

M. Maheshan Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Aug-12-1997

Reported in : 1999CriLJ247; 1999(4)KarLJ500

Judge : Tirath S. Thakur, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13 and 17; [Prevention of Corruption Act, 1947](#) - Sections 5(1); Karnataka Lokayukta Act, 1984 - Sections 6, 7, 9(4 and 5), 10, 11, 12, 14, 15, 20, 22 and 23; [Constitution of India](#) - Articles 226 and 309; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2 and 93; Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and Employees) Rules, 1988 - Rule 3; Karnataka Police Act

Appeal No. : Writ Petition No. 17819 of 1994

Appellant : M. Maheshan

Respondent : State of Karnataka and Others

Advocate for Def. : Sri S. Vijaya Shankar, Advocate General

Advocate for Pet/Ap. : Sri Gangadhar R. Gurumath, Adv.

Judgement :

ORDER

1. Two questions that arise for consideration in this writ petition can at the very outset be stated thus:--

(1) Is the Bureau of Investigation Karnataka Lokayukta competent to register and investigate cases involving offences punishable under the [Prevention of Corruption Act, 1988](#), without the directions of the Lokayukta asking it to do so? (2) If the answer to question No. 1 be in the negative should the registration of the case against the petitioner and investigation conducted by the Bureau of Investigation till now be quashed? The questions arise in the following backdrop.

2. The petitioner is a supertime scale officer in the Indian Administrative Service. On the 6th of June, 1994, the Deputy Superintendent of Police, Bureau of Investigation, Karnataka Lokayukta, Bangalore is said to have received credible information about the alleged acquisition of assets by the petitioner disproportionate to the known sources of his income constituting an offence punishable under Section 13(1)(e) and 13(2) of the [Prevention of Corruption Act, 1988](#). The information received was recorded and a report submitted to the Superintendent of Police, Bureau of Investigation, Lokayukta on the same day. The Superintendent of Police, in turn passed an order directing Mr. M. Gangireddy, Deputy Superintendent of Police, Bureau of Investigation Sub-Division, Karnataka Lokayukta, Bangalore to register a case against the petitioner for an offence under the provisions mentioned above. In exercise of his powers under Section 17 of the Prevention of Corruption Act, he by the same order authorised two other Deputy Superintendents and five Inspectors of Police attached to the staff of the Lokayukta to assist the senior officer in the investigation of the case. Consequently, a case punishable under Section 13 of the [Prevention of Corruption Act, 1988](#) was registered against the petitioner in the Lokayukta Police Station at Bangalore and investigation taken up, in the course whereof the petitioner's house was also searched on the 7th of June, 1994. Aggrieved, the petitioner has come up with the present petition seeking a certiorari quashing the FIR as also the investigation and all consequential steps taken pursuant thereto on the ground that the registration of the case so also the investigation are wholly incompetent and ultra vires of the provisions of the Karnataka Lokayukta Act.

3. Appearing for the petitioner, Mr. Gurumath argued that the Bureau of Investigation of the Lokayukta was constituted to assist the Lokayukta in the discharge of their functions and was not therefore empowered to entertain any complaint directly or conduct any investigation into any such complaint except in accordance with the directions, which the Lokayukta or the Upalokayukta may consider proper to issue. The Lokayukta has, contended the learned Counsel issued no such orders directing an investigation into the allegation made against the petitioner, so that an investigating agency like the Bureau of Investigation meant only to assist the Lokayukta could not independently entertain the complaint or initiate any investigation into the same. It was contended that Police Officers, deputed to assist the Lokayukta ceased to be the Police Officers in the wider sense of the said expression and could not arrogate to themselves the authority to register cases or initiate investigation into offences relating to a public servant. Their functions, powers and duties, it was argued, were limited to assisting Lokayukta and the Upalokayukta in the discharge of their duties under the Act. Relying upon Section 15(4) of the Lokayukta Act, Sri Gurumath argued that the very purpose of conferring disciplinary and administrative control over the officers and employees appointed to assist the Lokayukta and the Upalokayukta would stand defeated if these officers or any one of them were to claim or exercise powers and jurisdiction independent of the powers, functions and duties of the Lokayukta under the Act. The scheme of the Act, it was strenuously urged, did not permit a dual control over the officers appointed to assist the Lokayukta in accordance with the rules framed under Sections 15 and 23 of the Act. Inasmuch as the Bureau of Investigation was claiming a status independent and outside the purview of the Lokayukta Act, for purposes of registration of cases and investigation into the same, it was committing not only an illegality but an act of impropriety seriously jeopardising the independence and prestige of the Institution that was created under the Act to serve a laudable object of rooting out corruption from public life while at the same time saving public functionaries from the menace of false and frivolous accusations against them.

