

ITEM NO.7

COURT NO.3

SECTION PIL-W/XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) NO(S). 684/2016

ASHWINI KUMAR UPADHYAY

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

WITH

SLP(C) NO. 22841/2016 (XII)

[AND I.A. NO.2/2016 - EXEMPTION FROM FILING O.T.]

Date : 19-04-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Parties :

petitioner-in-person

State of W.B.

Ms. Indira Jaising, Sr. Adv.
Mr. Suhaan Mukerji, Adv.
Ms. Astha Sharma, Adv.
Mr. Harsh Hiroo Gursahani, Adv.
For M/s PLR Chambers & Co., AOR

Mr. G. Ananda Selvam, Adv.
Mr. K. Mayil Samy, Adv.
Mr. Ram Sankar, Adv.
Mr. Gopal Balwant Sathe, AOR

Mr. Gopal Sankaranarayana, Adv.
Mr./Ms. Veera Mahuli, Adv.
Mr. Shrutanjay Bhardwaj, Adv.
Mr. J.P. Tripathi, Adv.
Ms. Asha Upadhyay, Adv.
Mr. R. D. Upadhyay, AOR

Ms. Pragati Neekhara, AOR

Mr. M. Shoeb Alam, AOR
 Ms. Fauzia Shakil, Adv.
 Mr. Ujjwal Singh, Adv.
 Mr. Mojahid Karim Khan, Adv.

Ms. Kiran Bala Sahay, AAG
 Ms. Priyanka, Adv.
 Ms. Priyadarshni Priya, Adv.
 Mr. Sarad Kumar Singhania, AOR

State of Karnataka Mr. V. N. Raghupathy, AOR
 Mr. Md. Apzal Ansari, Adv.
 Mr. Prakshit P. Angadi, Adv.

Mr. Mishra Saurabh, AOR

State of Meghalaya Mr. Subhro Sanyal, Adv.
 Mr. Ranjan Mukherjee, AOR
 Mr. Daniel Stone Lyngdoh, Adv.

State of Nagaland Mrs. K. Enatoli Sema, AOR
 Mr. Edward Belho, Adv.
 Mr. Amit Kumar Singh, Adv.
 Mr. K. Luikang Michael, Adv.
 Mr. Z.H. Isaac Haiding, Adv.

Mr. Shibashish Misra, AOR

State of Punjab Ms. Uttara Babbar, AOR
 Ms. Akanksha Choudhary, Adv.

Mr. Devendra Singh, AOR

Mr. Milind Kumar, AOR

State of Sikkim Ms. Aruna Mathur, Adv.
 Mr. Avneesh Arputham, Adv.
 Ms. Anuradha Arputham, Adv.
 Ms. Simran Jeet, Adv.
 M/S. Arputham Aruna And Co, AOR

State of Miroram Mr. Shikhar Garg, Adv.
 Mr. Ganesh Bapu, Adv.
 Mr. Mudit Makhija, Adv.
 Mr. P.V. Yogeswaran, AOR

 Mr. M. Yogesh Kanna, AOR

 Ms. Rachana Srivastava, AOR
 Ms. Monika, Adv.
 Mr. Sudipta Sarkar, Adv.

UT of Puducherry Mr. R. Venkataramani, Sr. Adv.
 Mr. V. G. Pragasam, AOR
 Mr. Prabu Ramasubramanian, Adv.
 Mr. S. Manuraj, Adv.
 Mr. Yashraj Singh Bundela, Adv.
 Mr. Praveen Vignesh, Adv.

State of Manipur Mr. Leishangthem Roshmani Kh., AOR
 Ms. Maibam Babina, Adv.

State of Haryana Mr. Anil Grover, AAG
 Ms. Noopur Singhal, Adv.
 Mr. Sanjay Kr. Visen, AOR

State of M.P. Mr. Saurabh Mishra, AAG, MP
 Mr. Arjun Garg, Adv.

State of Telangana Mr. S. Udaya Kumar Sagar, Adv.
 Mr. Mrityunjai Singh, Adv.

