

(1991) 05 GUJ CK 0005

In the Gujarat High Court

Case No : S.C.A. No. 994 of 1991 with S.C.A. No's. 1204, 1205 and 1485 of 1991

Rajendra Manubhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 20(3), 21, 245
Evidence Act, 1872 — Section 132
Gujarat Lokayukta Act, 1986 — Section 10(2), 10(7), 16(1)

Citation : AIR 1992 Guj 10 : (1992) 1 GLR 223

Hon'ble Judges : G.N. Ray, C.J; R.K. Abichandani, J

Bench : Division Bench

Advocate : Soli Sohrabji and K.S. Nanavati, for the Appellant; A.G., D.K. Trivedi, Govt. Pleader, G.N. Desai and M.D. Pandya, for the Respondent

Judgement

R.K. Abichandani, J.—These four petitions raise common questions of facts and law and are being dealt with and disposed of together at the instance of the learned counsel of the parties.

2. The petitioners, in all these matters, have sought to challenge the action of the Lokayukta in summoning them to remain present as witnesses along with documents mentioned in the summons on the ground that they cannot be so summoned without being disclosed the identity of the complainant, the public functionaries involved and the nature of allegations made against such public functionaries. The petitioners have also challenged the legislative competence of the State Legislature in enacting "The Gujarat Lokayukta Act, 1986" as also the provisions of Sections 11 read with Sections 2(2), 15, 16 and 18 of the said Act as ultra vires the Constitution. It is also contended that, if the provisions of Section 10(2) of the said Act are so construed as to bar the disclosure of the identity of the complainant and the public functionary to the witness who is to be called then the provision must be struck down as unconstitutional.

3. The Registrar of the Lokayukta issued summons on the petitioner, Rajendra Manubhai Patel (Special Civil Application No. 994 of 199 1) on 28th August 1990 requiring him to remain present as a witness on 2nd September 1990 at the time mentioned therein in connection with complaint No. 2 of 1990 in the Office of the Lokayukta of the Gujarat State at Gandhinagar. In the list annexed to the, summons, the petitioner who was formerly the Chief Promoter and the Chairman of Mani Laxmi Co-operative Housing Society, Part IV, was called upon to bring with him the record mentioned therein including books of accounts pertaining to the said society. It appears from the averments made in the petition that the land purchased for the proposed society belonged to the public trust, Ahmedabad Panchra Pole Sanstha, the sale agreement was made on 14th July, 1990, the society was registered on 30th December 1989, the State Government granted permission u/s 63-C of the Bombay Tenancy & Agricultural Lands Act and Rule 36 of the Rules framed there under on 27-12-1989 permission of the Charity Commissioner was obtained on 5-2-1990 and the sale deed was executed on 15-2-1990 and registered on 16-2-1990. The said petitioner, by his letter dated 30th August 1990, informed the Respondent No. 2, Registrar of the office of the Lokayukta that as he was to go to Ambaji on 6-9-1990 it was not possible for him to remain present and therefore any other appropriate date may be given. The Respondent No." 2 therefore issued fresh summons dated 7th September 1990 requiring the said petitioner to remain present with the documents mentioned in the list annexed at the office of the Lokayukta in Criminal Complaint No. 2 of 1990 at the appointed time on 20th September 1990. The said petitioner, by his letter dated 17th September 1990 informed the Respondent No. 2 that as he had sprained his foot he was not in a position to walk and therefore any other appropriate date may be given in the matter. It appears from the copy of the letter at Annexure "F" to the petition that another witness summons was issued on 28-9-1990 to the petitioner in connection with the same complaint and the society in connection therewith took up the stand that the witness summons served was very wide and vague and that it appeared to them that some persons out to harass them had made some baseless allegations as a result of which the witness summons was issued and the documents were called for. The society requested the Respondent No. 2 to send a copy of the Complaint No. 2 of 1990 along with the copy of the documents produced with the complaint so that the matter may be kept before the General Meeting of the society and one of the employees of the society can be deputed at the hearing of the complaint. A draft of Rs. 100/ was forwarded towards expenses to the Respondent No. 2. The Respondent No. 2 by his letter dated 4th October 1990 informed the said petitioner that despite the witness summons issued on him in accordance with law he had failed to appear in obedience thereof under a lame excuse and that since he was only called as a witness he was not required to know as to which documents were required to be produced along with the complaint nor was it necessary for the office to inform him about the identity of the complainant or the public functionary. He was also informed that it was not his concern to go into the question of the relevancy of the

