Viswasrao Chudaman Patil Vs. Lok Ayukta, State of Maharashtra and ors.

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Court : Mumbai

Decided On : Sep-29-1984

Reported in : AIR1985Bom136; 1985(1)BomCR108; (1983)86BOMLR506; 1985MhLJ54

Judge : Dharmadhikari and;Kantharia, JJ.

Acts : Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 - Sections 2, 8 and 12; Constitution of India - Article 226

Appeal No. : Writ Petn. No. 3169 of 1984

Appellant : Viswasrao Chudaman Patil

Respondent : Lok Ayukta, State of Maharashtra and ors.

Advocate for Def. : C.R. Dalvi,;K.Y. Mandlik and;A.V. Savant, Adv. General, ;M.F. Saldanha, A.G.P. and;Atul Setalvad appointed Amicus Curiae

Advocate for Pet/Ap. : Indira Jaising and;Nirmalkumar Suryavanshi, Advs.

Judgement :

Dharmadhikari J.

1. the petitioner had applied for an appointment to the post of Honorary Paediatruician in the District Hospital at Dhule in pursuance of an advertisement issued by the Government of Maharashtra on 27th February 1984. According to him, the State of Maharashtra had constituted a Selection Board as per the rules contained in the Maharashtra Honorary Medical Officers (Recruitment and Condition of Service) Rules, 1976. The Selection Board scrutinised the applications of three candidates viz. the petitioners, respondent No.2 Dr. Mudholkar and one Dr. Vikas Sonawane. They were also called for interview on 30th April 1984. The petitioner was selected by the said Selection Board and was thereafter appointed to the said post, vide appointment letter, sated 12th April 1984. He joined his duties as an Additional Honorary Medical Officer on 13th April 1984. Thereafter he received another letter from the Government of Maharashtra, dated 17th April 1984, informing him that in view of the interim stay granted by the Lokayukta his appointment stands suspended and therefore he should not join his duties as an Additional Honorary Medical Officer in the Paediatrics Department at Dhule Hospital. Thus, his order of appointment came to be suspended and he was relieved of the post.

2. Thereafter the Lokayukta issued a notice, dated 2nd May 1984 to the petitioner, informing him that a complaint had been filed by respondent No.2 Dr Mudholkar, challenging his appointment. The petitioner was asked to remain resent on 17th May 1984, obtained copies of the complaint and other documents as filed by the complainant, respondent No.2 , in support of his complaint. He also filed his say. Then the hearing of the case was adjourned to 12th June 1984, for the determination of the issue as to whether the Lokayukta had jurisdiction to entertain the complaint of respondent No.2, in view of section 8 of the Maharashtra Lokayukta

and Upa-Lokayuktas Act. 1971.

3. It is the case of the petitioner that in his written say, he had raised a contention that the Lokayukta had no jurisdiction to entertain the complaint in view of the various provisions of the Lokayukta Act. The Lokayukta heard the parties on this preliminary issue on 12th June 1984 and passed an order, holding that the complaint filed by the complainant can be entertained and investigated into by the Lokayukta. Thereafter the case was adjourned for hearing on merits. It is this order of the Lokayukta, negativing the preliminary objection raised by the petitioner and the concerned public servants, which is challenged in this Writ Petition by the petitioner on various grounds.

4. Smt. Indira Jaising, the learned Counsel appearing for the petitioner, contended before us that if the complaint filed by the respondent No.2 Dr. Mudholkar had a grievance in the matter, within the meaning of the said expression as defined in section 2(d). As the said grievance related to an action taken in respect of an appointment, the said complaint was wholly barred by section 8(1)(a) read with item (d) of the Third Schedule and, therefore, the Lokayukta had no jurisdiction to entertain the complaint. Even otherwise, such a complaint could not have been entertained by the Lokayukta in view of the provisions of section 8(1)(b) of the Act since Dr. Mudholkar had an alternate remedy of filing a Writ Petition before the High Court or a suit before the /civil Court. None of the averments made in the complaint amounted to an 'allegation' within the meaning of the said expression as defined in section 2 (b) of the Act, and, therefore, the Lokayukta had had no jurisdiction to entertain the complaint itself, much less to pass an interim order of stay. She then contended that assuming that the Lokayukta had jurisdiction to entertain the complaint, still the Lokayukta had no jurisdiction or power to pass an interim stay order, staying the appointment of the petitioner. Thus, the stay order issued by the Lokayukta on 9th April 1984 was wholly without jurisdiction. The Governmental authorities had also no power to suspend the appointment of the petitioner, since the order of appointment was issued prior to the communication of the order of stay and the order of stay becomes operative from the date of communication of the order and not from the time of passing of the order itself.

