

**(1998) 6 Supreme Court Cases 66 : 1998 Supreme Court Cases (L&S) 1448**

(BEFORE K. VENKATASWAMI AND M. JAGANNADHA RAO, JJ.)

C. RANGASWAMIAH AND OTHERS . . Petitioners;

*Versus*

KARNATAKA LOKAYUKTA AND OTHERS . . Respondents.

SLPs Nos. 8758-8764 of 1998<sup>±</sup>, decided on July 21, 1998

**A. Service Law — Deputation — Person sent on deputation continues to remain employees of the lending authority with which master and servant relationship continues till it is terminated — Police officers sent on deputation to Lokayukta by State Govt. continued to be public servants of the State Govt. unless and until they are absorbed in the Lokayukta**

**B. Service Law — Deputation — Entrustment of extra work by lending authority — Legality — Though after sending an employee on deputation no extra duties should be entrusted on him concerning the lending authority, apart from the duties entrusted on him by the borrowing authority, but when such extra duties are entrusted by the lending authority in exercise of statutory powers and the action is not objected to by the borrowing authority, then such entrustment of extra duties would be competent — Police officers of the State of Karnataka sent on deputation to Lokayukta, entrusted the extra duty by State Govt. to conduct investigation in exercise of powers under S. 17 of Prevention of Corruption Act, 1988 — Held, entrustment being in exercise of statutory powers was within jurisdiction of the State Govt. — But State Govt. should inform the Lokayukta about its desire to entrust extra work on its employees sent on deputation — If Lokayukta does not agree to such proposal for good reasons but State Govt. insists on conferring the extra work, Lokayukta can direct the deputationists not to take up any such extra work — But once Lokayukta does not object to such entrustment of work, Lokayukta should not raise objection when the deputationists are halfway through the extra work — But in any case the public servants against whom the investigation is going on under the Prevention of Corruption Act cannot raise such objection — Karnataka Lokayukta Act, 1984 (4 of 1985), S. 15 — Prevention of Corruption**



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Act, 1988, S. 17 — Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and Employees) Rules, 1988, R. 3 and Schs. I & II — Lok Pal\*

*Held :*

The police officers of the State on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lokayukta. This legal position is absolutely unassailable because the State of Karnataka has merely lent the services of these officers to the Lokayukta and the officers continue to be employees of the State. In spite of the deputation of these officers with the Lokayukta, the relationship of master and servant between the State of Karnataka and these officers does not stand terminated.

(Para 22)

*State of Punjab v. Inder Singh*, (1997) 8 SCC 372 : 1998 SCC (L&S) 34, *relied on*

Normally, in respect of officers sent on deputation by the State to another authority, the lending authority should not, after deputation of its officers, entrust extra duties concerning the said lending authority to such officers without the consent of the borrowing authority. If, however, such action is taken by the lending authority by virtue of statutory powers and such a course is not objected to by the borrowing authority, it cannot be said that the entrustment is without jurisdiction. From a jurisdictional angle, the entrustment being under statutory powers of the State traceable to Section 17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. Maybe, if it is done without consulting the Lokayukta and obtaining its consent, it can only be treated as an issue between the State and the Lokayukta and is none of the concern of those public servants against whom these police officers on deputation are conducting the investigation. Such

entrustment of duties has statutory backing and obviously also the tacit approval of the Lokayukta. Once there is such tacit approval of the Lokayukta, the writ petitioners cannot have any grievance that the Lokayukta ought not to have permitted such a course.

(Para 24)

Harmonising the powers of the Govt. under the Central Act and of the Lokayukta under the Karnataka State Lokayukta Act it must be held that if the State Government wants to entrust such extra work to the officers on deputation with the Lokayukta, it can certainly inform the Lokayukta of its desire to do so. If the Lokayukta agrees to such entrustment, there will be no problem. But if for good reasons the Lokayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the viewpoint of the Lokayukta, then it will be open to the Lokayukta, — having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) [read with Section 15(2)] and direct that these officers on deputation in its Police Wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lokayukta will avoid any such unpleasant situations but will act reasonably in their respective spheres.

