

Amrendra Narayan Singh [At:02:00 P.M.] vs Remote Sensing Application Centre ... on 6 September, 2013

Bench: Devi Prasad Singh, Vishnu Chandra Gupta

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH RESERVED ON 14.8.2013 CIRCULATED ON 23.8.2013 DELIVERED ON 6.9.2013 IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

AFR Case :- SERVICE BENCH No. - 11 of 2004 Petitioner :- Amrendra Narayan Singh [At:02:00 P.M.] Respondent :- Remote Sensing Application Centre Lko.Through Its President Petitioner's Counsel :- L.P.Shukla Respondents' Counsel :- C.S.C.,A.K. Verma (Addl. C S C, Alok Sharma, Ashok Sharma, Dipak Seth, Jaideep Narain Mathur CONNECTED WITH Writ Petitions No.507(S/B) of 2004 and 1487, 1486, 1599 - all (S/B) of 2003.

Hon'ble Devi Prasad Singh, J Hon'ble Vishnu Chandra Gupta, J (Delivered by Hon'ble Devi Prasad Singh, J)

1. In these writ petitions, common question of facts and law are involved, hence are being decided by present common judgment. Writ Petition No.11 of 2004 is taken as leading writ petition.

2. These are the petitions under Art. 226 of the Constitution of India. Substantial question of law of public importance involved in the present writ petition is whether on the recommendation and finding recorded by Lokayukta, a statutory authority under U.P. Lokayuktas Act, 1975 (in short, 1975 Act), services of an employee, may be dispensed with without following service rules. In the present case, the petitioner happens to be the officer/Scientists of a body constituted under Societies Registration Act. The further question involved is whether an action may be taken by an authority of Society not empowered under the Memorandum or Rules of the Association ?

(i) FACTS AND RULES

3. Keeping in view the lengthy argument and pleading pressed by parties' counsel, the writ petitions are decided under the following heads :-

(i) Facts & Rules

(ii) Appointment of Director

(iii) Defence set up by the respondents and filing of false affidavit

(iv) Proceeding before Lokayukta

(v) Recommendation of Lokayukta

(vi) Natural Justice

(vii) Concealment of Fact and Abuse of Power

(viii) Finding

(ix) Order

4. The respondent No.1, Remote Sensing Application Centre, Lucknow (in short, Centre) is a body constituted under Societies Registration Act, governed by its Memorandum and Rules of Association. The rules of Association contains the provision conferring power on its different authorities to manage the affairs of Association. The centre has published an advertisement No.1/99 in October 1990 inviting applications for appointment on the post of its Director from Scientist of repute having five years experience at higher level of responsibility, managerial experience in project, planning formulation, implementation, evaluation and administrative experience. The advertisement (Annexure-4) requires following essential qualification :

"Ph.D in any Natural Science discipline with more than 10 years of working experiences emphasising in the field of remote sensing applications/M.Sc in any Natural Science discipline with 20 years working experience in related field having outstanding research project and applications work."

5. In pursuance to aforesaid advertisement, the petitioner has submitted an application being qualified for the post in question. The qualification and experience has been narrated in Annexure No.5 to the writ petition according to which the petitioner possess the following qualification :

"Ph.D., University of Allahabad, Allahabad, India. Thesis : Distribution and formation of salt-affected soils in Ganga-Yamuna Doab - A regional study using remote sensing techniques. 1990.

Post Graduate Diploma in Photo-interpretation for soil survey, Indian Institute of Remote Sensing, Dehradun, India. 1976 M.Sc. Agriculture, Soil Science, G.B. Pant Univ. of Agril. And Technology, Pantnagar, India. Thesis : Mineralogy of Soils from Eucalyptus plantation area in Nainital tarai. 1974.

B.Sc. Agriculture, Rajendra Agril. University, Bihar, India. 1971

6. Apart from aforesaid qualification, the petitioner had attended following additional professional course and awarded for outstanding performance. They are reproduced as under :

PROFESSIONAL COURSES ATTENDED (I) Attended Short course on Remote Sensing Technology and Applications held at LARS, Purdue University, U.S.A. (1977)

(ii) Participated in a training course on the Multispectral Data Analysis System conducted by the Aerospace Systems Division of the Bendix Corporation, Ann Arbor, Michigan, U.S.A. (1977)

(iii) Attended a workshop on Radar Data Applications to Agriculture, conducted by Interra Technologies, Canada (1989)

(iv) Participated in a Simulation and Systems Analysis Course conducted by the University of the Philippines and IRRI, Los Banos, Philippines (1993).

(v) Participated in a training on Incorporating Gender and Other Key Social Concerns in Rainfed Farming System Research conducted by Indira Gandhi Agril. University, Raipur, India and IRRI, Los Banos, Philippines (1995).

(vi) Participated in a programme on Procurement of works for World Bank aided projects conducted by Administrative Staff College of India, Hyderabad, India (1998).

AWARDS AND CITATIONS (I) Awarded a Citation in recognition of "Outstanding and distinguished contribution in the field of Remote Sensing and Soil Science", at the National Conference on Landuse/Land cover and Management Practices, Hyderabad (2003),

(iii) Conferred with Honorary appointment to the "Research Board of Advisors" by the American Biographical Institute."

7. All the applications were processed through Selection Committee and the meeting of the Selection Committee was convened on 25.9.2001 consisting the Cabinet Minister of the department as Chairman of the Governing Body Prof. Shiva Kant Ojha, Mr. A.K. Bit, Secretary, Deptt. of Science & Technology, Prof. B.L. Deekahatulu, Director, Centre for Space Science & Technology for Asia and Pacific, Dehradun., Dr. P.S. Roy, Dean, Indian Instt. of Remote Sensing, Dehradun and Director, NESAC, Shillong, Dr. S.C. Mudgal, Director General, U.P. Council of Agricultural Research, Lucknow.

8. It may be noted that the decision of the Governing Body was unanimous in terms of the agenda dated 12.10.2001, a copy of which has been filed as Annexure No.6 to the writ petition. The Chairman of the Governing Body has not casted vote since decision was unanimous.

9. The Selection Committee selected the petitioner for the post of Director and decision was placed before the Governing Body of the Centre which unanimously approved the petitioner's name for appointment on the post of Director on 12.10.2001 and forwarded the same with due recommendation to the President of the Centre. The President of Centre is ex officio Chief Minister of the State. After approval from the President of the Centre, Chairman issued the appointment letter dated 23.10.2001. In furtherance thereof, the petitioner resumed duty on the post of Director on the same day, i.e. 23.10.2001. However, it may be noted that the petitioner was officiating on the post of Director as Incharge since 10.5.1999, the date when the post fell vacant being senior-most

Scientist of the Centre. Copy of the office memorandum dated 23.10.2001 appointing the petitioner on the post of Director has been filed as Annexure No.7.

The petitioner stated that while working as Scientist SE in the Centre of U.P., the petitioner was promoted as Scientist SF on 1.1.1988 and thereafter promoted as Scientist SG on 1.1.1997 in accordance with service rules. It is further stated that an adverse entry was given to the petitioner from 1.4.1997 to 3.10.1997 but later on it was expunged with due communication to the petitioner.

10. During the course of advertisement and selection of the petitioner, a writ petition No.1348 of 2001 (S/B) was filed in this Court. A Division Bench of this Court by interim order dated 24.9.2001 had provided that if any selection is held, it shall be abide by the order passed by this Court. The question with regard to maintainability of the writ petition was also left over. Since there was no stay, the selection process continued and the petitioner was selected (supra) and appointed on the post of Director of Centre.

11. By amending the writ petition, the petitioner has brought on record that a complaint was sent to the opposite party No.3, i.e. Lokayukta, U.P. In para 10(B), it has been stated that the complaint submitted against the petitioner is not supported by affidavit in compliance to the provisions contained in Section 9(2) of the Act. The petitioner further stated that the complainant Ram Krishna Verma himself has sent a letter dated 5.10.2001 to Lokayukta (Annexure No.8A), U.P. that he has not sent any complaint and his name has been utilised by impersonation. He has also filed affidavit disowning complaint to Lokayukta. A copy of the letter dated 5.10.2001 withdrawing the complaint by Ram Krishna Verma supported by an affidavit is filed as Annexures 8A and 8B to the writ petition.

12. It is vehemently argued that once the complainant disowned the complaint, filed an affidavit, it was not open for the Lokayukta to send recommendation for action and removal. However, it appears that the Lokayukta sent his recommendation to the State Government on 5.2.2003 with the finding of alleged irregularities committed in appointment of the petitioner and some other employees by the then Cabinet Minister Prof. Shivakant Ojha and in pursuance thereof, by the impugned order, the petitioners and appointment of some other persons were held to be void and in consequence thereof, the petitioner was removed from service .

13. The aims and object of Centre as appears from the Memorandum reveals that it was established in December 1981 and registered under Societies Registration Act. Relevant portion from the Memorandum is reproduced as under :

"Remote Sensing Applications Centre, Uttar Pradesh was established in December 1981 by the Govt of U.P for the purposes of utilizing the newly developing technology of remote sensing in better management of the entire gamut of natural resources.

The Centre has developed as an autonomous scientific service organisation and has become operational. It is gradually providing accurate information about natural resources to the State Government departments and other agencies. The Centre is

also undertaking specific investigations on behalf of the user departments by integrating remote sensing technology with other conventional techniques for efficient exploitation and management of some of the natural resources.

This centre is the first of its kind to be established by any State in the country and was formally registered under the Societies Registration Act, in May 1982. The Memorandum and Rules of Association of the Centre are presented in the following pages."

14. Article 5 of the Memorandum of Association contains the name of 20 persons as its members. The first five names contains the names of President and Vice Presidents and an ex officio Member. For convenience, relevant portion of Article 5 of Memorandum of Association is reproduced as under :

"5. The following persons shall be the first members of the Centre, namely :-

Sl.

No. Name Address Designation Occupation

1.

Sri Vishwanath Pratap Singh Chief Minister/Minister of Planning, Uttar Pradesh, Vidhan Bhawan Annexe, Lucknow.

President (ex-officio) Politics

2. Sri Brahm Dutt Minister of Finance, Uttar Pradesh, Vidhan Bhawan, Lucknow Vice President (ex-officio) "

3. Sri Jagdish Chandra Dixit Minister of Science & Technology, U.P. Vidhan Bhawan, Lucknow Vice President (ex-officio) "

4. Sri Dayal Krishna Minister of State for Science & Technology, U.P., Vidhan Bhawan, Lucknow.

Vice President (ex officio) "

5. Sri R.P. Khosla Chief Secretary to Government, U.P., Vidhan Bhawan Annexe, Lucknow.

Member (ex-officio) U.P. Govt. Service.