4. Sri Vijaya Shankar, learned Advocate General, on the other hand, argued that the officers sent to the Lokayukta on deputation were Police Officers, who continued to be so even when they served as members of the Lokayukta staff

under Section 15. Their status, argued Mr. Shankar, did not suffer any change just because they had been sent out of the present Police Department particularly when the nature of their duties on the posts they were deputed to, also remained similar to the ones that were discharged by them earlier as Police Officers. He relied upon notification dated 26th of May, 1986 issued by the State Government in exercise of its powers under Section 2 of the Code of Criminal Procedure, whereby offices of the Lokayukta throughout the State have been declared as Police Stations in respect of the jurisdiction mentioned against each one of them. He also relied upon notifications dated 2nd of November, 1992 and 22nd of December, 1992, whereunder the Government have in exercise of their power under proviso to Section 17 of the [Prevention of Corruption Act, 1988](#) authorised all Inspectors of Police in the Office of the Karnataka Lokayukta to conduct investigations under the overall control and supervision of the Director of Bureau of Investigation. He contended that the declaration of the offices of the officers of the Police Department working with the Lokayukta as Police Stations and the authorisation issued by the Government under the notifications mentioned above clearly signified that the Police Officers sent to work with the Lokayuktha on deputation did not cease to be Police Officers and could therefore not only register cases where a cognizable offence was reported but also take up investigation into the same independent of any direction that the Lokayukta or the Upalokayukta may have been competent to issue under the provisions of the Act. Relying upon a Division Bench decision of this Court in C.M. Prasad and Others v State of Karnataka and Others, it was argued that the position as it existed under the erstwhile Vigilance Commissioner's Organisation had continued even after the passing of the Lokayukta Act and the establishment of the Institution of Lokayukta under the same. Heavy reliance was placed upon the observations made in the said decision in support of the submission that Police Officers and the staff of the Lokayukta continue to enjoy the status and exercise the powers available to them under the Code of Criminal Procedure.

5. Alternatively, it was contended that the principle of voidness applicable to statutory/executive actions being a principle of administrative law had no application to matters that were criminal in nature where the test to be applied was not whether the action taken was incompetent but whether the accused had on

account of any such incompetent actions suffered any prejudice. It was urged that the petitioner could at the stage of trial raise a plea of prejudice, if any, suffered by him on account of the agency conducting the investigation being incompetent to do so, in which event the Court would examine the said question and allow to him the benefit due in law. It was, according to Mr. Vijaya Shankar, premature for the petitioner to make any grievance against the investigation being conducted by the Bureau of Investigation nor was it necessary for this Court to examine the merits of the contentions raised in that regard.

6. I have given my anxious consideration to the submissions made by the bar. Before dealing with the question of competence of the Bureau of Investigation to conduct an investigation independent of the provisions of the Lokayukta Act, I deem it proper to dispose of the alternative submission made on behalf of the respondents. Section 17 of the [Prevention of Corruption Act, 1988](#) is in pari materia with Section 5(1) of [Prevention of Corruption Act, 1947](#) and regulates investigation into offences punishable under the Act. Like Section 5(a) of the old Act Section 17 of the 1988 Act prescribes that no officer other than those mentioned in clauses (a), (b) and (c) shall investigate any offence under the Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class as the case may be or make any arrest thereof without a warrant. Proviso (1) to Section 17 empowers the Police Officer not below the rank of an Inspector of Police authorised by the State Government in that behalf by a general or special order, to investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class and also make arrests without warrant. In *Munnalal v State of Uttar Pradesh*, the provisions of Section 5(a) of the old Act were held to be mandatory with the result that any investigation conducted in violation thereof would be illegal. So also in *Khandu Sonu Dhobi and Another v State of Maharashtra*, the Court declared that Section 5(a) of the old Act was mandatory in nature although the invalidity would not vitiate the conviction of the accused as a result of his trial unless the illegality in the investigation was demonstrably shown to have caused prejudice to the accused. The underlying reason was that the illegality committed in the course of an investigation did not affect the competence and jurisdiction of the Court to try the accused. This view was reiterated in *Muni Lal v Delhi Administration*, where the Court declared the