5. The petitioner has also challenged the validity and vires of Rule 35 of the Rules. According to the learned Counsel, the Lokayukta has no power to grant stay of the implementation or enforcement of the order of appointment or the proposed order of appointment. Rule 35 of the Rules is framed under the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 in purported exercise of the power conferred by section 20 of the Act. rules can be framed under the Act for the purpose of carrying onto effect the provisions of the Act. The present Rule goes beyond the scope of the Act itself and , therefore, is in excess of the rule-making power and, therefore, ultra-vires. Under section 12 of the Act, respondents No. 1, the Lokayukta, is empowered to make a report, which is recommendatory in nature. He is not vested with any judicial powers to express any final opinion on the legality or validity of any action or decision complained against, nor is he empowered to give any authoritative decision. Therefore, in the very nature of things, the Lokayukta is not empowered to issue orders staying operation of any action or decision. Such a power also runs counter to section 10(C) of the Act, and, therefore, on that count also the said Rule is ultra vires. According to the Counsel, the Lokayukta cannot assume such a power even impliedly. He has no power to issue any binding orders, including orders in the nature of an injunction or stay. Since the proceedings before the Lokayukta do not involve any judicial process and are purely investigative in nature, the Lokayukta cannot determine any question affecting the rights of the persons and, therefore, even by implication he cannot pass any order in the nature of stay. He can only make a recommendation after the whole investigation is complete. Therefore, before the completion of the investigation, he cannot even make any interim recommendation. Section 10(6) is not only an interdict against the Lokayukta, but also against the Government. The learned Counsel further contended that having regard to the facts and circumstances brought on record, even on merits the Lokayukta committed an error apparent on the face of the record in granting ad interim stay of the order of appointment issued in favour of the petitioner.

6. So far as the question of jurisdiction is concerned, the State of Maharashtra supported the petitioner. the State of Maharashtra also contended in its Return that the Lokayukta committed an error in issuing an order

of stay. According to the State, the petitioner was appointed by an order dated 12-4-1984. The order of stay was received by the Government thereafter and, therefore, vide letter dated 17-4-1984 the petitioner was informed about the stay order and then relieved of his duties. So far as vires of Rule35 is concerned, initially in the affidavit filed by Shri Bhagare, Desk Officer, dated 28-8-1984, a contention was raised that the Lokayukta is not empowered to pass such an interim order. The Desk Officer contended that as the Lokayukta is invested with the powers of a Civil Court in relation to summoning of witnesses, recording of evidence etc. and as the stay order is in the nature of a judicial order, the said authority cannot exercise such a power. Thereafter a second affidavit was filed by the State in which the challenge of the petitioner to the vires of the rule was repelled. It was contended in this affidavit that on a correct interpretation of Rule 35 as it has been framed, the Lokayukta is empowered to issue interim directions, which directions are not stay orders, neither have they been categorised as stay orders in the said Rule. The Lokayukta's acting under Rule 35 is authorised, in an appropriate case, to issue a direction that the further action ought to be stayed. There could arise a situation whereby it is not advisable for the Lokayukta to wait until the inquiry is completed. The Lokayukta is basically a fact finding and recommendatory authority and that if the authority arrives at the conclusion that it is necessary to stop the implementation or further implementation of a particular course of action, which is the subject-matter of an inquiry, then in an appropriate case, the Lokayukta has been vested with the power under Rule 35 to issue interim directions to the Government under this Rule. Therefore, on a correct interpretation of Rule 35, the Rule cannot be construed as being ultra vires the powers conferred on the Lokayukta.

7. Respondent No. 2, Dr. Mudholkar filed his detailed Return and has denied the allegations made in the Writ Petition. He has contended that the Lokayukta had jurisdiction to entertain his complaint and pass an interim order of stay. In the Return filed on behalf of Dr. Mudholkar, a preliminary objection is also raised and it is contended that the petitioner has no locus standi to file the present Writ Petition, nor this .court has any jurisdiction to interfere with the order passed by the Lokayukta in its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Since it was noticed that the stand taken by the Government, so far as the question of jurisdiction of the Lokayukta to entertain the complaint is concerned, is in tune with the stand taken by the petitioner and the Lokayukta was not represented before us, we requested the learned Assistant Government Pleader to enquire as to whether the Lokayukta can make any arrangement for representing his case before this Court. The Lokayukta informed the Assistant Government Pleader that in the absence of any budgetary provision, it is not possible for him to engage a Counsel to represent his case. However, it was suggested therein that the Court may call upon an Advocate to assist the Court as amicus curiae. We are pained to observe that this is wholly an unsatisfactory state of affairs. The State Government is obliged to treat the Lokayukta with dignity and decorum. As a matter of fact, the State Government should have made proper arrangements for his representation, if it thought that it cannot support the order passed by him. Therefore, in view of the stand taken by the State, we requested Shri Setalvad to assist the Court as amicus curiae, and we are happy to note that Shri Setalvad readily agreed to do so.