15. Article 6 contains the name of Chairman and 9 other ex-officio members constituting the Governing Body. For convenience, Article 6 is reproduced as under :

"6. The Governing Body of the said Centre shall be the body constituted to be the Governing Body and the first members and office bearers of the said Governing Body to which by the rules of association of the Centre the management of its affairs is entrusted shall be as follows :

Sl.

No. Name Address Designation Occupation

1.

Sri Vishwanath Pratap Singh Chief Minister/Minister of Planning, Uttar Pradesh, Vidhan Bhawan Annexe, Lucknow.

Chairman Politics

2. Sri D.K. Mittal Secretary Science & Environment, Government of Uttar Pradesh, Vidhan Bhawan, Lucknow Member (ex-officio) U.P. Govt. Service

3. Sri J.L. Bajaj Secretary Finance, Government of U.P. Vidhan Bhawan, Lucknow "

"

4. Dr. J.P. Singh, Secretary Planning, Government of U.P. Vidhan Bhawan, Lucknow "

"

5. Dr. Jagdish Narain Vice Chancellor, University of Roorkee, Roorkee.

"

Scientist

6. Dr. L.R.A. Narayan Head, Applications Division, National Remote Sensing Agency, Balanagar, Hyderabad - 500 037.

Member (ex officio) Scientist

7. Dr. Baldev Sahai Head, Aerial Surveys Groundtruth and Photointerpretation Division, R.S.A. Space Applications Centre, Ahmedabad.

"

"

8. Col. Prabhakar Misra Dean, Indian Photo Interpretation Institute (NRSA), P.B. No.135, Kalidas Road, Dehradun.

"

"

9. Prof. R.S. Chaturvedi Director, Remote Sensing Applications Centre, U.P., 46/8, Lalpat Rai Marg, Lucknow Member Secretary (ex-officio) "

Thus, a combined reading of Arts. 5 and 6 reveals that there shall be 20 members of the centre of which Chief Minister shall be ex officio President which appears to constitute its General Body.

16. There are nine members of Governing Body to manage the affairs of centre, of which the Chief Minister has been shown as its Chairman.

From combined reading of Arts. 5 and 6, it reveals that the then Chief Minister Shri Vishwanath Pratap Singh was designated as ex officio Chairman of the centre, i.e. General Body and the Chairman of the Governing Body. The memorandum indicates the then Chief Minister as first President and again as the first Chairman along with other office bearers of the Governing Body.

17. A combined reading of the rules reveals that every selection and appointment shall be done with the approval of the Governing Body and the decision of the Governing Body shall be placed before the Chairman for his approval. The appointment of Director shall be by the President on the recommendation of the Governing Body. It is the Governing Body which seems to have been conferred power to take a decision to fill up the vacancies.

18. The object of the Centre is to undertake, promote, guide, coordinate and aid research and development in the field of remote sensing. The then Chief Minister Mr. Vishwanath Prapat Singh was the first ex officio President of the Centre and he was also Chairman of the first Governing Body in accordance with Memorandum. Rule 5 deals with power of Governing Body. Rule 6 provides the members of Governing Body. Rule 9 provides for decision of the Governing Body. It provides that no act or proceedings of the Governing Body or the Advisory Committee may be questioned for the reason that any of its vacancy is not filled up or for any defect in appointment or nomination of any of its members or any defect or irregularity in the Act not affecting the substance. Sub Rule (3) approves selection and appointment done by the Committee approved by the Governing Body and on account of any defect in its constitution, decision taken may not be questioned. Rule 10 further provides that the Governing Body may delegate to a Committee or the Chairman or the Director any of its power for conduct of its business as it deem fit subject to conditions that the

action taken by the delegatee shall be reported to the Governing Body for its approval in its next meeting. For convenience, Rules 5, 6, 9 and 10 are reproduced as under :

"Rule 5 The superintendence, control and management of the affairs of the Centre, its income and property, both movable and immovable, shall be vested in the Governing Body, which shall exercise all powers and perform all duties for carrying out the objects of the Centre.

Rule 6 The Governing Body shall consist of the following members -

(a) The President of the Centre shall be the Chairman of the Governing Body. But the President may nominate any other member of the Centre as Chairman thereof;

(b) Three members of the centre who are officers of the State Government, to be nominated by the President;

(C) Four members of the centre who are scientists or technologist to be nominated by the President and;

(d) Director of the centre, who shall also act as Secretary of the Governing Body.

Rule-9 (1) All decisions of the Governing Body shall be taken by majority of the votes. Each member of the Governing Body shall have one vote but the Chairman may exercise casting vote in case of a tie.

(2) The decision of the Governing Body may, with the consent of the Chairman, also be obtained by circulating the proposal to the members and any proposal so circulated and approved by a majority of the members shall be as effectual and binding as if it had been passed at meeting of the Governing Body.

(3) No act or proceedings of the Centre or the Governing Body or the Advisory Committee shall be invalid merely by reason of any vacancy therein or of any defect in appointment or nomination of any of its members, or any defect or irregularity in the act not affecting the substance."

Rule 10 The Governing Body may delegate to a Committee or the Chairman or Director such of its powers for the conduct of its business as it may deem fit, subject to the condition that the action taken by the delegatee shall be reported to the Governing Body for its approval at its next meeting."

19. Under Rule 11, the Chairman ordinarily shall preside over the meetings of the Governing Body and under Rule 12, the appointment of the Director shall be done by the President on the recommendation of the Governing Body. For convenience, Rules 11 and 12 are reproduced as under :

"Rule 11 The Chairman, if present, shall preside over the meetings of the Governing Body. If the Chairman is unable to attend any meeting, the members present may

elect one of them as the Chairman for the purpose and hold that meeting.

Rule 12 The Director shall be appointed by the President on the recommendation of the Governing Body provided that the first Director shall be appointed by the State Government."

Rule 23 deals with the powers of the State Government and Rule 24 deals with power to remove difficulty. For convenience, Rules 23 and 24 are reproduced as under :

"Rule 23(1) The State Government may from time to time issue directives to the Centre as to exercise and performance of its functions in matters involving the security of the State or substantial public interest and such other directives as it may consider necessary in regard to the finances and conduct of business and affairs of the Centre and in the like manner may vary and annul any such directive (s). The centre shall give immediate effect to the directive (s) so issued.

(2) The State Government may call for such returns, accounts and other information with respect to the properties and activities of the centre as may be required from time to time.

Rule 24. If, in any emergent situation, any difficulty arises in giving effect to provisions of these rules, the President may, at the recommendation of the Governing Body, make such orders as he considers necessary for carrying out the objects of the Centre."

(ii) APPOINTMENT OF DIRECTOR

20. The petitioner has brought on record with specific pleading that the then Cabinet Minister Shri Shiva Kant Ojha took over charge of Science & Technology on 20.11.1999 from his predecessor Sri Hari Shanker Tiwari. It was Shri Hari Shanker Tiwari, the then Cabinet Minister of Science & Technology who put a note before the Chief Minister who happens to be ex-officio President of the centre for selection and appointment of Director through advertisement in the newspaper. The proposal was approved by the then Chief Minister Shri Kalyan Singh on 20.4.1999 as ex officio President of the centre. The copy of the office note filed as Annexure No.RA-1 contains the note of Cabinet Minister dated 15.4.1999 and approval granted by the then Chief Minister Shri Kalyan Singh on 22.4.1999, as ex officio President of the centre. It appears that again an approval was obtained from the then Chief Minister by the then Cabinet Minister vide his office note dated 10.5.1999 followed by approval of the then Chief Minister dated 4.6.1999 (RA-2). The proposal with regard to selection and appointment on the post of Director through advertisement was placed before the Governing Body on 19.10.2000. The Governing Body under its agenda item No.GB-9 approved for selection and appointment through a duly constituted Selection Committee with due approval of the competent authority. The resolution of the Governing Body dated 9.10.2000 as contained in Annexure RA-3 is reproduced as under :

"Item No.GB-9 :

Perused the agenda note regarding the appointment of a regular Director of RSAC. It was informed that 17 applications have already been received against the advertisement released in October, 1999. Decided that the selection of the Director should be made from the candidates who have applied against the above advertisement, after duly constituting a Selection Committee with the approval of the Competent Authority, as per rules. The selection of the Director should be done at the earliest."

21. A Selection Committee was constituted (supra). It appears that the then Minister Shri Shiva Kant Ojha had also taken over charge of the Chairman of the Governing Body from its predecessor Sri Hari Shanker Tiwari. He placed a note before the then Chief Minister Sri Rajnath Singh for approval of the resolution of the Governing Body with regard to selection and appointment of the post of Director. The Chief Minister as the President approved vide his note dated 19.12.2000. The office note in its entirety has been filed as Annexure No.RA-4 which is reproduced as under :

dqi;k iwoZ i`"B&25 ds ryk'k ij ikfjr vkns'kksa dk voyksdu djsa A izLrq i=koyh esa funs'kd] lqnwj laosnu mi;ksx dsUnz ds p;u gsrq desVh xfBr djus ds laca/k esa dk;Zokgh lEikfnr dh tk jgh gS A lEeq[k Hkkx ij iwoZ esa dh x;h xozfuax ckMh dh ehfVax ds dk;Zo`Rr dh ewy izfr jf{kr gS ftlds }kjk iwoZ funs'kd fjeksV lafUlaX ,.M ,Iyhds'kUl lasUVj dh fu;qfDr dh x;h Fkh] ftlds Jh ih lh prqosZnh] lfpo] foKku ,oa izkS+|kfcdh@v/;{k} xofuZx ckMh Fks A mYys[kuh; gS fd iwoZ esa tks Hkh xofuaZx CkkMh dh ehfVaxsa gqbZ gS rFkk ftlesa funs'kd] vkjo,lo,olh ds p;u dk Hkh izdj.k fopkjk/khu jgk gS esa v/;{k} izca/kdkfj.kh lfefr gh jgk gS A iwoZ esa lqnwj laosnu mi;ksx dsUnz ds :Yl vkWWWQ ,lksfl;s'ku ds fu;e&12 ds vUrxSr funs'kd dh fu;qfDr xofuax ckMh dh laLrqfr ij v/;{k} }kjk dh tk;sxh A tcfD xofuaZx CkkMh ds v/;{k in dk dk;ZHkj iwoZ esa fn;s x;s vkns'ksa ds vuqikyus esa esjs }kjk ns[kk tk jgk gS pwaFD izca/kdkfj.kh lfefr ds v/;{k in dk dk;Z esjs }kjk gh lEikfnr fd;k tk jgk gS] vr,o desVh ds v/;{k} p;u lfefr dk izLrko fd;k x;k Fkk] ftl ij vkidk vuqeksnu pkgk x;k Fkk A ;gka ;g Hkh mYys[kuh; gS fd izca/kdkfj.kh lfefr dh cSBdsa esjh v/;{krrk esa gh lEikfnr gksrh gS A mijksDr ds ifjizs{; esa vuqjks/k gS fd d`i;k iwoZ i`"B&25 ij ikfjr vkns'kssk ij iufozpkj dj funs'kd] lqnwj oaosnu mi;ksx dsUnz ds p;u gsrq esjs }kjk i`LB&25 ij izLrkfor desVh ij vuqeksnu iznku djus dh d`ik djsa A gLrk{kfjr 2&11&2000 izks f'kokdkUr vks>k ea=h foKku ,oa izkS+|ksfxdh] lwpuk izkS|kfxdh rFkk bysDVkfudl] m]iz] eko eq[;ea=h th pwaFD eko ea=h gh v/;{k gSa] vr % mUgha dh v/;{krrk esa p;u gksuk pkfg, A gLrk{kfjr 19&12&2000 jktukFk flag

22. The application received for appointment on the post of Director was subjected to screening by the Screening Committee through office note date 15.6.2001 (Annexure RA-5). The Screening Committee screened 13 applications for the post of Director keeping in view their suitability and qualification. The Screening Committee found three candidates suitable for appointment on the post of Director including the petitioner. Accordingly, the petitioner and two other persons were called by the Selection Committee for interview.

