sanction for prosecution of the Respondents 4 and 5. Learned Counsel submitted that no reason has been assigned for withholding the sanction for prosecution. It was submitted that this is a public order and hence it should be a speaking order and the Government should not have cursorily informed the Lokayukt that the Government after examining the matter was not inclined to grant sanction for prosecution of the said two Ministers. It was submitted that the public order should speak for itself and it should not have been passed in the manner the State Government has done. In support of this contention, learned Counsel invited our attention to the case of K. Veeraswami Vs. Union of India (UOI) and Others, . In this case,

question was whether the sanction for prosecution is required for a Judge or not. In that context, their Lordships of Supreme Court observed with reference to Section 6 of the Prevention of Corruption Act, 1947 and corresponding Section 19 of the Prevention of Corruption Act, 1988 as under:

...Section 6 is primarily concerned to see that prosecution for the specified offences shall not commence without the sanction of a competent authority. That does not mean that the act was intended to condone the offence of bribery and corruption by public servant. Nor it was meant to afford protection to public servant from criminal prosecution for such offences. It is only to protect the honest public servants from frivolous and vexatious prosecution. The competent authority has to examine independently and impartially the material on record to form his own opinion whether the offence alleged is frivolous or vexatious. The competent authority may refuse sanction for prosecution if the offence alleged has no material to support or it is frivolous or intended to harass the honest officers. But he cannot refuse to grant sanction if the material collected has made out the commission of the offence alleged against the public servant. Indeed he is duty bound to grant sanction if the material collected lend credence to the offence complained of. There seems to be Anr. reason for taking away the discretion of the investigating agency to prosecute or not to prosecute a public servant. When a public servant is prosecuted for an offence which challenges his honesty and integrity the issue in such a case is not only between the prosecutor and the offender; but the State is also vitally concerned with it as it affects the morale of public servants and also the administrative interest of the State. The discretion to prosecute public servant is taken away from the prosecuting agency and is vested in the authority which is competent to remove the public servant. The authority competent to remove the public servant would be in a better position than the prosecuting agency to assess the material collected in a dispassionate and reasonable manner and determine whether sanction for prosecution of a public servant deserves to be granted or not.

Thus a serious duty is cast on the sanctioning authority to see both the aspects that corrupt people should not be encouraged and at the same time, honest public servants should not be vexed or harassed unnecessarily. In this connection, our attention is invited to the case of *U.P. Financial Corporation v. Gen Cap (India) Pvt. Ltd. and Ors.* AIR 1993 SC 1435 wherein their Lordships have quoted a classic passage from the judgment of Lord Greene MR in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223 at 229, which reads as under:

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretion often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He

must call his own attention to the matter which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

16. Our attention was also invited to the case of Samsher Singh Vs. State of Punjab and Another, . This was a case wherein their Lordships of Supreme Court observed:

...Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because Constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister.

It was also observed that it is a fundamental principle of English constitutional law that Ministers must accept responsibility for every executive act. It is also observed that this principle had been accepted by Indian Courts.

In the case of State Through Anti-Corruption Bureau, Government of Maharashtra, Bombay Vs. Krishanchand Khushalchand Jagtiani, , it was observed by their Lordships as under:

...The law presumes - and the Court must also presume until the contrary is established that such authority will act fairly and objectively and will accord sanction only where he is satisfied that the charge(s) against the public servant requires to be enquired into by a Court. The authority is presumed to, and expected to, act consistent with public interest and the interest of law - both of which demand that while a public servant be not subjected to harassment, genuine charges and allegations should be allowed to be examined by the Courts. Both the consideration aforesaid should be present in the mind of the authority while deciding the question of grant of previous sanction required by Section 6(1)(c) of the Act or, for that matter, Section 197 of the Code of Criminal Procedure.

17. Learned Counsel for the Respondent No. 8 Lokayukta, Shri N.S. Kale, and Shri Shrotri submitted that in fact the Lokayukta has not acted in the present case u/s 4 of the Act of 1947 and in this connection, they have invited our attention to a communication dated 27.3.1997 (Annex-R8/14) by the Lokayukta to His Excellency the Governor of Madhya Pradesh forwarding the report of investigation made by the SPE and showing therein his agreement wherein it has been made very clear by the Lokayukta that the report being sent is not under the Act of 1981. Letter dated 27.3.1997 reads as under:

G.P.Singh Lokayukta, Madhya Pradesh.

