

(2004) 02 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 24135, 25339 and 25340 of 2003

Prof. S.N. Hegde

APPELLANT

Vs

The Lokayukta and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Karnataka Lokayukta Act, 1984 — Section 12, 3, 7 (4), 9 (4)

Karnataka State Universities Act, 1976 — Section 14 (7), 14 (8)

Citation : (2004) ILR (Kar) 3892 : (2004) 3 KarLJ 505 : (2004) 2 KCCR 182 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S.N. Narasimha Murthy for K. Shashi Kiran Shetty, in W.P. Nos. 25339 and 25340 of 2003 and B.V. Acharya for S.J. Chouta, in W.P. No. 24135 of 2003, for the Appellant; A.N. Jayaram, General and V.Y. Kumar, Government Advocate for Respondents-1 and 2, Ko. Channabasappa, for Respondent-3 in W.P. No. 24135 of 2003 and for Respondents 3 and 4 in W.P. Nos. 25339 and 25340 of 2003, S.G. Bhagwan, for Respondent-4 in W.P. No. 24135 of 2003 and for Respondents-3 and 4 in W.P. Nos. 25339 and 25340 of 2003, for the Respondent

Judgement

N. Kumar, J.—In these writ petitions important questions of law as regards the power of the Lokayukta and the Upalokayukta to investigate complaints under the provisions of the Karnataka Lokayukta Act, 1984, the procedure to be followed in such investigations, the effect of the report submitted by the Lokayukta and the consequences that flow from the declarations made under the Act arise for consideration, in addition to the question whether the Lokayukta or Upalokayukta has jurisdiction to investigate a complaint against a Vice-Chancellor of a University.

2. The petitioner in W.P. Nos. 25339 and 25340 of 2003 is one Professor S.N. Hegde, Vice-Chancellor, University of Mysore. His case in brief is as under:--

The petitioner was appointed as the Vice-Chancellor in September 1997 initially for a period of three years which was further extended for a period of three years

in September 2000. His term was to expire in September 2003. He had put in more than 40 years of service in teaching, research and administration in the field of higher education. Because of his performance he was given a second term. He was holding M.Sc. and Ph.D Degrees in Zoology and has written more than 60 research articles published in reputed national and international journals. He has guided eleven Ph.D students. He was also a Commonwealth Post Doctoral Fellow in England during Fulbright (1974-76) and full-time visiting Professor at the University of Arizona, U.S.A. during the period 1992-93. He was also a member of National and International academic bodies, namely, Member, New York Academy of Science, American Association for the advancement of Science, Elected President for two terms of the Indian Society for Comparative Animal Physiology. He is also a recipient of Shivarama Karantha, International Parisara Award. He has a clean and an unblemished track record.

3. The fourth respondent herein who was in the habit of blackmailing various persons in order to get his work done in the University where he is employed, has fabricated a false complaint against the petitioner with the help of the third respondent. This is evident from the fact that the complaints lodged against former Vice-Chancellors, Prof. KS. Hegde (1979-85), Dr. P. Selvie Das (1988-91) and Prof. M. Madaiah (1991-97) which were enquired into by Committees such as Venkataswamy Committee, Hazira Committee and Sharma Committee found that the allegations made by the fourth respondent were false and closed the files exonerating them.

4. The complaint lodged against the petitioner was that he received US \$ 7,000 from Late Dr. K.L. Rama Das who was the Chairman of TTL College of Business Management, Saraswathi Puram, Mysore, towards getting permanent affiliation to TTL College; permission to start B.Com. course and to enhance intake of MBA course from 40 to 60. The further allegation is that (sic) received Rs. 25,000.00 on 4-7-2002 by cash from TTL College to go to Delhi. The same was received as a bribe to do a favour to the said college. The said complaint was sent through an E-Mail dated 14-9-2002 by Ramdas to the Lokayukta. The second one was a complaint from the fourth respondent to the Lokayukta, third was a complaint in the prescribed form from the third respondent. The fourth respondent's complaint made to the Governor of Karnataka was in turn sent to the Lokayukta by the Under Secretary to the Governor of Karnataka, with a covering letter.

5. The case of the petitioner in W.P. No. 24135 of 2003 is that he is working as a Professor and Chairman, Department of Studies in Business Administration at the University of Mysore since 1999. He has put in 32 years of service in the University of Mysore without any blemish to his reputation or any allegations in his service records. The TTL College referred to supra did not have a competent and eligible faculty on their rolls to guide their students. Although extending guidance facility to the students of the college was not part of the official duties of the petitioner, the petitioner keeping the interest of the students in mind placed the request before the Staff Council of the Department of Studies in

Business Administration, University of Mysore. The Staff Council by a resolution dated 15-4-2003 resolved to extend the guidance facility to the students of TTL College on humanitarian grounds. The resolution of the Staff Council was communicated to the Registrar, University of Mysore. There was no objections from the University. In furtherance of the said resolution, the petitioner guided 17 students. Reader Dr. B. Shivaraj and Shri D. Ananda guided 12 students each as per their specialization subjects. The students completed their project report. The college authorities met the petitioner and his two colleagues and thanked them for helping their students in the completion of the project work. The petitioner and his two colleagues received momento as a token of appreciation and were given envelope containing certain amount as honorarium. Though the petitioner and his colleagues were hesitant, they were persuaded to accept the honorarium. The fourth respondent alleged in the Syndicate Meeting dated 29-7-2002 that the petitioner had unauthorisedly guided 41 students of TTL College and illegally collected a sum of Rs. 1,64,000.00. The University brought to the notice of the petitioner the said allegation and sought clarifications. The petitioner and his colleagues sent their clarification. The University sought for further explanation bringing to their notice Section 13(1) and (3) of the Mysore University Employee (Conduct) Statutes, 1984. Petitioner and his colleagues sent their reply. The Syndicate of the University of Mysore after considering the explanation given by the petitioner and his colleagues accorded post-facto sanction for the guidance provided by the petitioner. The Syndicate directed the petitioner and the faculty members to credit 50% of the total amount accepted by them to the funds of the University and permitted them to retain the remaining amount with them as "Consultancy Fee". Accordingly, the petitioner and his two colleagues paid 50% of the amount to the University. K.L. Ramdas, Chairman of TTL College, appears to have sent an E-Mail to the Lokayukta complaining against the Vice-Chancellor and the petitioner. The complaint in substance against the petitioner was that by abusing his official position as Chairman of the Department of Management Studies, University of Mysore, he demanded and took from TTL College of Business Management cash of Rs. 1,64,000.00 as bribe for affixing his signature for the Project Report of 41 students of TTL College (at the rate of Rs. 4,000.00 per student).

6. Therefore, the Lokayukta made an order on 12-11-2002 after clubbing all the complaints and directed the complainants to produce all the original documents on 19-11-2002, the date fixed for preliminary investigation in the open Court of Lokayukta. The preliminary investigation into the complaints was made by way of recording evidence and taking of documents and thereafter the Lokayukta passed the order dated 7-12-2002 stating that in view of the complaints, the evidence recorded, it was necessary to obtain the comments from the petitioner and others On all the complaints and materials in which serious charges of corruption had been made, before proceeding further with the investigation. Accordingly he directed that the photocopies of the said complaints, copies of the oral evidence and copies of all the said materials collected, to be sent to the

petitioner and other public servants against whom complaint was made. A copy of the order was also sent to the Governor of Karnataka. Petitioners received those materials and they have given their written comments. The petitioner in W.P. Nos. 25339 and. 25340 of 2003 sought for an opportunity to adduce evidence to substantiate his contention. However, no such opportunity was granted. Lokayukta proceeded with the investigation without farther hearing them, without giving them an opportunity to substantiate their defence, without opportunity to cross-examine the witness and submitted a report u/s 12(3) of the Karnataka Lokayukta Act, 1984 to the Government for taking urgent and appropriate action having regard to the fact that the charges of corruption levelled against them is substantiated.

7. The petitioners have challenged the said report submitted by the Lokayukta on the following grounds.--

(i) The Lokayukta has no jurisdiction to investigate into any alleged action of the Vice-Chancellor, u/s 12 of the Karnataka Lokayukta Act, 1984 (hereinafter for short referred to as "the Act"). The Karnataka State Universities Act (hereinafter for short referred to as "the Universities Act"), being a special legislation and provides specific provisions for appointment and removal of Vice-Chancellors, the Act is not applicable to the petitioner and the Universities Act overrides the Act.

(ii) In the absence of a notification of the State Government u/s 7 of the Act empowering the Lokayukta to investigate into actions of Vice-Chancellor or officers of the University appointed under the Universities Act, Lokayukta does not have competence, authority or jurisdiction to embark upon any enquiry against the petitioners in the alleged exercise of his powers under the Act.

(iii) Section 9(4) of the Act is highly arbitrary and illegal as the same gives absolute and unguided power to the Lokayukta to proceed to investigate as he may consider appropriate in the facts and circumstances of the case. The said provision does not provide for an opportunity to the aggrieved party to examine and to cross-examine the witnesses and the provision is therefore violative of the principles of natural justice and, therefore, Section 9(4) of the Act is liable to be set aside.

(iv) The Act u/s 7(4) covers situation where the Upalokayukta is unable to discharge his functions owing to absence, illness or any other cause. The post of Upalokayukta has not been filled and is vacant at present. It is only in a case where Upalokayukta is unable to discharge his functions the Lokayukta can discharge the functions of the Upalokayukta u/s 7(4). But, the Lokayukta has no power to discharge functions of the Upalokayukta if the post of Upalokayukta has not been filled.

(v) The report of the Lokayukta has been published in the newspapers and this has affected the reputation of the petitioners which has been earned with hard work.

8. Respondents 1 and 2 have filed their counter. The stand of respondents 1 and 2 are as under.--

(i) If the petitioner was a Government servant and if the Government were to accept the report sent by Lokayukta/Upalokayukta u/s 12(3) of the Karnataka Lokayukta Act, it would have referred the matter to Lokayukta for holding a regular and full fledged enquiry as to his conduct as provided for under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules and for taking disciplinary action against him. But, such enquiry, to be held insofar as the petitioner who is the Vice-Chancellor of a University, had to be done only u/s 14(7) and (8) of the Karnataka State Universities Act, 2000 (Universities Act). In this situation, what has been done in the impugned Investigation Report is, to invite the attention of the Competent Authority (State Government) to Section 14(7) and (8) of the Universities Act and inform it that if the authority wants to remove the Vice-Chancellor for his alleged misconduct, it should proceed as required by Section 14(7) and (8) of the Universities Act. However, having regard to the gravity of misconduct prima facie established against the petitioner, a declaration is made in the impugned report that the petitioner should not be allowed to discharge his functions in the high academic post held by him. This declaration made under the Lokayukta Act, is also subject to the decision to be taken by the Government one way or the other and hence the same is not final.

(ii) Secondly, it was contended that the Government has issued a notification bearing No. DPAR 10 SLU 99, dated 27-7-1999 issued under Clause (iv) of Sub-section (1) of Section 7 of the Karnataka Lokayukta Act, notifying all Group "A" Officers in the pay scale of Rs. 10620-260-10880-320-13440-380-14960 and above, conferring power on the Lokayukta to entertain a complaint u/s 7(1) of the Karnataka Lokayukta Act if the same involves an allegation or grievance. Therefore, it cannot be said that the Lokayukta has no jurisdiction to enquire into the allegations against the petitioners u/s 7(1) of the Act. ,

(iii) When there is no finality attached to the report of the Lokayukta/Upalokayukta, discretionary writ jurisdiction of the Hon'ble High Court cannot be invoked by the persons claiming to be affected by such report for quashing the same or otherwise. Therefore, the petition is liable to be dismissed as premature. What is stated in the investigation report like any other investigation report cannot adversely affect any individual, unless a full fledged enquiry is held against such person giving him the needed opportunity to dispute everything that goes against him.

(iv) Coming to the point of want of jurisdiction on the part of Lokayukta to investigate a complaint involving an allegation against the petitioner, the Vice-Chancellor of the University of Mysore, it cannot be overlooked that the Lokayukta was obligated to investigate such a complaint even in the absence of a notification under Sub-section (4) of Section 7 of the Karnataka Lokayukta Act, since he is functioning as Upalokayukta, as well, who will have jurisdiction to investigate a complaint against all public servants, who are not covered by Sub-

section (1) of Section 7 of the Karnataka Lokayukta Act.