23. The Selection Committee conducted interview of all three screened candidates on 26.9.2001 and recommended the name of the petitioner for the post of Director observing that keeping in view the experience, qualification and performance the petitioner was found fit for the post of Director, Remote Sensing Application, Lucknow. The resolution of the Selection Committee seems to be unanimous.

The decision of the Selection Committee along with record was placed before the Governing Body by the then Secretary, Science & Technology, Government of U.P. Sri Arun, who also happened to be convener of the selection committee. The Governing Body in its meeting dated 12.10.2001 had discussed the matter and accepted the recommendation of the selection dated 25.9.2001. The resolution of the Governing Body under item No.GB-9 in its meeting dated 12.10.2001 as contained in Annexure No.RA-6 is reproduced as under :

"Item No.GB-9 :

Considered the item regarding the selection of regular Director of RSAC-U.P. Discussed the agenda note put up to the Governing Body by Secretary, Science & Technology, Govt of U.P. (Appendix -I). Took note of the recommendation of the Selection Committee constituted by the President of the Centre on the recommendation of Hon'ble Minister, Science & Technology and Chairman, Governing Body for the screening and interview of the candidates who had applied against the advertisement for the post of Director and resolved to accept the recommendation of the Selection Committee regarding appointment of Director, RSAC-UP in the grade of Scientist 'H' in the pay scale of Rs.18400-500-22400 as per the advertisement.

Further resolved to recommend to the President of the Centre (Hon'ble Chief Minister, Govt of U.P.) to consider and approve the recommendation of the selection committee for appointment of regular Director as per rule 12 of the Rules of Association of the Centre.

Meeting ended with a vote of thanks to the Chairman.

Approved the minutes of the meeting as recorded between pages 1 to 3."

24. The resolution of the Governing Body (supra) was placed before the then Chief Minister for approval in October, 2001 by its Chairman/Cabinet Minister of Science & Technology. The resolution was duly approved by the then Chief Minister vide his endorsement dated 23.10.2001 being President of the Centre as is evident from office note, a copy of which has been filed as Annexure No.RA-7. Thus, at the face of record, the selection and appointment was done in accordance with Service Rules through a committee constituted in pursuance to the resolution of the Governing Body and all actions were approved by the then Chief Minister of the State who under the Memorandum of Association happens to be the President of the Centre.

25. One of the argument advanced by the respondents is that Sri Shiva Kant Ojha, the then Minister of Science and Technology could not have discharged duty on the post of Chairman, Governing Body. It has not been disputed while filing response by the respondents that when Shri Shiva Kant Ojha took over charge of Cabinet Minister, Science & Technology from Sri Hari Shanker Tiwari, at that time, his predecessor Hari Shanker Tiwari was discharging duty as Chairman of the Governing Body. It has further been brought on record that earlier, the power of Chairman, Governing Body was being performed by the Principal Secretary, Science & Technology. The power to discharge duty on the post of Chairman was conferred on the Principal Secretary, Science & Technology by the then Chief Minister Sri Mulayam Singh Yadav by order dated 7.12.1993 in pursuance to Sub rule (a) of Rule 6. The copy of the office memorandum dated 7.12.1993 has been filed as Annexure No.RA-14 to the rejoinder affidavit which is reproduced as under :

fjeksV lsfU lax ,Iyhds'ku lsUVj] mRrj izns'k la[;k & 112@[h,l@,lVh@93 fnukad y[kum % 7 fnlEcj] 1993 dk;kZy;&Kki dk;kZy; Kki la[;k 91@ih,l@,lVh@93 fnukad 4]9]93 esa vkaf'kd la'kks/ku lHkkifr lqnwvj laosnu mi;ksx dsUnz mRrj izns'k] dsUnz ds eseksjs.Me ,oa :Yl vki ,lksfl,lu dh /kkj 6 , ds vUrxZr vius vf/kdkjska dk iz;ksx djrs gq;s lfpo] foKku ,oa izk|ksfxdh mRrj izns'k 'kklu] dks dsUnz dh izcU/kdkfj.kh lfefr dk v/;{k fu;qDr djrk gwa A lfpo] foKku ,oa izkS|ksfxdh dk;Zdkfj.kh lfefr ds v/;{k dh gSfl;r ls dsUnz ds vius vf/kdkjska ,oa nkf;Roksa dk fuoZgu djsa A go eqyk;e flag ;kno lHkkifr lqnwvj laosnu mi;ksx dsUnz mRrj izns'k

26. Power conferred on the Principal Secretary was later on withdrawn by the successor Chief Minister Sri Kalyan Singh vide his order dated 17.1.1998 (Annexure RA 13).

27. It appears that after withdrawing the power of Chairman of Remote Sensing from the Principal Secretary, it was conferred on the Cabinet Minister of the Department of Science & Technology and in pursuance thereof, Sri Hari Shanker Tiwari and later on Shri Shiva Kant Ojha were holding the post. It further transpires that the Chief Minister has exercised power in pursuance to the provision contained in Sub Rule (a) of Rule 6 of the Rules of Association (supra) which provides that the President of the Centre shall be the Chairman of the Governing Body and may nominate any other Member of the Centre as Chairman.

28. Thus, the delegation of power by the Chief Minister to the Cabinet Minister of Science & Technology does not seem to be a decision without jurisdiction and there was no folly or illegality on the part of the then Cabinet Minister Sri Hari Shanker Tiwari, or Shri Shiva Kant Ojha in discharging duty as Chairman of the Governing Body. The case set up by Lokayukta while holding that Sri Shiva Kant Ojha was not empowered to discharge obligation under Rule of Association as Chairman does not seem to be correct. Lokayukta had not considered the entire factual matrix and Rule (supra).

29. The selection and appointment of the petitioner does not seem to suffer from any impropriety or illegality.

(iii) DEFENCE SET UP BY THE RESPONDENTS AND FILING OF FALSE AFFIDAVIT

30. After hearing learned counsel for the parties and going through the record, it appears that the State Government while implementing the decision of the Lokayukta and assailing the petitioner's appointment has acted with pre-decided mind to dispense with petitioner's services even by filing false affidavit and manipulating the record. The Lokayukta also seems to have been acted hastily on unfounded ground for some unforeseen reason which is not expected from person holding such high office.

31. Shri Navneet Sehgal (Dr), the then Secretary, Science & Technology had filed a counter affidavit dated 17.2.2004. He stated that the Chief Minister is the President of the centre and also ex-officio Chairman. Accordingly, Mr. Shiva Kant Ojha, the then Cabinet Minister could not have exercised power of Chairman of Governing Body. The defence set up by him is without taking into note of Sub Rule (a) of Rule 6(supra) and power exercised thereon by the then Chief Minister Shri Mulayam Singh Yadav and later on Shri Kalyan Singh. He had given a go-by to the resolution of the Governing Body and without adventing to the factual matrix on record concealed the material fact assailing the action of the then Cabinet Minister. For convenience, sub para (n) and (o) of para 3 of his affidavit dated 17.2.2004 is reproduced as under :

"(n) That in the above noted writ petition the controversy is not involved as in aspect of the constitution of the governing body or any action or proceedings of the governing body, but the illegality that surrounded in making appointment of the petitioner on the post of Director by a committee which have been illegally constituted by Sri Shiva Kant Ojha as minister recommended and formed constitution of the screening and interview committee headed by himself and after doing the selection got it approved from the governing body of which he was not nominated/elected as Chairman. The petitioner has been selected by a committee consisting of Sri Shiva Kant Ojha, Dr. N.C. Mudgal (Director General, U.P. Agro Research Council) (UPKAR), Lucknow, Sri P.S. Rai, Dean India Space Centre, Dehradun, Member V.N. Dixitalloo (Director Centre for Space, Science and Technology), Education in Asia and the Passific, Dehradun and the Secretary Science & Technology.

(o) It is submitted that the aforesaid committee has not been constituted by the governing body but by Sri Shiva Kant Ojha himself without any resolution of the governing body. The aforesaid constitution of the committee is illegal and void as neither the governing body has passed any resolution authorising Sri S.K. Ojha having any authority to act as Chairman as he was never nominated to act and function by the President of the centre."

In para 5, the Secretary further states as under :

"5. That the contents of paragraph 2 of the writ petition are admitted to the effect that through the abovenoted writ petition the petitioner has assailed the order dated 14.10.2003, passed by the opposite party No.1 on the ground alleged in para under reply. Sri S.K. Ojha under whose orders the committee for selecting the petitioner has

been constituted was neither the duly appointed Chairman of the governing body nor in absence of the resolution of the governing body, he was authorised to constitute any committee for making selection of the petitioner on the post of the Director. In fact, the Screening and Interview Committee was formed by Shri Ojha as minister. In view of the aforesaid facts and the averments made in earlier paragraphs of this affidavit, the rest of the contents of paragraph under reply, as alleged are misconceived and are denied."

32. The affidavit has been sworn on the basis of record. Non- disclosure of material fact with regard to holding of office of Chairman by the then Principal Secretary in pursuance to the order of the then Chief Minister and thereafter conferment of power of Chairman of the centre on the then Cabinet Minister Shri Hari Shanker Tiwari makes out a case of concealment of fact by the then Secretary who had filed the counter affidavit. Being holding high office of Secretary of the Government, it is always expected that while filing affidavit, correct facts shall be brought on record on behalf of the State Govt.