(Para 26)

But once the Lokayukta has, as in the present case, not objected, — at the threshold — to such entrustment of work by the State Government to the officers on deputation, then it will not normally be reasonable for the Lokayukta to object to the said entrustment when these officers are halfway through the extra work. Such withdrawal by the Lokayukta at a later stage might create various administrative problems and will only help the public servants against whom investigation is being done to raise unnecessary legal issues. Of course, in the present case, it is not the Lokayukta which has raised any objection but it is the public servants — against whom the investigation is going on — who have raised objections. They, in any



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case, cannot raise objections if the Lokayukta has not raised any objection at the threshold. The above, will take care of the independence and effective working of the Lokayukta and at the same time, will enable the State of Karnataka if need be, to exercise its statutory powers under Section 17 of the Prevention of Corruption Act, 1988.

(Para 27)

*Institution of A.P. Lokayukta/Upa-Lokayukta v. T. Rama Subba Reddy*, (1997) 9 SCC 42, *relied on Gokaraju Rangaraju v. State of A.P.*, (1981) 3 SCC 132 : 1981 SCC (Cri) 652, *referred to*

**Suggested Case Finder Search Text** (*inter alia*):

**C. Service Law — Administrative instructions — Administrative orders can be issued even creating a post so long the orders are not inconsistent with the rules — New post of Director General, Bureau of Investigation, Lokayukta, in the rank of Addl. DGP created by Govt. of Karnataka by an administrative order but the relevant recruitment rules of the staff of the Lokayukta were not amended to bring the said post in the cadre under the Lokayukta — Held, still the said post created in the Lokayukta Police Wing was intended to be and must be treated as part of the staff of Lokayukta in the Police Wing — Therefore, while the Police Wing of Lokayukta was under the general and overall control of the Director General still the staff as also the DG himself were under the administrative and disciplinary control of Lokayukta — Posts — Creation of, by administrative orders — Karnataka Lokayukta Act, 1984 (4 of 1985), S. 15 (4)**

**(Paras 19 and 20)**

R-M/TZ/19993/CLA

Advocates who appeared in this case:

Gopal Subramaniam, Senior Advocate (Ms Kiran Suri, Advocate, with him) for the Petitioners.

**Chronological list of cases cited**

**on page(s)**

1. (1997) 9 SCC 42, *Institution of A.P. Lokayukta/Upa-Lokayukta v. T. Rama Subba Reddy* 7
2. (1997) 8 SCC 372 : 1998 SCC (L&S) 34, *State of Punjab v. Inder Singh* 7
3. (1981) 3 SCC 132 : 1981 SCC (Cri) 652, *Gokaraju Rangaraju v. State of A.P.* 69€

The Judgment of the Court was delivered by

**M. JAGANNADHA RAO, J.**— On the last day before summer vacation, namely, 14-5-1998, we dismissed these special leave petitions at the stage of admission and stated that we shall pass a reasoned order later. We are passing that order now.

**2.** These seven special leave petitions have been preferred against the common judgment of the Karnataka High Court in Writ Petitions Nos. 24215, 32653, 33388, 27056, 27361 and 33852 of 1997 and 4361 of 1998. The judgment, in fact, disposed of several other writ petitions also and in addition considered the correctness of the judgment dated 12-8-1997 of a learned Single Judge of that Court rendered in Writ Petition No. 17819 of 1994 against which Writ Appeals Nos. 5081 and 5071 of 1997 were respectively preferred by the petitioner therein and the State of Karnataka.



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**3.** The point raised in these SLPs is whether the investigation under Section 17 of the Prevention of Corruption Act, 1988 entrusted by the State of Karnataka to the police officers of the State having the requisite rank could still be said to be vitiated because of the fact that the said officers were on deputation to the Police Wing of the Karnataka State Lokayukta at the relevant time?