(v) What has come as a surprise is the tact that the petitioner has come up with this writ petition, when the Lokayukta has stated in his report itself, that the Vice-Chancellor cannot be removed from his office unless an enquiry is held as provided u/s 14(7) and (8) of the Karnataka State Universities Act, 2000, by appointing a Judge of the High Court or Supreme Court to enquire into his conduct and decide on his removal or otherwise on the report to be got from such High Court Judge or Supreme Court Judge, as required by law. Such a suggestion is made by the Lokayukta, as the provisions of the Karnataka Lokayukta Act and the Universities Act had to be read together and their provisions are to be harmonized as both of them are State Acts.

(vi) In regard to the averments in the writ petition on merits, the respondent may be given liberty to file an additional statement of objections, in the event of such statement becoming necessary, after this Court has decided on the question of jurisdiction as stated above.

9. Fourth respondent has filed his statement of objections as under.--

(i) The petitioner has not made any grievance of invasion of his fundamental rights under Part III of the Constitution nor has he stated anything as to the infringement of his other statutory rights. The issue of a writ under Article 226 arises only if his fundamental rights or any other statutory rights are infringed. The petitioner has not urged the other purpose referred to in Article 226 for which he has invoked the writ jurisdiction.

(ii) The petitioner in his remarks has admitted the allegation made against him and therefore he cannot make grievance of invasion of his rights and invoke the writ jurisdiction. The petitioner has not at any stage of the investigation questioned, the competency of the Lokayukta to entertain the complaint given by the third and fourth respondents. As a matter of fact, he has submitted to the jurisdiction of the Lokayukta and has submitted his detailed comments as required under the provisions of the Prevention of Corruption Act in the form of objections. He has never made a grievance that he was prejudiced at any stage of the investigation. Hence, he cannot make a grievance against the report which is not final.

(iii) The report of the Lokayukta is not final and it is for the Government-Competent Authority to take action as it deems fit after following the provisions of the Karnataka State Universities Act, 2000. That the threat of any infringement of his right is not clear and present and as such the petitioner cannot invoke the extraordinary writ jurisdiction of this Court. Therefore, the petition is premature and is liable to be dismissed.

10. Sri R.N. Narasimha Murthy, learned Senior Counsel appearing for the petitioner, contended as under.--

(i) Section 14(7) and (8) of the Universities Act provides for the procedure for

removal of Vice-Chancellor. Therefore, the Lokayukta has no jurisdiction to enquire into the allegations of corruption or any other charge against the Vice-Chancellor under the provisions of the Act. The Universities Act being a special enactment which by specific provision provides for appointment and removal of Vice-Chancellor on various grounds, the Act do not apply to Vice-Chancellor. Therefore, the impugned report is one without jurisdiction, as such it is liable to be quashed.

(ii) There is no notification issued by the Government u/s 7 of the Act empowering the Lokayukta to enquire into the allegations against the Vice-Chancellor or other officers of the University and therefore in the absence of such notification the Lokayukta has no competence or jurisdiction to investigate into the complaints against the petitioner.

(iii) The Lokayukta has no power u/s 7(4) of the Act to exercise the powers of the Upalokayukta in the absence of the Upalokayukta being appointed to the said post. Admittedly no Upalokayukta is being appointed u/s 3 of the Act by the Government and therefore in the absence of appointment of a Upalokayukta, the Lokayukta has no jurisdiction to exercise the powers of the Upalokayukta under the Act.

(iv) In the investigation to be held u/s 9 relating to complaints, as no provision is made for an opportunity to the public servant either to cross-examine the witnesses who have deposed against him and no provision is made for adducing evidence to substantiate his defence any report to be submitted by the Lokayukta after such investigation would have serious civil consequence. The effect of such report is that the allegations of corruption, abuse of power, etc., is substantiated thus affecting the reputation of that public servant. The aforesaid procedure prescribed is arbitrary, illegal and has given unguided power to the Lokayukta to choose such procedure as he likes which seriously affects the rights guaranteed to the petitioner under Articles 14 and 21 of the Constitution which includes the right of reputation. Therefore, it has to be declared as ultra vires. In the alternative, he submitted in order to save the legislation it is open to the Court to read into the said section the principles of natural justice and admittedly as principles of natural justice has not been followed before passing the impugned report, the same is liable to be quashed.

11. On behalf of the respondents 1 and 2 learned Advocate General appeared and submitted that the stand of respondents 1 and 2 is clearly set out in the statement of objections filed and beyond what is contended therein they have nothing to add by way of argument at the Bar. Therefore, no arguments were canvassed before me on behalf of respondents 1 and 2.

12. Learned Counsels appearing for respondents 3 and 4 under those circumstances took the burden of defending the action of the Lokayukta by elaborate arguments on the question of jurisdiction of this Court to entertain the writ petition, power of the Lokayukta and the validity of the notification issued by

the Government. Sri Ko. Channabasappa, learned Senior Counsel appearing for the third respondent submitted as under.--

(i) That before a person could maintain a writ petition, it is a settled law that he must have a legal right and only when the said legal right is threatened, to enforce that legal right he can maintain a writ petition. In the instant case, what is impugned in the writ petition is a report submitted by the Lokayukta to the Government to take action. Therefore, by the report, no right of the petitioner is in any way infringed and the writ petition filed challenging the contents of the report is not maintainable.

(ii) All the grounds urged in this writ petition to assail the report, could be urged before the Government and the Government has the power under the Act to accept or not to accept the report of the Lokayukta in which event the petitioner cannot have any grievance whatsoever. On that score also the writ petition is not maintainable.

(iii) The Karnataka State Universities Act is a comprehensive legislation passed with an intention of achieving eminence and excellence in the field of higher education and it does not deal with any penal action to be initiated against the servants of the University and in that view of the matter, it cannot be said that the Universities Act excludes application of Karnataka Lokayukta Act, which is the law which provides for improving the standards of public administration by looking into the complaints against the administrative action including case of corruption, favoritism and official indiscipline in the administration matters. Therefore, in the matter of disciplinary proceedings, the Lokayukta Act prevails over the Karnataka State Universities Act and as such the Lokayukta has the jurisdiction to entertain the complaint against the Vice-Chancellor.

(iv) The Government has issued a notification empowering the Lokayukta to investigate into the complaints against all Group "A" Officers, the Vice-Chancellor who is also a Group "A" Officer comes within the jurisdiction of Section 7(1)(iv) of the Karnataka Lokayukta Act. The Karnataka Civil Services (Conduct) Rules, 1966 defines a Group "A" employee under the State and that all the benefits extended to Group "A" employees under the State is extended to the Vice-Chancellor of the University, he is deemed to be a Group "A" Officer and therefore, the Government by notification in consultation with the Lokayukta has empowered the Lokayukta to investigate the complaint against the Vice-Chancellor. As such, the Lokayukta has jurisdiction to investigate u/s 7(1)(iv) of the Act.

(v) That, the investigation conducted by the Lokayukta is in the nature of a police investigation collecting materials in support of the charges of corruption against the petitioners and at that stage the question of affording an opportunity to the petitioners either to cross-examine the witnesses examined or adduce evidence is unheard of. Investigation conducted by the Lokayukta is not in the nature of a quasi-judicial function but more in the nature of police investigation

and therefore it was submitted that the argument that Section 9(4) of the Act is ultra vires, offends the principles of natural justice and therefore liable to be quashed has no substance.

13. Sri S.G. Bhagwan, learned Counsel appearing for the fourth respondent, supported the argument of Sri Ko. Channabasappa. But, he was fair enough to submit that this Court has already held that the enquiry conducted by the Lokayukta is a quasi-judicial one and he produced the judgment of the learned Single Judge as well as the judgment of the Division Bench to put at rest the controversy,

14. However, his contention was the notification issued by the Government u/s 7(1) of the Act in respect of Group "A" Officers takes within its ambit the petitioners herein and therefore it cannot be said that the Lokayukta had no jurisdiction to enquire into the allegations against the petitioners.

15. Further, he submitted that when the language employed in Section 7(4) of the Act gives an impression that Lokayukta can discharge the functions of Upalokayukta owing to his absence due to illness or any other cause, exercise of power when no Upalokayukta is appointed is not excluded. Having regard to the object with which the Act was promulgated and the object sought to be achieved by the said legislation, the Courts should adopt the rule of purposive construction as opposed to strained construction and hold that the Lokayukta has the power of the Upalokayukta even in cases where Upalokayukta is not appointed. When the petitioners did not raise this objection, acquiesced in the exercise of jurisdiction by Lokayukta and submitted themselves to his jurisdiction, it is too late in the day to contend before this Court that he had no jurisdiction to enquire regarding the allegations made against them.

16. Sri B.V. Acharya, learned Senior Counsel appearing for the petitioner in W.P. No. 24135 of 2003, submitted that the arguments canvassed by Sri R.N. Narasimhamurthy in the other writ petition holds good to his case also and only two differences exist between that case and this writ petition. That is, insofar as the petitioner is concerned, Universities Act does not provide for his removal as in the case of Vice-Chancellor. Secondly, after submitting his comments, this petitioner did not seek for opportunity to adduce the evidence in writing as was in the case of Vice-Chancellor. But, for these two differences the question of law involved for decision in both the writ petitions is one and the same.

17. In view of the aforesaid facts and contentions and the arguments advanced, the following points arise for my consideration.--

(a) Whether the provisions of Sub-sections (7) and (8) of Section 14 of the Karnataka State Universities Act, 2000 exclude the jurisdiction of Lokayukta or Upalokayukta u/s 7 of the Act to investigate the complaint against the Vice-Chancellor of the University?

(b) Whether the Vice-Chancellor and Professor of the University falls within the

category of Group "A" Officers in the pay scale of Rs. 10620-260-10880-320-13440-380-14960 and above, so as to confer jurisdiction on the Lokayukta to investigate into the allegations or grievance against them?

(c) Whether the Lokayukta has jurisdiction to investigate into allegations and grievances which are exclusive to be investigated by Upalokayukta u/s 7(4) of the Act when no Upalokayukta being appointed?

(d) Whether right to reputation is part of right to life guaranteed under Article 21 of the Constitution?

(e) Whether Section 9 of the Act, which provides for the procedure regarding the investigation to be conducted is liable to be struck down as ultra vires and arbitrary and offending Article 14 of the Constitution?

(f) Whether the report submitted by the Lokayukta which is impugned in this writ petition liable to be quashed?

18. Re: Point No, (a).--Whether Lokayukta has jurisdiction over Vice-Chancellor?

In order to appreciate the question whether the Lokayukta has jurisdiction to investigate the complaints against the Vice-Chancellor of a University, it is necessary to have a look at the scheme of the Lokayukta Act as well as the Universities Act. The objects and reasons set out before passing the Karnataka Lokayukta Act discloses that the Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of improving the standards of public administration, by looking into the complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery. Section 2 of the Act is the definition section which defines what an action, allegation means and who is the Competent Authority in relation to a public servant, what is meant by grievance, maladministration and also defines who is a public servant and the meaning of Lokayukta and Upalokayukta. Sections 3 to 6 of the Act deals with appointment of Lokayukta and Upalokayukta, their term of office and other conditions of service and their removal. Sections 7 and 8 deals with matters which may be investigated by them and which does not fall within their jurisdiction. Section 9 deals with provisions relating to complaints and investigations and the procedure for investigation. Sections 10 and 11 deals with their powers. Sections 12 and 13 deals with their reports. Section 14 deals with initiation of prosecution by them. Sections 15 to 23 deals with staff of Lokayukta, secrecy of information, contempt power, protection from legal proceedings, additional functions of Upalokayukta, power to delegate, public servant to submit property statements to the Government and the power to make rules.