33. Not only the aforesaid affidavit dated 17.2.2004 but while filing another additional counter affidavit dated 10.3.2004 Dr. Navneet Sahgal, Secretary, Science & Technology, U.P. Government had again tried to conceal material fact. While filing second counter affidavit dated 10.3.2004, Dr. Sahgal had changed the stand and admitted that the Chief Minister may delegate power of Chairman in pursuance to Rule 6(o) of the Rules of Association but again he has not brought on record that in pursuance to the power conferred by the then Chief Minister, the Chairman of the Governing Body, was the Principal Secretary of the department and later on it was conferred on the Cabinet Minister of Science & Technology by different Chief Ministers (supra). Para 9 of the counter affidavit dated 10.3.2004 is reproduced as under :

"9. That Shri Shiva Kant Ojha the then minister for Science & Technology, Government of U.P assumed the charge of Chairman of the Governing Body of the centre without any orders of the competent authority on 20.11.1999 although the powers of the Chairman of the Governing Body rests with the Hon'ble Chief Minister of Government of U.P. It is further stated that in view of Art 5 of the Memorandum of Association of the Centre, the Chief Minister being the President of the centre is the Ex-Officio Chairman of the centre and in view of the Rule 6 the President of the centre shall be the Chairman of the Governing Body but the President may nominate any other member of the governing body as the Chairman of the centre. It is submitted that Sri Shiva Kant Ojha has never been nominated as the Chairman of the Governing Body."

34. The Secretary indicted the Cabinet Minister Shri Shiva Kant Ojha with regard to power exercised by him expunging the adverse entry from the ACR of Dr. S.K. Shukla and Dr. T.S. Kachhwaha and Sri Rajiva Mohan. He further stated that the petitioner has not sent the record in response to the demand made by the Secretary and the post of Director could not have been constituted by the Minister of Science & Technology but it could have been done only by the Governing Body. He further stated that it was the Cabinet Minister Shri Shiva Kant Ojha who himself constituted the

Screening and Selection Committee and was having defective membership, that too without taking note of Sub Rule (3) of Rule 9. He admits that the matter was placed before the Governing Body in its meeting dated 12.10.2001 chaired by Sri Shiva Kant Ojha who was not competent to do it. The averment contained in the subsequent affidavit also seems to be an attempt to conceal the material facts and not apprised the court with regard to correct proceeding taken before the State Government. Such action on the part of the officer of the rank of Secretary is reprehensible and seems to be an incident of serious mis-conduct and also ex facie contempt of court.

35. Not only Secretary, Science & Technology but on behalf of the respondent No.1, i.e. Remote Sensing Application Centre, an attempt has been made not to bring on record the correct facts. With regard to constitution of committee, Dr. A.K. Tangri, Scientist SF who filed affidavit dated 1.9.2004 has made following averments. To quote relevant portion :

"(p) That it is submitted that the aforesaid committee has not been constituted by the Governing Body but by Shri Shiva Kant Ojha himself without any resolution of the Governing Body. The aforesaid constitution of the Committee is illegal and void as neither the Governing Body has passed any resolution authorising Shri Shiva Kant Ojha having any authority to act as Chairman as he was never nominated to act and function by the Chief Minister/Chairman of the Governing Body."

36. It is stated on behalf of the Centre that Shri Shiva Kant Ojha assumed the charge of Chairman without any order of the President but it has not been disputed that the predecessor of Shri Shiva Kant Ojha, Sri Hari Shanker Tiwari was functioning as Chairman of the Centre. Ordinarily, powers are conferred in the name of the post and designation of the person holding the office in the government like Cabinet Minister and once one leave the office other occupy the office with all rights and privilege. This fact is also evident from the fact that earlier to Sri Hari Shanker Tiwari, it was the Principal Secretary of the Science & Technology was working as Chairman of Governing Body(supra).

37. The Remote Sensing Centre also had not brought on record correct fact that the constitution of Screening and Selection Committee as well as the recommendation of the Selection Committee was duly approved by the Governing Body followed by the President of the centre, i.e. the Chief Minister of the State in the manner indicated in the preceding para.

38. Many allegations have been made against the petitioner to defend the action of the Lokayukta which does not seem to be the fact in issue. Again the allegation seems to be have been cooked up to defend the impugned orders and action of Lokayukta.

(iv) PROCEEDING BEFORE LOKAYUKTA

39. The impugned order with regard to termination of service from the post of Director of Remote Sensing Centre as well as other orders have been passed in pursuance to the recommendation of Lokayukta. A perusal of the impugned order reveals that the State Government had considered the recommendation of Lokayukta dated 5.2.2013 against Shri Shiva Kant Ojha, the then Minister,

Science & Technology Shri Sushil Kumar Shukla, Scientist SG Grade and Dr. A.N. Singh, the petitioner as substantive and final. The recommendation of the Lokayukta has been reproduced in the impugned order. For convenience the same is reproduced as under :

"lqnwj laosnu mi;ksx dsUnz] y[kum dh izcU/kdkfj.kh lfefr ds fy, ;fn eko eq[;ea=h }kjk v/;{k ukfer fd;k tk;s rks vkns'k esa ;g Li"V dj fn;k tk;s fd ukfer v/;{k dk dk;Zdky dc rd jgsxk vkSj ;g Hkh Li"V dj fn;k tk;s fd ukfer O;fDr dk dk;Zdky lekIr gksus ds ckn tc rd vU; O;fDr v/;{k in ds fy, uke ls ukfer u fd;k tk;s] rc rd eko eq[;ea=h ds flok; dksbZ vU; in /kkjd izcU/kdkfj.kh lfefr ds v/;{k ds vf/kdkjksa dk iz;ksx ugha djsxk A c& Mko f'kokdkar vks>k rRdkyhu e=h] fo/kku ,oa ikzS|kSfxdh us v/;{k izcU/kdkfj.kh lfefr dh gSfl;r ls tks voS/k :i ls ckg;dkj.kksa o'k ,oa vuqfpr ykHk igqapkus gsrq fu.kZ; fy;s gS vkSj tks vkns'k ikfjr fd;s gS mudks fu:) djds iqu% fu;ekuqlkj mu fo"k;ksa ij fu.kZ; fy;s tk;s o vkns'k ikfjr fd;s tk;sa A l& Mko ,o,uo flag] Mko ,l ds 'kqDyk] Mko Vh ,lo dNokgk o Mko jktho eksgu dh izfrdwy okf"kZd izfofV;ksa dks Mko f'kokdkUr vks>k }kjk fujLr fd;s tkus laca/kh vkns'k rFkk bu pkjksa oSKkfudksa dh izksUufr laca/kh vkns' o Mko,lodso 'kqDyk ds fo:| ikfjr n.Mkns'k dks fujLr djus laca/kkh vkns'k tks voS/k {k=kkf/kdkj ds ckgj ,oa okg; dkj.ksao'k rFkk vuqfpr ykHk igqapkus gsrq ikfjr fd;s x;s gS a dks fujLr fd;k tk;s vkSj bu dkj.kksa ij l{ke izkf/kdkjh }kjk fu;ekuqlkj desVh xfBr djkdj iqufoZpkj dj;k tk;s A n& Mko ,o ,uo flag dks dsUnz ds funs'kd in ls gVkus ds fy, fu;ekuqlkj dk;Zokgh dh tk;s fu;ekuqlkj funs'kd dk p;u fd;k tk;s A

40. A perusal of the aforesaid recommendation of Lokayukta reveals that according to Lokayukta in case the Chief Minister nominates any person as Chairman of the Governing Body, then it should be clarified that the rights of the person to continue as Chairman of the Governing Body shall cease to exist with the retirement of such person and unless fresh nomination is given, other person may not exercise such power. The order passed by the then Cabinet Minister Shri Shiva Kant Ojha, Minister, Science & Technology be reviewed in accordance with rules and a fresh decision be taken. The decision taken with regard to the petitioner and Dr. Shiva Kant Shukla should be renewed and fresh decision be taken in accordance with rules. Action be taken for removal of Dr. A.N. Singh.

41. After going through the aforesaid recommendation of Lokayukta, State Government seems to have arrived at the conclusion that Sri Shiva Kant Ojha was not nominated as Chairman of the Governing Body. Hence, he has exceeded his jurisdiction and action taken by him is void ab initio.

42. At the face of record, the impugned order reveals two material facts - first is that Lokayukta had only directed to clarify the position with regard to nomination of one Cabinet Minister and right of successor Cabinet Minister to continue as Chairman of Remote Sensing Centre. No finding has been recorded by the Lokayukta as to how the predecessor Cabinet Minister Sri Hari Shanker Tiwari has worked as Chairman, Remote Sensing Centre and why Dr. Shiva Kant Ojha could not have assumed charge of the Chairman when he took over as Cabinet Minister. No finding has been recorded by Lokayukta why Dr. Shiva Kant Ojha could not have continued or assumed the charge of Chairman of governing Body. Even the order passed by the Chief Minister conferring power of Chairman on Sri Hari Shanker Tiwari and the earlier order passed by Sri Mulayam Singh Yadav, the then Chief Minister (Supra) has not been taken into account. Lokayukta has also not taken into account the

approval granted by the Chief Minister at relevant stages (supra), coupled with the fact that in view of sub rule (3) of Rule 9, defect in committee shall not invalidate the proceeding.

43. The State Government recorded the finding in a casual way that Shri Shiva Kant could not have assumed the charge of Chairman of Remote Sensing Centre though admittedly he was successor Cabinet Minister and assumed charged from Shri Hari Shanker Tiwari, who was working as Chairman of the Governing Body. No finding has been recorded either by the Lokayukta or by the State Government while passing the impugned order as to how and under what circumstances, every decision of Shri Shiva Kant Ojha while working as Chairman of the Governing Body duly approved by the then Chief Minister being President of the Remote Sensing Centre suffers from irregularity. In the absence of any finding of the aforesaid fact, an inference may be drawn that Sri Shiva Kant Ojha was well within power to work as Chairman of the Governing Body being successor Minister of Science & Technology, more so when his continuance never questioned.

44. While filing writ petition, in para 10-B and para 10(c), the petitioner has categorically pleaded that no affidavit was filed by the complainant in pursuance to power conferred by Sub Section (2) of Section 9 of Lokayukta Act and the matter with regard to selection and appointment, removal, pay and discipline of the government employee could not have been looked into by the Lokayukta.

45. A supplementary counter affidavit dated 8.4.2005 has been filed by the office of Lokayukta stating therein that the complaint of Shri Ram Krishna Verma was received on 23.4.2001 accompanied by a notary affidavit dated 22.2.2001 along with security of Rs.1000/-. Another complaint was received by the Lokayukta on 5.5.2001 against the Cabinet Minister Sri Shiva Kant Ojha.

46. While filing counter affidavit dated 16.7.2004, it is stated that the complaint of Ram Krishna Verma was received in the office on 5.5.2001, which was not accompanied with affidavit. Hence, by the letter dated 24.5.2001, he was directed to support the allegation with affidavit. A copy of the letter dated 24.5.2001 has been filed as Annexure No.1 to the counter affidavit dated 16.7.2004, filed by Shri Gyan Chandra, Secretary to Lokayukta. In pursuance thereof, Ram Krishna has filed an affidavit dated 6.6.2001. There appears to be variation in the original and subsequent affidavit filed on behalf of Lokayukta.

