
(2013) 10 DEL CK 0466
In the Delhi High Court
Case No : Writ Petition (C) 4870 of 2012

Sunita Bhardwaj	Vs	APPELLANT
Smt. Shiela Dixit and Others		RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1973 (CrPC) — Section 195
Delhi Lokayukta and Upalokayukta Act, 1995 — Section 10, 11, 12, 12(1), 12(2)
Penal Code, 1860 (IPC) — Section 193, 228
Representation of the People Act, 1951 — Section 29A

Citation : (2013) 10 AD 258 : (2013) 203 DLT 743 : (2014) 1 RCR(Civil) 473

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Zubeda Begum, Ms. Sana Ansari and Ms. Prachee Satija for the Respondent Nos. 1 and 3, Mr. Rajeev Mehra, ASG, Mr. Neeraj Chaudhary, Aditya Malhotra, Ravjot Singh, Kartikey Mahajan and Mr. Amrik Singh for the Respondent No. 2, Mr. Arvind K. Nigam, Mr. Abhijat and Mr. Harsh Hariharan for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The petitioner seeks the issuance of a writ, order or direction in the nature of certiorari quashing the order dated 11.11.2011 issued by the Under Secretary, Ministry of Home Affairs, Government of India indicating the President's decision on the report dated 18.07.2011 of the Lokayukta, National Capital Territory of Delhi. The petitioner has also sought the issuance of a writ, order or direction in the nature of mandamus directing the respondent No. 2 to act strictly in accordance with Section 12 of the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter referred to as "the said Act"). The said report of the Lokayukta was the culmination of an inquiry conducted by him on a complaint (complaint No. C-244/LOK/2009) made by the petitioner, who has described herself as a practicing advocate in Delhi and also as a political activist. In the said complaint, the petitioner had alleged that the respondent No. 1, who

was the Chief Minister of Delhi, had made a false representation that 60,000 flats were ready for being handed over to the poor under the "Rajiv Ratan Awas Yojna" on the eve of the elections in the year 2008. By an order dated 27.11.2009, the Lokayukta directed issuance of notice to the respondent No. 1 for holding an inquiry into the allegations made in the complaint u/s 7 of the said Act read with Section 2(b) of the said Act, returnable on 16.12.2009. Thereafter, the response of the respondent No. 1, as also of the respondent No. 2, was considered. The relevant record produced by the Department of Urban Development, Government of NCT of Delhi, the affidavits filed by various officers of the Department as well as the written and oral submissions of the complainant and the respondent No. 1, were considered and the inquiry was concluded by the Lokayukta.

2. The inquiry conducted by the Lokayukta culminated in the said report dated 18.07.2011. The Lokayukta was of the view that the petitioner/complainant had been able to establish that the respondent No. 1 had misused her position for gain or favour to herself and her political party by misrepresenting to the public on the issue of allotting/handing over 60,000 flats to the poor and he was further of the view that the respondent No. 1 was actuated, in the discharge of her functions as a public functionary, by improper motives for her personal and party interest. It was also his view that the respondent No. 1 had acted in a manner which lacked faithfulness as she had misrepresented to the public, including the voters, by giving misleading and false information for the purpose of advantage in the ensuing elections. The Lokayukta also took the view that the respondent No. 1 failed to act in accordance with the norms of integrity and conduct expected of a public functionary occupying the august chair of the Chief Minister of Delhi. Consequently, the Lokayukta, by virtue of his report dated 18.07.2011, recommended to the President of India (respondent No. 2 herein), who was the competent authority under the said Act, to administer a caution to respondent No. 1 to be careful in publication of her messages in future in view of the present instance.