**4.** The facts of the case are as follows:

The petitioners before us filed writ petitions contending that the police officers on deputation with the Lokayukta could not have been entrusted with the investigation under Section 17 of the Prevention of Corruption Act, 1988. In Writ Petition No. 17819 of 1994 filed earlier by another public servant which went before a learned Single Judge of that Court, the same questions were raised. A learned Single Judge of that Court while, however, rejecting the contention of the writ petitioner in Writ Petition No. 17819 of 1994 that the police officers sent on deputation to the Lokayukta to "assist" the said authority under Section 15(1) of the Karnataka State Lokayukta Act, 1984 would cease to be police officers for purposes of Section 17 of the Prevention of Corruption Act, 1988, held that the petition was liable to be partly allowed on the basis of the following reasoning. The learned Judge held that in view of Section 15(2) of the Lokayukta Act which required the staff of the Lokayukta to act without "fear" in the discharge of their functions and Section 15(4) of the said Act — which vested "administrative and disciplinary control" of the staff in the Lokayukta, — the independence of the Lokayukta as an autonomous body would be affected if the police officers on deputation with the Lokayukta were entrusted with functions of investigation under Section 17 of the Prevention of Corruption Act, 1988 and that, therefore, such officers should not have been asked to conduct any such investigation. The learned Single Judge, however, sustained the investigation already made, by invoking the de facto doctrine laid down by the Supreme Court in *Gokaraju Rangaraju v. State of A.P.*<sup>1</sup> Question arose as to the position of the post of Director General of Police in the Lokayukta created w.e.f. 21-12-

1992 which post was however not included in the rules governing the Lokayukta and to the effect of another notification dated 22-12-1992 issued by the State Government under Section 17 of the Prevention of Corruption Act, 1988 designating all the Inspectors of Police, Karnataka Lokayukta to be police officers for purposes of the proviso to Section 17 of the said Act. The learned Judge held that the latter notification insofar as it placed the said officers under the "general and overall control and supervision" of the *Director General*, Bureau of Investigation, Lokayukta, Bangalore — rather than under the Lokayukta — as was the position under an earlier notification dated 2-11-1992 which had vested such control and supervision in the Lokayukta — was bad inasmuch as it jeopardised the independence of the Lokayukta, particularly when the post of Director General of the Bureau of Investigation, Lokayukta was not



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included among the posts listed in the Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and the Employees) Rules, 1988. The learned Judge also held that the notification dated 22-12-1992 mentioned above designating the Inspectors of Police who were on deputation in the Karnataka Lokayukta to be police officers under Section 17 of the Prevention of Corruption Act, 1988 and that the notification dated 26-5-1986 issued under Section 2(s) of the Criminal Procedure Code, 1973 whereby offices of the Lokayukta throughout the State were declared as police stations in respect of jurisdiction mentioned against each of them — could not be of any help to the State inasmuch as those police officers on deputation in the Police Wing of the Lokayukta could not have been asked to undertake any functions other than those of "assisting" the Lokayukta as specified in Section 15(1) of the Lokayukta Act, 1984. In the result, the learned Single Judge directed that from the stage at which the investigation stood under the Prevention of Corruption Act, 1988, as on the date of the judgment, the Police Wing/Bureau of Investigation of the Lokayukta "shall cease" all investigations but that this would not, however, prevent the said agency from transferring the cases for *further* investigation and appropriate action to *any other agency* competent to investigate the same. So far as the investigation which was already made by the police officers of the Bureau was concerned, — though it was sustained under the *de facto* doctrine, — it was still observed that the same would be subject to the right of the public servants concerned to prove that *prejudice* was caused to them on account of the entrustment of the investigation to such officers who were on deputation. Writ Petition No. 17819 of 1994 was allowed to the extent stated above.

**5.** The said writ petition having been partly allowed as stated above, both the petitioner therein and the State filed writ appeals as stated earlier. Other officers like the petitioners in these SLPs who filed fresh writ petitions, had their writ petitions clubbed with the said writ appeals.