9. Shri Setalvad contended that if the complaint is read as a whole, it involves an 'allegation' within the meaning of the said term as defined in section 2(b) and, therefore the Lokayukta had jurisdiction to entertain the complaint. The said complaint being in the nature of 'allegation', section 8(1)(a) or (b) has no application to the facts of the case. Therefore, it cannot be said that the jurisdiction of the Lokayukta is ousted either under section 8(1)(a) or (b) of the Act. so far as the vires of Rule 35 is concerned, it is contended by Shri Setalvad that the rule is framed under section 20(1) of the Act and, therefore, is intra vires. Even otherwise, it is well settled that an authority conferred with a power has an implied power to so whatever is necessary to make the power effective. Therefore, even under the implied powers, the Lokayukta has authority of jurisdiction to issue an order of stay. Shri Setalvad further contended that this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution cannot throttle the investigation to be carried out by the Lokayukta. According to him, the beneficiary of the order like the petitioner has also no locus standi to

challenge such an order by filing Writ petition.

10. Shri Dalvi, the learned Counsel appearing for respondent No.2, Dr. Mudholkar, adopted the arguments of Shri Setalvad and contended that even on the merits of the matter, the Lokayukta was perfectly justified in issuing the order of stay. According to Shri Dalvi, the order of stay issued by the Lokayukta was communicated to the authorities concerned on the very day i.e. 9-4-1984 itself. Thus, disregarding the stay order issued by the Lokayukta, the authorities issued the order of appointment in favour of the petitioner on 12-4-1984, which was wholly illegal. That in itself amounts to maladministration and could be the subject-matter of an independent complaint. When this fact was brought to the notice of the authorities, they suspended the order of appointment issued by them. Since the order of appointment was issued contrary to the directions issued by the Lokayukta, it cannot confer any legal right upon the petitioner, the beneficiary of the illegal order. Even otherwise, the investigation contemplated under the Act is qua the public servant and the third party or the beneficiary does not come into the picture. Therefore, the petitioner has neither the locus standi to file the present petition, nor he could be heard in the matter since he is a beneficiary of an illegal order.

11. For properly appreciating the controversy raised before us, kit will be worthwhile if a reference is made to the history of the legislation as well as the aims and objects of the Act. so far as our country is concerned, the starting point of such legislation is the Interim Report of the Administrative Reforms Commission on 'Problems of Redress of Citizens' Grievances'. The Commission recommended that the person authorised to discharge the functions of the Ombudsman at the Centre would be called the Lokpal and his counterpart in the States was to be called the Lokayukta. In para 25 of its Report, the Commission catalogued the main features of the two functionaries viz. Lokpal and Lokayukta, in the following terms :--

(a) They should be demonstrably independent and impartial.

(b) Their investigations and proceedings should be conducted in private and should be informal in non-political.

(c) Their appointment should, as far as possible, be non-political.

(d) Their status should compare with the highest judicial functionaries in the country.

(e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.

(f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude & powers in obtaining information relevant to their duties.

(g) They should not look forward to any benefit or pecuniary advantage from the executive Government.

It appears that after the receipt of this Report, the Central Government introduced a Bill, called the Lokpal and Ayukta Bill, 1968 (Bill 51 of 1968). This Bill lapsed. A second attempt was made in the year 1971 by introducing Bill 3 of 1971. This Bill also met with the same fate. Thereafter a third Bill was introduced in Parliament (Bill 88 of 1977). But the said Bill never became the law. So far as the State Government is concerned, it enacted the present legislation known as The Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, which is more or less on the pattern of the Bills introduced in the Central legislation. Cognate Acts which are available in the field are; the (English Parliamentary Commissioner Act, 1967; the (English) National Health Service Reorganisation Act, 1973 and the (English) local Government Act, 1974. The object of the Act is to ensure an independent investigation of administrative action. The investigation results in a recommendation under section 12. However, the recommendation would ordinarily be accepted as public authorities are expected to act reasonably and fairly. After the report is submitted, the competent authority has to examine the report and intimate the action taken or proposed to be taken on the basis of the report within the time prescribed. It the Lokayukta or the Upa-Lokayukta is satisfied with the action taken or proposed to be taken on the

recommendations or findings referred to sub-sections (1) and (3) of section 12, 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. The Lokayukta and the Upa-Lokayukta have to present annually a consolidated report on the performance of their functions under the Act to the governor. 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 explanatory memorandum to be laid before each House of the State Legislature. For investigating the complaints, wide powers have been conferred upon the Lokayukta or the Upa-Lokayukta. Under sub-section (4) of section 11, neither the provisions of the Official Secrets Act, nor the provisions of law relating to the privilege can prevent (subject to some exceptions) the Lokayukta from conducting investigation. Under section 14, secrecy is attached to the information obtained. Thus, though the powers conferred are in the nature of an investigation, and the ultimate finding recorded is in the nature of recommendation, it is not a futile exercise.