Bhopal Dt. 27.3.1997

Respected Rajyapalji,

I am forwarding herewith a copy of the report of investigation by the Special Police Establishment (SPE) in crime No. 122 of 1996 (Madhotal land allotment case). The report is not a report of enquiry under the Lokayukta Adhiniyam but a report of regular investigation of the crime under Code of Criminal Procedure which was undertaken on my direction made on 30.12.1996 u/s 4 of the Special Police Establishment Act, I have gone through the report and I agree with the conclusions reached therein. I am also enclosing a copy of my order dated 30.12.1996 which led to the investigation.

2. The SPE is submitting the report to the Law Department, which is the Department to which the subject is allocated, requesting for grant of sanction u/s 19 of the Prevention of Corruption Act and Section 197 Code of Criminal Procedure for prosecution of the following public servants:

(1) Shri P.L. Kanwar, Dy. Chief Minister.

(2) Shri B.R. Yadav, Minister,

(3) Shri U.K. Samal, IAS

(4) Shri S.P. Trivedi, IAS,

(5) Shri M.L. Mittal, SAS,

(6) Shri S.C. Shukla, SAS.

3. Shri B.R. Yadav's acts constituting the offence were committed in 1987/88 when he was a Minister in the Congress Ministry led by Shri Arjun Singh which office he lost in 1990 when the BJP was voted to power. The present office as Minister held by Shri Yadav is not a continuation of the office which he held in 1988 and therefore technically no sanction is needed to prosecute Shri Yadav under the Prevention of Corruption Act.

4. The Governor being the authority competent to remove a Minister, sanction to prosecute a Minister has to be granted by him.

5. The SPE report makes Dy. Chief Minister Shri Kanwar and Minister Shri Yadav liable for prosecution u/s 13(1)(d) of the Prevention of Corruption Act and Section 120 of the Indian Penal Code. Propriety requires that they should be advised to resign.

6. I am sending a copy of this letter with a copy of the SPE report to Hon. the Chief Minister also.

With profound regards,

Yours sincerely, sd/- (G.P. Singh)

His Excellency Shri Mohd. Shafi Qureshi, Governor of Madhya Pradesh, Bhopal, M.P.

In view of the above, the learned Counsel submitted that it should be very clearly understood that the action of the Lokayukta was not under the Act of 1981 but was an action initiated u/s 4 of the Act of 1947. It was submitted that in fact this report alongwith the finding given by the Lokayukta required due consideration by the Government and it should not have been very casually disposed of by communication dated 2.5.1997 (Annex-R8/15) wherein it has been recorded that no case has been made out for grant of sanction for prosecution. Document Annex. R8/15 dated 2.5.1997 reads as under:

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18. The arguments were not confined with reference to Act of 1981 but also with reference to Act of 1947. We shall come to the provisions of the Act of 1981 later

on. However, it should be very clearly understood that the learned Lokayukta had sent his recommendations after agreeing with the finding of the investigation made by the SPE that a prima facie case is made out against all the six officials including Respondent Shri Pyarelal Kanwar, Deputy Chief Minister and Shri B.R. Yadav, Minister. Learned Counsel for Lokayukta submitted that the Government accepted the recommendations of the Lokayukta in part and has already ordered prosecution so far as Shri S.P. Trivedi, M.L. Mittal and Shri S.C. Shukla are concerned and so far as Shri U.K. Samal, IAS is concerned, the Government has accepted the recommendation of the Lokayukta and has forwarded papers for sanction to the competent authority i.e. President of India. In so far as Respondents Shri Pyarelal Kanwar and Shri B.R. Yadav are concerned, the Government has declined to accord sanction as the State found that no case is made out against them.

It is true that as per the provisions, Ministers are public servants and they can be prosecuted under the provisions of the Prevention of Corruption Act but for that, sanction is required under the provisions of Section 6 of the Prevention of Corruption Act, 1947 and correspondingly u/s 19 of the Prevention of Corruption Act, 1988. What should be the consideration for grant of sanction or for withholding the same is as observed by their Lordships of Supreme Court quoted above, that is it should be in an objective manner and should not be in a manner to protect the corrupt officials. The sanction for prosecution has been made a condition precedent with an idea that it should not give rise to vexatious litigation or harassment to the public servant.

This has been provided as a safeguard for public servant against unnecessary harassment; but at the same time, it has been enjoined upon the authorities who are competent to take decision to come to such a conclusion after subjective satisfaction in an objective manner. Simply because the delinquent happens to be a high personality, consideration should not be based on that. Authorities are supposed to have a dispassionately objective approach without any bias.