**6.** The Division Bench dismissed the writ petitions filed by the petitioners as also the writ appeal of the writ petitioner in Writ Petition No. 17819 of 1994 and allowed the writ appeal filed by the State. It held that even after deputation, there could be a "dual" role on the part of the police officers in their functions, namely, functions under the Lokayukta and functions in discharge of the duties entrusted to them by the State of Karnataka, under the Prevention of Corruption Act, 1988. It, however, held reversing the view of the learned Single Judge that the notification dated 22-12-1992 issued under Section 17 of the Prevention of Corruption Act, 1988 designating all Inspectors on deputation in the Lokayukta as officers competent for purposes of Section 17 of that Act and the notification dated 26-5-1986 issued under Section 2(s) of the Code of Criminal Procedure designating all offices of the Lokayukta in the State as police stations — indicated that these police officers though on deputation, were entrusted with these powers of investigation, by virtue of statutory powers. The Division Bench further held that though the Director General of

Police newly attached w.e.f. 21-11-1992 to the Bureau of Investigation of the Lokayukta by way of



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an administrative order of the Government was to be in control and supervision of the police staff in the Lokayukta and though the said post of Director General of Police was *not* — by appropriate amendment of the recruitment rules of the Lokayukta staff — included in the cadre of posts in the Police Wing of the Lokayukta — still it had to be taken that the said Director General of Police was under the administrative and disciplinary control of the Lokayukta and therefore the above notification dated 22-12-1992 could not be treated as invalid or as jeopardising the independence of the Lokayukta. It also held that the appointment of the said Director General and the notification placing the police officers of the Lokayukta under his control did not amount to divesting the powers of the Lokayukta in relation to these police officers nor to vesting the said powers only in the Director General of Police. It observed that dual functions could be performed by these officers in relation to the two Acts, namely the Prevention of Corruption Act and the Lokayukta Act and such a situation of dual control could not be said to be alien to criminal jurisprudence concerning investigation of crimes. In other words, these officers who were of the requisite rank as per Section 17 of the Prevention of Corruption Act, 1988 could not be said to be incompetent to investigate into offences assigned to them under that Act by the competent authority by virtue of statutory powers under Section 17 thereof or to the extent not excluded by the Lokayukta. The Division Bench, therefore, held that the further investigation against the petitioners could be continued through the police officers on deputation with the Lokayukta.

**7.** We have also to refer to an office memorandum dated 2-9-1997 issued by the Lokayukta after the judgment of the learned Single Judge. The Lokayukta issued office memorandum dated 2-9-1997 to the effect that in view of the judgment in the writ petition, all police officers in charge of police stations of the Lokayukta, could take cognizance and investigate offences punishable under the Prevention of Corruption Act, 1988 and the IPC but that keeping in view Section 17 of the Prevention of Corruption Act, 1988, they were to obtain necessary orders from the respective Superintendents of Police, attached to the Lokayukta — who in their turn would report to the Lokayukta or Upa-Lokayukta, as the case may be — with reference to their respective jurisdictions through the Inspector General of Police (except in trap cases). The memorandum stated that the report of the police officers should be submitted to the Lokayukta or Upa-Lokayukta, as the case may be, through the IGP immediately after such action was taken in the proceedings. It further stated that the IGP would place the FIR, the evidence collected and the final investigation report before the Lokayukta and that before filing charge-sheet for prosecution or filing closure reports, orders of the Lokayukta or Upa-Lokayukta — as the case may be — would have to be obtained. The validity of this memorandum, therefore, fell for consideration before the Division Bench in the light of the other findings given by the Division Bench reversing the opinion of the learned Single Judge.



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**8.** In regard to the above memorandum of the Lokayukta dated 2-9-1997, the Division Bench held that it was issued by the Lokayukta only in view of the judgment of the learned Single Judge and government notification dated 20-8-1997, to overcome the difficulties faced by the police officers in the Lokayukta. The office memorandum was