documents which were required to be produced. He was further informed that the witness summons sought his personal presence and if any one else was to be deputed it would amount to noncompliance with the summons. It appears that, despite the said letter, the petitioner did not respond and the Respondent No. 2 again issued similar summons dated 4-1-1991 on the said petitioner requiring him to remain present on 11-1-1991 along with the documents and again similar summons dated 11-1-1991 for the same purpose requiring him to remain present on 16-1-1991. It appears that the said petitioner did not comply with the said summons also and has filed the said petition (Special Civil Application No. 994 of 11991) on 24th January 1991. The other three cognate matters which were heard along with Special Civil Application No. 994 of 1991 are also filed by persons called as witnesses by Respondent No. 2 in connection with the same complaint No. 2 of 1990 and since the facts and contentions are similar, it is not necessary to narrate them.

4. It was contended by Mr. Soli Sohrabji, the Learned Counsel appearing for the petitioners that the State Legislature was not competent to enact the said Act because none of the Entries of the IIInd list nor any of the Entries of the IIIrd list of the Seventh Schedule to the Constitution of India would cover the subject matter of the Gujarat Lokayuta Act, 1986. He submitted that, it was the Parliament alone which could legislate on the subject matter of the said Act under Entry 97 of List I of the Seventh Schedule. Mr. Sohrabji argued that Lokayukta had no power to give any definitive judgment but had power only to make a report and therefore the subject matter will not fall in Entry I 1-A of the Concurrent List which relates to administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts. Mr. Sohrabji also contended that the said enactment cannot be sustained under Entries 1, 2 or 46 of the Concurrent List. The Learned Advocate General appearing on behalf of the Respondent No. I on the other hand contended that the subject matter of the Entry fall within the purview of the Entries Nos. 25 and 45 of the Concurrent List and also incidentally within Entries Nos. 2, 12 and 13 of that List.

5. The Preamble of the Act records that it is an Act to make provision for the appointment of Lokayukta for the investigation of the allegations against public functionaries in the State of Gujarat, and also for safeguarding the dignity and prestige of public functionaries against false and frivolous allegations and for matters connected therewith. The Statement of Objects and Reasons narrates that the main object of the Bill was to provide for appointment of Lokayukta to enquire into the complaints in respect of actions taken by the public functionaries. The expression "public functionary" is defined in Section 2(7) of the said Act so as to mean a person who holds or has held an office of a Minister, Chairman or Vice-Chairman of a Government Company or a Corporation as are mentioned in Clauses (b) and (c) of subsection (7) and Vice-Chancellor of a University established by law in the State of Gujarat. The allegations which are required to be investigated are as to whether such public functionary is guilty of

corruption or lack of integrity or was actuated in the discharge of his functions by personal interest or improper or corrupt motives or has abused his position to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person. It will be noticed that in pith and substance the said enactment relates to enquiry or investigation into the allegations made against public functionaries in respect of their actions in their capacity as such public functionaries. Entry 45 of the Concurrent List - List III of the Seventh Schedule to the- Constitution enumerates the following matter in respect of which the Parliament and the State Legislature have concurrent powers to make law, -"Entry No. 45 - the enquiry and statistics for the purposes of any of the matters specified in List II or List-III". The said enactment in pith and substance, in our opinion, is law enacted with a view to make investigations or enquiries into the actions of public functionaries in respect of the allegations made against them. Having regard to the nature of allegations which can be investigated, it is clear to us that they would amount to enquiries into the matters which would fall within the domain of Criminal Law including matters in the Indian Penal Code and might also amount to. actionable wrongs. In this connection, we may notice Entries I and 8 of the Concurrent List, which read as under:

List III - Concurrent List:

Entry 1. "Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List 11 and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

Entry 8. Actionable wrongs."