State of Tamil Nadu Mr. K.V. Vijaya Kumar, AOR
 Ms. Maitreyee Mishra, Adv.
 Mr. Kiran Karan Chawla, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Re: State of Meghalaya

We have considered the affidavit filed on behalf of the State of Meghalaya and have taken note of the contents thereof. As, admittedly, the process for appointment of Lokayukta under the Meghalaya Lokayukta Act, 2014 is presently on all that the Court would be required is to direct the concerned Authority in the State of Meghalaya to expedite the process. We accordingly direct that appointment of Lokayukta in the State of Meghalaya be finalized at the earliest.

Report of compliance be filed on or before the next date fixed i.e. 10th July, 2018.

2. Re: State of Mizoram

The affidavit filed on behalf of the State of Mizoram has been tendered in Court. We have perused the same and have heard the learned counsel for the State. It is stated that the Search Committee has completed the requisite task and a panel of 4 (four) persons have been forwarded to the Selection Committee for recommendation for appointment. It is also stated that the provision for infrastructure including manpower is

currently pending before the Finance Department of the Government of Mizoram. The Court would expect all the necessary formalities in this regard to be completed and Office of the Lokayukta to commence functioning from 1st July, 2018.

List the matter again on 10th July, 2018 for consideration of the report of compliance to be submitted on behalf of the State of Mizoram.

3. Re: State of Nagaland

We have perused the affidavit filed on behalf of the State of Nagaland wherein it has been stated Nagaland Lokayukta Act, 2017 has been published and notified in the Nagaland Gazette dated 31st day of January, 2018.

List the matter again on 10th July, 2018 for consideration of the report of compliance to be submitted on behalf of the State of Nagaland.

4. Re: State of J & K.

The affidavit filed on behalf of the State of Jammu & Kashmir has been duly considered. The matter will be considered again on 10th July, 2018.

5. Re: U.T.of Puduchery

In the affidavit filed by the Chief Secretary of the Government of Puducherry it has been stated as follows:

"6. I respectfully submit that in light of advice of Ministry of Personnel, Public Grievances & Pensions, Dept. of Personnel & Training, New Delhi, the Government of Puducherry is considering the matter of enactment of separate law providing for Lokayukta in the Union Territory of Puducherry.

7. I respectfully submit that as this process requires time including for consultation/approval with Ministry of Home Affairs, Government of India, I pray for extension of time of six months in the matter."

The Government of Puducherry to expedite the process of appointment and intimate to this Court on 10th July, 2018 the progress made till that date.

6. Re: State of Tamil Nadu

We have considered the affidavit filed by the Chief Secretary of the State of Tamil Nadu. We have heard the learned counsel appearing for the State. In the affidavit filed it is stated that the Vigilance and Anti-Corruption Directorate of the Government of Tamil Nadu is presently functioning and as envisaged under

the Lokpal and Lokayuktas Act, 2013 the Directorate has an Inquiry Wing and a Prosecution Wing. We do not see what relevance the constitution of the Vigilance Commission and its functioning would have on the necessity of having the institution of Lokayukta under the Lokpal and Lokayuktas Act, 2013. In paragraph 12 of the said affidavit it is stated on behalf of the State of Tamil Nadu that the State is closely monitoring and keenly observing the fate of the Amendment Bill to the Lokpal and Lokayukta Act, 2013 (Central Act) which is presently under consideration of the Inter-Ministerial Committee (Group of Ministers) of the Government of India. It is also stated in the aforesaid paragraph of the affidavit that the State of Tamil Nadu is awaiting the establishment of the institution of Lokpal at the Centre to enable the State to take appropriate action and to avoid repugnancy.

This Court by its judgment/order dated 27th April, 2017 passed in Writ Petition (Civil) No.245 of 2014 [Common Cause: A Registered Society vs. Union of India]¹ had already expressed the view that the appointment of Lokpal at the Center need not await the finalization of the Amendment to the Central Act. In

1 (2017) 7 SCC 158

such circumstances, we are constrained to observe that the stand taken by the State of Tamil Nadu with regard to establishment of the institution of Lokayukta on the grounds stated in the affidavit is not acceptable. As the State is duty bound under Section 63 of the Lokpal and Lokayuktas Act, 2013 to bring in place the institution of Lokayukta we direct the State to take necessary action in the matter and report compliance of the progress made and the stage reached on the next date fixed i.e. 10th July, 2018.

The report/affidavit to be filed will be that of the Chief Secretary of the State.

7. Re: State of Telangana

It is stated by the learned counsel for the State of Telangana that he has received instructions in the matter from the Competent Authority of the State which are to the extent that pursuant to the State Act, which was enacted in the year 2017, names have been recommended for appointment of Lokayukta and the matter is expected to be completed within next 6-8 (six-eight) weeks. The State may go ahead and finalize the matter and file its report for consideration of the Court on 10th July, 2018.

8. Re: State of Tripura

In the affidavit filed on behalf of the State of Tripura it has been stated that a former judge of the Calcutta High Court has been appointed as Lokayukta, Tripura for a period of three years commencing from 27th April, 2017. No orders, therefore, would be called for.

9. Re: State of West Bengal

In the affidavit filed on behalf of the State of West Bengal it has been stated that the State is presently engaged in reviewing the provisions of the West Bengal Lokayukta Act, 2003 to further strengthen the institution of Lokayukta and Uplokayukta. In the said affidavit, it has been further stated that it is only after completion of the aforesaid exercise that necessary steps will be taken to appoint the Lokayukta. As the review of the West Bengal Lokayukta Act, 2003 is stated to be on the basis of the features of the Central Act i.e. Lokpal and Lokayuktas Act, 2013 and the provisions of the Prevention of Corruption Act, 1988 we may at this stage usefully recapitulate the order passed by this Court in Common Cause : A Registered Society (supra). While the State of West Bengal may certainly engage its attention in the matter of amendment/review of the provisions of the existing

law to further strength the institution of Lokayukta we do not see how and why pending such review the State should be left without a Lokayukta. The State, therefore, may proceed further in the matter of appointment of Lokayukta and inform the Court the stage of the progress reached on 10th July, 2018 by means of a status report.

10. Re: State of Odisha

We have perused the affidavit filed by the Chief Secretary of the State of Odisha wherein it has been stated that the Odisha Lokayukta Act, 2014 has come into force with effect from 16th January, 2015 and presently steps for framing of Orissa Search Committee Rules, etc. are under process. From the affidavit filed it is also evident that after the last incumbent had died in office on 22nd January, 2013 the State of Odisha has not had a Lokpal/Lokayukta. No reasons, save and except that the Rules under the Act are under process, has been stated in the affidavit filed. In the above circumstances, to give effect to the provisions of Section 63 of the Central Act i.e. Lokpal and Lokayuktas, 2013 the State shall take immediate steps for appointment of the Lokayukta which process will be completed at the earliest. The progress made

including the finalization of the process and appointment of Lokayukta, if achieved, will be considered by the Court on 10th July, 2018 on or before which date the status report will be filed by the Chief Secretary.

11. Re: State of Manipur

We have perused the affidavit filed on behalf of the State of Manipur. We have heard the learned counsel appearing for the said State. On the basis of the statements made by the learned counsel on instructions and the expected stage at which the process of appointment is presently poised, we are of the view that the same should be proceeded with and finalized and the result thereof be placed before the Court on 10th July, 2018 by means of status report of the Chief Secretary.

12. Re: State of Arunachal Pradesh

It is stated by Mr. Ritu Raj Biswas, learned standing counsel appearing for the State of Arunachal Pradesh that a meeting of the Selection Committee for recommendation of names for appointment of the post of Lokayukta is scheduled to be held on 27th April, 2018 and thereafter necessary steps will be taken for appointment of Lokayukta.

The State may proceed to finalize the matter and intimate the outcome thereof on 10th July, 2018.

[VINOD LAKHINA]
AR-cum-PS

[ASHA SONI]
BRANCH OFFICER