12. The power conferred is coupled with duty to investigate. The investigation is carried out by eminent persons holding the high positions of Lokayukta or Upa-Lokayukta. The powers conferred on the Lokayukta are advisedly very wide. These powers are wider than of any Court of law. Notwithstanding remedies to be found in Courts of law and in statutory appeals against administrative decisions there still remains a gap in the machinery for the redress of grievances of the individual against administrative acts or omissions. As observed by conference of Jurists representing Asian and Pacific regions :-

'This gap should be filled by an authority which is able to act more speedily, informally and with a greater regard to the individual justice of a case than is possible by ordinary legal process of the Courts, it should not be regarded as a substitute for, or rival to, the legislature or to the Courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion'.

The fight between an individual citizen and the State is unequal in nature. Therefore, the very existence of such an institution will act as a check and will be helpful in checking the canker of corruption and maladministration. More so when it has been repeatedly asserted that the canker of corruption, in the proportions it is said to have attained, may well dig into the vitals of our democratic State, and eventually destroy it (See Corruption - Control of Maladministration by John B. Monteiro).

13. The million dollar question before our democracy is as to who will watch the watchman? This seems to be the object behind the present legislation. It is no doubt true that the Lokayukta is invested with the power of investigation and to make a recommendatory report. However, it is not an exercise in futility. The competent authority to whom the report is sent is duty bound to intimate or cause to be intimated to the Lokayukta the action taken. In the case of the report qua allegation, submitted under section 12(3), the competent authority is obliged to intimate the Lokayukta the action taken or proposed to be taken on the basis of the report. If the Lokayukta is not satisfied with the action taken, he can make a special report to the Governor. After receiving such a special report, the Governor has to place it before each House of the legislature, together with an explanatory memorandum. This is advisably provided, so that the representatives of people can discuss and comment upon it. In a given case, depending upon the facts and circumstances of a case, if the recommendation is shielded with malafide intention and for oblique motive, the complainant can approach the Court of law for enforcement of the recommendation. We agree with Shri Setalvad that the provisions of such an enactment, which is enacted for the eradication of the evil of corruption and maladministration should be liberally construed so as to advance the remedy.

14. In this context, reference could usefully be made to the following observations of Lord Denning in Regina v. Local Commissioner for Administration for the North and East Area of England, Ex parte Bradford Metropolitan City Council,(1979) 1 Q.B. 287 :--

'In the nature of things a complainant only knows or feels that he has suffered injustice. He cannot know what

was the cause of the injustice. It may have been due to an erroneous decision on the merits or it may have been due to maladministration somewhere along the line leading to decision. If the commissioner looking at the case - with all his experience -can say : 'It looks to me as if there was maladministration somewhere along the line - and not merely an erroneous decision'-then he is entitled to investigate it. It would be putting too heavy a burden on the complainant to make him specify the maladministration : since he has no knowledge of what took place behind the closed doors of the administrators' offices.

I confess that there is a difficulty about applying this approach to a Local Commissioner - because of section 26(2) (a), which I have just quoted, which says that the complainant must specify 'the action alleged to constitute maladministration.....' But I cannot help thinking that these few words are misleading if taken by themselves. In order to give sense to the provision, I think that the word 'action' there refers to the same 'action' as is mentioned earlier in section 26(1). Expanded fully, section 26(2)(a) should read 'specifying the action taken by or on behalf of the authority in connection with which the complainant complains there was maladministration'. I realise that this means departing from the literal words: but I would justify it on the ground that it will 'promote the general legislative purpose' underlying the provision : see Nothman v. Barnet London Borough Council (1978) 1 WLR 220. It cannot have been intended by Parliament that a complainant (who of necessity cannot know what took place in the council offices should have to specify any particular piece of maladministration. Suffice it that he specifies the action of the local authority in connection with which he complains there was maladministration.'

15. Further, in our view, in a given case, an action may constitute both grievance and an allegation. In some cases, the action may amount to allegation and its consequences might result in grievance. The overlap is inevitable as in one case the definition emphasizes the consequence of an act, in the other the motive for it.

16. The various expressions used in the Act have been well defined. The Act in itself contemplates investigation of administrative action taken by or on behalf of the Government of Maharashtra or certain public authorities in the State. The terms 'allegation' with 'grievance' and 'maladministration' with which we are concerned in the petition are defined as under :--

'2(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 persons or to cause undue harm or hardship to any other person.

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or

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

(d) 'grievance' means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration

(g) 'maladministration' means action taken or purporting to have been taken in the exercise of administrative functions in any case-

(i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, 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.'

Section 7 enumerates the matters which nay be investigated by the Lokayukta or the Upa-Lokayukta. Then comes section 8 which reads as under :--

'8(1) Except as hereinafter provided, the Lokayukta shall not conduct any investigation under this Act in the

case of a complaint involving a grievance in respect of any action,--

(a) if such action relates to any matter specified in the Third Schedule; or

(b) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law.