Therefore the enquiries and investigations intended to be made under the said enactment are enquiries for the purposes of the matters specified in Entries I and 8 of the Concurrent List. Since the matters squarely fall in Item 45 read with Items 1 and 8 of the Concurrent List, it cannot be covered under the Remainder Entry No. 97 of List-I - Union List of the Seventh Schedule to the Constitution of India. The scope of Entry 45 of the Concurrent List and also Entry 94 of the Union List which relates to the enquiries for the purpose of the matters in the Union List came to be considered by the Supreme Court in R. K. Dalmia v. Justice Tendolkar reported in AIR 1958 SC p. 538. The Supreme Court held that the law to be made by the appropriate legislature with respect to the said two legislative entries may cover enquiries into any aspect of the matters enumerated in any of the lists mentioned therein and was not confined to those matters as mere heads of legislative topic. The law with respect to the inquiries for the purpose of any of the matters in the lists may also be for administrative purposes and the scope of the inquiry under such law will cover all the matters which may properly be regarded as ancillary to such inquiries. It was observed that the words "for the purposes of " indicate that the scope of the inquiry was not necessarily limited to

the particular or specific matter enumerated in any of the entries in the list concerned but may extend to the inquiries into collateral matters which may be necessary for the purpose, Legislative or otherwise, of those particular matters. The said question, which had arisen before the Supreme Court in context of the provisions of the Commissions of Inquiry Act, 1952, again cropped up before the Supreme Court in *State of Karnataka Vs. Union of India (UOI) and Another*, with a frontal attack on the provisions. of Commissions of Inquiry Act, 1952 and in considering the question of powers flowing from the said two Legislative Entries, the Supreme Court observed that the term "enquiries" as used in Item 94 of List I and Items 45 of List III, without any limitations upon their nature or specification of their character or objects, is wide enough to embrace every kind of inquiry, whether a criminal offence by any one is disclosed or not by facts alleged, Entry 45 in List III must include inquiries to cover allegations against all persons which bring them within the sphere of Entry I of List III relating to criminal law. The Supreme Court observed that to determine whether there is a prima facie case for a criminal offence facts have to be necessarily investigated or inquired into. But, if every type of inquiry and investigation except one by the House of the Legislature of which a Minister is a member is barred, the very first step towards a prosecution for any serious crime would be shut out in limited. No question of any further legal proceedings would arise under any enactment. Such a consequence of the constitutional provisions could not be possible within the contemplation of our Constitution makers. The Supreme Court held that the language used - "any of the matters specified" in the said Entry 45 was broad enough to cover anything reasonably related to any of the enumerated items even if done by holders of ministerial offices in the States. The view, that we are taking in the context of the provisions of the said Act, thus, stands completely fortified by the aforesaid two decisions by the Supreme Court which have a direct bearing on the reading of Entry 45 of the Concurrent List. We, therefore, hold that the State Legislature has legislative competence to enact the said Act.

6. It was then contended by the Learned Counsel, Mr. Soli Sohrabji that the stand taken up by the Respondent No. 2 that the identity of the complainant and the public functionary cannot be disclosed to the witness who is to be summoned, was not justified on a proper construction of the provisions of Section 10(2) of the said Act. He submitted that, if such a narrow construction is put upon the provisions of Section 10(2), a witness may not be able to exercise his constitutional rights under Article 20(3) in a given case where in respect of some allegations the witness is facing prosecution as an accused. He also submitted that the statutory form prescribed under Rule 29 of the Gujarat Lokayukta Rules, 1989, clearly shows that names of the complainant and public functionaries were required to be mentioned in the witness summons. He submitted that the provision that the identity of the complainant and the public functionary concerned shall not be disclosed to the public or the press or published in any manner would only mean that it is intended to guard against the disclosure to the public at large and could not include the witnesses who are to