19. The Karnataka State Universities Act, 2000 (for short hereinafter referred to as the "Universities Act") was passed replacing the Karnataka State Universities Act, 1976, after repealing the same. The object and reasons of this enactment was to make Higher Education, orientated towards supply of manpower

commensurate with the needs of the Society, improvement of the standards, to become self-reliant, for mobilization of resources, to assess the contribution of the Teaching fraternity, freedom and autonomy conducive for adoption of new methods in teaching, learning and research for achieving eminence and excellence; and also to tune-up the administration. It provides for establishment and incorporation of Universities u/s 3 of the Act. Sections 4 to 10 of the Act deals with powers of the University, with regard to jurisdiction, admission to privileges, etc., teaching and research in the University, discipline, inspection and control, power of the Chancellor to issue directions, power of the Government to annul the orders of the University. Chapter III of the Act which deals with Officers of the University defines who are the officers of the University. It provides for appointment of Chancellor, Pro-Chancellor and the Vice-Chancellor, powers of the Vice-Chancellor, arrangement of work during vacancy in the office of the Vice-Chancellor, provides for Registrar, Registrar (Evaluation); The Finance Officer; Chapter IV deals with authorities of the University, such as the Syndicate, the Academic Council, Finance Committee, Board of Studies, Faculties, the Planning, Monitoring and Evaluation Board, Constitution of the said authorities, their powers, their term of office, etc., Chapter V deals with statutes, ordinances, regulations and rules. Chapter VI deals with finance and accounts, audit of accounts, preparation of final estimates, submission of annual reports and the power of the Government to direct audit. Chapter VII deals with vacancies in the authorities, how the offices become vacant, how the offices have to be filled up. Chapter VIII deals with appointment of teachers and other, employees of the University; Qualifications for such appointments, promotions, appointment of part-time posts, temporary appointment, appointment of non-teaching, ministerial and other staff Chapter IX deals With inter University transfer of employees. Chapter X deals with affiliation of colleges and recognition of institutions; Restriction for appearance in the examinations; Permanent affiliation; withdrawal of affiliation, autonomous college, voluntary closure of college or course; recognition of certain institutions, inspection of colleges, etc., Chapter XI deals with enrollment and degrees; eligibility for admission of students; honorary degrees; withdrawal of degree or diploma. Chapter XII deals with University Review Commission by the Chancellor to review the working of the University and make recommendations. Chapter XIII deals with functions and the responsibilities of the persons involved in the examination work; duties of a teacher; Obligation to perform the examination work; Punishment for abetment of offences and Prohibition of private tuition. Chapter XIV deals with miscellaneous and transitory provisions.

20. The relevant provisions with which we are concerned in this writ petition and which would have a bearing on this case are contained in Sub-sections (7) and (8) of Section 14 of the Universities Act which are extracted hereunder:

"(7) The Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of willful omission or refusal to carry out the provisions of this Act or for abuse of the powers vested in him and on the

advice tendered by the State Government on consideration of the report of an inquiry ordered by it under Sub-section (8).

(8) For the purposes of holding an inquiry under this section the State Government shall appoint a person who is or has been a Judge of the High Court or the Supreme Court. The inquiry authority shall hold the inquiry after giving an opportunity to make representation by the Vice-Chancellor and shall submit a report to the State Government on the action to be taken including penalty if any to be imposed, and the State Government shall on consideration of the report advise the Chancellor. The Chancellor shall act in accordance with such advice, as far as may be within six months".

21. A reading of the aforesaid provision makes it very clear that the power to remove a Vice-Chancellor is vested with the Chancellor. The said power is exercised by the Chancellor on the advice tendered by the State Government on consideration of the report of an inquiry ordered by it under Sub-section (8). It also provides for grounds on which a Vice-Chancellor could be removed from his office namely:

- (a) wilful omission;
- (b) refusal to carry out the provisions of this Act;
- (c) for abuse of the powers vested in him.

22. In the event the State Government decides to hold an enquiry against the Vice-Chancellor, the State Government shall appoint a person who is or has been a Judge of the High Court or Supreme Court. The said enquiring authority shall hold the enquiry after giving an opportunity to make representation by the Vice-Chancellor. Thereafter the enquiring authority has to submit a report to the State Government on the action to be taken including penalty if any to be imposed. It is thereafter, that the State Government on consideration of such report, advises the Chancellor. Then the Chancellor is required to act in accordance with such advice as far as may be within six months.

23. It is evident from the aforesaid provisions that the Vice-Chancellor shall not be removed from his office except in the manner prescribed above. Such a removal is possible only if any one of the grounds set out above are held to be proved by an enquiry authority presided over by a Judge of the High Court or Supreme Court. It is only on consideration of such report submitted by the enquiry authority that the State Government shall advise the Chancellor. Once such a advice is given the Chancellor has no option except to take action in accordance with such advice.

24. Therefore, the question is whether the application of the Act to the Vice-Chancellor is taken away in view of the specific provision in the Universities Act. The said question will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same Legislature. One such principle of statutory interpretation which is applied is contained in the Latin

maxim; *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. In *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, , it has been held as under.--

"51. The rationale of this rule is thus explained by this Court in the *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*,

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions should have effect".

52. In *U.P. State Electricity Board, v. H. S. Jain* , this Court has observed:

"In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament".

53. In *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, , Krishna Iyer, J., has pointed out:

"In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law"".

25. The question regarding the interpretation of the provisions of two enactments passed by the same Legislature, but being found to be inconsistent with each other, in view of one being a special enactment with a non obstante clause giving overriding effect to its provisions, was considered by the Supreme Court in the case of *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, and it was held as under.--

"Each enactment being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case.

It is, therefore, desirable to determine the overriding effect of one or the other of

the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein".

26. In *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, , the Supreme Court observed as under.--

"When two or more laws operate in the same field and each contains a non obstante clause stating that the provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration".

27. The Supreme Court in the case of *D.J. Bahadur*, supra, on the subject has approved the statement of Craie on Statute Law, 1963 Edition which reads as under.--

"48. The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Seward v. Vera Cruz* (1884)10 AC 59, "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so". "There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalalia specialibus non derogant* i.e., general provisions will not abrogate special provisions. "When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms".

28. Again in *D.J. Bahadur*'s case it was held as under.--

"55. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, Universities, research councils and the like, is regulated in the critical area of industrial disputes by the I.D. Act, Parliament

would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance in *Watney Combe Reid and Company v. Bemers* 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518 observed that (The Political Tradition) : The Lord Chancellors, 1912-1940, page 221.

"General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the Legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law" .

29. Keeping in mind the aforesaid statement of law of the Apex Court if we examine the case on hand the following picture will emerge. Firstly, in order to know the intention of the Legislature in this regard we have to bear in mind the provisions contained in the Karnataka State Universities Act, 1976, the provisions contained in the Karnataka Lokayukta Act as well as the provisions of the Karnataka State Universities Act, 2000. The Karnataka State Universities Act, 1976 did provide for an enquiry with reference to the misconduct of the Vice-Chancellor and his removal. It is to be remembered that only against the Vice-Chancellor a specific provision is made in the said enactment, whereas in respect of other officers and servants of the University the said Act did not make any provision at all. After the coming into force of the Lokayukta Act in the year 1984, if it is to be held that the Act also provided for investigation against the Vice-Chancellor, then the provisions contained in the Karnataka State Universities Act, 1976 insofar as enquiry and removal of Vice-Chancellor is concerned is said to have been repealed by implication. But, when the Universities Act was enacted in 2000 by repealing the Karnataka State Universities Act, 1976, if the Legislature thought it fit to incorporate the provisions for holding an enquiry and for removal of the Vice-Chancellor u/s 14(7) of the Act, then the intention of the Legislature becomes apparent. If the Act had application to Vice-Chancellor of a University, the Universities Act would not have contained a specific provision to that effect. If insofar as enquiry and removal of Vice-Chancellor the provisions contained in the Universities Act, is held to be a special law, it clearly overrides the provisions contained in the Act. Because, even in the Universities Act, no provision is made for enquiry or investigation against other officers of the University except the Vice- Chancellor.

30. It is also clear from the provisions of the Act that on the recommendation of the Lokayukta on his submitting a report, the Vice-Chancellor cannot be removed from the office. The Vice-Chancellor can be removed from the office only in the manner prescribed under the Universities Act. In other words the report or recommendation of the Lokayukta can only be in the nature of a request to the Government to initiate enquiry against the Vice-Chancellor under the Universities Act. That by itself is not sufficient for the Lokayukta to hold an investigation.

31. In this regard it is useful to refer to observation of the Supreme Court on the question of jurisdiction in the case of Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, The Court held:

"What is relevant is whether the Court had the power to grant the relief asked for in the application made by the settlor. It cannot be disputed that if it is held that the Court had competence to pronounce on the issue presented for its decision then the fact that it decided that issue illegally or incorrectly is wholly besides the point: *Ittavira Mathai Vs. Varkey Varkey and Another*, .

Before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties; *Hirday Nath Roy v. Ramchandra Barna Sarma* AIR 1921 Cal. 34 (FB) : ILR 48 Cal. 138 (FB)

32. What inevitably follows from the above is that, when specific provision is made in the Universities Act for conducting an enquiry against the Vice-Chancellor and on the basis of the report to be submitted for his removal, the presumption is that a general enactment like the Lokayukta Act is not intended to interfere with the said provisions unless such an intention manifest clearly. Each enactment must be construed in that respect according to its subject-matter and on its own terms. More importantly when the Lokayukta has no power to make recommendation for the removal of Vice-Chancellor, merely because he has some jurisdiction related to the subject-matter it cannot be a ground to hold that the Lokayukta has jurisdiction over the Vice-Chancellor. Before a Court or an authority could be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to investigate but must have also the authority to pass the orders sought for. This jurisdiction must include the power to hear and decide the question at issue.

33. In the event of an enquiry being initiated against the Vice-Chancellor on the basis of the report submitted by the Lokayukta and if after enquiry the Vice-Chancellor is exonerated of the charges levelled against him, the report of the Lokayukta loses its importance or significance. It is the report of the enquiry conducted under the Universities Act which would prevail over the report of the Lokayukta. More importantly the damage done to the Vice-Chancellor by the report of the Lokayukta would become irreparable in the sense that even if he is exonerated in the enquiry conducted under the Universities Act, the damage done to his reputation cannot be compensated in any manner whatsoever.

34. Therefore, seen from the above angle when the Lokayukta did not have the power or jurisdiction to take any action against the Vice-Chancellor in view of specific provision being made in the Universities Act, the Lokayukta ought to

have refrained from proceeding further for want of jurisdiction. The defect of want of jurisdiction cannot be overcome merely because Vice-Chancellor and the Professor sent their replies to the complaint. Acquiescence or consent would not confer jurisdiction. Under these circumstances, having regard to the scope of the Universities Act and the object behind the Lokayukta Act, it is clear that the Lokayukta has no jurisdiction to investigate a complaint against the Vice-Chancellor under the provisions of the Act, Such a jurisdiction is clearly barred in view of Section 14 of the Universities Act.

35. Re: Point No. (b).--"Whether the Group "A" Officers include a Vice-Chancellor and Professor of a University?".

The specific stand taken by respondents 1 and 2 in the statement of objections is the Lokayukta has the jurisdiction to investigate the complaint against the Vice-Chancellor as well as the Professor in the University because the State Government in consultation with the Lokayukta has issued a notification bearing No. DPAR 10 SLU 99, dated 27-7-1999 notifying all Group "A" Officers in the pay scale of Rs. 10620-260-10880-320-13440-380-14960 has conferred such power under Clause (iv) of Sub-section (1) of Section 7 of the Act on Lokayukta, In order to appreciate this contention it is necessary to look into and the terms of the notification:

NOTIFICATION

In exercise of the powers conferred by item (iv) of Sub-section (1) of Section 7 of the Karnataka Lokayukta Act, 1984 (Karnataka Act 4 of 1985) and in consultation with the Karnataka Lokayukta and in sup recession of Notification No. DPAR 70 SLU 98, dated 18-11-1996, published in the Karnataka Gazette, dated 26th December, 1996, the Government of Karnataka hereby notify the following class of Public Servants for the purpose of said section, namely.--

"All Group "A" officers in the pay scale of Rs. 10620-260-10880-320-13440-380-14960 and above".