3. The said report was forwarded to the President on 28.07.2011. The President's Secretariat sent a letter dated 03.08.2011 to the Home Secretary, Government of India for examination of and advice on the said Lokayukta's report dated 18.07.2011. By a communication dated 24.08.2011, the Ministry of Home Affairs, Government of India asked the Chief Secretary, Government of NCT of Delhi to send his comments/views alongwith the response of the respondent No. 1 on the report of the Lokayukta dated 18.07.2011. In response to the said letter dated 24.08.2011, the views of the Government of NCT of Delhi were communicated to the Ministry of Home Affairs, Government of India by virtue of a letter dated 28.09.2011. The response of the respondent No. 1 was also communicated under the same communication.

4. This was followed by the decision of the President which was communicated to the Registrar, Office of Lokayukta, NCT of Delhi by virtue of the impugned letter

dated 11.11.2011 issued by the Under Secretary to the Government of India, Ministry of Home Affairs. The said letter dated 11.11.2011 is to the following effect:-

No. U-17020/17/2011-UTL

Govt. of India

Ministry of Home Affairs,

Dated, the 11th November, 2011

To

The Registrar,

Office of the Lokayukta, NCT of Delhi

G Block, Vikas Bhawan,

I.P. Estate, New Delhi

Subject:- Report of the Lokayukta, NCT of Delhi in respect of Chief Minister, Govt. of NCT of Delhi.

Sir,

I am directed to refer to the report dated 18th July, 2011 of the Lokayukta, NCT of Delhi forwarded to the President's Secretariat on 28th July, 2011 in respect of Chief Minister, Govt. of NCT of Delhi and to say that the report of the Lokayukta has been examined carefully. The comments of the Government of NCT of Delhi as well as response of the Chief Minister, Govt. of NCT of Delhi on the report of the Lokayukta were also obtained (copy enclosed) and taken into account while analyzing the report. After weighing the facts and circumstances of the case, it was found that there was no evidence of any malafide intention on the part of the Chief Minister, Government of NCT of Delhi. However, it was observed that the Department of Urban Development, Government of NCT of Delhi was not as careful as it should have been in releasing the brochure relating to construction of houses for weaker sections of the society. Accordingly, the President has decided that the Department of Urban Development, Government of NCT of Delhi may be advised to be more careful in preparing such publications in the future.

Encl:- As above

Yours faithfully,

Sd/-

(T. Narasimahan)

Under Secretary to Govt. of India

Tel. 23093147

5. From the above communication, it is apparent that after receipt of the Lokayukta's report dated 18.07.2011, comments of the Government of NCT of Delhi as well as the response of the Chief Minister, Government of NCT of Delhi on the said report of the Lokayukta were also obtained and that after the same were considered, it was found that there was no evidence of any mala fide intention on the part of respondent No. 1. It was, however, noticed that the Department of Urban Development, Government of NCT of Delhi was not careful enough in releasing the brochure relating to the construction of houses for the weaker sections of society and that accordingly, the President had decided that the Department of Urban Development, Government of NCT of Delhi be advised to be more careful in preparing such publications in future.

6. On receipt of the decision of the President, the Lokayukta, not being satisfied with the "action" taken by the President, felt that this was a fit case for making a Special Report upon the case to the Lt. Governor and also to inform the complainant concerned. Consequently, the Lokayukta prepared a Special Report dated 20.03.2012. In the said Special Report, it was observed by the Lokayukta as under: -

35. In these circumstances, it would appear that the Hon''ble President was not properly advised with regard to the factual position and the admitted position and role of the Respondent which led to advice of caution being given to the Department of Urban Development instead of the Respondent for her message. It was neither the case of the Complainant nor the Respondent that there was any negligence on the part of the Urban Development Department or its Officers. The Respondent had duly owned her message and had not claimed that the Department was responsible for this. She had rather justified the message.

It is, therefore, prayed that this matter may be sent, in the first instance, to the Hon''ble President for reconsideration and administration of caution to the Respondent as originally recommended, failing which, it be placed before the Assembly under Sub-Section (6) of Section 12 of the Act.

7. On the same date, that is, on 20.03.2012, the substance of the case was also made available by the Lokayukta on the official website of the Lokayukta. Thereafter, the said Special Report alongwith an action taken report was laid before the Legislative Assembly by the Chief Minister of Delhi on 11.12.2012.