Provided that, the Lokayukta or an Upa-Lokayukta may conduct an investigation now withstanding that the complainant had or has such a remedy if the Lokayukta or, as the case may be, the Upa-Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

(2) The Lokayukta or an Upa-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, with the prior concurrence of the Lokayukta; or

(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, with prior concurrence of the Lokayukta.

(3) The Lokayukta or an Upa-Lokayukta shall hot investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) of clause(k) of section 2.

(4) The Lokayukta or an Upa-Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 18.

(5) The Lokayukta or an Upa-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 three years from the date on which the action complained against in alleged to have taken place.

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

(6) In the case of any complaint involving a grievance, nothing in this Act, shall be construed as empowering the Lokayukta or an Upa-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 can prima facie be regarded as having been improperly exercised'.

Section 9 deals with the procedure of filing of complaints etc. Every complaint has to be made in such form and shall be accompanied by such affidavits as may be prescribed. Under rule 3 read with the form, the complainant is expected to give a brief substance of the action complained against and of the grievance or allegation. Under sub-section (3) of section 9 it is clarified that a letter could also be treated as a complaint. The rules framed under the Act provide for the procedure on receipt of the complaint and the preliminary action to be taken on it by the Registrar. By section 10 the procedure in respect of investigation is laid down. Section 10(6) with which we are concerned in this Writ petition reads as under :--

'10(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.'

By section 20 powers have been conferred upon the Governor to make rules for the purpose of carrying into effect the provisions of the Act. it is an admitted position that Rule 35 has been framed in exercise of the said

power.

17. The main contention raised before us as well as before the Lokayukta was regarding the jurisdiction of the Lokayukta to entertain the complaint filed by Dr. Mudholkar. It is not necessary to make a detailed reference to the averments or allegations made in the complaint, since they are properly catalogued by the Lokayukta in para 5 of his order, dated 12-6-1984, which reads as under :--

'1. Dr. Vishwas Chudaman Rawandale had been called for interview for the post of Additional Honorary Paediatrician in the Government General Hospital at Dhulia although he was not eligible or qualified for that post;

2. Respondents 1 to 3 had issued G.R. No. HMO 1083/1587/PH-9A dated 8-2-1984 by abusing their position as public servants in order to ensure selection of Dr. Vishwas Chudaman Rawandale;

3. The certificates and testimonials produced by the complainant (Dr. Mudholkar) were not considered and no marks were given to him; and

4. The certificates produced by Dr. Rawandale were, however, considered without proper evaluation and marks were given to him'.

Reading the allegations made in the complaint, it can be said that the averments made in sub-paras (1),(3) and(4) might fall within the area of 'grievance'. However, the averments made in sub-paras (2) about the abuse of position by the public servants to favour the petitioner squarely fall within the scope of the term 'allegation' as defined in the Act. Sub-section (2) (b) (i) takes in its import such averments. The averment made is also covered by the definition of 'maladministration'. Therefore, in any case, this is one of those cases where it can be said that the averments made in the complaint are overlapping and cover the area and field of 'allegation' as well as 'grievance'. However, it was contended by Smt. Indira Jaising that these averments being distinct and separable, the Lokayukta should have treated this as two different complaints. So far as the averments which cover the area and the field of 'grievance' are concerned, the Lokayukta had no jurisdiction to entertain the same, in view of the provisions of section 8(1)(a) and (b) of the Act. According to the learned Counsel, the complaint involved a grievance, relating to an action in respect of appointment i.e. the Lokayukta had no jurisdiction to entertain such a grievance, in view of the provisions of section 8(1)(a) of the Act. Further, under sub- section (b) of section 8(1), the complainant had an alternate remedy by way of a suit before a Civil Court or a Writ Petition before the High Court, and, therefore, on that count also the jurisdiction of the Lokayukta was ousted. The learned Lokayukta had dealt with this aspect of the matter and had reached a conclusion that the averments made in the complaint are in the nature of 'allegations' and, therefore, are not barred by the provision of section 8(1)(a) or (b) of the Act.