purported to have been issued under Section 15(4) of the Karnataka Lokayukta Act. The Bench held that the Lokayukta had no authority statutorily delegated to it to issue such an office memorandum. The Bench held that in the light of the views expressed in the judgment of the Division Bench that the Director General attached to the Lokayukta was to be treated as under the administrative control of the Lokayukta, the memorandum had become "redundant" and "unworkable". Even otherwise, the Court would have no hesitation to set aside the same on ground of want of jurisdiction or as being in excess of jurisdiction of the Lokayukta. The Division Bench, however, clarified that the setting aside of the said memorandum did not mean that the Lokayukta had no administrative and disciplinary control over the police officers on deputation. It held that in case the Lokayukta directed a police officer "*not to proceed in relation to a case*", such a police officer could not venture to initiate investigation. A direction not to go ahead with the entire duties entrusted to him by the Government under the Prevention of Corruption Act, 1988 could be given by the Lokayukta only under specified and exceptional circumstances such as — when there was "excess load of work" in the Lokayukta, which might not consequently leave adequate time for investigation of offences being investigated by the Lokayukta. These exceptions, the Bench held, were not exhaustive and there could well be other situations where the Lokayukta could direct its officers not to take up the extra work entrusted to them by the State under the Prevention of Corruption Act, 1988. The Division Bench thus allowed the writ appeal filed by the State and dismissed the writ appeal of the petitioner in WP No. 17819 of 1994 and dismissed the writ petitions filed by the petitioners before us.

**9.** It was contended in these special leave petitions before us by the learned Senior Counsel for the petitioners, Shri Gopal Subramaniam, that the Division Bench erred in dismissing the writ petitions filed by the petitioners, that the entire investigation under the Prevention of Corruption Act so far conducted by the police officers of the Lokayukta must be treated as illegal and that the entrustment of the remaining investigation to these officers could not be permitted. In other words, it was contended that the entire proceedings must be quashed.

**10.** Before giving our reasons for dismissal of these special leave petitions, we may state that we are here conscious of the fact that the writ petitioner in Writ Petition No. 17819 of 1994 out of which the two writ appeals arose before the High Court is not before us. But inasmuch as the fresh writ petitions filed by the petitioners who are now before us have been disposed of by a common judgment along with the writ appeals, it has not become possible to avoid consideration of the reasons given by the learned Single Judge in Writ Petition No. 17819 of 1994.



**11.** The following points arise for consideration:

- (1) Was it permissible for the State Government to create the post of Director General of Police, Lokayukta by way of an administrative order of 21-12-1992 though the said post was not included in the relevant rules of recruitment of the staff of the Lokayukta? If permissible, can it be said that the said officer was independent and outside the administrative and disciplinary control of the Lokayukta?
- (2) Is the entrustment of functions under the Prevention of Corruption Act, 1988 by the Government to the police officers on deputation with the Lokayukta without jurisdiction?
- (3) In what manner can the provisions of Section 17 of the Prevention of Corruption Act, 1988 and Section 15 of the Karnataka Lokayukta Act, 1984 be harmonised?
- (4) Is the further investigation in the present cases to be continued by the police

officers on deputation to the Lokayukta?

*Point 1*

**12.** At the outset, it is necessary to refer briefly to the provisions of the Prevention of Corruption Act, 1988, and of the Karnataka State Lokayukta Act, 1984 insofar as they are relevant and to certain notifications adverted to by the parties before the High Court.

**13.** Section 17 of the Prevention of Corruption Act, 1988 states that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), *no police officer below the rank (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police, (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan areas notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (Act 2 of 1924), of an Assistant Commissioner of Police or a police officer of equivalent rank, shall, investigate any offence punishable under that Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest without a warrant. The first proviso to Section 17 states when a police officer of a rank below the rank of an Inspector of Police can take similar action. The second proviso states that if the offence is one under clause (e) of sub-section (1) of Section 13 namely, dealing with possession of assets disproportionate to the known sources of income of the public servant, then such an offence shall not be investigated without the orders of a police officer not below the rank of the Superintendent of Police.*

**14.** We shall next refer to Section 15 of the State Lokayukta Act, 1984, which deals with the mode of recruitment of staff of the Lokayukta. Section 15 of the Act reads as follows:

“15. *Staff of Lokayukta, etc.*—(1) There shall be such officers and employees as may be prescribed to *assist* the Lokayukta and the Upa-Lokayukta or the Upa-Lokayuktas in the discharge of their functions under this Act.