8. It was contended by the petitioner/complainant that the decision of the President communicated by the impugned letter dated 11.11.2011 was open to judicial review and ought to be quashed inasmuch as the President, being the competent authority, had not called for the response of the complainant or the views of the Lokayukta and that the President had only obtained the comments of the Government of NCT of Delhi and the respondent No. 1. It was also contended that Section 12(2) of the said Act does not require or envisage another hearing or round of hearing before the competent authority (the President of India in this case). It was also contended that while the competent

authority has indicted the Department of Urban Development, Government of NCT of Delhi, it must be noted that the Lokayukta does not have any jurisdiction over Government servants and his jurisdiction only extends to public functionaries as defined in Section 2(m) of the said Act and, therefore, the direction given to the Department of Urban Development, NCT of Delhi to be more careful in preparing publications in the future was of no consequence and, in any event, beyond the scope of the said Act. It was also contended that the recommendation of the Lokayukta given in his report dated 18.07.2011 ought to have been endorsed by the competent authority (President of India).

9. We may point out that in this case, a predecessor Bench had also directed notice to be issued to the respondent No. 4 (the Lokayukta), by virtue of the order dated 13.02.2013, to place on record his stand. Thereafter, an affidavit dated 08.04.2013 of Sh. A.K. Kuhar, DHJS, Officer on Special Duty in the office of the Lokayukta, Delhi was filed. And, Mr. Arvind Nigam, senior advocate, appeared on behalf of the respondent No. 4 and had made his submissions expounding the stand and views of the Lokayukta. In sum and substance, the learned counsel for the respondent No. 4 supported the stand taken by the petitioner/complainant. It was also contended that the President had adopted a "faulty procedure" while considering and processing the recommendations made by the Lokayukta and that because of this, the functioning of the institution of the Lokayukta and its efficacy was adversely impacted. It was submitted that the Lokayukta, in adherence with the principles of natural justice, carries out a comprehensive inquiry with full opportunity being provided to the parties to set forth their respective cases. Where the allegations are found to be established against the public functionary, the Lokayukta submits a report to the competent authority alongwith the pleadings, evidence, submissions and other material produced during the inquiry. Mr. Nigam submitted that in terms of the mandate of Section 12(2) of the said Act, the competent authority is required to examine the "report" forwarded to and to intimate the Lokayukta, within a period of three months, as to the "action" taken or proposed to be taken on the basis of the report. According to the learned counsel, the said Act does not contemplate or provide for any further hearing or proceedings in the nature of hearing by the competent authority, other than the one conducted by the Lokayukta. In the context of the present case, it was contended by the learned counsel for the respondent No. 4 that there was no occasion for the competent authority (the President) to have called for the comments of the Government of NCT of Delhi as well as the response of the respondent No. 1 on the report of the Lokayukta. It was submitted that the expressions used in Section 12(2) of the said Act to the effect "examine the report" and "on the basis of the report", were significant and these expressions limited the scope of consideration by the competent authority. It was contended that the statute does not permit the conduct of a supplementary inquiry or the calling for responses or comments of the public functionary or the Government when their detailed responses/submissions are already available with the report submitted by the Lokayukta. With reference to

paragraph 17 of the affidavit on behalf of the respondent No. 4 (Lokayukta) and the Supreme Court decision in Institution of Andhra Pradesh lokayukta/UPA-Lokayukta, A.P. Vs. T. Rama Subba Reddy and Another, , it was contended that the recommendations of the Lokayukta not being accepted as a result of the "flawed procedure" having been adopted makes the report of the Lokayukta "a paper direction and the Lokayukta a paper tiger without having any claws".