47. While filing counter affidavit under para 7, it has been specifically stated that by letter dated 5.10.2001, the complainant has withdrawn his complaint on the ground that one Rajesh Pandey has filed the same on his behalf by impersonation. A defence has been set up that since Lokayukta has proceeded with the proceeding, the application for withdrawal is immaterial since the Act does not provide for withdrawal of complaint. Assuming the right of Lokayukta to proceed with the complaint for the sake of argument but the Act does not empower the Lokayukta to proceed with a complaint which has been filed by impersonation, i.e. by a fictitious person. Lokayukta should have verified whether the complaint has been filed by Ram Krishna himself or it is by Rajesh Pandey as alleged in the letter dated 5.4.2001.

48. Under Section 2 of the Act, the word, "action", "allegation", mal administration, public servant and person in the service of local authority has been defined. For convenience, Clause (a), (b), (f), (j) and (v) of Section 2 is reproduced as under :

(a) "action", means action taken by way of decision, recommendation or finding or in any other manner, and includes, failure to act and all other expressions connoting action shall be construed accordingly;

(b) "allegation", in relation to a public servant, means any affirmation that such public servant-

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person. *Published in the Uttar Pradesh Gazette, Extraordinary, dated September 8, 1975.

(ii) was actuated in the discharge of his functions as such public servant by personal interest or im-proper or corrupt motive, or

(iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;

(f) "mal-administration" means action taken or purporting to have been taken in exercise of administrative function in any case,-

(i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, utpirak, oppressive or improperly discriminatory, or

(ii) where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay;

(j) "public servant" denotes a person falling under any of the following descriptions, and includes, subject to the provisions of sub-section (4) of section 8, a person who at any time in the past fell under any of the following descriptions namely-

(i) every Minister referred to in clause (g),

(ii) every member of the Legislative Assembly or the Legislative Council of the State of Uttar Pradesh not being the Chief Minister or Minister referred to in clause

(iii) every officer referred to in clause (h),

(iv) (a) every Pramukh of a Kshettra Samiti,

(b) every Adhyaksha of a Zila Parishad,

(c) every Nagar Pramukh of a Nagar Mahapalika,

(d) every President of the Municipal Board of a city as defined in clause (4) section 2 of the U.P. Municipalities Act, 1916,

(e) a non-official Chairman including every office-bearer of that description by whatever name called, or Managing Director of a district level central society or of an apex society, registered under any law relating to co-operative societies for the time being in force;

Explanation - In this sub-clause, "central society" means a co-operative society which includes in its membership other co-operative societies and "apex society" means a State level central society.

(v) every person in the service or pay of -

(a) any local authority in the State of Uttar Pradesh which is notified by the State Government in this behalf in the Gazette;

(b) any corporation not being a local authority established by or under an Uttar Pradesh or Central Act and owned or controlled by the State Government which is notified by the State Government in this behalf in the Gazette;

(c) any Government company within the meaning of section 617 of the Companies Act, 1956 (Central Act I of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the State Government or any company which is a subsidiary of a company in which not less than fifty-one per cent of the paid-share capital is held by the State Government or any company* and which is notified by the State Government in this behalf in the Gazette:

*As amended by notification No. 943/Seventeen V-1-90-80, dated 14 April, 1981, (U.P. Act no. 7 of 1981)

(d) any society registered under the Societies Registration Act, 1860, which is owned or controlled by the State Government and which is notified by that Government in this behalf in the Gazette;

From the perusal of definition Clause (supra), the allegation against a public servant means such public servant has abused his position as such to obtain any gain or favour to himself or to any other person or to cause harm or hardship to any other person and was actuated to, personal interest or corrupt motive or he or she is guilty of corruption, lack of integrity in his capacity as public servant. In case an action is oppressive, unreasonable, unjust or discriminatory or there appears to be negligence on the part of the public servant, then it may amount to mal administration and Lokayukta may look into it.

49. Section 7 of the Act provides that Lokayukta may investigate any action which is taken by or with the general or specific approval of a Minister or Secretary. For convenience, Section 7 of the Act is reproduced as under :

"SECTION- 7. Matters which may be investigated by Lokayukta or Up-Lokayukta (1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf the Lokayukta may investigate any action which is taken by or with the general or specific approval of -

(i) a Minister or a Secretary ; and (ii) any public servant referred to in sub-clause

(ii) or sub-clause (iv) of clause (j) of section 2; or

(iii) being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta in this behalf.

(2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Up-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister, Secretary or other public servant referred to in sub-sec(1).

(3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Up-Lokayukta under that sub-section.

(4) Where two or more Up-Lokayuktas 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 an Up-Lokayukta under this Act, and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order."

50. Section 8 contains the exception and reveals the conditions under which a matter may not be subjected to investigation. For convenience, Section 8 is reproduced as under :

"8. Matters not subject to investigation.-(1)- Except as hereinafter provided, the Lokayukta or an Up-Lokayukta shall not conduct any investigation under this Act-

(a) except on a complaint made under and in accordance with Section 9; or

(b) in the case of a complaint involving a grievance in respect of any action-

(I)if such action relates to any matter specified in the Third Schedule; or (II)if the complainant has or had any remedy by way of proceeding before any Tribunal or Court of law :

Provided that nothing in sub clause (ii) shall prevent the Lokayukta or an Up lokayukta from conducting an investigation if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to a remedy referred to in that sub clause.

(2) The Lokayukta or an Up-Lokayukta shall not investigate any action,-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850), by the Government of India or by the State Government; or

(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), by the Government of India or by the State Government.

(3) The Lokayukta or an Up Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under Section 19.

(4) The Lokayukta or an Up Lokayukta shall not investigate, -

(a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

(b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place;

Provided that the Lokayukta or an Up Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfied him that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Up Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

(6) The Lokayukta or an Up Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) or sub clause (v) of clause (j) of Section 2. "

51. Section 9 contains the provision with regard to right of citizen to make a complaint. It provides that any aggrieved person may file a complaint to Lokayukta with regard to allegation by any person other than a public servant may file a complaint. The proviso of Sub Section (1) of Section 9 provides that where the person aggrieved is dead or is for any reason unable to act for himself, then the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf. Every complaint should be accompanied by the complainant's own affidavit indicating therein the source of information together with all documents. Sub Section (5) of Section 9 provides that a complaint which does not comply with any of the foregoing provisions shall not be entertained. For convenience, Section 9 is reproduced as under :

""SECTION- 9. Provisions relating to complaints-

(1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokayukta or an Up-Lokayukta-

(a) in the case of a grievance, by the person aggrieved ;

(b) in the case of an allegation, by any person other than a public servant :

Provided that where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorized by him in this behalf.

Provided further that in the case of grievance involving a complaint referred to in sub-clause (ii) of clause (d) of section 2, the complaint may be made also by an organization recognized in that behalf by the State Government.

(2) Every complaint shall be accompanied by the complainant's own affidavit in support thereof and also and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings and affidavits respectively.

(4) Not less than three copies of the complaint as well as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

(6) Notwithstanding anything contained in sub-sections (1) to (5), or in any other enactment, any letter written to the Lokayukta or Up-Lokayukta by a person in police custody, or in gaol or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other persons in charge of such gaol, asylum, or other place, and the Lokayukta or Up-Lokayukta as the case may be, may entertain it and treat it as a complaint, but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under sub-section (2).

Sub Section (2) of Section 9 of the Act has been amended by Act No.4 of 2012 which provides that every complaint should be accompanied by a sum of Rs.2000/- as security. For convenience, Sub Section (2) of Section 9 is reproduced as under :

"[(2) Every complaint shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary together with all documents in his possession or power pertaining to the accusation and a sum of Two thousand rupees shall be paid as security along with the complaint, in respect to complaint involving allegation, filed under the Uttar Pradesh Lokayukta and Up-Lokayuktas (Complaint) Rules, 1977.]"

52. From plain reading of Section 9, it is evident that in view of embargo contained in Sub Section (5) of Section 9, Lokayukta cannot entertain a complaint which is not supported by an affidavit disclosing source of information. Section 9 does not empower Lokayukta to direct or make a request for filing of an affidavit in support of a complaint. In absence of any provision in the Act empowering the Lokayukta to direct the complainant to file an affidavit, such action on the part of Lokayukta is not permissible. Even the person who is in police custody shall be liable to file an affidavit in support of the allegations at later stage keeping in view the mandate of Sub Section (2) of Section 9 of the Act.

In view of above, in case the complaint is not supported by an affidavit, then there is no option to Lokayukta except to reject such complaint. There is reason behind it. Lokayukta discharge his or her obligation as an ombudsman or umpire who should be free from bias. He cannot become a party to any complaint or proceeding. All complaints filed before the Lokayukta should be screened and in case the provision contained in Sub Section 2, Sub Section (5) and Sub Section (6) of Section 9 are not complied with at appropriate stage, then such complaint should be outrightly rejected by Lokayukta.

53. In the present case, letter sent by Lokayukta directing the complainant to file an affidavit seems to be an incident of exceeding of jurisdiction. Lokayukta should not have issued any letter inviting affidavit in support of the complaint.

54. Under Section 10 of the Act, specific procedure has been given for the Lokayukta to proceed in a particular manner. Under Sub Section (a) of Section 10, Lokayukta has to forward the copy of the

complaint to the public servant concerned and giving him reasonable opportunity including the opportunity to file a response to the complaint. For convenience, Section 10 of the Act is reproduced as under :

"SECTION- 10. Procedure in respect of investigations (1) Where the Lokayukta or an Up-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he-

(a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned ;

(b) shall afford to the public servant concerned an opportunity to offer his comments on such complaints ; and

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

(2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation :

Provided that, the Lokayukta or an Up-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.

(3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Up-Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta or an Up-Lokayukta 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 ; or

(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.

(5) In any case where the Lokayukta or an Up-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of 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.

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

55.Clause (b) of Sub Section (1) of Section 10 provides that the concerned public servant shall be given an opportunity to offer his comment on the complaint received by Lokayukta or Up-Lokayukta. It means, it shall be obligatory on the part of Lokayukta to provide a copy of the complaint as well as supporting affidavit to the public servant. In the present case, though a copy of the complaint was sent but affidavit does not seem to be provided to the petitioners.

Sub Section (2) provides that the investigation shall be conducted by in private by the Lokayukta without disclosing the identity of complainant and of the public servant who is affected by investigation. The investigation shall not be disclosed to the public or the Press. It means Lokayukta has to maintain secrecy during the pendency of the investigation before him.

56.The Legislature to their wisdom used the word, "investigation". In Black's Law Dictionary, the word, "investigate" has been defined as under :

"investigate, 1. To inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry (the police investigated the suspect's involvement in the murder) 2. To make an official inquiry (after the judge dismissed the case, the police refused to investigate further)"

In The Law Lexicon by P. Ramanatha Aiyar, the word, "investigation" has been interpreted keeping in view different pronouncements of various Courts. Some of them is reproduced as under :

"investigation" defined. Act 10, 1882, S. 4(b); Act 5, 1898, S.4.

