

1989 SCC OnLine Kar 150 : ILR 1990 Kar 223

In the High Court of Karnataka
(BEFORE K.A. SWAMI, J.)

N. Gundappa
Versus
State of Karnataka*

W.P. No. 2951 of 1989
Decided on April 20, 1989 and May 19, 1989

KARNATAKA LOKAYUKTA ACT, 1984 (Karnataka Act No. 4 of 1985) — Section 9(3) — Mandatory; procedure in Clauses (a) & (b) to be followed scrupulously being essential to validity of report — Being exercise of quasi-judicial power, compliance with Rules of Natural Justice essential — Copy of complaint to be sent to public servant and Competent Authority concerned & opportunity afforded to offer comments thereon - Failing compliance report invalid.

Held :

The Lokayukta or the Upalokayukta as the case may be is required to follow the procedure laid down in sub-section (3) of Section 9 of the Act. It is not open to the Lokayukta or the Upalokayukta, as the case may be, to disregard or overlook Clauses (a) and (b) of sub-section (3) of Section 9. The procedure laid down in Clauses (a) and (b) for conducting investigation into a complaint is required to be followed scrupulously and it is essential to the validity of the report made by the Lokayukta or the Upalokayukta as the case may be,....It is also relevant to notice that the Lokayukta or the Upalokayukta as the case may be while conducting investigation into a complaint and making a report on the basis of such investigation, exercises quasi judicial power. It is an established principle of natural justice that while exercising quasi-judicial power of performing quasi-judicial function,



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the Authority has to act according to the Rules of Natural Justice in coming to a decision and give all parties an opportunity of being heard and of dealing with the evidence. He must not act on ex parte statements. Clauses (a) and (b) of sub-section (3) of Section 9 of the Act incorporate the Rules of Natural Justice. They provide that a copy of the complaint shall be forwarded to the public servant and the Competent Authority concerned, and afford to the public servant an opportunity to offer his comments on such complaint. These things are required to be complied with failing which it will lead to invalidity of the Report made by the Lokayukta or the Upalokayukta inasmuch as one of the Rules of Natural Justice is that no party shall be condemned unheard.

(Para - 10)

— SECTION 9 — Scope, ambit & purport.

Vide: Para 8

BOOK REFERRED:

Craies — *Statute Law*, 1971 Edn. Page 62.

Advocates who appeared in this case :

Mr. B.B. Bajantri for Petitioner
Mr. N. Devadas, Govt. Advocate for R-1 & 4
Mr. R.C. Castelino for R-2 & 3.

ORDER

SWAMI, J.:—

As at the stage of Preliminary Hearing, on the direction of the Court, respondents 1 and

4 have put in appearance through Sri N. Devadas, learned Government Advocate and respondents 2 and 3 have put in appearance through Sri Castelino, learned Standing Counsel for the Corporation of the City of Bangalore. Respondents 1 and 4 have filed a common statement



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of objections concerning this Writ Petition and W.P. Nos. 18405 and 18415 of 1988. The learned Government Advocate has also produced the records of the case. Thus the petition is ready for final disposal. Hence Rule is issued and the petition is heard for final disposal.

2. In this petition under Article 226 of the Constitution, the petitioner has sought for quashing the order dated 16-2-1989 passed by the Commissioner, Corporation of the City of Bangalore in No. PS.I.PA/8/88-89 produced as Annexure-E. This Order is passed pursuant to the direction issued by the State Government in its order dated 31-10-1989.

3. The petitioner is a Record-cum-Stores Officer in the Corporation of the City of Bangalore. By the impugned order, he is placed under suspension along with another person by name Sri M.S. Basavarajappa, who is stated to be a relation of the petitioner on the ground that a report is made by the Upa Lokayukta that the petitioner is possessed of assets and liabilities disproportionate to his known source of income. It is relevant to notice that in respect of the Officers of the Corporation of the City of Bangalore, the State Government becomes a Competent Authority if a proceeding is initiated under the Karnataka Lokayukta Act, 1984 (hereinafter referred to as the 'Act') and a report is submitted to the Government in respect of the Officers of the Corporation. That is what has been done in the instant case. On the basis of the report dated 9th September 1988 bearing No. COMPT/UPLOK/138/85-86 made by the Upa Lokayukta, the State Government has informed the Corporation that there is a prima facie case against the petitioner to proceed against him and it has accordingly directed the Commissioner of the Corporation to place the petitioner and Sri M.S. Basavarajappa under suspension. The Commissioner of the Corporation of the City of Bangalore, pursuant to the order of the State Government has placed them under suspension.