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(2) The categories, recruitment and conditions of service of the officers and employees referred to in sub-section (1) including such special conditions as may be necessary for *enabling them to act without fear in the discharge of their functions*, shall be such as may be prescribed in consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukta or an Upa-Lokayukta may, for the purpose of conducting investigations under this Act utilise the services of,—

(a) any officer or investigating agency of the State Government; or

(aa) any officer or investigating agency of the Central Government with the prior concurrence of the Central Government; or

(b) any other agency.

(4) The officers and other employees referred to in sub-section (1) shall be under the administrative and disciplinary control of the Lokayukta:

Provided that when Lokayukta is unable to discharge his functions owing to absence, illness or any other cause, the Upa-Lokayukta or if there are more than one Upa-Lokayukta, the senior among them may discharge the functions of the Lokayukta under this sub-section.”

(emphasis supplied)

**15.** It will be noticed from the above provisions that the staff of the Lokayukta is to “*assist*” the Lokayukta and Upa-Lokayukta in the discharge of their functions as stated in Section 15(1) and that the staff is to function without “*any fear*” in the discharge of their

duties as stated in Section 15(2). The staff is to be under the administrative and disciplinary jurisdiction of the Lokayukta as stated in Section 15(4).

**16.** Under the rule-making power conferred on it by Section 23 of the Lokayukta Act, 1984, the State of Karnataka has framed rules for recruitment of the staff in the Lokayukta called the Karnataka Lokayukta (Cadres, Recruitment and Conditions of Service of the Officers and Employees), Rules, 1988. Rule 3 thereof provides for the strength and composition of the staff of the Lokayukta and states that the staff shall be recruited as detailed in the *First Schedule* of the Rules. Rule 4 of the Rules prescribes the method of recruitment and the minimum qualifications therefor. The First Schedule divides the staff into three wings: (i) Administrative and Enquiry Wing, (ii) Police Wing and (iii) General Wing. The number of posts in each wing is also specified. So far as the Police Wing is concerned, it is to comprise of one IGP, one Deputy IG, three Superintendents of Police, three non-IPS Superintendents of Police, eleven Deputy Superintendents of Police, apart from 24 Inspectors of Police and an equal number of Sub-Inspectors of Police besides Head Constables and Drivers, etc. The *Second Schedule* to the Rules provides for the method of recruitment, according to which so far as *staff in the Police Wing* of the Lokayukta is concerned, it has to be appointed *by deputation* from the Karnataka State Police Service. The only condition is that the Inspector General of Police, Deputy Inspector General of Police (except the Superintendents of Police) have to be IPS Officers.



**17.** We shall next refer to the relevant notifications which were referred to in the High Court. We have a notification dated 22-12-1992 issued by the State Government under Section 17 of the Prevention of Corruption Act, 1988 (issued in modification of an earlier notification dated 2-11-1992) designating all Inspectors of Police on deputation with the Karnataka Lokayukta to the police officers for the purposes of Section 17 of the Prevention of Corruption Act, 1988 but subject to the "general and overall control and supervision" of the Director General, Bureau of Investigation, Lokayukta, Bangalore. Under the previous notification dated 2-11-1992, the said control and supervision of the police officers was vested with the Lokayukta. On 21-12-1992, the Government of Karnataka created a post of Director General, Bureau of Investigation, Lokayukta, in the rank of an Additional Director General of Police and then issued the notification dated 22-12-1992 above-referred to vesting the control of the police staff in the Lokayukta with the general and overall control of the said Director General of Police. There is also a notification dated 26-5-1986 issued under Section 2(s) of the Code of Criminal Procedure, 1973 declaring offices of the Lokayukta as police stations and authorising Inspectors of Police therein to conduct investigations under the Prevention of Corruption Act, 1988.

**18.** The above are the relevant provisions of the Central and State Acts, the rules and notifications.

**19.** We may first deal with the crucial question as to whether the Director General of Police in the office of the Lokayukta who is to supervise the work of the police officers on deputation in the Lokayukta is independent of the Lokayukta and is outside the administrative and disciplinary control of the Lokayukta. We agree with the Division Bench when it took the view, — differing from the learned Single Judge, — that though the newly-created post of Director General of Police in the office of the Lokayukta was created on 21-12-1992 by an administrative order and the relevant recruitment rules of the staff of the Lokayukta were not amended to bring the said post into the cadre under the Lokayukta, still the said post created in the Lokayukta Police Wing was intended to be and must be treated as part of the staff of Lokayukta in the Police Wing. It is well settled that administrative orders even creating posts can be issued so long as they are not inconsistent with rules, that is to say, as long as there is no prohibition in the statutory



rules for creation of such posts. The learned Single Judge's view that the independence of the Lokayukta was under threat was mainly based upon his decision that the post of the Director General created on 21-12-1992 was outside the control of the Lokayukta. This view, in our opinion, is not correct for the reasons mentioned above.

**20.** Therefore, while it is true that as per the notification dated 21-11-1992 issued by the Government, the Police Wing in the Lokayukta is to be under the general and overall control of the said Director General of Police, still, in our opinion, the said staff and, for that matter, the Director General himself are under the administrative and disciplinary control of the Lokayukta. This result even if it is not achieved by the express language of



Section 15(4) is achieved by the very fact that the Director General's post is created in the office of the Lokayukta. By creating the said post of Director General of Police in the office of the Lokayukta and keeping the Police Wing therein under control and supervision of the said Director General, the State of Karnataka, in our opinion, did not intend to remove the Police Wing or the said Director General from the administrative and disciplinary jurisdiction of the Lokayukta nor did the State intend to interfere with the independent functioning of the Lokayukta and its police staff. The modification of the earlier notification dated 2-11-1992 was, in our opinion, necessitated on account of the creation of the post of the Director General in the office of the Lokayukta. Nor was the notification intended to divest the Lokayukta of its powers and to vest the said powers only in the Director General. For the aforesaid reasons, the memorandum dated 2-9-1997 issued by the Lokayukta after the judgment of the learned Single Judge has become redundant as held by the Division Bench. Thus the main argument relating to the threat to the independence of the Lokayukta which appealed to the learned Single Judge stands rejected.

#### Point 2

**21.** The next question is whether when the State Government had sent the police officers on deputation to the Lokayukta, it was permissible for the Government to entrust them with additional duties under the Prevention of Corruption Act, 1988?

**22.** The learned Single Judge as well as the Division Bench are one, as already stated, in accepting that the police officers of the State on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lokayukta. This legal position is absolutely unassailable because the State of Karnataka has merely lent the services of these officers to the Lokayukta and the officers continue to be employees of the State. In spite of the deputation of these officers with the Lokayukta, the relationship of master and servant between the State of Karnataka and these officers does not stand terminated (*State of Punjab v. Inder Singh*<sup>2</sup>).

**23.** There is no dispute that though these officers are on deputation, they are otherwise of the requisite rank as contemplated by Section 17 of the Prevention of Corruption Act, 1988 and that other formalities under that Act are satisfied for entrustment of duties under the Prevention of Corruption Act, 1988. Question is whether these police officers of the State can be invested with powers of investigation under Section 17 of the Prevention of Corruption Act, 1988 by the State under its statutory powers traceable to the same section?

**24.** It is true that normally, in respect of officers sent on deputation by the State to another authority, the lending authority should not, after deputation of its officers, entrust extra duties concerning the said lending



authority to such officers without the consent of the borrowing authority. If, however, such action is taken by the lending authority by virtue of statutory powers and such a course is not objected to by the borrowing authority, can it be said that the entrustment is without jurisdiction? In our opinion, from a jurisdictional angle, the entrustment being under statutory powers of the State traceable to Section 17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. Maybe, if it is done without consulting the Lokayukta and obtaining its consent, it can only be treated as an issue between the State and the Lokayukta and is none of the concern of those public servants against whom these police officers on deputation are conducting the investigation. Such entrustment of duties has statutory backing and obviously also the tacit approval of the Lokayukta. Once there is such tacit approval of the Lokayukta, the writ petitioners cannot have any grievance that the Lokayukta ought not to have permitted such a course.

#### *Points 3 and 4*

**25.** As stated by the Division Bench, situations might arise where the Government might like to entrust such duties to the police officers on deputation but the Lokayukta might feel that such entrustment would affect the independent working of the Lokayukta or add unreasonably to the workload of the officers on deputation in the office of the Lokayukta. The question is as to how to harmonise the powers of the Government under the Central Act and of the Lokayukta under the State Act. Points 3 and 4 deal with the balancing of the respective powers of the State Government and the Lokayukta.

**26.** In our view, if the State Government wants to entrust such extra work to the officers on deputation with the Lokayukta, it can certainly inform the Lokayukta of its desire to do so. If the Lokayukta agrees to such entrustment, there will be no problem. But if for good reasons the Lokayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the viewpoint of the Lokayukta, then it will be open to the Lokayukta, — having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) [read with Section 15(2)] and direct that these officers on deputation in its Police Wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lokayukta will avoid any such unpleasant situations but will act reasonably in their respective spheres.

**27.** But once the Lokayukta has, as in the present case, not objected, — at the threshold — to such entrustment of work by the State Government to the officers on deputation, then it will not normally be reasonable for the Lokayukta to object to the said entrustment when these officers are halfway



through the extra work. Such withdrawal by the Lokayukta at a later stage might create various administrative problems and will only help the public servants against whom investigation is being done to raise unnecessary legal issues. Of course, in the present case, it is not the Lokayukta which has raised any objection but it is the public servants — against whom the investigation is going on — who have raised objections. As already stated, they cannot raise objections if the Lokayukta has not raised any objection at the threshold. The above, in our view, will take care of the independence and effective working of the Lokayukta and at the same time, will enable the State of Karnataka if need be, to exercise its statutory powers under Section 17 of the Prevention of Corruption Act, 1988.

**28.** In the matters before us, as already stated, there has been no objection by the Lokayukta at the initial stage of the entrustment of work under Section 17 of the Central Act to these police officers on deputation. It is therefore not possible to interdict the

further investigation by these officers at this stage at the instance of the public servants. As stated above, if no objection has come from the Lokayukta at the time of initial entrustment, it is certainly not permissible for the public servants against whom the investigation is being done, to raise objection. The Division Bench was right in holding that the memorandum dated 2-9-1997 issued by the Lokayukta is, in fact, purely consequential to the judgment of the learned Single Judge and in declaring the same to be invalid and also redundant.

**29.** We may, however, add that if instead of deputation of police officers from the Government, any other solution can be found, that is a matter to be decided amicably between the State Government and the Lokayukta, — keeping in view the independence of the Lokayukta and its effective functioning as matters of utmost importance.

**30.** Before parting with the case, we may reiterate what this Court stated recently in connection with the independence of the Lokayukta in a case arising under the corresponding statute from Andhra Pradesh, in *Institution of A.P. Lokayukta/Upa-Lokayukta v. T. Rama Subba Reddy*<sup>3</sup> (SCC at p. 44): (SCC Headnote)

“The legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in appropriate cases to the Upa-Lokayukta who is a District Judge of Grade I as recommended by the Chief Justice of the High Court, so that these statutory authorities can work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to cater to the need of the public at large with a view to seeing that public confidence in the working of public bodies remains intact. When such authorities consist of high judicial dignitaries it would be obvious that



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such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned.”

**31.** For the aforesaid reasons, the special leave petitions are dismissed.

<sup>†</sup> From the Judgment and Order dated 18-3-1998 of the Karnataka High Court in W.Ps. Nos. 24215, 32653, 33388, 27056, 27361, 33852 and 4361 of 1998

<sup>1</sup> (1981) 3 SCC 132 : 1981 SCC (Cri) 652

<sup>2</sup> (1997) 8 SCC 372 : 1998 SCC (L&S) 34

<sup>3</sup> (1997) 9 SCC 42