10. On behalf of respondent Nos. 1 and 3, it was contended by Ms Zubeda Begum that the President dealt with the report of the Lokayukta in accordance with the requirements of law. The comments of the respondent Nos. 1 and 3 on the report of the Lokayukta were called for by the President and there was nothing wrong with this. The procedure adopted by the President was not faulty and, in fact, was in consonance with the principles of natural justice. Mr. Rajeeve Mehra, the learned Additional Solicitor General, appearing on behalf of the respondent No. 2 (the competent authority) submitted that the decision of the competent authority/President is not justiciable. He also submitted that as required u/s 12(2) of the said Act, the President considered the report of the Lokayukta and applied her mind to the same as also to the comments thereon of the respondents 1 and 3 and took the decision. It is not at all necessary that the competent authority must agree with the findings and/or the recommendations of the Lokayukta. And, before the competent authority takes or proposes to take any action against a public functionary, the competent authority is not barred from seeking the comments/response of the public functionary.

11. On behalf of the respondents (other than respondent No. 4), it was further contended that the present writ petition is not maintainable, in any event, inasmuch as a special procedure has been laid out in the Act itself in the event the Lokayukta is not satisfied with the action taken or proposed to be taken by the competent authority. That procedure is provided in Section 12(3) whereunder the Lokayukta may make a Special Report upon the case to the Lt. Governor. In case such a Special Report is made and it contains any adverse comment against any public functionary, the special report, by virtue of Section 12(5) of the said Act, is required to also contain the substance of the defence adduced by such public functionary and the comments made thereon by or on behalf of the Government or the public authority concerned, as the case may be. Furthermore, by virtue of Section 12(6), on receipt of such a Special Report, the Lt. Governor is required to cause a copy thereof together with an explanatory memo to be laid before the Legislative Assembly. It was submitted on behalf of the respondents (other than respondent No. 4) that in the present case, the Lokayukta was evidently not satisfied with the action taken by the competent authority (President) and, therefore, he made a Special Report on 20.03.2012 which was sent to the Lt. Governor and, thereafter, the same has been laid before the Legislative Assembly on 11.12.2012. The remedy in respect of dissatisfaction with the action taken by the competent authority has, therefore, been specifically provided and has also been availed of. Thus, there is no occasion for this court to entertain the writ petition in respect of the "action" taken by the competent

authority, as indicated in the impugned letter dated 11.11.2011.

12. It was also contended by the respondents (other than respondent No. 4) that once the Lokayukta's report is received by the competent authority, there is no bar under the Act on the competent authority calling for the views from the public functionary or the concerned Government on the said report of the Lokayukta. It was also contended that this was within the parameters of natural justice and that before any action is taken by the competent authority, against or in respect of a public functionary, the said public functionary ought to be given an opportunity of commenting on the report of the Lokayukta. It was also contended that, at that stage, it was not at all necessary to call for the views of the complainant or the Lokayukta because the action proposed is against the public functionary.

13. At this stage, it would be appropriate if the relevant provisions of the said Act are considered. Section 2(a) of the said Act defines "action" to mean action by way of prosecution or otherwise taken on the report of the Lokayukta or the Upalokayukta and includes "failure to act". Section 2(b) of the said Act, which defines "allegation", reads as under:-

2. Definitions: In this Act, unless the context otherwise requires:

a. xxxxx xxxxx xxxxx xxxxx

b. "allegation" in relation to a public functionary means by affirmation that such public functionary in capacity as such:-

i. has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs;

ii. has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any

iii. was actuated in the discharge of his functions as such public functionary by improper or corrupt motives or personal interest;

iv. is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known resources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf;

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

14. Section 2(d) defines "competent authority" in relation to a public functionary to mean, in the case of a Chief Minister and Minister, the President. The definition of "public functionary" given in Section 2(m) of the said Act, inter alia, means the "Chief Minister". By virtue of Section 7(a), the Lokayukta is empowered to proceed to inquire into an "allegation" made against the public functionary in

relation to whom either the President or the Lt. Governor is the competent authority. Section 9 of the said Act makes provisions relating to complaints. Section 10 provides that the Lokayukta or the Upalokayukta, shall, in each case before it, decide the procedure to be followed for making the inquiry and, in so doing, ensure that the principles of natural justice are satisfied. Section 11 stipulates that the provisions of the Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall, as nearly as may be, apply to the procedure of inquiry before the Lokayukta in the specified matters, such as summoning and enforcing the attendance of any person and his examination on oath, etc. The said provision also stipulates that the proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. Furthermore, the Lokayukta or the Upalokayukta shall be deemed to be a civil court for the purposes of Section 195 and Chapter XVI of the Code of Criminal Procedure, 1973.