18.A. In the present context, when the recommendation is coming from a person well versed in legal subtleties of the law i.e. the retired Chief Justice of the State who holds the office of Lokayukta, then such a recommendation should not be lightly brushed aside. We do not mean to suggest that the authorities, who are competent to take a decision, should be denuded of their power simply because the recommendation has come from the Lokayukta but at the same time, the authorities who are competent under the Act to take a decision to launch the prosecution or not to launch the prosecution, should not attempt to shield the corrupt people howsoever high they may be placed in the hierarchy of the administration. Objectivity should be reflected in such decisions as such decisions are under the gaze of public and, therefore, it becomes all the more incumbent on the competent authorities to show their objectivity by way of passing a proper speaking order. In the present case, as stated above, the order passed by the Government declining sanction for prosecution of the Respondents 4 and 5 does

not show whether there was a proper application of mind to all the detailed facts given out in the investigation report which have been agreed by the Lokayukta.

19. Learned Counsel for the State submitted that file relating to the case may be perused which will show that the matter was examined at length and after that a decision was taken not to grant sanction for prosecution of the Respondents 4 and 5. We do not propose to go through the file because a detailed reply has been filed by the State which shows that the matter was examined in light of the opinion given by the Advocate General of Madhya Pradesh and ultimately it was decided not to grant sanction to launch prosecution. That is not the way for withholding the sanction. The authorities should have passed a detailed speaking order giving out the reasons which prevailed with them not to proceed with the prosecution of Respondents 4 and 5 in the present case. As mentioned above, the reply which has been filed by the State supported by an affidavit, does not show as to in what way the State has found that no case is made out against Respondents 4 and 5. When detailed investigation was made by the investigation agency and the same was thoroughly scrutinised at length by the learned Lokayukta who has already refused to accept the finding of the investigation against large number of officers against whom the investigation agency found a prima facie case and found that there is a prima facie case against the said six persons only and moved the Governor to grant sanction for prosecution of the said six persons who are directly involved in the land scam in question, it was expected of the competent authorities to have given proper consideration and passed a speaking order. It is clear that a proper care was taken by the Lokayukta and after proper application of mind, recommendation was sent to the Governor. It appears that the competent authority has not applied his mind in an objective manner and has not given detailed reasons in order to show why sanction for prosecution against the Respondents 4 and 5 has been declined when against other officials the sanction has been accorded.

20. Learned Counsel Shri P.P. Rao appearing for the State has submitted that question of grant of sanction or not to grant sanction is always the privilege of the competent authority. It is for the competent authority to weigh the matter to come to a conclusion whether the evidence which has been brought forth is sufficient to launch prosecution against the officials or not. In that connection, learned Counsel invited our attention to the case of AIR 1948 82 (Privy Council) , wherein their Lordships observed as under:

In order to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.

This decision in the case of Gokulchand Dwarkadas Morarka has been followed in the case of Ram Sagar v. State of Bihar 1964 (2) CrLJ 65.

It is true as to in what form sanction should be granted is not necessary, but it is definitely necessary to show that the sanction has been withheld for sufficient and good reasons. The order for not according sanction should satisfy the principle of reasonableness. When a person like Lokayukt, who is a retired Chief Justice, after scrutinising the matter recommends prosecution against certain persons, then it is atleast expected of the Government that they should record reasons in the order showing application of mind that the recommendation of the investigating agency and the material collected is not sufficient to constitute an offence so as to accord sanction for prosecution. The reply which has been filed only shows that the matter was considered objectively and after considering it was realised that no prosecution should be launched against the two Respondents 4 and 5.

21. Learned Counsel for the State also strenuously urged before us that so far as the Respondent Shri B.R. Yadav is concerned, he held the office before five years and no action was taken in pursuance of his direction for executing the agreement and, therefore, he cannot be held guilty of corruption. It was submitted that Section 13 of the Prevention of Corruption Act will only come into play when a public servant is found guilty u/s 13(1)(d) i.e. if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage. In the present case, it was urged that no advantage has been proved to have accrued either to Shri B.R. Yadav or to Shri Pyarelal Kanwar and therefore Government thought it proper not to launch prosecution against them. It is also pointed out by learned Counsel that so far as appreciation of evidence is concerned, simply on the basis of suspicion, no prosecution can be launched. In this connection, learned Counsel has relied on a decision of the Supreme Court in the case of S.P. Bhatnagar Vs. State of Maharashtra, wherein it was observed that in cases depending on circumstantial evidence, there is always the danger that conjecture or suspicion may take the place of legal proof. Therefore, learned Counsel submitted that since there was no direct evidence to connect both the Respondents 4 and 5 to have drawn any pecuniary advantage to themselves, the Government did not think it proper to grant sanction for prosecution.

22. Our attention was also invited to the case of R.S. Nayak Vs. A.R. Antulay, wherein it is observed that it is holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Learned Counsel for the State submitted that no benefit had floated to both the persons and hence they were not benefited by these acts. The learned Counsel submitted that all these aspects were examined and sanction has rightly been withheld.

23. We have bestowed our best consideration to the contentions of the learned Counsel. We are of the opinion that in the present case, the sanctioning authority, which is statutory, should have passed a speaking order showing due application of mind and should not have cursorily disposed of the matter with the observation that no case was made out. The learned Counsel for the State tried to press into service Section 13 of the Prevention of Corruption Act to show that in fact that authorities were satisfied that no benefit has flowed to both these persons (Respondents 4 and 5). No such plea has been taken in the return by the Respondents. However, learned Counsel Shri P.P. Rao as well as Shri S.L. Saxena, Advocate General, have tried to place before us the note-sheet but that was not proper in the present case for the simple reason that all this discussion should have formed a part of the final order so that the public at large who had misgivings about the conduct of these officers, should also know from the speaking order and the same could be independently scrutinised by the Court. If such a public order is passed showing reasons, then it may also be open for the Court to see that such consideration had become part of the decision making and the decision had been taken not on irrelevant considerations but on relevant considerations. It is not the stage to judge closely whether the evidence which has been collected by the investigating agency will ultimately lead to conviction or not. Appreciation of evidence at the time of according the sanction cannot be decisive of the matter because that is not within the jurisdiction of the authorities to act like a Court and decide that the evidence will ultimately entail conviction or not. Sanctioning authority has to see and to satisfy itself whether there is a prima facie case or not for grant of sanction. What is to be seen is a prima facie case and not the ultimate result whether it would culminate in conviction or not. It is in the case of frivolous litigation and not in the litigation which may or may not result in conviction. Therefore, the scope of the sanctioning authority is limited to evaluate the facts objectively and record prima facie satisfaction that there is a case for launching prosecution or there is no case for launching prosecution.

24. In the present case, the duty is still more onerous on the State because a high exalted person, who held the office of Lokayukta after scrutinising the papers of the investigation agency, recommended the prosecution, hence a greater amount of respect should have been given by the administration so that the people may not carry impression that persons, who are holding high office have been protected. In this view of the matter, the order which has been passed by the authorities withholding the sanction does not appear to be a proper speaking order showing due application of mind. Proper course for the authorities would have been to pass a detailed, speaking order giving reasons why sanction for prosecution against Respondents 4 and 5 is being withheld. The office of the Lokayukta has been created only to be a watchdog over the high officers whose actions should be above suspicion. If the recommendations of the Lokayukta are received with the scant regard, then the very act of constituting such a high exalted office will be frustrated. It is true that the Lokayukta who exercises the

power of superintendence under the Act of 1947 works as a supervisory authority and recommends prosecution on the basis of investigation report. Therefore, if the Lokayukt expresses opinion that there is & prima facie case against a person and if the competent authority wants to withhold sanction, then it has to pass a detailed speaking order negotiating all the reasons given by the Investigating agency. We regret to say that this step has not been taken in the present case. In this connection, reference may be made to the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, wherein their Lordships have said that the statutory authorities should pass a proper speaking order showing application of mind. The same principle has been reiterated by their Lordships of Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it is observed as under:

When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

25. In the present case, when the matter has received consideration by the investigation agency headed by no less than the Lokayukta who after scrutinising the matter recommends to the State Government for grant of sanction for launching prosecution against Respondents 4 and 5, it deserved to have received due respect and regard and was not liable to be so cursorily disposed of as has been done by order Annexure-R8/15. Strangely enough, on one hand, a part of the recommendation of the Lokayukta has been accepted qua public servants, on the other hand, it has been left out for two ministers who are responsible in the Cabinet form of Government for all the acts of their officials, because all the official act as their functionaries, and the said ministers cannot disown their responsibility so easily.

26. In this connection, reference may also be made to the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, wherein their Lordships observed as under:

Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of the these situations it can well be said that the authority did not honestly form its opinion or satisfaction requisite under the legislation. In any

one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

Therefore, the State Government should have detailed its reasons in the order itself as to what led them to form the opinion that the recommendation given by the Lokayukta on the basis of investigation report, suffers from any infirmity and what was the reason which was not sufficient for granting sanction. If the order had been passed with reasons upon relevant considerations, that would have formed the basis for non-grant of sanction. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusion of certain definiteness. The formation of an opinion must, therefore, be as to whether there are circumstances suggesting the existence of one or more of the matters which dissuaded the Government from according the sanction. This Court will not go into the question of aptness or sufficiency of the grounds upon which subjective satisfaction of the authorities is based but it should be shown that the opinion has been formed after considering relevant facts in an objective manner. This will be a very limited query by the Court.

27. Since the letter recommending for grant of sanction by the Lokayukta vide Annex-R8/14 dated 27.3.1997 itself says that he is not making this recommendation under the Act of 1981, therefore we need not dilate on the position of the Lokayukta vis a vis the Government. However before parting with the case we would like to observe that in the present day society has touched its lowest ebb and such a high institution is created in order to be watch dog for prevention of corruption at high places, then in that case the recommendations of that authority should be given due weightage, if not binding on the State. If this high institution is made toothless, then it would virtually amount to not creating such an institution. A sad note has been sounded by the Hon. Supreme Court in the decision given in the case of Institution of Andhra Pradesh lokayukta/ UPA-Lokayukta, A.P. Vs. T. Rama Subba Reddy and Another, wherein their Lordships after quoting the aims and objects of the A.P. Lokayukta Act, 1983 have observed as under:

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 Up-Lokayukta who is a District Judge of Grade I as recommended by the 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. These statutory authorities are meant to cater to the need of the 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 sanctions so that their orders and

opinions do not become mere paper directions. The decisions of Lokayukta and Up-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 disciplinary authorities concerned.

Under Section 12(3), once the report is forwarded by the Lokayukta or Up-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 enquiry to take action on the basis of the said recommendation for the removal of such public 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 Up-Lokayukta. The question may arise in a properly instituted public interest litigation as to whether the provision of Section 12(3) of the Act implies a power coupled with duty which can be enforced by a 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 so that the public confidence in the working of the system does not get eroded and these institutions can effectively justify their creation under the statute.

Same is equally applicable in the Madhya Pradesh also.

28. If the recommendations of the Lokayukta are not accepted and then the matter is reported back that the action cannot be taken, then he has to refer the matter back to the Governor with his recommendations and the comments made by him can only be placed at the floor of the House for debate. That would virtually amount to defeating the purpose for which such exalted institution is created. It is therefore all the more necessary that the Lokayukta institution should not be made as helpless institution that its recommendations can be so easily brushed. That would be defeating the very purpose of creating the institution. Section 12(6) of the Act of 1981 only provides that when the recommendations of the Lokayukta are not accepted, the same have to be placed on the floor of the house and then the very purpose would be frustrated. It is high time that the institution should be given more teeth so that atleast it can serve the purpose for which it is created and it may not be defeated by just discussing out at the floor of the house. We need not dilate on the subject any more because we have already pointed out that the Lokayukta has himself mentioned that he is not making recommendation under the Act of 1981 and that he is making the same under the Act of 1947 as he has dual capacity - being the Head of the Lokayukta institution as well as being the authority exercising power of superintendence under the Act of 1947. Therefore the recommendation of the Lokayukta deserves greater amount of respect and

acceptance.

29. Learned Counsel for the Respondent State has also submitted that the Lokayukta should not have joined the issue in the present case and it does not behave to him to judge his own cause. We are mentioning this argument just for rejection. Lokayukta institution has come forward to assist the Court for arriving at a just decision. That does not reflect that Lokayukta institution is in any way interested in the result of the petition. Learned Counsel for Respondent No. 4 also submitted that Section 14 of the Act of 1981 provides a secrecy of the information recorded in the Lokayukta proceedings. Since we are not dilating on the provisions of the Lokayukta Act (Act of 1981) as the Lokayukta has himself stated that he is not proceeding under the said Act of 1981, we need not pursue this argument further as to what secrecy should be attached to the material collected by the investigation agency and how it should be used in other proceedings.

30. As a result of above discussion, we are of the opinion that the order passed by the State Government does not disclose the reasons for which the recommendation of the Lokayukta has not been accepted. It is not a speaking order and does not disclose application of mind. We, therefore, set aside order dated 2nd May 1997 (Annex-R8/15) and remand the matter back to the Government for passing a proper speaking order showing application of mind. The petition is accordingly allowed. There shall be no order as to cost.