"Investigation" includes all the proceedings under this Cr. P. 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."

"The term Investigation in the section, in its ordinary dictionary meaning is, in the sense of ascertainment of facts, sifting of materials and search for relevant data, State v. Pareswar Ghosi, AIR 1968 Ori 20 at 24. [Evidence Act (1872) S. 157] The "investigation" in Regulation 17 of Posts & Telegraph Manual Vol. II embraces within 'its scope' any investigation' whether it is being conducted in a court or by the police or by the officers of the department concerned. Hemanta Kumar Bhattacharjee v. N.N. Sen Gupta, AIR 1953 Cal 504 "The proper office of examination, inquiry, and ratiocination is, strictly speaking, confined to the production of a just discernment

and an accurate discrimination:- Gogan.

Inquiry is the aiming at or discovery of truth by question, either formal, verbal interrogation, or a recourse to the proper means and source of knowledge when the object has been shaped into a question or problem for solution."

57. Proceeding before Lokayukta is summary proceeding. Accordingly, it is not necessary to proceed like regular enquiry in service matter but it shall always be incumbent that in case the Lokayukta or Up- Lokayukta is not satisfied with the response filed by the affected public servant and proceeded further, then appropriate opportunity should be given to the public servant to defend his cause and rebut the adverse material made available at later stage.

58. In the present case, Lokayukta has sent copy of the complaint to two of the petitioners, namely Mr. A.N. Singh and Mr. S.M. Shukla but the copy of the affidavit which is statutory in nature does not seem to have been sent. No opportunity was given by the Lokayukta to the petitioners to defend their cause after filing of objections with due communication of material collected at later stage.

Lokayukta seems to have proceeded with pre-decided mind to fill up the vacuum for compliance of mandate of Section 9 directing the complainant to file affidavit and thereafter submitted a report to the State Government without inviting any response from the petitioner to the alleged affidavit filed at later stage.

Categorical pleading contained in para 30 of the writ petition that the Lokayukta has not given any opportunity of hearing to the petitioner and passed the impugned order unilaterally has not been denied.

59. There is another aspect of the matter which seems to be of disturbing nature. While filing counter affidavit dated 23.7.2004 supported by an application, Shri Gyan Chandra, Secretary of Lokayukta has brought on record a letter dated 25.5.2001 sent by the Lokayukta to the Chief Minister of the State. The letter reveals that the Lokayukta has informed the Chief Minister of State that he admitted a complaint to proceed against Shri Shiva Kant Ojha, former Minister. Lokayukta further while sending letter also forwarded the copy of the complaint received by him against Shri Shiva Kant Ojha, the former Cabinet Minister. The letter dated 25.5.2001 sent by the Secretary to Lokayukta is reproduced as under :

yksd vk;qDr dk;kZy;] mRrj izns'k] Kku pUnzk ,potso,lo lfpo yksd vk;qDr iz'kklu mRrj izns'k] y[kum A lsok esa] ekuuh; eq[;ea=h th mRrj izns'k] y[kum A la[;k 974&2001@4@2395 fnukad 25 ebZ] 2001 fo"k; % Jh jked`".k oekZ }kjk izLrqr vfHkdFku :ih ifjokn A ekuuh; egksn;] fuosnu gS fd yksd vk;qDr iz'kklu esa Jh jke d`".k oekZ }kjk Jh chovkjofd'kksj] 1@45] ch] fiz;nkf'kZuh dkyksuh] lhrkiqj jksM ;kstuk] efM;kao y[kum esa ekuuh; Jh f'kokdkUr vks>kk eU=h foKku ,oa izkS+|ksfxdh@lwpuk izkS+|ksfxdh@bysDVk`fuDl mRrj izns'k] y[kum ds fo:) vfHkdFku :ih ifjokn izLrqr fd;k gS A bl ifjokn dks ekuuh; yksd vk;qDr us tkap gsrq xzg.k dj fy;k gS A vr% l{ke izkf/kdkjh dh {kerk esa bl ifjokn dh izfr mRrj izns'k yksd

vk;qDr ,oa mi yksd vk;qDr vf/kfu;e 1965 dh /kkjk 10 ¼41½ ¼4d½ ds vUrxZr vkidks
Hksth tk jgh gS A layXud % ifjokn dh izfr layXudksa lfgr A Hkonh;

Kku pUnzk lfpo

60. It appears that the Secretary has communicated the Chief Minister of the State with regard to the status of enquiry in pursuance to the direction issued by Lokayukta. Under the Act, there is no provision which makes it necessary for the Lokayukta to keep in touch with the Chief Minister of the State and inform him with regard to action taken against a person or public servant in pursuance to the complaint received. Such action on the part of the Lokayukta seems to suffer from malice and pre-decided mind to give adverse report against the petitioners as well as former Minister Shri Shiva Kant Ojha. Inference may be drawn that the Lokayukta has investigated and sent the report with pre-decided mind and accordingly, it suffers from arbitrary exercise of power.

61. Legislature to their wisdom conferred power to Lokayukta under Sub Section (4) of Section 10 of the Act to refuse investigation in case in the opinion of Lokayukta, the complaint is frivolous or vexatious or is not made in good faith or there is no sufficient ground for investigation or some other remedy is available to the complainant.

62. It is the settled law that a thing should be done in a manner provided under the Act or statute and not otherwise vide; Nazir Ahmed Vs. King Emperor, AIR 1936 PC 253; Deep Chand Versus State of Rajasthan, AIR 1961 SC 1527, Patna Improvement Trust Vs. Smt. Lakshmi Devi and others, AIR 1963 SC 1077; State of U.P. Vs. Singhara Singh and other, AIR 1964 SC 358; Barium Chemicals Ltd. Vs. Company Law Board AIR 1967 SC 295, (Para 34) Chandra Kishore Jha Vs. Mahavir Prasad and others, 1999 (8) SCC 266; Delhi Administration Vs. Gurdip Singh Uban and others, 2000 (7) SCC 296; Dhanajay Reddy Vs. State of Karnataka, AIR 2001 SC 1512, Commissioner Of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others, 2002 (1) SCC 633; Prabha Shankar Dubey Vs. State of M.P., AIR 2004 SC 486 and Ramphal Kundu Vs. Kamal Sharma, AIR 2004 SC 1657, Taylor Vs. Taylor, (1876) 1 Ch.D. 426; Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077; Ramchandra Keshav Adke Vs. Govind Joti Chavare and others, AIR 1975 SC 915; Chettiam Veettil Ammad and another Vs. Taluk Land Board and others, AIR 1979 SC 1573; State of Bihar and others Vs. J.A.C. Saldanna and others, AIR 1980 SC 326, A.K.Roy and another Vs. State of Punjab and others; AIR 1986 SC 2160; State of Mizoram VS. Biakchhawna, 1995 (1) SCC 156.

63. In view of above, recommendation or report submitted by the Lokayukta could not have been acted upon by the State Government for passing of the impugned order, that too without holding a proceeding under Rules of the Society. The report submitted by Lokayukta seems to suffer from vice of arbitrariness and is violative of Art. 14 of the Constitution of India.

The manner in which Lokayukta has proceeded is a matter of great concern for the court. When whole of the country is looking for creation of the post of Lokpal or Lokayukta in every State with ample power to deal with rampant corruption in the country, then the functioning of Lokayukta in such a manner seems to be an discouraging event and erodes the peoples' faith in our system.

(v) RECOMMENDATION OF LOKAYUKTA

64. Learned counsel representing the respondents has vehemently defended the impugned order which has been passed in pursuance to the recommendation of Lokayukta without any departmental proceeding or show cause notice.

65. While assailing the impugned order, it has been submitted by Mr. L.P. Shukla, representing the petitioners that the State could not have passed the impugned order without serving a show cause notice or calling explanation, that too without adhering to service rules.

66. Section 12 of the Act deals with the manner in which recommendation of Lokayukta is implemented. For convenience, Section 12 is reproduced as under :

"Section 12- Report of Lokayukta and Up-Lokayuktas. (1) If, after investigation of any action in respect of which a complaint involving a grievance has been made, the Lokayukta or an Up-Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta or Up-Lokayukta shall by a report in writing recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1), shall within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokayukta , or as the case may be, the Up-Lokayukta, the action taken for compliance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lokayukta or an Up-Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendation along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section 93) and intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Up-Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokayukta or the Up-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-section (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned.

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

(7) On receipt of a special report under sub-section (5) or the annual report under sub-section (6), the Governor shall cause a copy thereof together with an explanation memorandum to be laid before each House of the State Legislature.

(8) Subject to the provisions of sub-section (2) of section 10, the Lokayukta may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by an Up-Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate."

67. The provisions contained in Section 12 of the Act (supra) seems to be self speaking. Lokayukta or Up-Lokayukta, as the case may be, subject to satisfaction on their part with regard to injustice or undue hardship caused to the complainant shall prepare a report in writing and send their recommendation to the competent authority for appropriate remedial action in such manner and within such time as specified in the report.

68. The Legislature to their wisdom has used the word, "manner". According to Black's Law Dictionary, "manner" and "mode" are synonymous to each other which means the mode of process or manner of doing something or the mode of proceeding.

According to the Law Lexicom (The Encyclopaedic Law Dictionary), "Mode" means the customary manner; prevailing style; the manner in which a thing is done. Meaning thereby while sending recommendation, the Lokayukta may direct for registration of First Information Report coupled with prosecution on criminal side or other appropriate action in a specified manner in accordance with law.

69. In view of the provisions contained in Sub Section (2) of Section 12 of the Act, it shall be obligatory on the part of the State Government to intimate the Lokayukta within one month of the expiry of term specified in the report with regard to action taken in compliance thereof.

70. While proceeding in pursuance to the report of Lokayukta, in the event of a government servant with regard to allegation of mis-conduct, though the State Government may proceed in the manner provided by Lokayukta but in any case, it shall not override the procedure prescribed under service rules or other statutory procedure regulating the service conditions of the government employee being protected under Art. 311 of the Constitution of India or Service Rules. Reason is Sub Section (2) of Section 12 does not seem to possess overriding effect. Accordingly, while interpreting the provisions contained in Sub Section 2 of Section 12 of the Act, it should always be kept in mind that the statutory provisions regulating the service condition or other statutory provisions with regard to related subject should not be given a go-bye. A balance should be struck in such a manner while interpreting the provisions contained in Sub Section (2) vis-a-vis other statutory provisions with regard to related matters so that both may co-exist. For example, with regard to government

employee, the procedure prescribed by statutory service rules or Art. 311 of the Constitution must be complied with and when a matter comes to registration of First Information Report or prosecution on criminal side, then the procedure provided by the Code of Criminal Procedure and other statutory provisions dealing with subject matters should be followed.