18. In our opinion, it is not necessary to decide any wider questions in this writ petition, once it is held that the complaint filed was overlapping. It is not possible for us to accept the contention of the learned Counsel for the petitioner that the averments made in the complaint were distinct and separable. In our view, the averments made are interdependent. The languages used and the averments made leave no doubt in our mind that it was the cumulative effect of the acts and lapses on the part of the respondents which is the basis of the present complaint. Therefore, the averments are overlapping and amount to 'allegation' as well as 'grievance' and, therefore, it cannot be said that the view taken by the Lokayukta that the said complaint was not barred under section 8(1)(a) of the Act was any way perverse or wrong. If this is so, then obviously the said complaint is also not barred by section 8(1)(b) of the Act. Even otherwise, there is difference between a direct remedy and a collateral remedy against an administrative and quasi-judicial action. A remedy of statutory appeal or revision is direct and vertical remedy. It is a re-hearing in which the merits of the impugned decision can be considered. But a suit or a writ petition attacking the validity of the decision are collateral attacks on it. They consider not the merits but only the validity or legality of the decision. Collateral attack on a decision by way of a suit is always available. Therefore, if the interpretation as proposed by the petitioner is accepted, then there will be no occasion for making any 'grievance' under the Act. It is no doubt true that some statutes

contain provisions which bar suits to attack the legality of a decision or order made under the concerned statute. But such decision or order must be within the jurisdiction, then alone the suit would be barred. If they are without jurisdiction, they would not be under the statute, being ultra vires of the statute; and the suit to set them aside would not be wholly barred. While a suit may be an ordinary remedy for one person against another to prove and establish his rights, it can only be a collateral remedy when administrative or quasi-judicial decisions of Government or a public body are attacked. When used as an ordinary remedy, the merits of the case are decided in the suit. When used as a collateral remedy, only the validity or legality of a decision is decided and not its merits. Therefore, the bar under section 8(1)(b) will have to be tested on the basis of the facts and circumstances of each case and no general, rule can be laid down in that behalf. It is not necessary to further deal with this aspect of the matter in view of the proviso to the said sub-section which authorises the Lokayukta or the Upa-Lokayukta to entertain the complaint notwithstanding any other remedy, if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy. Further, once it is found that the complaint covers both the areas viz. that of an 'allegation' and a 'grievance' and is overlapping, then it cannot be said that only because a part of it falls within the area of grievance, the Lokayukta had no jurisdiction to entertain the complaint. It will amount to pre-judging the issue. When the Lokayukta decides to investigate he is merely commencing the process, after satisfying himself, prima facie, that the complaint raises issues within the ambit of his powers. It is only after investigation, he can come to a definite finding. In the cases where the complaint is overlapping, if he is prevented from investigating it, the whole purpose of the Act will be set at naught. Therefore, taking any view of the matter, in the present case, it cannot be said that the Lokayukta had assumed jurisdiction which was not vested in him by law.

19. In this context, it is pertinent to note that on the petitioner's own averment, the hearing on 12-6-1984 before the Lokayukta was restricted to the determination of the issue of jurisdiction. From the order of the Lokayukta, kit is also clear that the parties had requested him that the point of jurisdiction should be heard and decided as a preliminary issue. Arguments were advanced of the question of jurisdiction and it is the question of jurisdiction which alone is decided by the Lokayukta without touching the merits or demerits of the complaint or the order of stay issued by him. By the notices issued by the Lokayukta to the petitioner and the public servants, they were given liberty to move the Lokayukta for vacating the stay order even earlier. Admittedly, the Lokayukta was not moved in the matter. However, a contention is raised before us that the Lokayukta had no jurisdiction to pass such an order of stay, since Rule 35 is ultra vires, it being in excess of the rule-making power. It was also contended that the said Rule is inconsistent with the provisions of the Act and also runs counter to section 10(6) of the Act. We have already reproduced the provisions of section 10(6). From the bare reading of the said provision, it is quite clear that it is akin to Order 41, Rule 5 of the /code of Civil Procedure. It merely lays down that the conduct of an investigation under the Act in respect of any action shall not ipso facto 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. However, the said provision will have to be read with the other provisions of the Act. Read in its context it only means that the mere conduct of the investigation is no bar, to further action being taken, unless the Lokayukta directs otherwise. Therefore, it is not possible for us to read in sub-section (6) of section 10 a complete bar for issuing any interim order in the nature of a recommendation, so far as the Lokayukta is concerned. Section 20(1) empowers the Governor to make rules for the purpose of carrying into effect the provisions of the Act. Rule 35 had been framed in pursuance of the said power as well as the powers conferred upon the Lokayukta under section 11(2) of the Act. The said Rule reads as under :--

'35 Interim stay etc.- If during the course of an inquiry or investigation under this Act, the Lokayukta or Upa-Lokayukta is prima facie satisfied that the case is likely to result in an action being taken under section 12(3), he may direct that the further implementation or enforcement of the order or action complained against be stayed and may direct the status quo as on the date of the application to be maintained on such terms and conditions, if any as he thinks fit.'

On the one side, it is not possible for us to accept the broad proposition put up by the petitioner that the

Lokayukta has no power to make any interim recommendation. On the other side, we find it difficult to accept the contention of Shri Setalvad that the Lokayukta has power to pass binding orders at interim stage under Rule 35 of the Act. In our opinion, the contentions raised by the leaned Advocate General in this behalf are well-founded and deserve to be accepted. From the provisions of the Act it is quite clear that the Act empowers the Lokayukta to carry on the investigation into a complaint and then make a final report on the basis of the finding, recorded after the investigation. The final report of the Lokayukta is recommendatory in nature. Admittedly, under the Act the Lokayukta has no jurisdiction to pass a binding order which will operate on its own force. However, it is well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied. Where legislature confers jurisdiction to do thing, it impliedly also grants power of doing all such acts as are essentially necessary for its execution. The authority conferred with a power has the power to do whatever is necessary to make the power effective, so that the order or decision is not a 'barren success'.