36. A reading of Section 7(1)(iv) makes it clear that if the Lokayukta has to entertain and investigate a complaint against a public servant other than a Chief Minister, a Minister or a Secretary, or a member of the State Legislature he has no such power unless it is conferred on him by a notification by the State Government in consultation with him. It is relevant to notice that the said notification can be issued in respect of a public servant or a class of public servants. In this regard if we look into the aforesaid notification, the said notification empowers Group "A" Officers as a class in the pay scale mentioned therein and above to fall within the jurisdiction of Lokayukta. The question is whether the Vice-Chancellor of a University or a Professor of a University is a Group "A" Officer. The Lokayukta Act does not define who constitute Group "A" Officers. To understand this phrase we have to look into the K.C.S. (CCA) Rules. Rule 2(g) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 defines "service" means a civil service of the State. Rule 2(b) of the

Karnataka Civil Services (Conduct) Rules, 1966 defines "Government servant" means any person appointed to any Civil Service post in connection with the affairs of the State of Karnataka. Explanation to the said definition makes it clear a Government servant whose services are placed at the disposal of a Company, Corporation, Organisation or a local authority by the Government shall for the purpose of these Rules be deemed to be a Government servant, serving under the Government notwithstanding that his salary is drawn from sources other than from the Consolidated fund of the State, The note to Rule 5 of the K.C.S. (CCA) Rules makes it clear that all references to State Civil Services (Class I, Class II, Class III and Class IV) in these rules and in all other rules, orders, schedules, notifications, regulations or instructions in force, immediately before the commencement of these Rules, shall be construed as reference to the State Civil Services (Group "A", Group "B", Group "C" and Group "D"), respectively and any reference to "Class or Classes" therein in this context shall be construed as reference to "Group or Groups", as the case may be.

37. Rule 6 which deals with Constitution of State Civil Services states that the State Civil Services (Groups A, B, C and D) shall consist of the services and posts specified in Schedules I, II and III. Schedule I deals with State Civil Services (Classes I and II) and it enumerates the category of services. Curiously, Karnataka State Universities Act is not included in the said schedule.

38. Statutes Part "A" framed and notified under the Karnataka State Universities Act, 1976 which is applicable to the Karnataka State Universities Act, 2000 also, on which reliance was placed provides at 17.3 adaptation of Government order relating to the service benefit. It reads as under.--

"In the absence of Rules regarding the service conditions of the University applicable to University Employees, the provisions of Karnataka Civil Services Rules and Government Orders, amendments and clarifications issued from time to time shall ordinarily be applicable till specific statutes are framed. Provided in case of doubt or difficulty in any matter of following the Karnataka Civil Services Rules, the Vice-Chancellor may adapt the Rules to such an extent as may be necessary depending upon the merits of the case and where, in the opinion of the Vice-Chancellor, reference to the Syndicate is found necessary, Syndicate may decide the matter suitably and provided further in all cases where financial implications are involved so as to necessitate provision of additional funds, no such benefit or concession will be extended to the University Employees without obtaining prior consent of Government".

39. Moreover, Schedule I of the K.C.S. (CCA) Rules which defines the State Civil Services (Classes I and II) excludes persons appointed under the Karnataka State Universities Act, 1976 or 2000. Vice-Chancellor of a University and a Professor of a University cannot be equated to a Group "A" Officer of the State Civil Services.

40. A reading of the aforesaid provision makes it very clear that neither the Vice-

Chancellor of a University nor a Professor in the University would be a Group "A" Officer. Realising this futility, it was contended that as all the perks of a Group "A" Officer is extended to a Vice-Chancellor and Professor of a University, in law they are deemed to be Group "A" Officers. It is very difficult to accept this argument. It is not the extension of the benefit of a particular category of employees to other category of employees which makes those persons who had the benefit as belonging to the particular category. They are all selected, appointed and work under specific statutes. Merely because certain perks and monetary benefits that are not specifically provided in the Act under which they were appointed, are extended the benefit which are granted to Government employees, that would not render them employees belonging to that cadre. Therefore, it is not possible to accept the contention that merely because either the salary or the perks extended to the Vice-Chancellor and the Professor of the University is same as that of Group "A" Officers in the State they are also be treated as Group "A" Officers for the purpose of the Act.

41. As the section itself indicates the Vice-Chancellor of different Universities by itself form a class. Similarly, the Professors working in various Universities form a class by themselves. If the intention of the Legislature was to confer power on the Lokayukta to investigate complaints against these categories of public servants then they ought to have issued a notification in respect of Vice-Chancellors of all Universities within the State of Karnataka and another notification for the Professors working in any of the University in Karnataka or a notification in respect of that particular public servant. In the absence of any such notification in view of my finding that neither the Vice-Chancellor nor the Professor of a University is a Group "A" Officer, the aforesaid notification does not confer power on the Lokayukta either to entertain or investigate a complaint against the petitioners. On that ground also the Lokayukta has no jurisdiction to investigate against these petitioners and consequently the report submitted by him is one without jurisdiction, void ab initio and a nullity.

42. Re: Point No. (c).--When no Upalokayukta is appointed, whether the Lokayukta can discharge his functions?

Section 7 is the heart of the Act which empowers Lokayukta and Upalokayukta to investigate any action. It reads as under.--

"7. Matters which may be investigated by the Lokayukta and an Upalokayukta.--
(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by or with the general or specific approval of.--

(i) the Chief Minister;

(ii) a Minister or a Secretary;

(ii) a member of the State Legislature; or

(iv) any other public servant being a public servant of a class notified by the State Government in consultation with the Lokayukta in this behalf;

in any case where a complaint involving a grievance or an allegation is made in respect of such action.

(2) Subject to the provisions of the Act, a Upalokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant referred to in Sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upalokayukta, the subject of a grievance or an allegation.

(2-A) Notwithstanding anything contained in Sub-sections (1) and (2) the Lokayukta or a Upalokayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the State Government.

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

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

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

43. Section 7 of the Act provides for matters which may be investigated by the Lokayukta or by the Upalokayukta. Sub-section (1) of Section 7 of the Act makes it clear that the Lokayukta has been empowered to investigate a complaint involving a grievance or an allegation made in respect of any action which is taken by or with the general or specific approval of the Chief Minister, a Minister or a Secretary, a member of the State Legislature or any other public servant being a public servant of a class notified by the State Government in consultation with the Lokayukta in this behalf. Therefore, it is clear that the Lokayukta's power to investigate complaints is confined to against the persons mentioned in Sub-section (1) of Section 7 only. Similarly, Sub-section (2) of Section 7 empowers the Upalokayukta subject to the provisions of the Act to investigate any complaint involving a grievance or an allegation made in respect of any action by public servants other than the public servants mentioned in Clause (i). Therefore, the Legislature in its wisdom has clearly defined the jurisdiction of the Lokayukta and Upalokayukta in respect of investigations to be carried out by them and the public servants who fall within their jurisdiction. Statutorily, a dichotomy has been inscribed in the Act. However, subsequently by an amendment by insertion of Section 2-A notwithstanding anything contained in

Sub-sections (1) and (2), the Lokayukta and Upalokayukata are empowered to investigate any action taken by or with general or specific approval of a public servant, if it is referred to him by the State. Therefore, it is clear that statutorily the Lokayukta and Upalokayukta are empowered to investigate complaints against public servants as provided respectively under Sub-sections (1) and (2) which are mutually exclusive. But, they are empowered to investigate the complaints against public servants which do not fall within their purview if such a complaint is referred to them by the State Government. Sub-section (3) of Section 7 deals with the power of the Lokayukta to assign complaints to be investigated by the Lokayukta when there are two or more Upalokayukta. In other words when two or more Upalokayukta are functioning under the Act, if a complaint is received which only the Upalokayukta is empowered to investigate and when there are two or more Upalokayukta functioning, the distribution of the complaint for the purpose of investigation is vested with the Lokayukta who by a general or special order assign to each of the Upalokayuktas the matter to be investigated by them under the Act.

44. The Legislature has also taken note of the fact that after appointment of a Upalokayukta under the Act if the said Upalokayukta who is empowered to investigate a complaint which falls within his jurisdiction, is unable to discharge his functions temporarily how those complaints have to be investigated. Sub-section (4) of Section 7 is inserted to meet such a contingency. If a Upalokayukta appointed u/s 3 of the Act is unable to discharge his functions owing to absence, illness or any other cause, his function may be discharged by the other Upalokayukta, if any and if there is no other Upalokayukta, by the Lokayukta. Having regard to the language employed in this subsection it is in the nature of a temporary arrangement, an arrangement during interregnum for a short period. Proviso to Section 7 referring to Sub-section (3) provides that no investigation made by the Upalokayukta shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order. In other words by a general or special order if one of the Upalokayukta investigates a complaint which falls within his jurisdiction, such investigation shall not be questioned only on the ground that there is no general or special order assigning the said complaint to the Upalokayukta by the Lokayukta.

45. It follows from this that the Legislature had made its intentions very clear in categorical terms regarding the jurisdiction of Lokayukta and Upalokayukta and the public servants against whom they can investigate the complaints. Having regard to the intention and object behind the piece of legislation, namely, that if any complaint is made against high dignitaries such as Chief Ministers, Ministers and Secretaries and elected representatives, i.e., members of the Legislature and highly placed public servants who head the administration of the State, it was found necessary that the same has to be investigated by a person who is higher in rank to all those persons. Therefore, the Legislature in its wisdom has chosen a person who has held the post of a Judge of a Supreme Court or that of the Chief Justice of the High Court as the person to be appointed as Lokayukta. In

other words, the Lokayukta is called upon only to investigate the complaints against high dignitaries as enumerated in Sub-section (1) of Section 7. Insofar as the public servants who fall below the category of the persons mentioned in Sub-section (1) of Section 7, the Legislature thought that a person who hold the office of a Judge of a High Court should be sufficient, Therefore, insofar as all public servants other than the class mentioned in Sub-section (1) of Section 7 are concerned, Upalokayukta was conferred the power to investigate the complaints against them. In other words, the public servants against whom complaints could be investigated are clearly defined under the Act. Only in exceptional cases Lokayukta and Upalokayukta are empowered to investigate the complaint against a public servant who would not fall within the jurisdiction as contemplated under Sub-sections (1) and (2), if such a complaint is referred to them by the State Government. Therefore, referring of a complaint by the State Government is a condition precedent for the Lokayukta or Upalokayukta to investigate a complaint against a public servant who does not fall within their jurisdiction. Yet another exception to this general rule is to be found in Sub-section (4). If a Upalokayukta appointed u/s 3 is unable to discharge his functions owing to absence, illness or any other cause, his function may be discharged by the other Upalokayukta, if any and if there is no other Upalokayukta, by the Lokayukta. Therefore, u/s 7 only two exceptions are carved out to the jurisdiction of the Lokayukta and Upalokayukta to investigate a complaint against public servants [who fall within their jurisdiction]. Beyond this statutorily recognized exceptions, neither the Lokayukta nor the Upalokayukta can enquire into the complaints against a public servant who does not fall within their jurisdiction.

46. The key words which is required to be understood in Sub-section (4) of Section 7 of the Act, for interpreting the said provision are, "unable to discharge his functions owing to absence, illness or any other cause". Sub-section (4) presupposes the existence of a Upalokayukta, for its application. Section 2(14) of the Act defines Upalokayukta, which means a person appointed as Upalokayukta u/s 3. Section 3 in turn provides for appointment of Upalokayukta. It states that for the purpose of conducting investigations and enquiries in accordance with the provisions of the Act, the Governor shall appoint one or more persons to be known as the Upalokayukta or Upalokayuktas. A person to be appointed as a Upalokayukta shall be a person who has held the office of a Judge of a High Court. A person appointed as a Upalokayukta shall, before entering upon his office, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation that he will bear true faith and allegiance to the Constitution of India as by law established and perform the duties.

47. When a Upalokayukta is so appointed and takes oath to perform his duties, if he is unable to discharge his functions owing to absence, illness or any other cause, till he resumes his functions, during the said interregnum, his function may be discharged by the other Upalokayukta, if any and if there is no other

Upalokayukta, by the Lokayukta. This is the meaning one could gather from a reading of the plain language used in the section. There is no ambiguity. Therefore, there is no scope for any interpretation than what the plain language of the Act permits.

48. However, it was contended that this provision applies to a case where no Upalokayukta is appointed also. The said contention has to be examined bearing in mind the settled legal principles regarding interpretation of statutes. The golden rule is that the words of statute must prima facie be given their ordinary meaning. The natural and ordinary meaning of words should not be departed from, unless it can be shown that the legal context in which the words are used requires a different meaning, the statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make consistent enactment of the whole statute. Where the language of the Act is clear and explicit it must be given effect to. Whatever may be the consequence, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning the task of interpretation could be hardly said to arise.

49. In construing the meaning of the word "owing to absence", it is to be remembered, that many words of common use in English language have more than one meaning. It is not infrequent that a word having one meaning in its ordinary employment has a materially different or modified meaning in its legal use. The word "absence" is a fair example. It is held that one may be absent, though actually present, as where a Judge though on the Bench, does not sit in the cause. It has also been held to mean not present. It has been held, too, as not meaning out of the State only. "Absence" and "disability" are words which, from their use in the statutes may have two different meanings. The Legislature has not defined the sense in which either of them is to be construed. "Disability" is a word of scarcely less ambiguity, as generally used in common parlance, than "absence". It is a difficult task, if not impossible one, to lay down a rule that could apply to all cases defining the meaning of "absence". The word "absence" used in the statute providing that, on the absence of a public servant, constitutional, functionary, Judge or a elected representative, another functionary shall act in their place means not merely physical absence of the said functionary from the city, but such an absence as renders him incapable for the time being of performing the act that may be in question, which act must present such a necessity for immediate attention as to require it to be executed.

50. In re An Act concerning Alcoholic Beverages 31 A 2d 837: 130 NJI 123, it was held, that the word "absence" as used in constitutional provision that in case of Governor's absence from State, the powers and duties of the office shall devolve on the President of the Senate until the Governor shall return does not mean the absence from the State by the Governor for any purpose or for any period of time however short, but means an absence such as will injuriously affect the public interest as distinguished from a mere temporary absence.

51. In *Nolan v. Representative Council of City of New Port* 57 A 2d 730, it was held that the Municipal Charter provision that Chairman of Board of aldermen shall perform duties of mayor in case of "absence" or inability of mayor to act did not authorise Chairman of Board to perform mayor's duties in case of a vacancy in that office created by mayor's death, since quoted word connotes that a person is in being but not present in some particular place and not that he has died.

52. Similarly, the word owing to "illness" clearly means that the person appointed as a Upalokayukta owing to illness is unable to discharge his functions, and till he recovers from illness and is able to resume his work, discharge his functions, during that temporary period the Lokayukta may discharge his functions in public interest. Owing to any other cause, the person appointed as a Upalokayukta is unable to discharge his functions, that is yet another circumstance when Lokayukta can step in during the interregnum and discharge the functions of a Upalokayukta.

53. Therefore, it is abundantly clear from the above that for the Lokayukta to discharge the functions of a Upalokayukta, the existence of the following conditions are prerequisites. They are.--

- (a) Appointment of a person to be known as the Upalokayukta; and
- (b) Person so appointed is unable to discharge his functions owing to.--
 - (i) absence;
 - (ii) illness; or
 - (iii) any other cause.

When no Upalokayukta is appointed and is not discharging his functions, Sub-section (4) is not attracted at all. It is attracted to a case where Upalokayukta is in being but not able to discharge his functions for the aforesaid reasons. In other words Upalokayukta though actually present, is unable to discharge his functions for any of the aforesaid reasons. When the Upalokayukta is not appointed at all, or if appointed, dies, or he is removed from his office under the Act, then the said sub-section has no application at all. In any of those contingencies the Lokayukta does not get jurisdiction to discharge the functions of a Upalokayukta at all. In spite of it, if he exercises jurisdiction, it would be a case of exercise of jurisdiction which is not vested him in law and therefore void ab initio, non est and a nullity. Any other interpretation would be contrary to the intention of the Legislature.

54. The learned Counsel appearing for the respondent contended that in order to give effect to the intention of the Legislature even if there is any deficiency in the section as aforesaid, the Court has to adopt what is known as a purposive construction and not strained construction of the statute to give effect to the object with which the legislation was brought. In support, of his contention he

relied on a judgment of the Supreme Court in the case of Directorate of Enforcement Vs. Deepak Mahajan and another, , wherein it has been held as under.--

"32. True, normally Courts should be slow to pronounce the Legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the Legislature inane. In cases of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for interfering that the Legislature intended to exclude jurisdiction of the Courts from authorising the detention of an arrestee whose arrest was effected on the ground that there is reason to believe that the said person has been guilty of an offence punishable under the provisions of FERA or the Customs Act which kind of offences seriously create a dent on the economy of the nation and lead to hazardous consequences. Authorities, a few of which we have referred to above, show that in given circumstances, it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

33. In the light of the above exposition of the principle of law, we have no reason to believe and in fact do not believe that the provisions of the FERA and Customs Act were passed for any other purpose rather than their ostensible purposes, vital among which being the economic development of the country and augmentation of revenue".

55. He also relied on the judgment of this Court in Sudarshan Kumar Babu Vallurur Vs. Visveswaraiah Technological University and Another, , wherein it has been held as under.--

"These are beneficial legislations regulating the conduct of examination, declaration of results and benefits accruing to the students. There is no logic in denying a class to a meritorious student who has secured the requisite percentage of marks. For the reasons beyond the control of the student, if the student is prevented from taking the first examination and when a specific provision is made to meet such contingencies by enabling the student to take the next examination, it cannot be said that the marks obtained in the next examination which would be the first attempt cannot be taken into consideration in deciding the declaration of class. ... On a reading of the said regulations, if two views are possible, that view which tend to give benefit to the student is to be preferred as the regulations, are not penal but beneficial".

56. In the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , it has been held as under.--

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and, by reference to what preceded, the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa and we find no reason to depart from the Court's construction".

57. Per contra, learned Counsel appearing for the petitioner submitted that though the statement of objects and reasons are to be looked into to ascertain the intention of the Legislature in passing a particular legislation but where the language of a statute is clear and the same cannot be ignored, the statement of objects and reasons, cannot override the intention of the Legislature as set out in the section. In this connection he relied on a judgment of the Supreme Court in the case of Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra, , wherein it is held as under.--

"The Statement of Objects and Reasons is not otherwise admissible as an aid to the construction of a statute but the same simply assists as to the necessity of introduction of such a law. While construing the clear terms of an Act the Court is not required to ascertain the object of the enactment. However, though, in case of an urgent need of the situation by reason wherefor the intent of the Legislature is to be assessed, the Statements and Objects can be looked into for the limited purpose of ascertaining the conditions prevailing at the time which prompted or actuated the proposer of the Bill to introduce the same and the extent of remedying the existing evil of the society".

58. Therefore, the question that arise for consideration is, what is purposive construction. When the material words are capable of hearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general" is the rule laid down in Heydon's case (1584)3 Co. Rep. 7:76 ER 637, which has now attained the status of a golden rule. It is also known

as mischief rule. It enables consideration of four matters in construing an Act:

- (i) What was the law before making the Act;
- (ii) What was the mischief or defect for which the law did not provide;
- (iii) What is the remedy that the Act has provided; (iv) What is the reason for the remedy.

The said rule then directs that the Courts must adopt that construction which shall suppress the mischief and advance the remedy. Then the office of all the Judges is always to make such construction which shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*, and to add force and life to the cure, and remedy, according to the true intent of the makers of the Act, *pro bono publico*. The plain meaning is that a Court while interpreting a statute should keep the purpose of the enactment in mind and every effort should be made to give effect to the said purpose while interpreting the provisions of the said statute so as to remedy the mischief or defect for which the law did not provide. Therefore, the interpretation must depend on the text and the context. They are the bases of interpretation. The text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. A bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the Legislature insane. It is permissible for the Courts to have functional approaches and look into the legislative intention and sometimes may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

59. The object of all interpretation is to discover the intention of Legislature, but the intention of Legislature must be deduced from the language used and it should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Not only the intention of the Legislature has to be gathered from the language used in the statute, thus paying attention to what has been said, as also to what has not been said. Under the guise of purposive construction of a statute the Court cannot add words or read words into the section which the Legislature has deliberately omitted to add. Then it would be case of the Court legislating and not interpreting, which is its role.

60. Keeping these principles in mind let us apply the law to the facts of this case.

The Act is enacted for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery. The complaint is against a public servant, Having regard to the number of public servants, the Legislature thought of classifying these public servants into two categories. The first category comprises high dignitaries who head the administration in the State, namely the Chief Minister, Ministers, Secretaries, Member of the Legislature and any other public servant notified by the State Government. Having regard to the position they hold and the power they exercise, the Legislature in its wisdom, thought any investigation against them should be by a person who held highest judicial post in the High Court or Supreme Court. Therefore, the Lokayukta who is appointed under the Act who is empowered to investigate complaints against these persons should be a retired Chief Justice of High Court or Judge of the Supreme Court. Regarding the other categories of public servants who are in the lower rung of administration, Upalokayukta who is a retired High Court Judge was empowered to investigate. Therefore, the intention of the Legislature was to clearly create a dichotomy regarding the public servants and the jurisdiction to investigate the complaints against them. This is what is expressly provided in Section 7(1) and (2) of the Act. There is no ambiguity. An exception is carved out to this general rule in Sub-section (3), by investigation of complaints by Lokayukta and Upalokayukta, which do not fall within their jurisdiction if the said complaint is referred to them by the State Government. Here also the language is clear, and there is no ambiguity. In the absence of such a reference by the State Government, no such jurisdiction is conferred. Yet another exception to the general rule is if a Upalokayukta is appointed, and he is unable to discharge his functions owing to absence, illness or any other cause, Lokayukta may discharge his functions. Here also the intention of the Legislature is clear and no ambiguity.

61. If the intention of the Legislature was that Lokayukta should discharge the functions of Upalokayukta even when the Upalokayukta is not appointed, the Legislature would have added the words "non-appointment", in addition to the words "absence, illness or any other reason". If the Legislature did not choose to confer such powers on the Lokayukta by deliberately not using the word, the legislative intent should be respected and it should not be negated by reading those words into the section under the guise of purposive construction. Probably, the Legislature did not intend that way because, they were not contemplating a case of non-appointment. When the Act provides for appointment of Lokayukta and casts a statutory obligation to appoint a Lokayukta, they could not have provided as to what should happen when Upalokayukta is not appointed. It would have run counter to the object of enacting the Act. If the State has no intention of appointing a Lokayukta and Upalokayukta, then the Act becomes a dead letter. There is no dearth for competent persons to be appointed as Upalokayukta in the State. The term of office is stipulated. When Upalokayukta lays down the office, is clear. All that the Government of the day has to do is to choose one among the

retired Judge of High Court and appoint him as Upalokayukta, after necessary consultation with the constitutional authority. This process can begin well in advance, as the date of retirement of the incumbent in office is well-known.

62. If the Government of the day by its inaction does not appoint a Upalokayukta in time and commits breach of its statutory obligations, then the statutory provisions cannot be interpreted to support such inaction under the guise of purposive interpretation. There is no defect in the legislation. The law specifically provides for remedying the mischief. The specific mandatory provisions are ignored by the authorities. There is no question of two or more constructions being placed on the provisions. The provisions are rendered nugatory by inaction. As demonstrated above, if such an interpretation is placed, it runs counter to the intention of the Legislature and defeats the purpose of the Act, than aiding the purpose. It amounts to condoning the exercise of powers which are not vested in the authority which has exercised it, That would signal the end of the rule of law.

63. What is shocking to know here is the complacency on the part of the State in the matter of appointment of Upalokayukta. The previous Upalokayukta laid down his office on 1-4-2002. Nearly two years have elapsed. The State has not thought it fit to appoint a person as Upalokayukta to perform the functions under the Act. In fact, the Act provides for appointment of more than one. Upalokayukta. This conduct of the Government is totally inconsistent with the object with which this Act was enacted. The aim of the Act is to fight corruption in public offices and to take action against public servants who indulge in corruption. The language used in Section 3 of the Act makes it mandatory for the appointment of Upalokayukta. No discretion is left in this regard. It clearly mandates that for the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upalokayukta or Upalokayuktas. Therefore, no discretion is given to the Government of the day in the matter of appointment of Lokayukta or Upalokayukta which is a legislative mandate. The Supreme Court dealing with the cascading effect of corruption has this to say in the case of High Court of Judicature at Bombay v. Shiris Kumar Rang Rao Patil and Anr. (sic)--

"Corruption, appears to have spread everywhere. No facet or public function has been left unaffected by the putrefied stink of corruption. Corruptionary name is depraved and degraded conduct. Dishonesty is thine true colour, thine corroding effect is deep and pervasive, spreads like lymph nodes, cancerous cells in the human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and ramifications in the society as a whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root corruption is nepotism and apathy in control on narrow considerations, which often extend passive protection to the corrupt officers. The source and succor for

acceptability of the judgment to be correct, is upright conduct, absolute integrity and dispassionate adjudication as hallmarks".

64. In another judgment their Lordships of the Supreme Court in State of Madhya Pradesh v. Ram Singh (Sic) have observed as follows.--

"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to mailings (sic) the polity of the country leading to disastrous consequence. It is termed as plague, which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable, it has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. If affects the economy and destroys the cultural heritage, unless nipped in the bud at the earliest, it is likely to cause turbulence - shaking of the socioeconomic-political system in an otherwise healthy, wealthy, effective and vibrating society".

65. Any Government which has a commitment to eradicate corruption in public life cannot be so insensitive in not appointing a Lokayukta or Upalokayukta which is a statutory obligation cast upon them. In a democracy when the Government does not perform its statutory obligations and when it concerns performing a public duty, a responsible opposition also owes an obligation to the public to highlight these matters thus compelling the Government to perform its duty. It is an unfortunate thing that such sad state of affairs is allowed to continue for long. The question why no Upalokayukta is not appointed so long, has remained unanswered to this day. If a declaration is made as contemplated u/s 13 of the Act by the Lokayukta insofar as the Chief Minister, Ministers and a member of the State Legislature all that is required is acceptance of such report. There is no further action to be taken on that report if the report is accepted. Consequently the aforesaid public servants namely, the Chief Minister, Ministers or a member of a State Legislature or any of the elected or appointed public servant present holding the public office shall be deemed to have vacated their office. Only in cases of public servants who are strictly speaking Government servants or the servants of the local authorities even after the acceptance of the report further action is required in accordance with law. It is the exclusive jurisdiction of the Lokayukta to investigate complaints against the Chief Minister, Ministers and the members of the State Legislature. By not appointing a Upalokayukta, the State has allowed the Lokayukta to exercise the power of Upalokayukta and Lokayukta is kept engaged in investigating complaints against public servants who fall within the exclusive jurisdiction of Upalokayukta, thus preventing the Lokayukta from discharging his statutory duties effectively. In this connection the observation of the Supreme Court while dealing with Andhra Pradesh Lokayukta and Upalokayukta Act is worth recalling.--

"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 Upalokayukta 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 the public bodies remain 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 direction. The decisions of Lokayukta and Upalokayukta, 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 effort put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned.

When we turn to Section 12 of Sub-section (3) of the Act, we find that once the report is forwarded by the Lokayukta or Upalokayukta recommending the imposition of penalty or removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such public servant from this office and for making him ineligible/or being elected to any office etc. Even if it may be lawful for the Government will be bound to comply with the recommendation of the Lokayukta or Upalokayukta. 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 Upalokayukta 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".

66. Therefore, it is clear that the provisions as they exist in the Act are totally inadequate to fight corruption in the society and in particular among the public servants. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage, peace and prosperity in the society and it leads to jealousy and violence in society. It is likely to cause turbulence, shaking of the socio-economic and political system in an otherwise healthy, wealthy, effective and vibrating society. Any amount of sacrifice would not be enough sacrifice to fight the cancerous malady affecting the society. When this disease is to be fought in a legal manner in a civilized society, the law must meet that challenges. The persons against whom the said fight is to be launched are generally powerful, resourceful, well- entrenched in the society and will be holding high positions in the Government. Therefore, it is the responsibility of the law makers

namely, the legislators to pass appropriate legislation to fight this malice. Once a high dignitary is chosen as the Lokayukta or Upalokayukta and when they submit a report after a thorough investigation, the question of the Government of the day sitting in judgment over the said report or initiating further proceedings according to the departmental rules governing the public servant to proceed against him do not serve any purpose. Considerable time and expenses will be spent only in these enquiries and investigations. There is the urgent need to properly amend the existing law so that once a report of the Lokayukta or Upalokayukta is submitted to the Government, the Government cannot sit in judgment over the said report. On the contrary it has to accept the report and take appropriate penal action against the persons found guilty, such as removal of public servant from office, confiscation of ill-gotten wealth, debarring them from holding any public office and debarring them from contesting elections and stripping them of all civil rights and in a given case putting those persons behind the bars. Otherwise these authorities constituted under the Act will be reduced to mere paper tigers and their reports shelved by the Government and the disciplinary authorities. It has the effect of taking away the power of such authorities constituted under the Act and all this exercise would become a farce. In the event of the elected representatives not taking appropriate steps to suitably amend the law there is nothing that the Courts can do. The Courts cannot encroach upon the legislative function of the Legislature. Therefore, the only way out appears to be a public debate on these issues and an enlightened public opinion which could compel these elected representatives to pass the required legislation in this regard. The elected representatives, to whichever party they belong to, in this great democracy of our's, if they are interested in the country, the society at large, and in the well-being of the people in their heart, they should come out of their narrow party politics and personal interests and demonstrate their bona fides by passing suitable legislation giving a finality to the report to be submitted by the Lokayukta and Upalokayukta and for implementation of the said report by appropriate penal action. Otherwise it would be mockery of democracy and the rule of law. It has now become a practice for persons who are found guilty by Competent Courts after elaborate procedure, and persons who are put behind jail, going before the public and contesting the elections and if they were to win, they contend that the "people's Court" has given its judgment and thus all the judgments rendered by Law Courts and Commissions are rendered "ineffective" and they feel that they are completely exonerated of all the charges levelled against them. If this dangerous trend is not changed, what is in danger will be democracy in this country, the rule of law, and the cherished ideals of our founding fathers engrafted in our Constitution.

67. Re: Point No. (d).--Whether right to reputation is part of right to life?

It was contended that all that the Lokayukta has done insofar as the Vice-Chancellor is concerned is to hold an investigation, collect the material and as he is satisfied prima facie that the allegations made against him are true, the said report is sent to the Government to take further action in the matter, namely to

initiate an enquiry as contemplated u/s 14(7) of the Universities Act. Only in the said enquiry if the charges levelled against the Vice-Chancellor are proved, it is only thereafter the question of removal of Vice-Chancellor would arise. It is always open to the Vice-Chancellor to contend before the Government, before any such enquiry is initiated, that there is no substance in the report of the Lokayukta and if he is able to convince the Government in this regard, then the enquiry would not be initiated. Therefore, it cannot be said that the Vice-Chancellor is in any way aggrieved by this report of the Lokayukta and that any of his rights have been affected by such a report and, therefore, the writ petition itself is not maintainable as it is well-settled that unless a constitutional right is affected, or any other legal right is affected, no person can approach this Court under Article 226 of the Constitution of India and no writs could be issued.

68. The learned Counsel for the third respondent also contended that there is no specific plea in the writ petitions complaining that their right to reputation is infringed by the impugned act of the Lokayukta and, therefore, the Court cannot decide the said issue for want of proper pleading and in support of his contention he relied on few judgments of the Supreme Court.

69. Per contra, learned Counsel appearing for the petitioner contends that it is not the fear of removal from office about which the petitioners are worried, it is the effect, this report of the Lokayukta has, insofar as their reputation is concerned. Without a proper enquiry, without affording an opportunity to substantiate their contention, without an opportunity to cross-examine the witnesses, the Lokayukta has come to the conclusion that the allegations made against them have been substantiated and the said report is released to the press and it has been given wide publicity, thus seriously affecting the reputation of the petitioners. Thus, the petitioner's fundamental right guaranteed to them under Article 21 of the Constitution has been seriously affected. The writ petition read as a whole discloses the plea that their right to reputation is affected by the report.

70. The petitioners in their petitions have elaborately set out the reputation they have acquired in their respective fields working over years with reference to their achievements in life. The writ petitions read as a whole leaves no one in doubt that what the petitioners are complaining, is that the reputation which is acquired by them over the years is destroyed by this one-sided report of the Lokayukta. In fact, the parties understood the Us between them as pleaded in their respective pleadings and arguments were addressed at length on this issue and no one is taken by surprise about the aforesaid contention. It is that which necessitated the Court to go into the said question. A constitutional right cannot be defeated on technical grounds. Even otherwise necessary plea exists. Under these circumstances, I do not find any substance in this contention of the learned Counsel for the third respondent.

71. Therefore, the question that arises for consideration is firstly whether the reputation of a person falls within the meaning of right to life as defined under

Article 21 of the Constitution. In order to answer this question, it is necessary to know what is "reputation". The meaning of the word "reputation" given in several dictionaries could be summed up as under.--

In Webster's Comprehensive Dictionary, Encyclopaedic Edition it is stated that reputation means, general estimation in which a person or thing is held by others, especially by a community; repute, either good or bad, The State of being in high regard or esteem; good repute; to ruin one's reputation. A particular credit or character ascribed to a person or thing: usually with for: a reputation for honesty.

The new shorter Oxford - English Dictionary - Thumb Index Edition gives the meaning of reputation" as condition or fact of being highly regarded or esteemed; distinction, respect, fame. The general opinion or estimate of a person's character, behaviour, etc.; the relative esteem in which a person or thing is held. The honour, credit or good name of a person or thing. The fame, credit, or notoriety of being, doing, or possessing something. .

In the Chamber's 21st Century Dictionary, Revised Edition, the meaning of reputation is given as a generally held opinion about someone's abilities, moral character; A high opinion generally held about someone or something; good name.

The Words and Phrases - Permanent Edition, Volume 37 gives the meaning of "reputation" as "Reputation is what the people generally think and state about a person; Reputation is what others say about one, and not necessarily what they know of him.

In the Black's Law Dictionary - 7th Edition - Byran A. Garner the meaning of reputation is, the esteem in which a person is held by others; The evidence of reputation may be introduced as proof of character whenever character evidence is admissible.

In Mozley and Whiteley's - Law Dictionary, 12th Edition - J.F. Penner the meaning attached to the word reputation is a person's good name, that which generally has been and many men have said and thought.

72. Bhagavad Gita which is considered to be the essence of Vedas and Upanishads has the following verse in Chapter II (Verse 34):

"Akirthim Chaapi Bhutaani Kathaishyanthi Thevyayam Sarnbhavithasya Chaakirthi Maranaadaapi Richyathe"

Translated into English, it runs as follows:

Moreover men will ever tell of your disgrace, and to a man of honour ill fame is worse than death.

Commenting on the above words Maharishi Mahesh Yogi in his commentary has stated that those who have enjoyed goodwill and fame in society, lose it, they

suffer shame and misery, which is worse than death. Loss of renown for a once famous man is more than death to him. The underlying principle of good fame in society is that when a man constantly does good he becomes a centre of harmonious vibrations which, enjoyed by the people around him, naturally create warmth and love in their hearts. That is why he is described in glowing terms by all. In this way the good fame of a man is the criterion of his goodness, and ill fame the criterion of his badness. No one who is good could possibly acquire ill fame. Max Muller commenting on the aforesaid words in Gita has stated that all beings, too, will tell of your everlasting infamy; and to who has been honoured, infamy is (a) greater (evil) than death.

73. In the Celebrated Commentaries Blackstone on the Laws of English, he propounded his philosophy of natural or absolute rights of a man. He categorised the said rights as right of personal security, right of personal liberty and the right of private property. The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation. The Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , held that both the rights of personal security and the personal liberty recognised by what Blackstone termed natural law are embodied in Article 21 of the Constitution. For this proposition, the Supreme Court relied on a passage from Subba Rao, C.J. speaking for five Judges in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , when he said.--

"(16) Now, what are the fundamental rights? They are embodied in Part III of the Constitution and they may be classified thus : (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property, and (vii) right to constitutional remedies. They are the rights of the people preserved by our Constitution. "Fundamental rights" are the modern name for what have been traditionally known as "natural rights". As one author puts : "they are moral rights which every human being everywhere at all times ought to have a simply because of the fact that in contradistinction with other beings, he is rational and moral". They are the primordial rights necessary for the development of human personality. They are the rights which enable a man to chalk out his own life in the manner he likes best. Our Constitution, in addition to the well-known fundamental rights, also included the rights of the minorities, untouchables and other backward communities, in such rights.

Hidayatullah, J., in the same case said:

"What I have said does not mean that Fundamental Rights are not subject to change or modification. In the most inalienable of such rights a distinction must be made between possession of a right and its exercise. The first is fixed and the latter controlled by justice and necessity. Take for example Article 21:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Of all the rights, the right to one's life is the most valuable. This article of the Constitution, therefore, makes the right fundamental. But, the inalienable right is curtailed by a murderer's conduct as viewed under law. The deprivation, when it takes place, is not of the right which was immutable but of the continued exercise of the right".

Hence, in Maneka Gandhi's case, supra, it was held as under:--

"21. It is, therefore, clear that six out of eleven Judges in Golak Nath's case, supra, declared that fundamental rights are natural rights embodied in the Constitution itself. This view was affirmed by the majority of Judges of this Court in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, . It was explained by me there at some length, Khanna, J., took a somewhat different view. Detailed reasons were given by me in Shukla's case, supra, for taking what I found to be and still find as the only view I could possibly take if I were not to disregard, as I could not properly do, what had been held by larger benches and what I myself consider to be the correct view: that natural law rights were meant to be converted into our constitutionally recognised fundamental rights, at least so far as they are expressly mentioned, so that they are to be found within it and not outside it. To take a contrary view would involve a conflict between natural law and our Constitutional law. I am emphatically of opinion that a divorce between natural law and our Constitutional law will be disastrous. It will defeat one of the basic purposes of our Constitution".

74. The Supreme Court has in number of judgments quoted the said words in Gita to say what reputation means. The Supreme Court in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , while interpreting Article 21 has held as under:--

"13. Article 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilisation which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedure. In this context one can recall the famous words of Chapter II of Bhagwad Gita:

Sambhavitasya Cha Kirti Marnadati Richyate"

75. Again interpreting Article 21, the Supreme Court in the case of Pandit Parmanada Katara v. Union of India (35) 1997 ACC 560 (SC), has observed thus : Right to dignity and fair treatment is not only available to a living man but also to his body after his death.

76. Therefore, it is clear that the reputation of a man is a very precious thing, the man cherishes most in his life. It is a natural or absolute right of a man. In

fact the whole exercise which a man undertakes in life is to acquire fame, name and reputation. No office which a man occupies in life is permanent. Therefore, between the removal of the man from that office and damage to his reputation what he is afraid of is damage to the reputation. Office does not last but reputation is permanent. In fact, the reputation outlives a man. Therefore, the wide interpretation placed by the Supreme Court to the word "life" in Article 21 of the Constitution, leads to inevitable inference that Article 21 of the Constitution not only should be taken to mean protection of one's life and liberty while a person is alive, but equally covers the reputation of a person during his life and after. Any wrong action by the State or its agencies which sullies the reputation of a virtuous person would certainly come under the scope of Article 21 of the Constitution. Therefore, it can be said that the right to reputation is a part of right to life, a fundamental right guaranteed to every citizen under Article 21 of the Constitution and no person should be deprived of such right except according to the procedure established by law.

77. In this context we have to see what is the effect of declaration made by Lokayukta and Upalokayukta u/s 12(3) of the Act. The allegation against the public servant that he has abused his position to obtain any gain or favour to himself or he was actuated in the discharge of his functions by personal interest or improper or corrupt motives, or is guilty of corruption, favouritism, nepotism or lack of integrity is substantiated. He should not continue to hold the post held by him. If the said declaration is accepted or deemed to have been accepted if the public servant falls under Clause (12)(a) and (b) of Section 2 of the Act, shall resign his office. If they fall under Sub-clauses (e) and (f) they deemed to have vacated the office. If they fall under Sub-clauses (d) and (g) be deemed to have been placed under suspension. It is on the premise that the charges levelled against the public servant is substantiated after investigation by an highest judicial officer, Therefore, it cannot be said that the declaration is of no consequence, unless further steps are taken by appropriate authority and the declaration by itself do not affect the interests of the public servant. By such declaration, the public servant is not removed from his post. But, the said declaration adversely affect his reputation, one of the finer graces of human civilization which make life worth living, would be jeopardized, and the same can be put in jeopardy only by law which inheres fair procedure.

78. Re: Point No. (e).--Whether the procedure prescribed u/s 9 is arbitrary?

The next question that arise for consideration is, whether the procedure prescribed u/s 9 of the Act is sufficient compliance with Article 21. Is the prescription, some sort of procedure enough or must the procedure comply with any particular requirements. Obviously, the procedure cannot be arbitrary, unfair or unreasonable. The procedure prescribed should not be violative of the equality clause. That procedure must answer the requirement of Article 14. What is the requirement of Article 14. What is the content and reach of the great equalising principle enunciated in this Article. The Supreme Court in Maneka Gandhi's case

held that, there can be no doubt that Article 14 is a founding faith of our democratic republic and, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. The Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , by a majority judgment held that.--

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".

79. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. That the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. Natural justice, it has been said, is only "fair-play in action". The soul of natural justice is "fair-play in action" and that is why it has received the widest recognition throughout the democratic world. The Supreme Court in *Maneka Gandhi's* case has ruled that the test of applicability of the doctrine of natural justice applies to not only quasi-judicial functions but also administrative functions, where it has stated as under.--

"59. Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair-play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. "The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be

exercised". The net effect of these and other decisions was that the duty to act judicially need not be superadded, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted".

80. The Supreme Court speaking through Hegde, J., in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , quoted with approval the above passage from the judgment of Lord Parker, C.J. and proceeded to add.--

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. . . . Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George Vs. University of Kerala and Others, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case".

Any procedure which permits impairment of constitutional right without following the principles of natural justice ought to be condemned as unfair and unjust and, therefore, it infringes the requirement of Article 21. Now let us see whether Section 9 of the Act satisfies the aforesaid requirement.

81. Section 9 of the Act reads as under.--

"9. Provisions relating to complaints and investigations.-- (1) Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokayukta or a Upalokayukta.

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

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

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

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

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

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

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

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

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

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

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

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

82. Section 9 of the Act provides for complaints and investigations under the Act. Subject to the provisions of the Act any person may make a complaint under the Act to the Lokayukta or a Upalokayukta. The complaint should be in the prescribed form. Once such a complaint is made depending upon the public servant against whom such a complaint is made having regard to Sub-sections (1) and (2) of Section 7, the Lokayukta or a Upalokayukta has to take note of the said complaint and then consider the complaint on its merits. Sub-section (3) of Section 9 provides for a preliminary enquiry being made by the Lokayukta or a Upalokayukta on such complaint. In the course of this preliminary enquiry, the question of hearing the public servant or issuing notice to him about the

complaint would not arise. The said preliminary enquiry has to be done discretely in order to find out the truth or otherwise of the complaint prima facie. After such preliminary enquiry has been made, the Lokayukta or the Upalokayukta has been conferred the discretion to hold an investigation on the said complaint or refuse to investigate. On looking into allegations in the complaint and the material collected during the preliminary enquiry, is of the opinion that the complainant is frivolous or vexatious or is not made in good faith or there are no sufficient grounds for investigating the complaint or that the complainant has other remedies available for redressal of the said complaint and in the circumstances of the case it would be more proper for the complainant to avail of such remedies, Lokayukta or a Upalokayukta in their discretion may refuse to investigate the complaint. If they decide not to entertain the complaint and refuse to investigate they shall record their reasons therefore and communicate the same to the complainant and the public servant concerned.

83. If after the preliminary enquiry the Lokayukta or the Upalokayukta deem it fit to conduct an investigation under the Act then Sub-section (3) of Section 9 provides the procedure to be followed in that regard. The procedure stipulated under the Act is as under.--

(a) They shall forward a copy of the complaint to the public servant and the Competent Authority as defined under subsection (4) of Section 2 of the Act.

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

(c) They may make such order as to the safe custody of the documents relevant to the investigation as they deem fit.

84. Therefore, it is clear that once a Lokayukta or a Upalokayukta decides to conduct an investigation they shall comply with the aforesaid mandatory requirements. What is to be forwarded to the public servant and the Competent Authority concerned is only the complaint and not the material which they have collected in the course of the preliminary enquiry. Once the public servant offers his comments on such complaint then again the Lokayukta or a Upalokayukta has to consider the said comments along with the complaint and the material collected in the preliminary enquiry and if any comments are sent by the Competent Authority in pursuance of the complaint and then decide whether it is necessary to continue with the investigation. If after such consideration it is open to the Lokayukta or Upalokayukta to cease to investigate the complaint if they are of the opinion the complaint is frivolous or vexatious or is not made in good faith or there are no sufficient grounds for continuing the investigation, and stop the investigation forthwith. If they discontinue the investigation they shall record the reasons therefore and communicate the same to the complainant and the public servant concerned. If after receipt of the comments from the public servant if the Lokayukta or Upalokayukta are not satisfied with the said reply, they may proceed with the investigation.

85. Therefore, the question for consideration is what is the procedure for conducting the investigation after receipt of the comments from the public servant in the event the Lokayukta and Upalokayukta decides to proceed with the investigation. Sub-section (4) of Section 9 provides that the procedure for conducting investigation shall be as the Lokayukta or the Upalokayukta considers appropriate in the circumstances of the case. It is left to their discretion to hold such an investigation either in public or in camera. Whether the investigation is conducted in public or in camera the procedure for investigation is also left to their discretion. In other words, the Legislature has not prescribed the procedure to be followed by the Lokayukta or Upalokayukta for the investigation.

86. At this juncture it is relevant to notice one other aspect. The word used in Section 9 is "investigation". What does it connote. The word "investigation" is not defined under the Act. The word "investigation" is defined under the provisions of the Code of Criminal Procedure where it has been defined as under.--

"2(h) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

87. However, the said meaning attached to the word "investigation" has to be strictly construed and it is to be applied only in the context of proceedings under the Criminal Procedure Code, 1973 as the said enactment also defines what an "enquiry" means, what a "judicial proceedings" means. Therefore, a distinction is made between the collection of evidence conducted by a Police Officer and the same thing by a Magistrate or a Court. Therefore, the meaning attached to the word "investigation" under the Code of Criminal Procedure cannot be applied to an investigation u/s 9 of the Act. u/s 9 of the Act the person who conducts investigation is not a Police Officer but a high constitutional dignitary as that of a retired Supreme Court Judge or a Chief Justice of a High Court. Therefore, the Legislature has left it to the discretion of those high dignitaries to evolve a procedure in conducting the said investigation. In substance, though the word used is investigation, what the authorities are expected, is to enquire into the allegations or grievances made in the complaint. As the finding recorded by the authorities after such investigation would have serious consequences resulting in civil consequences, naturally the minimum that is expected in such an investigation or enquiry is that the person conducting the investigation should follow the principles of natural justice.