be examined in the investigation. He also submitted that there was intrinsic evidence in- sub-section (2) of Section JO showing that there was no blanket bar of disclosure of such names for, under the proviso contained therein, the Lokayukta may conduct any investigation in public for reasons to be recorded in writing. Mr. K. S. Nanavati, the learned counsel appearing for the petitioners added one more contention to the effect that if the witnesses are not to be disclosed the identity of the complainant and the public functionary during the investigation, it would be impossible for the Lokayukta to conduct the investigation without making such disclosure. The learned Advocate General and the learned counsel Mr. G. N. Desai appearing, for the Respondent No. 2 on the other hand contended that the words "published in any manner" occurring in sub-section (2) of Section 10 are of wide amplitude and therefore disclosure of such identity even to a person who is summoned as witness was not warranted by the said provision. It was also contended that a witness summons can be shown to anybody and therefore the very purpose of sub-section (2) of Section 10 would be frustrated if the identity is disclosed to a witness who is summoned by mentioning the names in the witness summons.

7. The contention that non-disclosure of identity of the complainant and the public functionary and the nature of allegations, to a person who is to be called as a witness would violate the provisions of Article 20(3) of the Constitution of India, because he may possibly expose himself during the investigation to some likely situation which may incriminate him, does not appear to be well founded. Under Article 20(3) of the Constitution, the fundamental right against testimonial compulsion is guaranteed to a person who is accused of an offence. Therefore, a person, who is to be summoned as a witness cannot resort to the provisions of Art. 20(3) unless he is accused of an offence and is being compelled to be a witness against himself. The said guarantee is not attracted in a given case where a person is not accused of an offence but who has fears that exposure as witness in the investigations might tend to bring out material which may ultimately point against him. Merely because, a witness who is to be summoned apprehends that the answer that he may give during the investigation may incriminate him would not by itself entitle him to claim privilege of silence under Art. 20(3). There can be no doubt that in a case where a person is accused of an offence and is asked a question during the investigation the answer to which may tend to incriminate him, the provisions of Art. 20(3) of the Constitution will make themselves feel and protect him. However, mere apprehension of likely implication due to material being revealed during investigation will not justify the petitioners and the like to claim any protection since Art. 20(3) is not intended to guarantee protection to such persons who are not accused of an offence.

8. We may now proceed to examine the provisions of Section 10(2) of the said Act, which read as under:

10(2) "Every such investigation shall be conducted in private and, in particular the identity of the complainant and of the public functionary affected by the

investigation shall not be disclosed to the public or the press or published in any manner whether before, during or after the investigation:

Provided that, the Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so." On a plain reading of the above provision, it is clear that the investigation which the Lokayukta decides to conduct has to be conducted in private except when for reasons to be recorded in writing the Lokayukta thinks it fit to conduct it in public in respect of a matter of public importance. Therefore, in matters which have no definite public importance even the Lokayukta will have no option but to conduct the investigation in private. From the Preamble, it can be seen that the Act is also intended to safeguard the dignity and prestige of public functionaries against false and frivolous accusations. It will be seen in sub-section (6) of S. 10 that the conduct of an investigation under the said Act does not affect the action or power or duty of any public functionary to take further action with respect to any matter subjected to investigation. Even during, the investigation if the Lokayukta decides not to continue it any further, he can discontinue the same under sub-section (5) of S. 10. Thus, having regard to the nature of the investigation and to the need of safeguarding the dignity and prestige of public functionaries against false and frivolous allegations, it is clear that the provision, requiring the investigation to be conducted in private, cannot be said to be an unreasonable provision. As a necessary corollary to the confidentiality of the investigation, the provision is made against disclosure of the identity of the complainant and the public functionary affected by the investigation before, during or after the investigation. Sub-section (7) of S. 10 makes disclosure to the public or to the press any information or publication of such information in contravention of the provisions of S. 10, an offence. As provided under S. 11(1), for the purpose of the investigation including the preliminary enquiry, the Lokayukta may require a public servant or any other person to furnish information or produce document. Therefore, when investigation has to be conducted in private under sub-section (2) of S. 10, the information obtained for the purpose of such investigation has to be kept confidential. The Legislature refers particularly to the identity of the complainant and the public functionary affected by the investigation for not being disclosed as they constitute core of the investigation which is to be conducted in private and also because public functionaries are required to be safeguarded against false and frivolous allegations. If a person who is to be called as a witness is to be informed about the identity of the complainant and the public functionary the provisions regarding safeguarding the identity of the complainant and the public functionary would become redundant, for all the witnesses will have to be informed about such identity and who as in the present case may be required to inform others about their having received their summons. To illustrate: in the present case itself, the petitioner who is the Chairman of the Society had turned over his summons to the Society which in its letter had asked the respondent to furnish particulars of the complaint so that the matter may be kept before the

General Meeting of the society. The summons issued to the witnesses are required to be served as per R. 29 of the said Rules through the Police Station within the jurisdiction of which. the witness resides, Therefore, if the identity is disclosed in the summons, even such police media would come to know about the complainant and the public functionary involved in the investigation. Under S. 11(2), while recording evidence, the Lokayukta has powers of a Civil Court under the Civil Procedure Code, inter alia, of summoning and enforcing the attendance of any person and examining him on oath. Therefore, in a given case, a question may arise of substituted service including publication of summons in newspapers for enforcing attendance of a person as witness if he cannot be served in the manner provided in R. 29 through the police station. The resultant disclosure of identity of the complainant and public functionary would fly in the face of the mandatory provisions of sub-section (2) of S. 10. Much reliance was placed on the Form G prescribed in R. 29 of the said Rules which indicate that the names of the complainant and the public functionary are required to be mentioned. It will be noticed from R. 28 that if either party wants his witness to be summoned he can do so on payment of the prescribed fee. Under R. 25 of the said Rules, during the course of hearing each party has a right to examine himself and his witness and to cross-examine the opposite party and the witness of that party. Thus, when a party wants to summon his witnesses, such witness would normally, know the party for whom he is required to give evidence. Therefore, when the complainant or as the case may be public functionary wants to examine his witness, mentioning of name in such a summons may not amount to any disclosure since such witness knows or ought to know for whom he is called. In any event, the provisions of R. 29 are not mandatory and they are subject to any other provision or specific order in the matter of issuance of summons. The expression that, "the summons may be issued in Form G" also indicate that it is not a mandatory statutory form. Under sub-section (3) of S. 10, the procedure for conducting any investigation shall be such as the Lokayukta considers appropriate in the circumstances of the case save as laid down in Ss. 10(1) and 10(2) of the Act. Therefore, Lakayukta in an appropriate case can withhold disclosure of identity of the complaint or the public functionary while issuing summons in Form "G" under R. 29. In the present case, however, it appears, and it was not controverted at the time of the arguments, that the Lokayukta has suo motu summoned these petitioners as witnesses. Thus, when they are not cited as witnesses and summoned suo motu by the Lokayukta, it cannot be said that the Lakayukta was not justified in withholding the identity of the complainant and the public functionary affected by the investigation from these petitioners. The words "published in any manner" if are construed so as to mean that publication to the public is intended, that expression will overlap with the earlier word "published". It would, therefore, appear that the expression "to the effect that the identity shall not be "published in any manner" would mean that it may not be announced in any manner. If the identity is announced to a witness who is to be called and if there are more than one, to all of them then the very purpose of the provision would be frustrated.

9. The witness who is to be summoned for the purpose of investigation by the Lokayukta would have no right to be informed about the contents of the complaint or other particulars of the case. It would be sufficient for him to know that he is being called as a witness by the authority in connection with some complaint and to know what documents/ records are to be carried. The intimation about nature of documents/ records required to be produced has to be given to him so that he may not later on be accused of not complying with the directions to produce such documents or records. The relevancy of his deposition or the documents which may be required to be produced during the investigation is not a matter of his concern. Indeed the courts frown at tutored witnesses and if a witness is not already fed with the information of the case in which he is called, there is a better possibility of getting a spontaneous and natural response to the enquiry sought to be made. He is required to answer only what he already knows and can depose to. If he really does not know about the matter on which he is being inquired of, he can suitably respond, The process of examining witnesses for the purpose of investigation is laid down by the provisions of the said Act and merely calling witness in accordance with such provision for eliciting information cannot be said to be depriving the witness of any personal liberty without any authority of law. When the law enjoins upon a citizen a duty to disclose facts in any inquiry/ investigation, there is no liberty not to respond. If prior justification is made a requisite for summoning a witness whom the authority finds it necessary to examine for the purpose. of statutory investigations, it would become impossible for such authority to smoothly proceed with the investigation, for, it would entail unnecessary deviations from the main investigation. If the proposed witness is granted a right to beforehand know the particulars of the case and the reason why he is called, he would then embark upon the discussion on the merits of the case, in case he takes up a stand that his being called as a witness was not justified, even though the, question whether he may be called or not is within the domain of the authority wanting to examine him. In any event, it cannot be said to be unreasonable if a proposed witness is not informed about the names of the complainant or the public functionary and the nature of the inquiry/ investigation and in absence of any right to get such information, a witness can hardly insist on such prior disclosure. Therefore, even if there were no provision requiring the identity not to be published in any manner, if the Lokayukta chooses not to disclose the identity to the witness who is summoned, no right of such person is violated and the provision of S. 10(2), therefore, does not suffer from the vice of unfair procedure and does not, in our opinion, violate the provisions of Art. 21 of the Constitution as sought to be contended on behalf of the petitioners. We are of the view that the petitioners have absolutely no right of any prior disclosure of the identity of the complainant or the public functionary or about the nature of complaint and the provisions of sub-sec. (2) of S. 10 insofar as they do not warrant such disclosure of the information or identity, to the persons including the witnesses who are summoned, are reasonable and valid and in no way arbitrary or ultra vires Art. 20(3) or 21 of the Constitution of India.

10. We may now deal with the contention which was canvassed by the learned counsel Mr. K. S. Nanavati that it is impossible to conduct any investigation if identity is not disclosed to the witness during the investigation and that if the identity is so disclosed to the witness during investigation, it may entail penal liability under sub-section (7) of S. 10 of the said Act. It is difficult to accept this proposition because it is the investigation which is to be conducted in private and when the witness is being examined during the investigation, he becomes part of the investigation and to the extent it is necessary, for example, in the cross-examination or on questions being put to the witnesses, reference to the complainant or the public functionary may become necessary. However, all that being part of the investigation itself which is to be conducted in private, disclosure of identity within the investigation would not attract the provisions of sub-section (7) of S. 10 which lay down that whoever discloses to the public or to the press any information or publishes such information in contravention of the provisions of S. 10 shall on conviction be punished as provided therein. The said provision would be attracted if information acquired during the investigation is divulged in contravention of the provisions of S. 10 and cannot by its very nature operate when the disclosure of identity is made during the investigation and for the purpose of the investigation. Therefore, is a witness who is being examined by the Lokayukta is disclosed the identity, it cannot be said that information which is being obtained during such investigation is being published in any manner contrary to the provisions of sub-section (7) of S. 10 read with S. 10(2) of the said Act. To the extent it is necessary for obtaining information disclosure of identity can be made during the investigation to the witness and that would not violate the provisions of sub-section (2) of S. 10 because such process is a part of the investigation itself which is being conducted in private. However, if information obtained during such investigation is divulged by such witness, it would attract provisions of sub-section (7) of S. 10 of the said Act against such witness.

11. It was lastly contended by Mr. Sohrabji, the learned counsel that the provisions of S. 16(1) of the said Act are violative of Art. 14 of the Constitution inasmuch as the witness other than a public servant does not have a protection and can be compelled to disclose to the Court in public that he has testified before the Lokayukta in private. It was also contended that the absence of protection to such witness coupled with absence of any information regarding the nature of complaint and the identity of the complainant and the public functionary exposes the witness who hazards and introduces an element of unfair and unreasonable procedure violative of Arts. 14 and 21 of the Constitution. The learned Advocate General, on the other hand, contended that, S. 11(7) of the said Act which provides that the obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to any public servant imposed by the enactment or any rule of law, was not to apply to the disclosure of information for the purpose of any investigation under the Act and the public servants are not entitled to claim any privilege in respect of

production of documents or the giving of evidence as was available to him under any enactment or any rule of law in a legal proceeding. He submitted that the provisions of S. 11(7) provided. an answer to the provisions of S. 16(1) and the provisions of S. 16(1), by which no Court could compel a public servant to give evidence relating to the information obtained and or produce the evidence recorded by the Lokayukta, were justified, for, otherwise, a public servant may be compelled to make disclosures in respect of which ordinarily he could have claimed privilege before the Court.

12. The provisions of S. 16(1) read as under:

16(1) "Any information obtained by the Lokayukta or members of his staff in the course of, or for the purposes of, any investigation under this Act, and any evidence recorded in connection with such information, shall, subject to the provisions of the proviso to sub-section (2) of S. 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokayukta, or any public servant to give evidence relating to such information or produce the evidence so recorded."

It is clear from the above provision that the information obtained by the Lokayukta or his staff in the course of or for any investigation and the evidence recorded in connection with such information is to be treated as confidential. The provision, which may incidentally be mentioned, for, secrecy of information is also contained in S. 11 of the Parliamentary Commissioner Act, 1967 in England. The provision, similar to S. 11 (7) of the said Act, finds place in S. 8(3) of the Parliamentary Commissioner Act, 1967 of England. Having regard to the fact that the investigation is to be kept in private and that the disclosure of information in contravention of S. 10 is made an offence, the provision of S. 16(1) fully supplements the other provisions by treating the information obtained by the Lokayukta and evidence recorded as confidential the only exception being the proviso to sub-section (2) of S. 10 under which the investigation can be conducted in public as provided therein. It is the latter part of the S. 16(1) which has really raised the rival contentions. According to the petitioners, while a Court cannot compel a public servant to give evidence relating to the information obtained by the Lokayukta or to produce the evidence recorded by him a private person who has been a witness can be compelled to do so and such a situation was discriminatory. For the reasons which follow, we feel that the contention is not based on the correct reading of S. 16(1) The information which is obtained by the Lokayukta and the evidence which is recorded under S. 11(1), all form part of the investigation which is to be conducted in private and is to be treated as confidential, The disclosure of any such information is made an offence under S. 10(7). On completion of the investigation and while submitting report in writing to the competent authority, the Lokayukta is required under S. 13(1) to communicate his findings along with the relevant documents, materials and other evidence. Thus, the original record which remained with the Lokayukta until the completion of the investigation is to be transmitted to the competent authority

under S. 13(1) along with the report of the Lokayukta communicating his findings in the matter to the competent authority. Thus, there would be occasion for other public servants to come across the information obtained and the evidence recorded by the Lokayukta. The latter part of S. 16(1) read in this context would show that the Court cannot compel the Lokayukta or any public servant meaning thereby the staff of the Lokayukta as also any other public servant, who by virtue of transmission of record is in a position to divulge the information or produce the record cannot be compelled to give evidence relating to the information obtained by the Lokayukta and cannot be asked to produce the evidence so recorded even after the transmission of the record under S. 13(1), it would be public servants who will be in charge of the records which include the information obtained and the evidence recorded by the Lokayukta. The provision is, therefore, made to ensure that the Court does not get such information obtained by the Lokayukta and evidence recorded by him during the investigation to be brought as evidence before it. In our opinion, in view of this construction of provisions of S. 16(1) no question of any discrimination against other witnesses who are not public servants can arise.