15. We now come to the all important Section 12 of the said Act which reads as under:-

12. Report of Lokayukta and Upalokayukta-

(1) If, after inquiry into the allegations, the Lokayukta or an Upalokayukta is satisfied that such allegation is established, he shall, by report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the public functionary and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Lieutenant Governor and also inform the complainant concerned.

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

(5) If in any special report under sub-section (3) or the annual report under sub-section (4) any adverse comment is made against any public functionary, such report shall also contain the substance of the defence adduced by such public functionary and the comments made thereon by or on behalf of the Government or the public authority concerned, as the case may

(6) On receipt of a special report under sub-section (3), or the annual report under sub-section (4), the Lieutenant Governor shall cause a copy thereof

together with an explanatory memorandum to be laid before Legislative Assembly.

(7) Subject to the provisions of section 10, the Lokayukta may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by him, or by an Upalokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

16. We may also notice the provisions of Section 18 of the said Act which reads as under:-

18. Provision of this Act to be in addition to any other law for the time being in force - The provisions of this Act shall be in addition to the provisions of any other enactment or any rule or law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

17. From the above, it is evident that if, upon a complaint, the Lokayukta embarks upon an inquiry into the allegations made in the complaint, the exact procedure to be adopted by the Lokayukta would be within the domain of the Lokayukta provided it is ensured that the principles of natural justice are satisfied. In other words, insofar as the Lokayukta is concerned, he is enjoined by the said Act to ensure that his inquiry falls within the parameters of natural justice. As indicated above, Section 12(1) stipulates that if the Lokayukta is satisfied after an inquiry into the allegations that such allegation or allegations are established, he is required to communicate his findings and recommendations by a report in writing alongwith the relevant documents, materials and other evidence to the competent authority. In other words, the function of the Lokayukta is to inquire into the allegations made by the complainant. In doing so, the Lokayukta has to abide by the principles of natural justice. The Lokayukta does not himself take any decision with regard to the action to be taken on the basis of the report. That decision has to be taken by the competent authority u/s 12(2) of the said Act. Therefore, the Lokayukta's jurisdiction extends to the conducting of an inquiry and thereupon arriving at the findings and in the making of recommendations. In Mr. Justice Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna and Others etc., , the Supreme Court (Per K.S.P. Radhakrishnan, J), while considering the position under the Karnataka Lokayukta Act, 1984 and, in particular, Section 12 thereof, which is more or less similar to Section 12 of the Delhi Act, observed as under:-

Functions of the Lokayukta/Upa-Lokayukta-Investigative in nature

32. The provisions discussed above clearly indicate that the functions to be discharged by the Lokayukta or Upa-Lokayukta are investigative in nature and the report of Lokayukta or Upa-Lokayukta under sub-sections (1) and (3) of Section 12 and the special report submitted under subsection (5) of Section 12

are only recommendatory. No civil consequence as such follows from the action of the Lokayukta and Upa-Lokayukta, though they can initiate prosecution before a competent court. I have extensively referred to the object and purpose of the Act and explained the various provisions of the Act only to indicate the nature and functions to be discharged by Lokayukta or Upa-Lokayukta under the Act."

xxxxx xxxxx xxxxx xxxxx xxxxx

"37. The Lokayukta and Upa-Lokayukta while exercising powers under the Act, of course, is acting as a quasi-judicial authority but his functions are investigative in nature. The Constitution Bench of this Court in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, held: (AIR p. 408, para 14)

14. ... Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder.