legal position in the following words:--

'The contention on behalf of the appellant is that some of the statements recorded appear to be in the handwriting of Ved Prakash and, therefore, the inference is that it is he who has conducted the investigation. It is true that Section 5-A is mandatory and not directory and an investigation conducted in violation thereof is illegal. But as held by this Court in H.N. Rishbud and Inder Singh v State of Delhi, if cognizance in fact has been taken on a Police report in breach of the mandatory provisions relating to investigation, the results, which follow, cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. It has been further emphasised in the said decision that an illegality committed in the course of an investigation does not affect the competence and jurisdiction of the Court for trial. The same propositions have been reiterated in Munnalal's case, supra'.

7. It follows that an investigation into offences punishable under the [Prevention of Corruption Act, 1988](#) in order to be lawful must be in accordance with the provisions of Section 17 of the Act, although once the accused is charge-sheeted and put on trial before a competent Court an illegality attached to the preceding investigation would not by itself vitiate the trial and can be looked into by the Court only for the purposes of finding out whether the same had caused any prejudice to the accused. That does not however mean that an illegality must be allowed to persist or be perpetuated by allowing the investigation to go on at the hands of an officer not competent to conduct the same, just because the accused has the option of pointing out the illegality and claiming prejudice at the appropriate stage of the trial. It is one thing to question the validity of a trial or conviction on the ground that the preceding investigation was illegal and an entirely different thing to question the validity of an ongoing investigation on the ground that the same is incompetent. An illegality that stares the Court in its face cannot be ignored or permitted to continue just because the accused may be entitled to claim prejudice at the trial. In the ordinary course, if an illegality has crept into the investigation which is the very foundation of the case, it ought to vitiate everything that may follow. That however is not so when it comes to testing the validity of a trial by a competent Court on the touchstone of an illegality in the preceding investigation.

The trial is not vitiated not because the illegality ceased to be one but because the illegality in the investigation does not prevent the Court from trying the accused for the offence charged. Once cognizance is taken and the accused tried, the illegality in the previous investigation pales into insignificance and remains relevant only for the limited purpose of pointing out or claiming prejudice, if any, on that ground. Even in Bhajanlal's case, reference to which was made at the bar, the Court did not decline to quash the investigation because the accused may have had an opportunity to claim prejudice at a later stage, although the Court felt that the investigation could be quashed as the same had not made much of a progress on account of an interim stay against the same. So long as the case has not culminated in the filing of a charge-sheet against the accused persons and so long as the competent Court has not taken cognizance of the same, an illegality based on the violation of Section 17 of the Act cannot be brushed aside only on the ground that the accused shall have the right to claim prejudice at the trial. If the argument advanced on behalf of the respondents were to prevail, it would mean that the Court should first allow an illegality to be committed or continued and then examine whether any such illegality had caused prejudice. Such a course would neither meet the ends of justice nor be otherwise sound or rational. I may at this stage refer to the decision of the Supreme Court in *State of Madhya Pradesh v Mubarak Ali*. An objection to the validity of the investigation was taken in that case before the trial had begun. The matter was taken up to the High Court, who directed that in order to rectify the defects and cure the illegality in the investigation, the Special Judge should have ordered the Deputy Superintendent of Police to carry on the investigation himself while the case remained pending in the Court of the Special Judge. That order of the High Court was challenged before the Supreme Court who confirmed it on the ground that the objections to the illegality of the investigation had been taken at the earliest stage before the trial Court and therefore the direction given by the High Court was justified, since the same would ensure a proper investigation being made and completed for the prosecution of the accused. Reliance placed by Mr. Vijaya Shankar on the observations made by Vivian Bose, J., in *Willie (William) Slaney v State of Madhya Pradesh*, would not therefore help in the light of the settled legal position as emerging from the subsequent pronouncements of the Supreme Court, which are

directly on the point.

8. That brings me to the core issue which arises for consideration in this case viz., whether the Police Officers deputed to the Karnataka Lokayukta can register and investigate cases or exercise powers independent of the provisions of the Lokayukta Act. There are two facets of this question viz., (a) whether the Police Officers sent to assist, Lokayukta and the Upalokayukta in the discharge of their duties under the Act continue to be Police Officers exercising powers under the Code of Criminal Procedure and (b) whether such officers even when they are Police Officers can register cases or conduct investigations into the same otherwise than under the provisions of the Act.

9. Insofar as the status of Police Officers continuing even after they have been deputed to the Lokayukta to lend assistance to him is concerned the same does not appear to present a serious difficulty for neither in the Lokayukta Act nor the Karnataka Police Act is there a provision by which the officers belonging to the Police Department when sent on deputation to the Lokayukta for purposes of assisting him can be said to have been denuded of that status or position. Section 15 of the Lokayukta Act envisages that the Lokayukta shall have such officers and employees as may be prescribed to assist him in the discharge of his functions under the Act. Section 23 empowers the State Government to frame rules for the purpose of carrying out the provisions of the Act including those providing for recruitment and other conditions of service of the staff and the employees of the Lokayukta or Upalokayukta appointed under sub-section (2) of Section 15. The Government have accordingly framed what are known as Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and the Employees) Rules, 1988. Rule 3 of the said Rules provides that the strength and composition of the staff of the Lokayukta shall comprise such number of posts and such pay scales as are mentioned in the corresponding entries of the I Schedule. Rule 4 of the rules prescribes the method of recruitment and the minimum qualifications therefor. A perusal of the I Schedule to the rules would show that the Lokayukta staff has been divided into three distinct wings viz., (i) Administrative and Enquiry Wing; (ii) Police Wing; and (iii) General Wing. The number of posts in each one of these wings against the various categories of officers have also been indicated in

the Schedule. Insofar as the Police Wing is concerned, the Lokayukta staff has to comprise one IGP, one Dy. IGP, three Superintendent of Police, three non-IPS Superintendent of Police, eleven Deputy Superintendent of Police apart from 24 Inspectors of Police and an equal number of Sub-Inspectors of Police besides Head Constables and Drivers etc. What is significant is that neither the Act nor the Cadre and Recruitment Rules give a different nomenclature to the Investigating Agency at the disposal of the Lokayukta. The officers and the staff of the Lokayukta in its Police Wing are not only termed as Police Officers but are by the nature of the duties to be performed by them required to function as such. Schedule 2 of the Rules provides for the method of recruitment, according to which the entire staff in the Police Wing of the Lokayukta right from the Inspector General of Police down to the Driver/Constable has to be appointed by deputation from the Karnataka State Police Service. The only difference is that the Inspector General of Police, Deputy Inspector General of Police and the Superintendent of Police (except Superintendent of Police, non-IPS) have to be IPS Officers. Superadded to all these, is the fact that the officers sent on deputation are required to assist the Lokayukta in the investigation of the cases for which purpose, the offices mentioned in the notification dated 26th of May, 1986 have been declared as Police Stations and Inspectors of Police authorised to conduct investigations into offences punishable under the [Prevention of Corruption Act, 1988](#). Far from suggesting any change in the status and the position of the officers sent on deputation, the notifications issued as also the purpose why the officers have been deputed to the Lokayukta indicate that these officers continue to remain Police Officers entitled to exercise powers available to them in that capacity. I have therefore no hesitation in rejecting the submission made by Mr. Gurumath that Police officers sent on deputation to the Lokayukta to assist him in the discharge of his functions do not cease to be Police Officers.

10. