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**(2007) 05 MP CK 0022**  
**In the Madhya Pradesh High Court**

Pooran Singh Pallaiya

APPELLANT

Vs

Lok Ayukta and Others

RESPONDENT

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**Date of Decision :** 15-05-2007

**Acts Referred:**

Constitution of India, 1950 — Article 153, 154, 162, 163, 166  
Penal Code, 1860 (IPC) — Section 193, 21, 228, 243P, 243Q

**Citation :** AIR 2007 MP 247 : (2007) 3 JLJ 201 : (2008) 3 MPLJ 445 : (2007) 1 MPLJ 256

**Hon'ble Judges :** S.A. Naqvi, J; Abhay Gohil, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Abhay Gohil, J.

This appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005 is directed against the judgment/order dated 14-11-2006 passed by Writ Court in Writ Petition No. 5649/ 2005.

The moot question for consideration in this appeal before us is whether in Ex-Mayor of Gwalior Municipal Corporation and Ex-Councillors of the Municipal Corporation come within the purview of the definition of "public servant" as defined u/s 2(g) of Madhya Pradesh Lokyukt Evam Up-Lokayukt Adhiniyam, 1981 (for brevity as "Adhiniyam of 1981", which reads as under:

2(g). "Public Servant" means a person falling under any of the following categories, namely:

(i) to (iv) ....

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

(i)

(ii) a Corporation or "local authority established by State Government under a

Central or State enactment.

The brief facts leading to the controversy involved in the case are that the appellant No. 1 was elected as Mayor and appellants Nos. 2 to 6 as Councillors of the Municipal Corporation Gwalior in the elections held in the year 1999 in accordance to the provisions of M. P. Municipal Corporation Act 1956 (for brevity as "Act of 1956") for a period of five years, which has expired in January 2004. A complaint was filed before the Lokayukt M.P. about some irregularities committed by the appellants in acceptance of tenders called by the Municipal Corporation for construction of asphalt road. Lokayukt in exercise of power u/s 7 of the Adhiniyam of 1981 got enquired the matter through the Technical Cell of the Lokayukt Organization. Upon the preliminary enquiry prima facie case was found against the appellants as well as against the M.P. Municipal Commissioner, Engineers and Officers of the Corporation. Thereupon show cause notices were issued to 11 persons to show cause as to why the recommendations should not be made against them to the competent authority u/s 12(1) of the Adhiniyam of 1981.

The appellants raised preliminary objection that Lokayukt Organization does not have the jurisdiction to enquire into the allegations against them as they are not covered within the definition of "public servant" as defined u/s 2(g) of the Adhiniyam of 1981 because in Section 2(g)(v)(ii) of the Adhiniyam of 1981 the word "municipal" has not been added with the "corporation". Secondly, the Corporation should be established by the State Government under a State enactment and Gwalior Municipal Corporation has not been established by the State Government under State enactment, as there is no such provision in the Madhya Pradesh Municipal Corporation Act, 1956.

Lokayukt rejected the preliminary objections holding therein that the Gwalior Municipal Corporation was established by the State Government by Notification No. 76/XII-LA/56, Gwalior, dated 30th October, 1956, which was published in the Madhya Bharat Government Gazette, Special, dated 30th October 1956 and the copy of the notification has been quoted, according to which the Rajpramukh is pleased to notify that all provisions of the above Act shall come into operation in the following cities of Madhya Bharat from the date of publication of this notification in the Government Gazette, namely - (1) Indore (2) Gwalior and Lokayukt has held that there is no doubt that the Gwalior Municipal Corporation was established by the State Government under a State enactment, against which the appellants have filed Writ Petition No. 5649/ 2005.

The learned Writ Court vide order dated 14-11-2006 dismissed the Writ Petition holding therein that though the conclusions arrived at by the Lokayukt are correct, but the reasonings adopted by the Lokayukt cannot be sustained. Learned Writ Court further held that the Municipal Corporation Gwalior is not established by the State Government and it is constituted under the provisions of the Constitution of India i.e. Article 243 Q and R, still the office holders and employees of the Corporation are not beyond the purview of the definition of

public servant defined in the said Adhiniyam. Against this order of dismissal of the Writ Petition, the appellants have filed this Writ Appeal.

We have heard the learned Counsel for the parties. Shri P.N. Kelkar, learned Counsel appearing for the appellants vehemently argued and submitted that the Municipal Corporation Gwalior has not been established by the State Government under any Central or State enactment. His submission is that Corporation has been established under the Madhya Bharat Municipal Corporation Act, 1956 (now under Madhya Pradesh Municipal Corporation Act, 1956), therefore it is a creature directly under the law and not established by the State enactment and he relied on Section 443 of the Act of 1956. He further submitted that Mayor and Councillors of the Corporation will come within the definition of "public servants" when Corporation and local authority not established strictly by the State Government under Central or State enactment, as has been defined u/s 2(g) of the Adhiniyam of 1981. During the course of arguments he developed this point through various citations and various ways by reading various provisions of Act of 1956 and submitted that in the Act nowhere it has been provided that the Corporation shall be established by the State Government. It was vehemently argued that Lokayukt has not considered the matter in proper perspective. After the amendment in the Constitution of India adding Chapter IX-A it should be held that the Municipal Corporations are established in exercise of the powers under Article 243 Q to ZF under Chapter IX-A of the Constitution. He also submitted the definition of "Corporation" in the Hulsbury's Laws of England according to which:

At the present day a corporation is created under the law of England by one or other of two methods (1) by royal charter of incorporation from the Crown, or (2) by the authority of Parliament, that is to say by or by virtue of statute.

Shri Kelkar also cited a decision in the case of S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, , in which it has been held by the Supreme Court that there is a distinction between a corporation established by or under an Act and a body incorporated under an Act. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. There is thus a well-marked distinction between a body which, after coming into existence, is governed in accordance with the provisions of a statute. Shri Kelkar further argued that Corporation is a creation of law and is not constituted either by Madhya Bharat Municipal Corporation Act of 1956 or Act of 1956 as amended in the year 1961. In support of his contention he referred to the decisions in the case of the Commissioner of Income Tax v. K.B. Kalikutty AIR 1969 SC 869, K.P. Sudhakaran and Another Vs. State of Kerala and Others, and Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, on the question of intention of legislature and decisions in the case of P. Kasilingam and others Vs. P.S.G. College of Technology and others, and State of Kerala and Another Vs. P.V. Neelakandan Nair and Others, on the question of interpretation of word "mean" and decision in the case of Cantonment Board, Secunderabad Vs. G. Venketram Reddy and Others,

on the question of definition of Article 243Q and decision in the case of *University of Allahabad v. Amrit Chand Tripathi* AIR 1987 SC 57 on the question of harmonious construction of provisions of the Act. Shri Kelkar further submitted that u/s 21 of the IPC under the definition of "public servant" Mayor, councillors and MLAs are not the public servant and the scope of enquiry should be confined only to the order passed and reasonings given by the Lokayukt. In support of his contention he placed reliance on the decision in the case of *Ramesh Balkrishna Kulkarni Vs. State of Maharashtra*, on the question that u/s 21, IPC Municipal Councillors and MLA are not public servant and heavily placed reliance on the Constitution Bench decision of the Apex Court in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, on the question that validity of order should be judged by the reasons given in the order alone and subsequent material supplied should not be considered to make the order as valid. He further submitted that Lokayukt has not considered the notification dated 30th October 1956 and the provisions of Section 1(3) of the Madhya Bharat Corporation Act, 1956 and in the notification nowhere it has been mentioned that the Corporation has been established by the State Government, on the contrary it says about the Rajpramukh and Section 1(3) says that the provisions of the Act will come into operation as the Madhya Bharat Government may by notification in the official gazette specify in respect of each cities. He submitted that the learned Writ Court has accepted his contention to the extent that Municipal Corporation is not established by the State Government, but this contention of the Writ Court that it is constituted under the provision of the Constitution is also not true. Therefore by any stretch of imagination it cannot be held that the Corporation is established by the State Government under any State enactment. Now it directly became the body under the Constitutional provisions as quoted in Part IX-A of the Constitution from Article 243(P) or 243(ZG). He also placed reliance on the decisions in the case of *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, and *Yadlapati Venkateswarlu Vs. The State of Andhra Pradesh and another*, on the question of construction of the amended Act. In reply on the question of maintainability of appeal Shri Kelkar submitted that Writ Petition is under Article 226/227 of the Constitution of India and therefore Writ Appeal is maintainable and placed reliance on the decisions in the case of *Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others*, , *Kishorilal v. Sales Officer, District Land Development Bank* 2006 (4) MPLJ 339 : AIR 2006 SC 6126 and *Smt. Shiva Dubey (Jhira) v. S.R. Dubey (Jhira)* 2006 (4) MPHT 420.

Per contra, Shri K.B. Chaturvedi, learned Senior Advocate appearing for the Lokayukt supported the order passed by the Lokayukt and learned Writ Court and raised a preliminary objection about the maintainability of the Writ Appeal. His contention is that the order (Annexure P/1), which has been passed by the Lokayukt recommending punishment, is passed as the judicial authority. Lokayukt is judicial authority and Court under the provisions of Section 11 of the Adhiniyam of 1981. Therefore, the order is within the purview of Article 227 of

the Constitution of India and no Writ Appeal lies. He also placed reliance on the decision in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, as well as in the case of Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, in the matter of Minister's prosecution. He further argued that the Municipal Corporation is local body and the same has been established by the State Government. He referred the preamble of the Act of 1956 as well as relied on provisions of Section 7 Sub-section (2) of the Act of 1956 and various other provisions of Act of 1956 to argue that the Municipal Corporation Gwalior is established by the State Government under the State enactment. In support of his contention he has also referred various Sections 2(59), 5(13), 7(2), 17(a), 25(b) and 19(c) and also cited various other Sections from Sections 410 to 422 and also placed reliance on a Full Bench decision in the case of Meena Agrawal (Smt.) v. Chief Municipal Officer 2007 (1) JLJ 188 to show that the Corporation has been established under State enactment. He submitted that Section 1(3) of the Madhya Bharat Corporation Act 1956 says that the State has established the Corporation and further submitted that the appellants are the "public servants" within the definition of Section 2(g)(v)(ii) of the Adhiniyam of 1981 and therefore the Lokayukt was justified in recommending the punishment u/s 11 of the Adhiniyam of 1981.

Shri S.B. Mishra, Additional Advocate General also argued on behalf of the respondent No. 2 State and supported the stand of Shri P.N. Kelkar, Advocate and submitted that the recommendation of the Lokayukt u/s 17(A) of the Act of 1956 is contrary to the provisions of the Act of 1956 and the Lokayukt is not competent to make such recommendations and it is beyond the powers of the Lokayukt.

Having heard the learned Counsel for the parties, firstly we have examined the question about the maintainability of the appeal. It was argued by the counsel for the respondent that u/s 11(2) of the Adhiniyam of 1981, the proceeding before Lokayukt or Up-Lokayukt shall be deemed to be a Judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code and in the meaning of Contempt of Courts Act, 1971, the Lokayukt shall be deemed to be Court. Therefore, the order challenged in the Writ Petition has to be treated as passed in exercising powers under Article 227 of the Constitution of India and has placed reliance on the decision in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, . But in our opinion, this judgment is against the respondent, as the Supreme Court has held as under (Para 39):

The parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene

because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine." Thus, the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

In the case of *Kishorilal v. Sales Officer, District Land Development Bank* 2006 (4) MPLJ 339 : AIR 2006 SC 6126 in a case when the lands mortgaged to the bank were sold, sale certificate was issued in the name of auction purchaser, an appeal was preferred against it before the Joint Registrar, Co-operative Societies and Second Appeal before the Board of Revenue. The Writ Petition was filed before the High Court by the Bank, which was allowed, against which Letters Patent Appeal was filed by the appellant before the Division Bench and the same was dismissed on the premise that the single Judge exercised jurisdiction under Article 227 of the Constitution and in that context placing reliance on a decision in the case of *Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others*, , the Supreme Court has held that the Division Bench of High Court wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Article 226/227 of the Constitution of India.

In the case of *Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others*, , the Supreme Court has held as under:

It was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

Admittedly in this case the Writ Petition was filed by the appellant both under Article 226 and 227 of the Constitution of India and as has been held in the case of *Surya Dev Rai Vs. Ram Chander Rai and Others*, - *Certiorari*, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. In this case admittedly the question of jurisdiction of the Lokayukt has been raised and the basic argument of the learned Counsel for the

appellant is that the Municipal Corporation Gwalior has not been established or constituted under the Madhya Bharat Municipal Corporation Act, 1956 and therefore under the definition of Section 2(g)(v)(ii) of the Adhiniyam of 1981, it is not a corporation or local authority established by the State Government under the State enactment and on the basis of the aforesaid argument his submission is that Lokayukt has no jurisdiction to issue any notice or to take any action against the appellant. In view of such controversy involved in this matter, the question involved in the matter can be examined and it can be held that in such a case when the petition was under Article 226/227 of the Constitution of India and if the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved, the supervisory jurisdiction is capable of being exercised suo motu as well. Therefore, in view of the aforesaid constitutional position with regard to the subject matter of filing of writ petition under Article 226/227 of the Constitution, the Writ Appeal is maintainable and the question of jurisdiction involved therein can be examined in the Writ Appeal.

As a next question, to consider the case, we have examined the history of the Act of 1956. Admittedly, before State re-organization, Gwalior was part of Madhya Bharat. Madhya Bharat Legislative Assembly originally enacted Madhya Bharat Municipal Corporation Act vide Act No. 23 of 1956, which received assent of His Highness of Rajpramukh on 25th October 1956 and thereafter by notification it came into operation w.e.f. 28th Oct. 1956. It was applied to the whole of the Madhya Bharat region of the present State of Madhya Pradesh and initially the provisions of this Act were applied to the cities of two Corporations; Indore and Gwalior from 30th October 1956. The present State of Madhya Pradesh was formed under the State Re-organization Act, 1956 from 1st November 1956. The City of Jabalpur, situated in the Mahakoshal Region of the State was governed by the City of Jabalpur Corporation Act, 1958 (M.P. Act 3 of 1950). Vide Section 3 of M.P. Act 13 of 1961, the Madhya Bharat Act was extended to the other regions of the State from the appointed date i.e. 20th May 1962. Sub-section (3) of Section 1 of the original Act was substituted by the following:

(3) It shall apply in the first instance to the cities of Gwalior, Indore and Jabalpur and the State Government may, by notification, direct that this Act shall apply to any other city on such date as may be specified in such notification.

Thereafter, in exercise of the powers so conferred upon the State Government, the State Government extended the provisions of this Act to the various other 14 cities from 21-1-1966 to 5-9-1983 including the cities which are now part of State of Chhattisgarh.

We have to meet the basic arguments of Shri P.N. Kelkar that the Municipal Corporation Gwalior is the creature of law and that has been established under the law, but it has not been established by the State Government under the State enactment. The Writ Court has held that the reasonings adopted by the

Lokayukt cannot be sustained though the conclusions arrived at by the Lokayukt are correct and the Municipal Corporation is not established by the State Government is constituted under the provisions of Article 243 (Q) and (R) of Constitution of India. To arrive at a conclusion the Lokayukt has placed reliance on the notification issued by the Rajpramukh and the provisions of Section 1(3) of the Act of 1956 and the learned Writ Court has also held that the office holders and employees of the Corporation are not beyond the purview of the definition of public servant defined in the said Adhiniyam.

It is true that the Municipal Corporation is the creature of law and as per the preamble of Act of 1956-

an Act to provide for the establishment of Municipal Corporation for certain Cities in Madhya Pradesh.

As contained in the preamble it is clear that the Act of 1956 has been enforced with a view to establish the Municipal Corporations in certain cities of Madhya Pradesh and to regulate their business. To answer the question whether it is a State enactment, some of the constitutional provisions are required to be looked into. If we look to the origin of the Madhya Bharat Municipal Corporation Act, 1956, the same was passed by the Madhya Bharat Legislative Assembly vide M.B. Act 23 of 1956 and in the original Sub-section (3) of the Act, it was provided that this Section shall come into operation at once. The remaining provisions of the Act shall come into operation in such cities of Madhya Bharat and on such dates as the Madhya Bharat Government may, by notification in the Official Gazette, specify in respect of each city. Therefore, there is no doubt that the original Act was passed by the Madhya Bharat Legislative Assembly and date was specified by the Madhya Bharat Government in official Gazette for enforcement of the other provisions of the Act.

Part VI of the Constitution deals about "The States". Article 153 of the Constitution provides that there shall be a Governor for each State. The same may be appointed as the Governor for two or more States. Under Article 154 it is provided that the executive power of the State shall be vested in the Governor and it shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 162 of the Constitution of India, which is relevant to answer the question reads as under:

Article 162, Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. This rule is subject to the provisions of the Constitution. The legislature of a State can legislate on a matter included in the State list and the Concurrent list. Hence, it is clear that an executive power of a State shall extend to the matters with respect to which the Legislature of a State have power to make laws. The executive power of the State shall be subject to and limited by the Constitution or by any law made by Parliament. Article 166(1) of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. As per the VII Schedule of the Constitution under List II, which is State List as per item No. 5, the State Government is having power to enact law regarding "local government i.e. to say the, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." From this list, it is clear that the State Government is having power to enact law relating to the local Government, local authorities and particularly Municipal Corporation. In the case of Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, on the question of executive power of the State, the Supreme Court has held that the executive function comprises both the determination of the government policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction on foreign policy; in fact the carrying on or supervision of the general administration of the State. The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important question of policy are all formulated by them. No doubt the entire executive power of State vests in the government in respect of all matters in regard to which the State legislature has power to make laws.

From the aforesaid provision it is clear that under entry No. 5 of List II of 7th Schedule the State Government is empowered to make laws relating to local bodies, local authorities and Municipal Corporation. Under Article 162 of the Constitution of India, the executive power of the State shall extend to the matters with respect to which the State Legislature of the State has power to make laws. So to make a law on the Municipal Corporation it is under the power of the State Legislature through State Executive. Originally the Madhya Bharat Municipal Corporation Act was passed by Madhya Bharat Legislative Assembly and that has to be treated as passed by the State Legislature under executive powers of the State Government as defined under Article 162 of the Constitution of India. It is true that neither in the Madhya Bharat Municipal Corporation Act nor in the Madhya Pradesh Municipal Corporation Act, 1956 there is no direct provision that the State Government shall establish the Corporation in the cities of the State as Section 7 of the Act of 1956 provides that there shall be

constituted a Municipal Corporation for a larger urban area in accordance with the provisions of this Act. Therefore, under the provisions of the Constitution, when the law has been enacted by State Legislature and state executive have power to enact law it has to be held that the Act of 1956 has been enacted by State Government. As per Article 243Q and the provisions of Municipal Corporation Act it shall be constituted for a larger urban area means though it is creation of law but that shall be constituted by State government and none else. Therefore, it is only the State Government who will establish the Municipal Corporation in the cities of State of M.P. It is to be understood like this that when under executive power of the State Government, State can make laws for establishment of Municipal Corporation in the State, means State will establish the corporation. Therefore, Corporation shall be constituted or established under the Madhya Pradesh Municipal Corporation Act 1956 by the State Government. Initially there were only two corporations in the Madhya Bharat State, i.e. Gwalior and Indore and they were established under the Madhya Bharat Municipal Corporation Act and one was established under the Jabalpur Corporation Act, 1948. So it has to be held that they were established by the State Government under executive power. The other corporations in other cities have also been established by the State Government under exercise of the powers so conferred upon the State Government by the Act of 1956 and they are 14 in number for united State of M.P. before formation of Chhattisgarh. The contention of Shri P.N. Kelkar is right that the Corporation is creation of law and as provided under Sub-section (3) of Section 7, the Corporation shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued. Therefore for the word used in the definition in Section 2(g)(v)(ii) of the Adhiniyam of 1981, a Corporation or local authority established by the State Government under State enactment, it has to be held that Municipal Corporation, Gwalior is established by the State Government under a State enactment namely; Madhya Bharat Municipal Corporation Act, 1956 and thereafter under M.P. Municipal Corporation Act, 1956 as amended in 1961. The point raised by Shri Kelkar is that it is the creation under law is accepted but this cannot be accepted that this has not been established by State Government under the State enactment. We accept that the corporation is a body created under the law and it is the creation of law. Since we have accepted that it has been established by the State Government under State enactment, therefore all the appellants; Mayor and Councillors will fall within the definition of Section 2(g)(v)(ii) of the Adhiniyam of 1981. The argument of Shri P.N. Kelkar was very forceful and attractive and could have been logical in the absence of Article 162 of the Constitution of India, but Article 162 of the Constitution of India makes these things quite clear that it is the executive powers of the State Government, which shall extend to the matters with respect to which the legislature of the State has power to make laws. Admittedly the State legislature is having power to make laws and therefore it has to be held that it is the part of the executive power of the State Government to make law relating to municipal corporation. It was further argued that the word "Rajpramukh" has been used originally in the

Madhya Bharat Municipal Corporation Act and not the State Government. The "Rajpramukh" was the head of the State and all executive actions of the Government of a State were to be expressed in the name of "Rajpramukh" (as they are now being done in the name of Governor as per Article 166(1) of the Constitution). As per Article 168, the Governor is also part of the legislature. Article 168 provides that for every State there shall be a legislature which shall consist of the Governor. Therefore, Governor is not only the executive head but is also the legislative head. Article 163 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

Various other provisions of Act of 1956 were cited by the counsel for respondent from Sections 410 to 422 and it was argued that as per Section 410 every officer or servant in the employment of the Corporation whether for the whole or part of his time, and every Councillor of the Corporation shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860. Bare reading of this Section makes it clear that the Councillors are the public servants even u/s 21 of the IPC, as provided u/s 410 of the Act of 1956, which is at par with the definition of "public servant" as defined u/s 2(g)(v)(ii) of the Adhiniyam of 1981. Thus, it is clear that they are also public servants within the meaning of Act of 1956. Section 415 provides power to the State Government to resolve the dispute between the Corporation and any local authority and Section 417 provides power of Government to require returns from the Commissioner and Section 417-A provides power of the Government to depute officers to make enquiry, inspection or examination and call for the report and u/s 418 the government give written orders and directions to the Corporation, the Mayor-in-Council, the Commissioner, or any other officer or servant of the Corporation to make arrangements to the satisfaction of the Government for the proper performance of the duties referred to in Clause (a) or to take such measures as may be specified by the Government in connection with any matter referred to in Clause (b), or to make financial provision to the satisfaction of the government for the performance of any such duty or for the taking of any such measure, as the case may be or to show cause to the satisfaction of the Government against the making of such arrangements. Section 418-A further provides power to the State Government to issue directions for implementation of welfare measures and Section 419 provides procedure to be followed by the Government when municipal authority fails to take action. u/s 420 the government is having power to suspend, fine or otherwise punish any officer or servant of the corporation who is found negligent in discharging of his duties. Section 421 provides power to the Government to suspend any resolution or order and Section 422 provides power to the government for dissolution of the Corporation. Section 432 provides power to Government to modify or repeal bye-laws framed by the Corporation and as per Section 433 the Government has power to make rules. These provisions do indicate that the Government is having full control over the office bearers and

officers of the corporations and as per the various provisions the corporations are required to function under the directions of the Government and Government enjoys full control over them and naturally these sections will provide help to the Court to hold that the corporation is not only established by the State Government under the State enactment but it is even controlled and supervised by the State under the State enactment.

By Seventy-fourth amendment in the Constitution, Part IX-A relating to the Municipalities has been inserted by Constitution (Seventy-fourth Amendment) Act, 1992, which came into force w.e.f. 1-6-1993. As per Article 243Q, there shall be constituted in every State a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part and from Article 243P to 243ZG provisions have been inserted regarding the constitution of Municipalities, Composition of Municipalities, Constitution and composition of Ward Committees, Reservation of seats, Duration of Municipalities, Disqualifications for membership, Powers, authority and responsibilities of Municipalities, Power to impose taxes by, and Funds of, the Municipalities, Finance Commission, Audit of accounts of Municipalities, Elections to the Municipalities and Continuance of existing laws and Municipalities. Therefore, now for the aforesaid purposes provisions have been made in the constitution and their business is regulated by the constitutional provisions. Therefore, now the Municipal Corporations, have acquired constitutional status. Section 242-ZF clearly states that notwithstanding in this part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State. Therefore, the provisions of the law made by the State Legislature in this regard are subject to the provisions of Part LX-A of the Constitution.

During the course of arguments it was argued that u/s 2(g)(v)(ii) of the Adhiniyam of 1981, the word "Corporation" or "Local authority" established by the State Government under Central or State enactment has been used but the word "Municipal" has not been used in the aforesaid definition, nor the Municipal Corporation is a local authority. In fact the word "Corporation" used under that definition is having a wide connotation and not only Municipal Corporations, but all Corporations established by the State Government under Central or State enactment are included in the aforesaid definition. The word "Corporation" has been defined u/s 5(13) of the Act of 1956.

Section 5(13) - "Corporation" means the Municipality of a larger urban area.

The same is the definition provided under Article 243Q(1)(c), which is as under:  
a Municipal Corporation for a larger urban area.

As per Article 243Q, a Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area. The word "Municipality" has been defined in Webster's New Dictionary as, "a town, city or borough which has local self-Government". In Black's Law Dictionary it is extended to "legally incorporated or duly authorised association of inhabitants or limited area for local Government or other public purposes. A body created by the incorporation of the people of a prescribed locality invested with the subordinate powers of legislation to assist the Civil Government of the State and to regulate and administer local and internal affairs of the community. As per Article 243P Sub-clause (e) - "Municipality" means an institution of self-government constituted under Article 243Q." Therefore, Article 243Q indicates that a Corporation of a Municipal Council or a Nagar Panchayat is constituted on the strength of population and the area or place where it is constituted, namely rural or urban. But all the three are deemed to be municipality. A Municipal Corporation with a larger area is as much a municipality as a council with smaller area. Therefore, the expression "Municipality in the State" has to be read in a broad and larger sense as it has a wide connotation. Under Article 243P(e) definition of "Municipality" has been defined as an institution of self-government, therefore clearly it is a local body and comes within the definition of "local authority".

As per "Law Lexicon" (1997 Edition) "Local authority" is defined as under:

"Local Authority" mean any body of persons for the time being invested by law with the control and administration of any matters within a specified local area.

"Local Authority" means any district board or local board, joint committee, union committee or joint union committee constituted under Law.

"Local Authority" means an authority legally entitled to or entrusted by the Government with the control or Management of a local fund.

The expression "local authority" is not limited to a local authority situate within the taxable territory and it covers such local authority which, in respect of the property in question, can levy the tax.

An authority in order to be a local authority must be of like nature and character of a Municipal committee; District Board a Body of Port Commissioners, Possessing of the distinctive attributes and characteristic of Municipal Committees but possessing one essential feature legally entitled to or entrusted by the Government with control and Management of a Municipal or local fund.

"Local Authority" means an authority legally entitled to management of Municipal funds which it gets by way of contribution.

In "Law Lexicon" (3rd Edition 2005) "Local authority" is defined as under:

"Local Authority" means in the case of-

(1) a local area which is -

(a) a municipality, the municipal board or municipal corporation;

(b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) any other local area, such authority as may be prescribed by the Central Government or the State Government under this Act.

"Local Authority" means a Municipal Committee, District Board or other authority for the time being invested by law with the control and administration of any matter within a specified local area.

For the purpose of this clause, the expression "Local authority" means-

(i) Panchayat as referred to in Clause (d) of Article 243 of the Constitution; or

(ii) Municipality as referred to in Clause (e) of Article 243P of the Constitution; or

(iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924.

"Local Authority" means a municipal corporation or a municipal council by whatever name called or a cantonment board or any other body, entrusted with the duty of supplying water under the law by or under which it is constituted.

"Local Authority" means any Nagar Panchayat, Municipal Council, Municipal Corporation, Panchayat constituted at the village, intermediate and district levels, body of part commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund.

"Local Authority" shall mean a municipal committee, District Board, body of port commissioners or other authority legally entitled to, or entrusted by the Government, with the control or management of a municipal or local fund.

Thus as defined in Article 243P(e), the Municipal Corporation is a self-government and because it is invested by law with the control and administration of any matter within a specified local area. It is legally entitled to or interested by the government with control and management of a municipal or local fund. Therefore, the Municipal Corporation is definitely a local authority. Accordingly, we are of the view and hold accordingly that a Municipal Corporation is a "Corporation" as well as a local authority and the Municipal Corporation of Gwalior is a Corporation and a local authority within the meaning of Act of 1981.

As regard by Shri Kelkar that the judgment should be on the basis of reasons

given in the order, but since he has raised an important question of law and arguing that Municipal Corporation Gwalior is not local authority, nor is established by the State Government under Central or State enactment, therefore if a legal question has been raised, that requires critical examination by the Court and this requires legal answer. Therefore, the argument is nothing but fallacious.

It was also vehemently argued that Lokayukt has not considered the matter as per the preliminary objections raised by the appellant and has wrongly assumed the jurisdiction in the matter whereas the Lokayukt was not having any jurisdiction to issue any show cause notice or to take a decision in the matter. Learned Single Judge has held that the conclusions arrived at by the Lokayukt are correct, but the correctness adopted by the Lokayukt can not be sustained. We have examined the matter at length and found that the matter was dealt with by him in a cursory manner and not discussed the law at length, but the conclusion drawn by him are correct and it is held that the Lokayukt has rightly assumed the jurisdiction in view of the provisions of Section 2(g)(v)(ii) of the Adhiniyam of 1981. Thus, this argument of the learned Counsel for the appellant does not carry any weight and therefore is rejected.

Consequently, as discussed above, it is held that the Municipal Corporation Gwalior comes within the definition of a Corporation and also within local authority as has been defined u/s 2(g)(v)(ii) of the Adhiniyam of 1981. It is further held that the Madhya Bharat Municipal Corporation Act 1956 and now the Madhya Pradesh Municipal Corporation Act, 1956 as amended by M.P. Act 13 in 1961 it is a State enactment and under the provisions of law read with Article 162 of the Constitution of India it is enacted by the State Government and therefore it is held that Municipal Corporation Gwalior is established by the State Government under State enactment and the appeal filed by the appellants being without merit and devoid of substance is hereby dismissed.