38. This Court in Indian National Congress (I) Vs. Institute of Social Welfare and Others, , while dealing with the powers of the Election Commission of India under the Representation of the People Act, 1951, held that while exercising power u/s 29A, the Commission acts quasi-judicially and passes quasi-judicial orders. The Court held that: (SCC p. 700, para 27)

27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

Noticing the above legal principles this Court held in view of the requirement of law that the Commission is to give decision only after making an enquiry, wherein an opportunity of hearing is to be given to the representative of the political party, the Election Commission is required to act judicially."

xxxxx xxxxx xxxxx xxxxx xxxxx

40. The provisions of Sections 9, 10 and 11 clearly indicate that the Lokayukta and Upa-Lokayukta are discharging quasi-judicial functions while conducting the investigation under the Act. Sub-section (2) of Section 11 of the Act also states that for the purpose of any such investigation, including the preliminary inquiry the Lokayukta and Upa-Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in the matter of summoning and enforcing the attendance of any person and examining him on oath. Further they have also the power for requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office, issuing commissions for examination of witnesses or documents, etc. Further, sub-section (3) of Section 11 stipulates that any proceedings before the Lokayukta and Upa-Lokayukta shall

be deemed to be a judicial proceeding within the meaning of Section 193 of the Penal Code. Therefore, the Lokayukta and Upa-Lokayukta, while investigating the matters are discharging quasi-judicial functions, though the nature of functions is investigative.

(Underlining added)

18. In the very same decision, Justice Madan B. Lokur, concurring, had observed as under:

107. The broad spectrum of functions, powers, duties and responsibilities of the Upa-Lokayukta, as statutorily prescribed, clearly bring out that not only does he perform quasi-judicial functions, as contrasted with purely administrative or executive functions, but that the Upa-Lokayukta is more than an investigator or an enquiry officer. At the same time, notwithstanding his status, he is not placed on the pedestal of a judicial authority rendering a binding decision. He is placed somewhere in between an investigator and a judicial authority, having the elements of both. For want of a better expression, the office of an Upa-Lokayukta can only be described as a sui generis quasi-judicial authority.

108. The learned counsel for the State referred to *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, to highlight the difference between a court and a tribunal. It is not necessary to go into this issue because the question is not whether the Upa-Lokayukta is a court or a tribunal -- the question is whether he is a quasi-judicial authority or an administrative authority. To this extent, the decision of the Constitution Bench does not add to an understanding of the issue under consideration. However, the decision does indicate that an Upa-Lokayukta is certainly not a court. He does not adjudicate a lis nor does he render a "judicial decision" derived from the judicial powers of the State. An Upa-Lokayukta is also not a tribunal although he may have the procedural trappings (as it were) of a tribunal. The final decision rendered by the Upa-Lokayukta, called a report, may not bear the stamp of a judicial decision, as would that of a court or, to a lesser extent, a tribunal but in formulating the report, he is required to consider the point of view of the person complained against and ensure that the investigation reaches its logical conclusion, one way or the other, without any interference and without any fear. Notwithstanding this, the report of the Upa-Lokayukta does not determine the rights of the complainant or the person complained against. Consequently, the Upa-Lokayukta is neither a court nor a tribunal. Therefore, in my opinion, the Upa-Lokayukta can best be described as a sui generis quasi-judicial authority.

(Underlining added)

19. It is, therefore, clear that the Lokayukta can best be described as a sui generis quasi-judicial authority and that, although the Lokayukta is more than an investigator or an inquiry officer, at the same time, he is not placed on the pedestal of a judicial authority rendering a binding decision.

In other words, the Lokayukta, while investigating the matters before him in the course of conduct of an inquiry into the allegations, discharges a quasi-judicial function, although the nature of the function is investigative.

20. The competent authority, by virtue of Section 12(2) of the said Act is required to examine the report forwarded to it u/s 12(1) and to indicate within three months of the date of receipt of the report, to the Lokayukta, the "action" taken or proposed to be taken on the basis of the report. It is clear that while the Lokayukta conducts the inquiry and investigates the matter, he does not have the power to take any action. That power is with the competent authority. The question that arises is--does the competent authority act quasi-judicially in exercising this power?