20. In this context, our attention was drawn by Shri Setalvad towards the decision of the Supreme Court in I.T. O. v. Mohd. Kunhi, AIR 1969 SC 430 and The Asstt. Collector v. N.T. Co. : 1978(2)ELT416(SC) . It is also not correct to say that only judicial or quasi-judicial bodies have implied powers. Even the investigating agencies have such implied powers. In this context, Shri Setalvad rightly draws our attention to section 250 of the Companies Act which empowers the Central Government to restrain certain actions pending an investigation into certain facts. The very power to investigate, which may result in a recommendation, would become barren or futile if, in the meanwhile, administrative action is taken or implemented. If it is held that the Lokayukta has no implied power to make an as interim recommendation, then to borrow the expression from John B. Monteiro's book on Corruption. ' It will amount to applying the brakes after the accident.' In that case the report or the recommendation made by the Lokayukta will amount to post-mortem report. It will be an academic luxury. Therefore, in our view, it will have to be held that the Lokayukta, during the course of an inquiry or investigation has power to make any interim recommendation which will have to be in consonance with his power to make a final report under section 12 of the Act. Therefore, the principle of reading down the provision will have to be applied to Rule 35 of the Rules.

21. In this context, reference can usefully be made to the following observations of the Supreme Court in All Saints High School v. Govt. of Andhra Pradesh : [1980]2SCR924

'It is well-settled rule that in interpreting the provisions of statute the Court will presume that the legislation was intended to be intra vires and also reasonable. The rule followed in that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible. (Street on Doctrine of Ultra Vires, 1930 Edn. P. 444) Maxwell on Interpretation of Statutes. Twelfth Edn. P. 109 under the caption: 'Restriction of Operation' states :-- 'Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain person, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumscription of the field of operation.'

The following passage in Bidie v. General Accident Fire and Life Assurance Corpn. (1948) 2 All ER 995 was cited with approval in Kesavananda Bharati v. State of Kerala : AIR1973SC1461

'The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word?'

According to Holmes J. in Towne v. Eisner, (1917) 245 US 418 : 62 L ed 372, a word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. Gwyer J. in Central Provinces and Berar Act held :--

'A grant of the power in general terms standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context and even by the considerations arising out of what appears to be the general scheme of the Act.'

To the same effect are the observations of this Court in Kedar Nath Singh v. State of Bihar (1962) Supp. (2) SCR 769 : AIR 1962 SC 995:

'It is well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. The Bengal immunity Co. Ltd. v. State of Bihar : [1955]2SCR603 and R.M.D. Chamarbaugwalla v. Union of India : [1957]1SCR930 cited with approval.'

This Court has in several cases adopted the principle of reading down the provisions of the Statute. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power.'

Under Rule 35 he Lokayukta is empowered to pass certain interim orders during the course of an inquiry or investigation, if he is prima facie satisfied that the case is likely to result in an action being taken under section 12(1) or 12(3). In such a case he can direct that the further implementation or enforcement of the order of action complained against be stayed. The word used is 'direct' which means issue instructions or to recommend. Under Rule 35 the Lokayukta or the Upa-Lokayukta can issue instructions or make an interim recommendation to the competent authority that the further implementation or enforcement of the order or action complained against be stayed by the said authority. He may direct or recommend that the status quo on the date of the application be maintained on such terms and conditions, if any, as he thinks fit. The order issued in this behalf does not operate on its own, but in pursuance of this recommendation a further action is called for by the competent authority. To say the least, in the present case, the Government treated it as a recommendation and then issued an order staying the appointment of the petitioner. it is needless to say that if such an interim recommendation is made, then the competent authority is duty bound to take action upon it. After receiving an interim recommendation from the Lokayukta, the first thing the competent authority will have to do is to act upon it and then to approach the Lokayukta for revocation of the recommendation, if so advised. If after hearing or after the consideration of the materials placed, the Lokayukta is satisfied that the recommendation should be revoked then nothing will survive. However, if the said recommendation is not revoked and is confirmed, thin the authorities should normally follow it; otherwise, the procedure prescribed by section 12 of the Act will have to be adhered to. In our opinion, for carrying out an effective investigation, such a power is implicit or implied, otherwise the very purpose of the Act will be frustrated. To hold that the Lokayukta has no jurisdiction to issue any interim order even in the nature of a recommendation will render his final recommendation a barren success. Therefore, construing the said rule in its proper perspective, it will have to be held that it empowers the Lokayukta to make an interim recommendation in tune with their power to make a final recommendation, under section 12 of the Act. If this rule is so read, it cannot be said that the rule is ultra vires of the powers conferred upon the Governor under section 20(1) of the Act. The said Rule has been framed for the purpose of effectively carrying into effect the provisions of the Act and is therefore, wholly intra vires.