88. A reading of Section 12 of the Act makes it very clear that if the Lokayukta or Upalokayukta is satisfied that the action of the public servant has resulted in injustice or undue hardship to the complainant or to any other person, he shall by a report in writing recommend to the Competent Authority concerned calling upon them to redress or remedy the injustice or hardship done to the public servant as specified in the said report. Such a Competent Authority within a period of one month shall intimate the Lokayukta or the Upalokayukta regarding

the action taken in the report. Sub-section (3) of Section 12 categorically states after investigation if the Lokayukta or Upalokayukta is satisfied that such allegation is substantiated either wholly or partly he shall by report in writing communicate his findings and recommendations along with relevant documents, materials and other evidence to the Competent Authority. The word used in the section is communicate his "findings", A finding arrived at only after hearing both the parties and after giving them full opportunity to cross-examine witnesses, if any oral evidence is recorded during the course of investigation. The Competent Authority shall report within three months the action taken or proposed to be taken on the said report. There is also an indication in the Act itself regarding the nature of procedure to be followed in an investigation under the Act. Sub-section (2) of Section 11 confers on the Lokayukta or Upalokayukta the power of the Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the matters mentioned therein, namely summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record, or copy thereof from any Court or office, issuing commissions for the examination of witnesses or documents and such other matters as may be prescribed, Further, Sub-section (3) of Section 11 makes it very clear that the proceedings before the Lokayukta or Upalokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. In the investigation Lokayukta or Upalokayukta have the power to examine on oath any person. If any person is examined on oath in support of the allegations in the complaint, naturally the public servant against whom that evidence is given would have a right to cross-examine the said person. If evidence is given by way of affidavit in the said investigation in support of the complaint, if the said affidavit is to be used against the public servant, the public servant should have an opportunity to cross-examine the said person who has given the affidavit. When commissions are issued for examination of witnesses naturally the public servant would have the right to cross-examine those witnesses. Therefore, the investigation to be conducted u/s 9 would be in the nature of a judicial proceeding and it would be in the nature of a suit and oral evidence is recorded on oath and documentary evidence is also entertained. Therefore, it is clear that the investigation u/s 9 of the Act would be in the nature of judicial proceedings or at any rate it is a quasi-judicial proceedings where the principles of natural justice had to be followed and if any evidence is recorded the public servant has the right to cross-examine those witnesses. Merely because, the procedure to be followed in an investigation u/s 9 is not expressly provided under the Act, it cannot be said that the Lokayukta and Upalokayukta are not under any obligation to follow the principles of natural justice in such proceedings. When Section 11 categorically deals with evidence, in the absence of cross-examination of a person examined on oath, in law it would not amount to evidence at all, on the basis of such deposition no finding could be recorded against the public servant. It is needless to point out that the law on the point is well-settled.

89. The 21st Century Dictionary, gives the meaning of the word INVESTIGATE as to carry out a thorough, detailed and often official inquiry into or examination of, something or someone. Black's Legal Dictionary gives the meaning of the INVESTIGATE as to inquire into (a matter) systematically, to make (a suspect) the subject-matter of criminal inquiry, to make an official inquiry.

90. The question whether the proceedings before the Lokayukta is quasi- judicial or not is no more res integra. This Court in the case of N. Gundappa Vs. State of Karnataka, , dealing with the said question has held as under.--

"10. It is relevant to notice that on the basis of the investigation conducted by the Lokayukta or Upalokayukta as the case may be into a complaint made before him involving a "grievance" or an "allegation", he has to make a report u/s 12 of the Act to the Competent Authority. The Competent Authority, if satisfied, can also make a declaration in his report as per Sub-section (1) of Section 13 of the Act that the public servant concerned should not continue to hold the post held by him, The Competent Authority is required to take action within the period prescribed in Section 12 and intimate to the Lokayukta the action taken or proposed to be taken on the report. If that Lokayukta or the Upalokayukta, as the case may be, is not satisfied with the intimation regarding the action taken or proposed to be taken by the Competent Authority, it is open to him to make a special report upon the case to the Governor and also inform the Competent Authority concerned and the complainant under Sub-section (5) of Section 12 of the Act. Therefore, it is clear that investigation into a complaint and the report made by the Lokayukta or Upalokayukta to the Competent Authority will have a serious impact on the public officer concerned. It will affect his service very seriously as the Competent Authority has to examine the report forwarded to it and report the action taken thereon to the Lokayukta or Upalokayukta with in the period stipulated in Section 12 of the Act. If a declaration is made in the report in terms of Section 13(1) of the Act and on acceptance of the same by the Competent Authority, the public officer concerned will have to be placed under suspension. That being so, the Lokayukta or the Upalokayukta as the case may be is required to follow the procedure laid down in Sub-section (3) of Section 9 of the Act. It is not open to the Lokayukta or the Upalokayukta, as the case may be, to disregard or overlook Clauses (a) and (b) of Sub-section (3) of Section 9. The procedure laid down in Clauses (a) and (b) for conducting investigation into a complaint is required to be followed scrupulously and it is essential to the validity of the report made by the Lokayukta or Upalokayukta as the case may be. "When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done are called directory" (see page 62 of Craies on Statute Law -- 1971 Edition).

In addition to this, it is also relevant to notice that the Lokayukta or the

Upalokayukta as the case may be, while conducting investigation into a complaint and making a report on the basis of such investigation, exercises quasi-judicial power. It determines the complaint made against a public servant involving a "grievance" or "allegation" and the report becomes the basis for taking action against the public servant by the Competent Authority. It is an established principle of natural justice that while exercising quasi-judicial power or performing quasi-judicial function, the Authority has to act according to the Rules of Natural Justice in coming to a decision and give all parties an opportunity of being heard and of dealing with the evidence, He must not act on ex parte statement. Clauses (a) and (b) of Sub-section (3) of Section 9 of the Act incorporate the rules of natural justice. They provide that a copy of the complaint shall be forwarded to the public servant and the Competent Authority concerned and afford to the public servant an opportunity to offer his comments on such complaint. These things are required to be complied with failing which it will led to invalidity of the report made by the Lokayukta or the Upalokayukta inasmuch as one of the rules of natural justice is that no party shall be condemned unheard".

91. The aforesaid judgment has been affirmed by a Division Bench of this Court in State of Karnataka Vs. N. Gundappa, , wherein it has been held as under.--

"We have not the slightest hesitation in holding that the proceedings u/s 9 of the Karnataka Lokayukta Act, 1984 are quasi-judicial in nature. Our reasons are as under:

Firstly, there is a complaint. Secondly, there is a preliminary enquiry to conduct investigation. Thirdly, a copy of the complaint is forwarded to the public servant and the Competent Authority concerned. Fourthly, the public servant is afforded an opportunity to offer his comments on such complaint. Thereafter should the Lokayukta submit a report as to what consequences follow are delineated u/s 13 of the Act. Having regard to the serious consequences contemplated thereunder, the conclusion is inescapable that it is quasi-judicial in nature. Not only that, Section 14 of the Act also contemplates initiation of prosecution".

92, A reading of Section 9 of the Act makes it clear that the Legislature took care to insist upon the observations of the principles of natural justice even before the Lokayukta decides to conduct an investigation under the Act after making preliminary enquiry. If the intention was that without hearing the public servant the Lokayukta should not embark upon as investigation and took care to specifically provide for the observance of principles of natural justice as contained in Section 9(3), it cannot be said after satisfying the aforesaid provision, the Lokayukta is under no obligation to follow the principles of natural justice while actually conducting an investigation into the complaint after the public servant offered his comments, denying the allegations made against him. The principles of natural justice and the necessities for its observance in any manner of investigation or enquiry is sine qua non of every judicial or quasi-judicial act.

93. It is true that there is no express provision in Section 9 requiring that audi alteram partem rule should be followed after the Lokayukta or Upalokayukta decides to proceed with the investigation under subsection (4) of Section 9 of the Act. Absolute discretion is conferred on them. Such procedure for conducting any such investigation which they consider appropriate in the circumstances of the case. Merely because it is not so stated it cannot be said that the law does not require the Lokayukta not to follow the principles of natural justice. On the contrary, it is settled law that in the absence of an express prohibition contained in the statute exempting the authorities from following the principles of natural justice, the principles of natural justice is engrafted into the provision of law by implication. When the statute is silent on this aspect, the aforesaid rule can be read into it by implication. This is the principle stated by Byles, J. in *Cooper v. Wandsworth Board of Works* (1863) 14 C.B.N.S. 180 "A long course of decisions, beginning with *Dr. Bentley's* case (1723) 1 STR 557 and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature". When absolute discretion is conferred on the Lokayukta and Upalokayukta because of their past judicial status the Legislature with due respect to the high office held by them thought it fit to confer on them absolute discretion with the fond hope that the procedure which will be followed by them will never be attacked on the ground of not following the principles of natural justice.

94. Therefore, it cannot be said that Section 9(4) of the Act suffers from the vice of arbitrariness and unbridled power conferred on the authorities, thus, violating Article 14 of the Constitution. However, having regard to the provisions contained in Sections 9, 11 and 12, the procedure for conducting investigation u/s 9(4) do not exclude the observance of principles of natural justice and if such a procedure is not followed, it is the report which is liable to be struck down and not the provision of a statute. If such a provision were held to be incorporated in Sub-section (4) of Section 9 of the Act by necessary implication, as I hold it must be, then the procedure prescribed by the Act would be right, fair and just and it would not suffer from the vice of arbitrariness of unreasonableness. Therefore, it would be in conformity with the requirement of Articles 14 and 21 and does not fall foul of those articles.

95. For the reasons set out above this Court has no other option except to hold that the report submitted by the Lokayukta in respect of the petitioners is one without jurisdiction, a nullity and non est in the eye of law and suffers from the incurable defect of non-observation of principles of natural justice. As this Court is called upon to go only into the question of law regarding jurisdiction of the Lokayukta to investigate complaints, the Court did not go into the merits of the allegations. Therefore, it has not recorded any finding on the merits. Therefore, any finding recorded by this Court in this order cannot be construed as exonerating the petitioners of the charges levelled against them. Liberty is reserved to the authorities to hold such enquiry in accordance with law.

96. For the aforesaid reasons my answer to the points raised are as under:--

(a) The Lokayukta has no jurisdiction to investigate the complaints against the Vice-Chancellor of a University.

(b) The Vice-Chancellor and the Professor of a University are not Class "A" Officers and, therefore, the Lokayukta has no jurisdiction under the notification to investigate the complaints against them.

(c) When no Upalokayukta is appointed, Lokayukta has no jurisdiction to investigate the complaints which are to be investigated by the Upalokayukta u/s 7(I)(iv) of the Act, in the absence of the Government referring the complaint to Lokayukta under Sub-section (2-A) of Section 7 of the Act.

(d) Right to reputation is a part and parcel of right to life guaranteed under Article 21 of the Constitution of India.

(e) The procedure prescribed u/s 9 is not arbitrary as the principles of natural justice can be read by implication into Sub-section (4) of Section 9 of the Act.

97. Hence, I pass the following order:--

(a) Writ petitions are allowed.

(b) The impugned report of the Lokayukta against the petitioners declaring that the allegations against them are substantiated are hereby quashed as one passed without jurisdiction, a nullity and non est in the eye of law,

(c) Liberty is reserved to the authorities concerned to initiate appropriate action for investigating the complaints against the petitioners, in accordance with law.

(d) No costs.

N. Kumar, J.

4-2-2004

Writ Petition Nos. 25339 and 25340 of 2003 connected with Writ Petition No. 24135 of 2003 (GM-KLA).

1. A memo was filed on 4-9-2003 on behalf of the Lokayukta, the second respondent herein, pointing out that the Vice-Chancellor of University of Mysore retired on 3-9-2003 and, therefore, the question of deciding the jurisdiction of Lokayukta to investigate into the complaint against the Vice-Chancellor has become merely academic and, therefore, the writ petition is to be dismissed as having become infructuous.

2. Objections are filed to the said memo by the petitioner contending that just because the petitioner has retired the petition does not become infructuous. The impugned report passed by the Lokayukta has seriously affected the reputation of the petitioner and also attaches stigma to him and, therefore, the said impugned report is liable to be quashed for the reasons asserted in the writ

petitions.

3. Both the learned Counsels appearing for the parties submitted on the basis of what is contained in the memo and the objections the Court may proceed to pass orders.

4. In the first place, the jurisdiction of the Lokayukta to investigate complaints against the Professor of a University is the subject-matter of one of the writ petitions. The said writ has not become infructuous. Secondly, the main contention urged by the Vice-Chancellor before the Court is by the impugned report his reputation is damaged. The said grievance continues to survive notwithstanding the fact that his term has come to an end. Therefore, the writ petitions have not become infructuous. Accordingly, the memo is rejected. Consequent to the rejection of the memo, the application filed by the second respondent to decide and pass orders on the memo first is also rejected.