71. Sub Section (3) of Section 12 further provides another category of controversy, where Lokayukta is satisfied with regard to allegation but further is of the opinion that the allegation may be substantiated either wholly or partially, then he shall communicate his finding and recommendation along with relevant records and materials to the competent authority. In such a situation, in view of provisions contained in Sub Section (4), it shall be obligatory on the part of the competent authority to proceed further on the basis of finding and material, forwarded by Lokayukta in accordance with law. Action taken report should be submitted within a period of three months. The Lokayukta or Up-Lokayukta, if satisfies, may close the case after receipt of action taken report from the competent authority in view of the provisions contained in Sub Section (5) of the Act but in case not satisfied from the action taken report of the competent authority or the State Government and feels that the case deserves for an action, then special report should be sent to the Governor with due communication to the complainant.

72. After receipt of the report in pursuance to Sub Section (5) of Section 12 of the Act with regard to inaction on the part of the State Government or the competent authority, the Governor has option to communicate the State Government or the government authority to comply with the direction of the Lokayukta but in case it is not complied with or no decision is taken, then the Governor has option to proceed further in pursuance to the constitutional provisions against the State Government on the ground of "breakdown (failure) of constitutional machinery" (Art. 356).

73. Ordinarily, in case the report submitted by Lokayukta and material forwarded contains incriminating finding with supporting material, then it shall always be obligatory on the part of the State Government to proceed against the persons concerned who are found to be guilty by the Lokayukta in accordance with law. Inaction on the part of the State Government may make out a case for appropriate action keeping in view constitutional mandate by the Governor of the State.

74. The purpose of forwarding the copy of the special report to the complainant/informant is to make him aware with regard to inaction on the part of State Govt. In such a situation, the complainant or informant has right to approach higher judiciary (High Court and Supreme Court) for appropriate direction to make the State machinery in motion. Appropriate writ, order or direction may be issued by the High Court to the State Government or the competent authority to discharge their statutory obligation and take action in pursuance to the report of Lokayukta.

75. In view of the provisions contained in Sub Section (7) of Section 12 of the Act, it shall further be obligatory on the part of the Governor of the State to take further action so that the report of Lokayukta which includes special report under Sub Section (5) and annual consolidated report submitted under Sub Section (6) of Section 12 of the Act to be laid before each House of State Legislature.

76. Sub Section (8) of Section 12 further confers power on the Lokayukta to exercise his discretion to make available from time to time the substance of cases closed or otherwise disposed by him or by Up-Lokayukta which is of general public, academic or professional interest be made available to any person to whom he or she deem fit or proper. Lokayukta may exercise power under Section (8) of Section 12 of the Act to disclose the factum of investigation only after closure of investigation at his end for any reason whatsoever. Thus, Sub Section (8) of Section 12 of the Act empowers the Lokayukta or Up-Lokayukta to make available his report to media persons or other persons to whom he feels deem fit and proper. However, Sub Section (8) of Section 12 of the Act does not permit Lokayukta to disclose the material available to him during pendency of investigation before him in view of the provisions contained in Section 10 of the Act (supra).

77. Keeping in view the provisions contained in Sub Section (8) of Section 12 of the Act, citizens have got right to seek information with regard to report submitted by Lokayukta to the State Government or competent authority under Right to Information Act. Though the power conferred on Lokayukta is recommendatory in nature and the State Government has got right to make out its own mind by re-appreciation of evidence on record forwarded by the Lokayukta while taking final decision but keeping in view the mandate of Sub Section (3), Sub Section (2) and Sub Section (5), ordinarily, it shall be obligatory on the part of the State Government to comply with direction issued by Lokayukta. In any case, if the State Government takes a different view, then it shall be necessary for the State Government to record a reason and communicate its decision to the Lokayukta within specified time (supra). The copy of the decision of the State Government or authority must be forwarded by Lokayukta to the complainant within reasonable period keeping in view letter and spirit of Sub Section (5) of Section 12 of the Act.

78. It is well settled principle of interpretation that when the language of the statute is quite clear, then there cannot be any addition or omission. No external aid requires.

79. Section 12 of the Act does not confer power on the State Government to ignore the service rules by applying principle of cautious omissus. There should be harmonious construction of Section 12 of the Act as well as statutory provisions and service rules regulating the service conditions of the employees.

80. According to Maxwell, a construction which would leave without effect any part of the language of a statute will normally be rejected. Any construction which bye-pass the statutory service rules should be avoided while interpreting Section 12 of the Act. The construction should be harmonious in such a manner so that the provision contained in Section 12 of the Act vis-a-vis service rules may stand together vide 2010(9) SCC 280 Zakiya Begum versus Shanaz Ali, 2010(7) SCC 129 Bondu Ramaswamy versus Bangalore Development Authority, 2010(2) SCC 602 State of M.P. Versus Balram Mihani and others, JT 2009 (11) SC 151 Union of India and others versus M/s. Martin Lottery Agencies Limited, 2010(3) SCC 765 Securities and Exchange Board of India versus Ajay Agarwal.

81. In case the argument of the learned counsel for the respondents is accepted, it shall create absurdity and to avoid absurd result, it is necessary that the provision contained in Section 12 of the

Act should be read along with service rules of the employee concerned for the purpose of harmonious construction so that both may co-exist together.

82. Mr. Sanjai Bhasin, learned counsel appearing for the Lokayukta has submitted that the report submitted by Lokayukta cannot be questioned. He has placed reliance on Section 17 of the Act which is reproduced as under :

"17. Protection.-(1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or the Up-Lokayukta or against any officer, employee, agency or person referred to in Section 14 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta or the Up-Lokayukta shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or the Up-Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court."

83. A plain reading of the aforesaid provisions reveals that the protection granted to the Lokayukta is from prosecution on civil and criminal side and questioning the decision of Lokayukta in a Court. The protection granted by Section 17 of the Act does not seem to come in the way of citizen to approach this Court under Art. 226 of the Constitution or under Art. 32 before Hon'ble supreme Court where the recommendation or order of Lokayukta is impugned on the ground of violation of Fundamental Right or statutory provisions. Of course, the action of Lokayukta is protected from prosecution in civil and criminal Court or through filing a suit. But in case a decision or order is impugned on the ground of violation of Fundamental Right or statutory provisions, the constitutional power of judicial review conferred to this Court cannot be diluted by statutory provisions vide AIR 1964 SC 1419 *Than Singh Nathmal versus Superintendent of Taxes Bhobri*, 2007(2) SCC 1 I.R. *Coelho versus State of Tamilnadu*, JT 2007 (2) SC 1 *Rajaram Pal versus Hon'ble Speaker, Lok Sabha*.

Moreover, in the present case, the order challenged is the decision of the Chief Minister of the State as ex officio President of the Society in question. Otherwise also, present case relates to an order passed by Chairman of the Centre. Hence, there appears to be no room of doubt that this Court may interfere under Art. 226 of the Constitution of India.

84. In the present case, admittedly, the impugned order has been passed without serving a show cause notice or opportunity of hearing and without following service rules in pursuance to the recommendation made by the Lokayukta. The decision seems to be hasty. Neither the Lokayukta nor the State Government or the Chief Minister as the Chairman of Centre has given reasonable opportunity to defend their cause by the petitioners. Such action on the part of the government or Chairman of the Centre seems to be an instance of abuse of power.

(vi) NATURAL JUSTICE

85. It is a well settled principle of law that principle of natural justice are meant to prevent miscarriage of justice and is applicable not only to domestic inquiries but also to administrative proceedings, vide *A.K. Kraipak and others Vs. Union of India and others*, AIR 1970 SC 150, and AIR 1976 SC 2228 *Dr. G. Sarena Vs. University of Lucknow*.

86. In *Meneka Gandhi versus Union of India* 1978 SC 597, their Lordships of Hon'ble Supreme Court have reiterated that every action of the State must be just and fair and principle of natural justice is part and parcel of Art. 14 of the Constitution of India.

87. In *Maneka Gandhi*(supra), their Lordships further held that even if there is no provision in the statute principle of 'audi alteram partem' that no one should be condemned unheard should be enforced. 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. The enquiry must always be done. Fairness in action demand that opportunity to be heard given.

88. In (1987) 4 SCC 431: *K.L. Shephard and others. Vs. Union of India and others*, Hon'ble Supreme Court had considered the applicability of principle of natural justice with regard to pre and post decisional hearing. While holding that every agency requires to act fairly, principle of natural justice should be complied with while affecting civil rights and it should not be ousted by implication, to quote relevant portion:-

"15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame."

While considering the question with regard to post decisional hearing, a dissenting opinion was expressed with a statement that ordinarily, there is tendency to hold an order while providing post decisional hearing, to quote relevant portion:-

"16. ...There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

89. The purpose of Rules of natural justice is to prevent miscarriage of justice and it is applicable to administrative orders if the orders affect the right of citizen (supra). Arriving at the just decision is the aim of both quasi-judicial as well as administrative decision and unjust decision in administrative matter, may also reach with far reaching consequences, than the decision in a quasi-judicial matter. Generally, the principle of natural justice requires, opportunity of hearing should be given against whom an administrative order is passed. The application of principle of natural justice and its sweep depends upon the nature of rights involved, having regard to the State and context of statutory provisions.

90. Where a vested right is adversely affected by an administrative order or where civil consequence ensue, the principles of natural justice apply even if the statutory provisions do not provide for and the persons concerned, must be afforded opportunity of hearing and show cause before the order is passed, vide 1991 3 SCC 38, Union of India Vs. E.G. Nambudiri; AIR (1967) 2 SCC 625, State of Orissa. Vs. Dr. (Miss) Binopani Dei; ; 2001 (1) SCC 182, Kumaon Mandal Vikas Nigam Ltd. Vs. Girija Shanker Pant and others.; 2008 14 SCC 151, Sahara India (Firm) Vs. CIT.

91. In a case reported in (2003) 4 SCC 557 Canara bank and ors vs. Debases Das and ors, their lordships of Hon'ble Supreme court held that, "The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice.

92. In (2007)6 SCC 130 D. Dwarakanath Reddy versus Chaitanya Bharathi Educational Society and others, their Lordships of Hon'ble supreme Court held that the principle of natural justice requires the issuance of notice calling for an explanation and affording reasonable opportunity of being heard.

93. In 2009(27) LCD 1258 Allwyn Housing Colony Welfare Association versus Govt of A.P and others, Supreme Court held that no order adverse to a party may be passed without providing opportunity of hearing.

94. In a case reported in 2011 (2) SCC 258, Automotive Tyre Manufacturers Association Vs. Designated Authority, the Hon'ble Supreme Court has reiterated the principles of natural justice as sine qua non to justice meant to check arbitrary exercise of power by the State and its functionaries, to quote relevant portion as under:

"77. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

78. In *Mohinder Singh Gill* (supra), upon consideration of several cases, Krishna Iyer, J. in his inimitable style observed thus:

"48. Once we understand the soul of the rule as fairplay in action -- and it is so -- we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

79. In *Swadeshi Cotton Mills Vs. Union of India*, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle--as distinguished from an absolute rule 65 (1981) 1 SCC 664 5 of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with

situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise." (Emphasis supplied by us)

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application."

95 In the present case, the Lokayukta has not complied with the statutory provisions granting reasonable opportunity to the petitioners to defend his cause. The State Government or the Chief Minister as Chairman of Centre has also not proceeded in accordance with service rules or with due compliance of principle of natural justice keeping in view the mandate of Art. 14 of the Constitution. Hence, the action taken by the State Government and President of the Centre straightway relying upon the recommendation of Lokayukt suffers from vice of arbitrariness and is not sustainable.

96. Admittedly, the impugned order has been passed by the Chief Minister of the State as ex officio President of the Society. Under Rules, the decision should have been taken by the Governing Council (supra) and thereafter it should have been sent to the President of the Society for final order. In the present case, the President (Chief Minister) has straightway passed the impugned order after receipt of the report of Lokayukta. The decision of the President (Chief Minister) has been reported to be affirmed by the Governing Council at later stage during the course of litigation. Such affirmation of action by post-decision action (resolution) by the Governing Council does not seem to be in conformity of Service Rules and principle of natural justice. Moreover, even before placing the subject matter for approval or disapproval before the Governing Council, necessary exercise should have been done by the Committee or a body with due compliance of principle of natural justice calling an explanation from the petitioners with regard to mis-conduct or illegality if any. It does not seem to have been done. Accordingly, the impugned orders seem to be passed in blatant abuse of power and in utter disregard to principle of natural justice.

97. In a democratic polity, a decision should be made in accordance with the statutory provisions and constitutional mandate. Supreme Court in a case reported in AIR 1967 SC 1427 Jaisinghani versus Union of India and others held that a decision should be made by the application of known principles and rules and in general, such decision should be predictable and citizen should know where he is.

98. In AIR 1975 SC 2260 Smt. Indira Nehru Gandhi versus Raj Narain while interpreting the rule of law, their Lordships of Supreme Court held that the rule of law postulates that the decisions should

be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the rule of law.

(vii) CONCEALMENT OF FACT AND ABUSE OF POWER

99. While filing counter affidavit, the State Government as well as the office of Lokayukta has not come with clean hand while assisting the court. They have suppressed the fact that earlier, the Principal Secretary was the Chairman (supra) followed by Mr. Hari Shanker Tiwari, the then Cabinet Minister and thereafter Mr. Shiv Kant Ojha held the office in succession. The respondents have also concealed the fact that the decision taken by the Governing Body or the Cabinet Minister as Chairman was at every stage duly approved by the then Chief Ministers. It is a case where the State and its instrumentalities are not assisting the court with clean hand while filing counter affidavit.

100. In (2005) 6 Supreme Court Cases 344, Salem Advocate Bar Association (II), Vs. Union of India, Supreme Court held that where a litigant has suffered from mental pain and agony and compelled to approach the court, then imposition of cost is must.

101. Otherwise also, the petitioners who are Scientist suffered mental pain and agony and pursuing the matter in this Court since several years seems to be entitled for compensatory cost.

102. During the course of argument, Mr. L.P. Shukla and other counsel representing the petitioners submitted that being Scientist they are interested for restoration of their honour and job is no problem for them. The factual position on record reveals that the action was taken against the petitioners with pre-decided mind without adhering to principle of natural justice, rules and constitutional mandate.

(viii) FINDING

103. In view of the facts and circumstances and discussion, made hereinabove, the finding is summarised as under :

(I) The letter dated 25.5.2001 sent by the office of Lokayukta to the Chief Minister of the State apparently reveals that the Lokayukta had acted with pre-decided mind (supra) in consultation with the Chief Minister of the State while sending the report against the petitioner as well as former Chairman of the Centre. The overact on the part of the Lokayukta informing the then Chief Minister with regard to the complaint received and action taken thereon seems to be not part and partial of his duty under the Act and adverse inference may be drawn that he acted on the instruction of higher ups in the government while submitting the report in question.

(II) From the material on record, it appears that by letter contained in Annexure No.2 to the counter affidavit filed on behalf of Lokayukta, the Chief Minister was informed with regard to action taken against the petitioners in pursuance to the complaint filed which does not seem to be permissible under the Act. Lokayukta being an independent statutory body is not expected to discharge its statutory obligation in active or implied consultation with the Chief Minister or any other Minister or political or executive authority of the State.

(III) The provisions contained in the Act is mandatory. Non-compliance of the statutory provisions contained in the Act renders the report invalid and unforceable.

(IV) In the present case, Lokayukta has not followed the statutory mandate while submitting the report and also acted in utter disregard to principle of natural justice (supra). Hence, the recommendation of the Lokayukta is not sustainable and vitiated.

(V) The government has to comply with the direction of the Lokayukta within a specified time and communicate its decision within the period provided under Section 12 of the Act. Thereafter, it shall be obligatory on the part of Lokayukta or Up-Lokayukta, as the case may be, to communicate the action taken report of the State Government to the complainant.

In the event of non-compliance of the report of Lokayukta and after obtaining special report with regard to relevant controversy, referred by Lokayukta (supra), the Governor shall forward it to the table of the House.

(VI) Keeping in view the gravity of mis-conduct or charges, in the event of inaction on the part of the government, option is open to the Governor of State to proceed under Art. 356 of the Constitution in case there is breakdown of constitutional machinery.

(VII) Merely because the Chief Minister has passed the impugned order as ex-officio Chairman of the Centre shall not validate the impugned order for the reason that after receipt of the report from Lokayukta, it was incumbent on the Centre to proceed in accordance with Service Rules and after due compliance of principle of natural justice, a decision should have been taken by the Governing Council. Ratification by the Governing Council at later stage shall not meet out the requirement of principle of natural justice which involves pre-decisional hearing and enquiry in accordance with service rules. The Division Bench of this Court by judgment and order passed in Writ Petition No. 1191 of 1991 (R.S. Chaturvedi versus State of U.P.) has rightly held that the government lacks jurisdiction to interfere with the functioning of the Centre and only the Governing Council possess jurisdiction to initiate disciplinary proceedings and punish an officer of the Centre.

(VIII) The Lokayukta had forwarded the copy of the complaint to two petitioners, namely Mr. A.N.Singh and Mr. S.M. Shukla, in response to which they have filed objections. The complaint was originally not supported by affidavit. In absence of any affidavit, it was not permissible for the Lokayukta to proceed with investigation, more so when the complainant had withdrawn the

complaint. Letter issued by the office of Lokayukta for filing of the affidavit amounts to exceeding of jurisdiction. Every complaint filed to Lokayukta should be screened and in the event of non-compliance of statutory provisions (*supra*), it should be out-rightly rejected. The functioning of Lokayukta is like an ombudsman or umpire and it is not expected to fill up the vacuum while dealing with a complaint or become party to the proceeding.

(IX) The report of Lokayukta should have been considered in the light of Service Rules of the employee or other statutory provisions and it could not have been implemented by the State Government as final verdict in case it relates to employees of the State Government or a statutory body or society, ignoring service rules.

(x) The report relating to statutory body, in the present case like society should have been implemented in accordance with the Memorandum of Association and Rules of the Society. Even if the Chief Minister is *ex officio* President, he has no right to take a decision on his own without processing the matter through Governing Council in accordance with service rules.

(XI) From the material on record, it is evident that not only the Secretary, Government of U.P but also the Centre had tried to conceal the material fact. They have not come to Court with clean hand. The provisions contained in the Memorandum of Association have been circumvented. False affidavit has been filed to defend the impugned order. It is disturbing feature on the part of the government. The President of the Centre not only seems to be proceeded in haste to pass the impugned order but the Centre also tried to mislead the court.

(XII) The complaint was against the petitioner, Mr. S.M. Shukla and Shiva Kant Ojha which was later on denied by the complainant with the prayer for its cancellation but even then, the Lokayukta proceeded with the complaint. In spite of the fact that the report of Lokayukta relates only to three persons, the President (Chief Minister) of the Society relying upon the report of Lokayukta had passed the impugned orders with regard to other employees, namely S/Shri Rajiva Mohan, Dr. Sushil Kumar Shukla, Dr. T.S. Kachhwaha.

(ix) ORDER

104. It has not been disputed at Bar that the impugned orders passed in this bunch of writ petitions are exclusively based on the report of Lokayukta (*supra*). The complaint submitted to Lokayukta was against only three persons, namely, the petitioner Amrendra Narayan Singh, Mr. S.M. Shukla and Shiva Kant Ojha but relying upon the report of Lokayukta, the impugned orders have been passed with regard to other employees namely, S/Shri Rajiva Mohan, Dr. Sushil Kumar Shukla, Dr. T.S. Kachhwaha who preferred writ petitions No. 507(S/B) of 2004 and 1487, 1486 and 1599 - all of the year 2003 (S/B). Since the foundation of the order in this bunch of writ petitions is the same, i.e. the report of Lokayukta, hence the order passed in these writ petitions suffers from common illegality and arbitrariness. The writ petitions deserve to be allowed.

105. The writ petitions are allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 14.10.2003 (Annexure -1) 15.11.2003 (Annexure-2), 25.1.2003

(Annexure-3), passed in writ petition No.11(S/B) of 2004, Office Memorandum dated 13.2.2004 (Annexure No.1 to writ petition No.507 of 2004), Impugned order dated 15.11.2003 (Annexure No.1 to writ petition No.1487 of 2003), impugned orders dated 15.11.2003 (Annexures 1 and 2), 14.10.2003(Annexure No.3 passed in writ petition No.1486 of 2003), impugned orders dated 15.11.2003, 25.11.2003 (Annexures 1 and 2), 14.10.2003 (Annexure No.3 to writ petition No.1599 of 2003) with consequential benefits.

106. For the reason disclosed in the body of writ petitions, exemplary cost is awarded to the tune of Rs.10 lacs which shall be deposited in this Court within two months. From the cost so deposited, each of the petitioners shall be entitled to withdraw an amount of Rs.1 lac each. Rest of the cost shall be remitted to the Mediation & Conciliation Centre, High Court, Lucknow. In case the cost is not deposited, it shall be recovered as arrears of land revenue by the District Magistrate, Lucknow and remit to this Court within three months.

Registry to take follow up action.

The Chief Secretary of the State of U.P shall hold an enquiry in the light of the observation made in the body of judgment and recover the cost from the persons who are responsible for filing false affidavit and advising the government to pass the impugned orders.

The writ petitions are allowed with cost accordingly.

(Justice Vishnu Chandra Gupta)

(Justice Devi Prasad Singh)

September 6, 2013

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