21. There are two sets of cases where an authority is required to act judicially. The first set of cases is where there are disputing parties and the authority has to adjudicate the lis between them. The second set of cases is where there are no disputing parties as such, but the authority concerned is to sit in judgment. As observed in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, if a statute empowers an authority, not being a court in the ordinary sense, to decide the disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties, who are opposed to each other, there is a lis and, prima facie, in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is the result of a quasi-judicial act. Where, however, a statutory authority has power to do any act, which will prejudicially affect the subject, then, although there are no two parties apart from the authority and the "contest" is between the authority proposing to do an act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

22. In the present case, we find that while the inquiry is to be conducted by the Lokayukta, the decision is to be taken by the competent authority. There is no doubt that the entire process of inquiry and decision making is quasi-judicial in nature. While the Lokayukta has to act quasi-judicially and has to observe the principles of natural justice as specifically enjoined by Section 10 of the said Act, the principles of natural justice would also be applicable to the decision making process of the competent authority. However, the scenario before the competent authority is different. While before the Lokayukta, the complainant and the public functionary are, in a sense, pitted against each other because of the rival stands that they take, before the competent authority, it is only the report of the Lokayukta alongwith the ancillary documents and the public functionary against whom action is to be taken by the competent authority.

23. In this backdrop, it would be apposite to refer to certain observations of a Constitution Bench of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, which was dealing with disciplinary

proceedings and the provisions of Article 311 of the Constitution. While we have observed that the Lokayukta is something more than an inquiry officer, it is evident that the role of competent authority under the said Act is somewhat akin to that of a disciplinary authority. In the context of whether a delinquent employee has a right to represent against the report of the inquiry officer, the Constitution Bench observed as under:-

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

(Underlining added)

24. An analogy can be drawn from the above. The report of the Lokayukta does

not merely contain the relevant documents, materials and evidence collected by the Lokayukta during the course of inquiry conducted by the Lokayukta under the said Act. It also contains the findings of the Lokayukta. It is also true that the competent authority is not bound by the findings and/or the recommendations of the Lokayukta. It is well within the powers of the competent authority to reject the findings and recommendations. But, the findings and recommendations of the Lokayukta do constitute additional material before the competent authority of which the concerned public functionary has no knowledge. If such additional material, unknown to the public functionary, is to be taken into consideration by the competent authority, while taking action or proposing to take action, it is imperative under the principles of natural justice that before the competent authority takes such a decision, the public functionary is given an opportunity to respond and comment upon the Lokayukta's findings and recommendations.

25. From the above discussion, it is evident that the course adopted in the present case is in consonance with the principles of natural justice and the procedure followed by the competent authority cannot be regarded as "faulty". We have noticed that after the Lokayukta forwarded his report to the President, comments were sought from the Government of NCT of Delhi as also the respondent No. 1. Based on a consideration of the Lokayukta's report alongwith the documents, materials and evidence collected by the Lokayukta and the comments and responses received on the said report from the Government of NCT of Delhi and the respondent No. 1 (the public functionary in the present case), the competent authority came to the conclusion that there was no evidence of any mala fide intention on the part of the respondent No. 1 and, therefore, no action was taken or proposed to be taken by the competent authority insofar as the respondent No. 1 is concerned.

26. We entirely agree with the submissions made by the learned counsel for the respondents (other than respondent No. 4) that it was well within the powers of the competent authority to call for the views of the respondent No. 1 on the report of the Lokayukta before the competent authority took any action in the matter. First of all, there is no bar in the Act against such a course of action. Secondly, and more importantly, it is the requirement of natural justice, which is inbuilt in the decision making process of the competent authority that a response on the findings of the Lokayukta be obtained from the concerned public functionary. We may also point out that it was not at all necessary for obtaining or calling for the response of the complainant or the views of the Lokayukta. The complainant's stand had been examined by the Lokayukta and that had culminated in the report of the Lokayukta, which contained the findings and recommendations of the Lokayukta. Therefore, nothing further was required from the complainant or the Lokayukta and it is only the grant of an opportunity to the concerned public functionary to respond to the findings of the Lokayukta that was necessary for fulfilling the requirements of natural justice.