22. So far as the preliminary objection raised by Shri Dalvi is concerned, viz. that the petitioner has no locus standi to challenge the order of the Lokayukta, having regard to the special and peculiar facts and

circumstances of this case, it is not possible for us to accept the said contention. The complaint contemplated under the Act is against a public servant and the beneficiary or a third party does not come into the picture at all. The lis, if any, is between the complainant and the public servant. The final recommendation of the Lokayukta can also be qua the act of the public servant and it has nothing to do with the beneficiary. If it is held that every beneficiary has a right to challenge the order passed by the Lokayukta or to appear before him, then the very purpose of the investigation will be frustrated, because the investigation contemplated has certain sanctity and also some secrecy. The importance of the investigation is made manifest by the very wide powers conferred upon the authorities. These powers have been conferred for the purpose of purity of administration. If the Lokayukta is prevented from investigation of a complaint by a third party, thin the whole object of the Act will be frustrated. Further it will not be fair to block or throttle an investigation by an expert body duly qualified and equipped to do so at the instance of a third party. As stated by Judge Milvain of the Alberta Supreme Court in Re Alberta Ombudsman Act (1970) 10 Dem. (3rd) 47:

'It must be remembered that the Ombudsman is also a fallible human being and not necessarily right. However he can bring the lamp ort scrutiny to dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good.'

Generally, the Court will not arrest or prevent investigation under the Act. More so at the instance of the beneficiary of a suspect administrative action ad it can only have the result of his continuing to enjoy the benefits, without an investigation as to weather it was improperly motivated or not. Justice does not lie in favour of such party. So far as public servants are concerned, they are expected to participate in the inquiry or investigation and place before the Lokayukta all the relevant materials. They are public servants who are entrusted with a public duty. They are not expected to raise technical objections to shield mal-administration. There fore, normally this Court will not entertain any challenge so as to throttle the investigation itself. More so, at the instance of the third party.

23. However, in the present case, for the reasons best known to the Lokayukta, he chose to issue a notice to the petitioner. The petitioner was also heard on the question of jurisdiction which was treated as a preliminary issue. Therefore, having regard to the facts and circumstances of the case, it cannot be said that the petitioner had no locus standi to come to this Court. However, as already observed after appreciating the arguments advanced before him and reading the complaint as a whole, coupled with the affidavits and other documents, the Lokayukta prima facie came to the conclusion that he had jurisdiction to entertain the complaint and the said complaint was not barred by the provisions of section 8(1)(a) or (b) of the Act. this finding recorded by the Lokayukta cannot be said to be unreasonable or perverse so as to call for any interference in the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, we do not think that this ***** case for interference under Article 226 of the Constitution of India.

24. So far as the merits of the controversy viz. as to whether having regard to the facts and circumstances of the present case, the interim stay order of interim recommendation should have been issued by the Lokayukta. Are concerned, in our opinion, having regard to the disputed question of fact, it will not be fair on our part to decide the said question for the first time in our writ jurisdiction. From the bare reading of the order of the Lokayukta as will as the averments made in the complaint, it is quite clear that the matter was heard by the Lokayukta only on the preliminary issue of jurisdiction. The merits of the controversy or he prayer made by the Lokayukta on its merits. A dispute has been raised before us as to when the alleged stay order was communicated to the authorities on 9-4-1984 itself. That is the finding of the Lokayukta also. However, it is contended by the petitioner and the State of Maharashtra that the stay order was received by the authorities on 16-4-1984 i.e. after the appointed order was issued on 12-4-1984. This disputed question of fact cannot be gone into in this writ jurisdiction. Something will obviously turn on the finding on the said question. Therefore, we do not propose to enter into the controversy so far as the merits of granting of the stay order or interim recommendation is concerned public servants are at liberty to approach the Lokayukta and apply for revocation of the alleged stay order or interim recommendation. We hope that if an application

is made for revocation of the alleged stay order or interim recommendation, the same will be considered by the Lokayukta as expeditiously as possible.

25. Before parting with this judgment, we would like to record our appreciation for the assistance rendered to us by Shri Setalvad. But for his valuable assistance, it would not have been possible for us appreciate and decide the various contentions raised and argued before us. We are very much thankful to him.

26. In the result therefore, the writ petition fails and the Rules discharged, Shri Dalvi has not pressed for costs, as he says that he has not charged any fees to his client. Even otherwise, in our view, this is a fit case where there should be no order as to costs.

27. Petition dismissed.