13. It may further be noticed that, in view of sub-section (7) of S. 10, since it could be an offence to divulge any information contrary to the provisions of sub-section (7) a Court cannot compel any person whether a public servant or not who has given information to the Lokayukta or whose evidence is recorded by him to divulge the same before the Court in public nor can the Court ask the public servant to disclose what information was obtained from him by the Lokayukta for the purposes of investigation. Since such a course would amount to requiring him to commit an offence by making disclosure contrary to S. 10(7) of the said Act. The duty of the Court indeed is to uphold the law and not compel breach of it by a citizen. Therefore, the apprehension of the petitioners that they can be compelled to disclose the information obtained from them is wholly unfounded.

14. It may also be noticed that under S. 11(5) of the said Act, the Lokayukta is deemed to be a Civil Court. The proceedings before the Lokayukta are deemed to be judicial proceedings within the meaning of Ss. 193 and 228 of the Indian Penal Code, under sub-section (6) of S. 11. Under S. 11(2), the Lokayukta has all the powers of a Civil Court in respect of the matters enumerated therein. He can be invested with other powers of a Civil Court by rules framed under S. 23(2) (e), of the said Act. In fact that Lokayukta under R. 40 of the said Rules has been given such other powers of a Civil Court as contained in O. XI, Rr. 12, 13, 14 and 21, O. XII, R. 3A, O. XIII, R. 10, O. XVI, Rr. I to 7, 10, 11 and 12 regarding matters of fine only Rr. 14, 15 and 16 in the First Schedule to the code with such variations as circumstances may require. Thus, when the provisions of S. 11(5) in terms declare that the Lokayukta shall be deemed to be a Civil Court on cumulative reading of all the above provisions it would appear that the proceedings before the Lokayukta would be deemed to be civil proceedings for the purpose of applicability of proviso to S. 132 of the Indian Evidence Act.

Under the said proviso, no answer which a witness will be compelled to give in any civil or criminal proceeding shall subject him to any arrest or prosecution to be proved against him in any criminal proceedings except for a prosecutions for giving false evidence for such answer. Thus, if the proceeding before the Lokayukta is to be taken to be a civil proceeding by virtue of its being deemed to be a Civil Court, there is no reason why the protection of the proviso to S. 132 should not apply to a witness who has been compelled to answer any question during the investigation. The apprehension of the petitioners in this regard is, therefore, not well founded. In any other proceeding when the question about a witness having given certain information to the Lokayukta or his evidence recorded by the Lokayukta arises, in view of the provision contained in latter part of S. 16(1) it would not be possible to any one to confront such witness before the Court by the evidence given by him before the Lokayukta. There is built-in safeguard for such witness in S. 16(1) which prevents any evidence being given in respect of information obtained by the Lokayukta or production of the evidence recorded by him. Therefore, there would normally never be any occasion for such witness being confronted in a Court about his evidence recorded before the Lokayukta. On one hand, he cannot be directed to disclose the information obtained by him by the Lokayukta because the Court will not direct a person to commit an offence by violating S. 10(7) of the Act and on the other hand, the evidence given by him or information obtained from him cannot be brought on record through the Lokayukta or any public servant who is in charge of such record. Therefore, the contention of the petitioners that the provisions of S. 16(1) are discriminatory on the basis of the above apprehensions of the petitioners cannot be accepted. For the reasons indicated above, we are of the opinion that the provisions of S. 16(1) are not violative of Art. 14 or 21 of the Constitution as was sought to be contended on behalf of the petitioners.

15. As a result, we find no substance in these petitions, which deserve to be rejected. Rules is, therefore, discharged in all these matters with no order as to costs. Interim relief vacated.

16. After the judgment was pronounced, the learned counsel appearing for the petitioners prayed for stay of the operation of the judgment. In the facts and circumstances of the case, we are, however, not inclined to grant any such stay. The prayer is, therefore, rejected.

17. Petitions dismissed.