27. Though the nature of the functions of the Lokayukta is essentially

investigative, he is more than an investigator. This is amply demonstrated by the fact that the competent authority has to intimate the Lokayukta, the "action" taken or proposed to be taken. The matter once again falls within the domain of the Lokayukta. If no intimation is received by the Lokayukta within three months of the date of receipt of the report by the competent authority, the Lokayukta can proceed u/s 12(3) of the said Act. Where intimation is received by the Lokayukta and he is satisfied with the action taken or proposed to be taken by the competent authority, he shall close the case with information to the complainant, the public functionary and competent authority. However, in any other case, which includes the case where the Lokayukta is not satisfied with the action (which includes "failure to act") or the proposed action, he may, if he considers that the case so deserves, make a special report upon the case to the Lt. Governor and also inform the complainant. He cannot request the competent authority to re-examine or re-consider the case. There is no provision for such a "review" in the said Act.

28. In these circumstances, the Lokayukta could not have "prayed" in his Special Report of 20.03.2012 to the Lt. Governor that the matter be sent (in the first instance) to the President for reconsideration. There is no provision in the said Act for such a course of action. On the contrary, as pointed out above, when the Lokayukta is dissatisfied with the course of action (which includes inaction) taken or proposed by the competent authority, the procedure to be adopted by the Lokayukta is specifically provided in the said Act itself. That "remedy" or procedure is of making a Special Report to the Lt. Governor u/s 12(3) of the said Act in the manner indicated in Section 12(5) thereof. Thereafter, the Special Report has to be placed before the Legislative Assembly in terms of Section 12(6) of the said Act. In the present case, the Lokayukta was dissatisfied with the "action" taken by the President (the competent authority) and, therefore, he thought it fit to make a Special Report. That Special Report was made on 20.03.2012 and the same was forwarded to the Lt. Governor. As indicated above, the said Special Report has also been laid before the Legislative Assembly on 11.12.2012. Therefore, compliance with the provisions of the said Act, insofar as the complaint in question is concerned is complete. No further action is contemplated under the said Act by the Lokayukta or the Competent Authority. Once the matter is placed before the Legislative Assembly, it falls within the arena of the legislators, who eventually are representatives of the people.

29. This being a petition seeking a writ of certiorari quashing the decision of the competent authority, it cannot be allowed simply on the ground that the decision is wrong. We are not sitting in appeal over the decision. It must be shown before such a writ is issued that the competent authority acted without jurisdiction or in excess of it or in violation of the principles of natural justice (see: Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, . In the present case, the competent authority had the jurisdiction to take the decision on the report of the Lokayukta and in doing so she neither exceeded her jurisdiction nor violated the principles of natural justice.

30. Lastly, the lament of the Lokayukta that the institution of the Lokayukta should not be reduced to being a mere paper tiger needs to be addressed. This anguish of the Lokayukta in this case is predicated on the premise that the competent authority followed a faulty procedure. We have already repelled this premise. Therefore, at least, in this case, this issue is not a cause for concern. Insofar as the general observations of the Lokayukta based on the observations of the Supreme Court in T. Rama Subha Reddy (supra) are concerned, the way out has been suggested by the Supreme Court in that very decision in the following words:-

... it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of the Lokayukta or Upa-lokayukta so that the public confidence in the working of the system does not get eroded and these institutions can effectively justify their creation under the statute.

A caveat must also be entered and that is that the above Supreme Court decision was considering the provisions of the Andhra Pradesh Lokayukta and Upa-Lokayukta Act 1983, the provisions of which are somewhat different from those of the Delhi Act.

In these circumstances and for the foregoing reasons, there is no merit in this writ petition and the same is dismissed.