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4. The contention of the petitioner is that Upa Lokayukta has made a report on the basis of the complaint made by one Sri Nana Rao, and in such a case, provisions of Section 9 of the Act are attracted, therefore, a copy of the complaint ought to have been furnished to the petitioner, and he ought to have been given an opportunity to offer his comments on the complaint as required by sub-section (3) of Section 9 of the Act; that failure to do so has vitiated the report of the Upalokayukta. Consequently, it is submitted that the order passed by the State Government is liable to be quashed.

5. On the contrary, it is contended on behalf of the respondents that the petitioner was afforded an opportunity in as much as the Enquiry Officer who was directed to investigate into the complaint, did call for the particulars of the properties and other assets of the petitioner, and accordingly, the petitioner furnished the details of the properties and all other assets and thereafter further information was also called for by the Deputy Superintendent of Police as per Annexure-D dated 21-8-1987 and the petitioner furnished further details which were also taken into consideration. Thus, on the information gathered during the course of investigation, a report was made by Upalokayukta. Therefore, it is the case of the respondents that the requirement of sub-section (3) of Section 9 of the Act are substantially complied with.

6. In the light of the aforesaid contentions, the following points arise for consideration:
- 1) What is the scope and ambit of Section 9 of the Act?
 - 2) Whether the provisions of sub-section (3) of Section 9 of the Act are mandatory?
 - 3) Whether the provisions of Section 9 of the Act are attracted to the case on hand and if
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so, whether the provisions of sub-section (3) of Section 9 of the Act are complied with?

- 4) If the provisions of sub-section (3) of Section 9 of the Act are not complied with, what is the effect or consequence?

POINT NOS. 1 & 2

7. These two points go together. Section 7 of the Act states the actions which the Lokayukta or an Upalokayukta may investigate subject to the provisions of the Act. The Act defines the word 'action' as meaning "administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly." Sub-section (2A) of Section 7 of the Act provides that notwithstanding anything contained in sub-sections (1) and (2), the Lokayukta or an Upalokayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the State Government. Section 8 enumerates the matters which are excepted from the purview of Lokayukta or Upalokayukta. Section 9 of the Act provides the procedure to be followed by Lokayukta or an Upalokayukta in respect of a complaint received under the Act. The said Section reads thus:

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

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

3) Where the Lokayukta or an Upalokayukta proposes, after making such preliminary inquiry



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as he deemed fit to conduct any investigation under this Act, he,-

- "a) shall forward a copy of the complaint to the public servant and the Competent Authority concerned;
- b) shall forward to such public servant an opportunity to offer his comments on such complaint;
- c) may make such order as to the safe custody of documents relevant to the investigation as he deems fit.
- 4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upalokayukta, as the case may be, considers appropriate in the circumstances of the case.
- 5) The Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion-
 - a) the complaint is frivolous or vexatious or is not made in good faith;

- b) there are no sufficient grounds for investigating or as the case may be, for continuing the investigation; or
 - c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.
 - 6) In any case, where the Lokayukta or an Upalokayukta decides not to entertain a complaint or to discontinue any investigation
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in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

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

8. The aforesaid provisions of Section 9 of the Act, for the purpose of considering the scope and ambit of the said Section, can conveniently be divided into 4 parts. Sub-section (1) and (2) can be grouped in the first part; sub-sections (5) and (6) can be grouped in the second part; sub-sections (3) and (4) can be grouped the third part and sub-section (7) forms the fourth part.

Under sub-sections (1) and (2), any person may make a complaint to the Lokayukta or an Upalokayukta under, and subject to the provisions of the Act. The complaint has to be made in the Form prescribed by the Rules and it shall have to be in the form of a statement supported by an affidavit. As the complaint has to be made under, and subject to the provisions of the Act, it shall have to relate to the matters which are permissible to be investigated by the Lokayukta or an Upalokayukta under the Act. The Lokayukta or an Upalokayukta has to act and exercise power within the parameters of the Act. Therefore, the complaint shall relate to a 'grievance' or an 'allegation' as defined under sub-sections (2) and (8) of Section 2 of the Act. According to Section 2(2) 'allegation' in relation to a public servant means any affirmation that such public servant-

- a) has abused his position as such public servant to obtain any gain or favour to himself or to any person or to cause undue harm or hardship to any other person;
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- b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;
- c) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant; or
- d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs.

According to Section 2(8), 'grievance' means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration. The complaint which relates to matters which do not fall within the purview of the Lokayukta or Upalokayukta cannot be entertained and investigated by the Lokayukta or Upalokayukta.

The second part relates to preliminary enquiry for the purpose of finding out whether the complaint to be investigated by the Lokayukta or the Upalokayukta. This part, as already pointed out above is covered by sub-sections (5) and (6). According to sub-section (5), the Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation if in his

opinion the complaint is frivolous or vexatious or is not made in good faith; or if there are no sufficient grounds for investigating or for continuing the investigation; or other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies. Thus the preliminary stage enables the Lokayukta or the Upalokayukta to find out whether the complaint involves a grievance or an allegation which should or should not be investigated. The criteria for exercising the discretion by the Lokayukta or Upalokayukta to investigate or refuse to investigate or cease to investigate any complaint involving a grievance or an allegation are



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laid down in sub-section (5). On the basis of the guidelines laid down in Clauses (a), (b) and (c) of sub-section (5) of Section 9, the Lokayukta or Upalokayukta has to decide at the stage of preliminary enquiry as to whether the complaint should or should not be investigated. If the Lokayukta or the Upalokayukta, as the case may be decides not to entertain the complaint or to discontinue any investigation in respect of a complaint, he shall have to record the reason therefor and communicate the same to the complainant and the public servant concerned. As sub-section (5) is intended to safeguard the interest of the public servant concerned and to protect him from frivolous or vexatious complaints or complaints made not in good faith or for any other reasons mentioned in Clauses (b) and (c) of sub-section (5) of Section 9, it is all the more necessary for the Lokayukta or the Upalokayukta as the case may be to closely scrutinise the complaint involving a 'grievance' or an 'allegation' at the stage of preliminary enquiry before he decides to conduct investigation into the complaint.

Sub-section (6) also safeguards the interest of the complainant in as much as it makes it obligatory on the part of the Lokayukta or Upalokayukta as the case may be to record his reasons for refusing to entertain the complaint or to discontinue any investigation in respect of a complaint and communicate the same to the complainant and also the public servant concerned, thereby it enables the complainant to know the reasons of the Lokayukta or the Upalokayukta as the case may be for not entertaining the complaint or for discontinuing any investigation in respect of a complaint and to pursue his further remedies in accordance with law.

The third part, which is actually the third stage of the complaint filed before the Lokayukta or the Upalokayukta as the case may be, relates to conducting of investigation into the complaint. Where the Lokayukta or Upalokayukta decides to conduct any investigation into the complaint made to him, as per Clauses (a)



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and (b) of sub-section (3), he shall have to forward a copy of the complaint to the public servant and the Competent Authority concerned and afford to such public servant an opportunity to offer his comments on such complaint. Clause (c) thereof only directs the Lokayukta or the Upalokayukta to make an order as to the safe-custody of the documents relevant to the investigation as he deems fit. Sub-section (4) is subject to sub-section (3) because it opens with the words 'save as aforesaid'. Subject to sub-section (3), sub-section (4) gives discretion to the Lokayukta or Upalokayukta as the case may be to follow the procedure for conducting investigation whether in public or in camera as deemed appropriate by him in the circumstances.

As far as sub-section (7) of Section 9 is concerned, as already pointed out, it forms the 4th part. Sub-section (7) makes it clear that conduct of an investigation by the Lokayukta or Upalokayukta, as the case may be into a complaint made against a public servant in

respect of any action taken by him does not affect such action of the public servant concerned or exercise of any power or performing any duty by any other public servant to take further action against him in respect of any matter which is the subject of investigation by the Lokayukta or Upalokayukta. Thus the conduct of an investigation under the Act does not affect the action of the public servant concerned. It also does not prevent or affect any further action that may be taken against such public servant.

9. The point for consideration is as to whether sub-section (3) is mandatory or directory.

10. It is relevant to notice that on the basis of the investigation conducted by the Lokayukta or Upalokayukta as the case may be into a complaint made before him involving a 'grievance' or an 'allegation', he has to make a report under Section 12 of the Act to the Competent Authority. The Competent Authority if satisfied, can also make a declaration in his report as per



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sub-section (1) of Section 13 of the Act that the public servant concerned should not continue to hold the post held by him. The Competent Authority is required to take action within the period prescribed in Section 12 and intimate to the Lokayukta the action taken or proposed to be taken on the report. If the Lokayukta or the Upalokayukta, as the case may be, is not satisfied with the intimation regarding the action taken or proposed to be taken by the Competent Authority, it is open to him make a special report upon the case to the Governor and also inform the Competent Authority concerned and the complainant under sub-section (5) of Section 12 of the Act. Therefore, it is clear that investigation into a complaint and the report made by the Lokayukta or Upalokayukta to the Competent Authority will have a serious impact on the Public Officer concerned. It will affect his service very seriously as the Competent Authority has to examine the report forwarded to it and report the action taken thereon to the Lokayukta or Upalokayukta with the period stipulated in Section 12 of the Act. If a declaration is made in the report in terms of Section 13(1) of the Act and on acceptance of the same by the Competent Authority, the Public Officer concerned will have to be placed under suspension. That being so, the Lokayukta or the Upalokayukta as the case may be is required to follow the procedure laid down in sub-section (3) of Section 9 of the Act. It is not open to the Lokayukta or the Upalokayukta, as the case may be, to disregard or overlook Clauses (a) and (b) of sub-section (3) of Section 9. The procedure laid down in Clauses (a) and (b) for conducting investigation into a complaint is required to be followed scrupulously and it is essential to the validity of the report made by the Lokayukta or Upalokayukta as the case may be. "When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and



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may be disregarded without invalidating the thing to be done are called directory" (see page 62 of Craies on Statute Law - 1971 Edition).

In addition to this, it is also relevant to notice that the Lokayukta or the Upalokayukta as the case may be, while conducting investigation into a complaint and making a report on the basis of such investigation, exercises quasi judicial power. It determines the complaint made against a public servant involving a 'grievance' or an 'allegation' and the report becomes the basis for taking action against the public servant by the Competent Authority. It is an established principle of natural justice that while exercising quasi-

judicial power of performing quasi-judicial function, the Authority has to act according to the Rules of Natural Justice in coming to a decision and give all parties an opportunity of being heard and of dealing with the evidence. He must not act on ex parte statements. Clauses (a) and (b) of sub-section (3) of Section 9 of the Act incorporate the Rules of Natural Justice. They provide that a copy of the complaint shall be forwarded to the public servant and the Competent Authority concerned, and afford to the public servant an opportunity to offer his comments on such complaint. These things are required to be complied with failing which it will lead to invalidity of the report made by the Lokayukta or the Upalokayukta in as much as one of the Rules of Natural Justice is that no party shall be condemned unheard:

11. For the reasons stated above, point Nos. 1 and 2 are answered as follows:

“The scope and ambit of Section 9 of the Act is as indicated above. Clauses (a) and (b) of sub-section (3) of Section 9 of the Act are mandatory. Therefore, they cannot be disregarded. It is obligatory on the part of the Lokayukta or Upalokayukta to comply with the same when he proposes to conduct an investigation



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into a complaint against a public servant involving a ‘grievance’ or an ‘allegation.’

POINT NOS. 3 AND 4

12. These points can be conveniently considered together.

13. The Act came into force on 15-1-1986. On going through the records of the case, it is noticed that even though some sort of an enquiry was held before 1986 but that enquiry was not continued after the Constitution of Lokayukta and Upalokayukta. Under the provisions of the Act, a complaint dated 10-2-1986 was made by one Sri Nana Rao complaining that the assets possessed by the petitioner and Sri Basavarajappa were disproportionate to their own source of income. The complaint furnished the details of the immoveable properties and other assets held by the petitioner and Sri M.S. Basavarajappa. On the basis of the complaint of Nana Rao, the Upalokayukta took up the investigation. Therefore, the records clearly indicate that the case against the petitioner and one Sri M.S. Basavarajappa was started on the complaint of Sri Nana Rao. The said complaint was given in accordance with the provisions contained in Section 9 of the Act and Form No. 1 prescribed under Rule 4(1) of the Karnataka Lokayukta Rules, 1985 (hereinafter referred to as the ‘Rules’). Thus this is a case in which the provisions of Section 9 of the Act are attracted because the complaint itself is made under the Act and it is entertained under the Act.

14. It is contended and the records also reveal, that the details about the immoveable and other assets held by the petitioner were called for from the petitioner by issuing notices as per Annexures-A and B. The petitioner also submitted the details of the properties. In the light of these facts, it is contended that there is substantial compliance with the requirements of Clauses (a)



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and (b) of sub-section (3) of Section 9 of the Act. Therefore, sub-section (3) of Section 9 of the Act is not violated.

15. There is no doubt in this case, that the requirements of Clauses (a) and (b) of sub-section (3) Section 9 of the Act are not complied with in as much as a copy of the complaint made by Sri Nana Rao was not sent either to the petitioner or to the Competent Authority concerned and no opportunity was afforded to the petitioner to offer his

comments on the complaint. In addition to this, the notices issued as per Annexures-A and B, did not contain the gist of the complaint and there was no reference to the complaint made by Sri Nana Rao. Therefore, Annexures-A and B read independently do not disclose that they were in any way connected with or issued pursuant to the complaint made by Sri Nana Rao. Under the notices Annexures-A and B, the particulars of the immoveable properties and other assets held by the petitioner were called for. Pursuant to the notices, the petitioner also submitted his replies and furnished the particulars. Even then the notices Annexures-A and B cannot be construed as amounting to substantial compliance with the requirements of Clauses (a) and (b) of sub-section (3) of Section 9 of the Act. This is a case in which the investigation is held by the Upalokayukta, on a complaint made by Sri Nana Rao. Without that complaint, and in the absence of any reference made to him under sub-section (2A) of Section 7 of the Act, the Lokayukta or the Upalokayukta, as the case may be, could not have investigated into the matter. Therefore, it was necessary for the Upalokayukta to send a copy of the complaint to the petitioner and to the Competent Authority and afford an opportunity to the petitioner to offer his comments on the said complaint. Clauses (a) and (b) of sub-section (3) of Section 9 are to be complied with in the manner provided therein. Hence I am of the view that Clauses (a) and (b) of sub-section (3) of Section 9 of the Act are not complied.



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16. Point No. 4 need not detain us any longer because it has already been pointed out in the preceding paragraph that non-compliance with the requirements of Clauses (a) and (b) of sub-section (3) of Section 9 of the Act leads to invalidity of the report. Accordingly point Nos. 3 and 4 are answered as follows:

POINT NO. 3

Section 9 of the Act is attracted to the case on hand. The requirements of Clauses (a) and (b) of sub-section (3) Section 9 of the Act are not complied with.

POINT NO. 4

The effect of non-compliance with the provisions of Clauses (a) and (b) of sub-section (3) of Section 9 of the Act leads to invalidity of the report made by the Upalokayukta. Consequently, the report of the Upalokayukta in so far it relates to the petitioner and the action taken by the Competent Authority on the basis of the report against the petitioner are violated and as such the same are liable to be quashed.

16. For the reasons stated above, this Writ Petition is allowed in the following terms:

- a) The order dated 16-2-1989 bearing No. PS.I.PA/8/88-89 produced as Annexure-E passed by the Commissioner of Corporation of the City of Bangalore in so far it relates to the petitioner is hereby quashed;
 - b) The order dated 31st October 1988 bearing G.O. No. HUD 123 MNU 88 passed by the State Government in so far it relates to the petitioner is also quashed;
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- c) The report dated 9th September 1988 bearing No. COMT/UPLOK/138/85-86 made by the Upalokayukta in so far it relates to the petitioner is quashed;
- d) The matter now stands remitted to the Upalokayukta with a direction to proceed with

the complaint made by Sir Nana Rao after furnishing a copy of the complaint to the petitioner and to the Competent Authority and fix a date for submitting the comments thereon by the petitioner. If the comments are submitted by the petitioner, the same shall be taken into consideration and to proceed with the matter in accordance with law;

- e) As the case is old one and service of copies of the complaint on the petitioner and the Competent Authority itself may take considerable time, in order to avoid delay, in the interest of justice, it appears to me that it is necessary to fix a date for appearance of the petitioner and a representative of the Competent Authority before the Upalokayukta and receive a copy of the complaint along with a notice to the petitioner fixing a date for offering his comments on the complaint. Accordingly, the petitioner and the Competent Authority are directed to appear before the Upalokayukta on the 30th of June 1989 during office hours. On that day, the Upalokayukta shall furnish a copy of the complaint to the petitioner and to the representative of the Competent Authority and also communicate the date to the petitioner for submitting his comments on the complaint.

Sri N. Devadas, learned Government Advocate is permitted to file his memo of appearance on behalf of respondents 1, 3 and 4 within six weeks.

* W.P. No. 2951 of 1989.

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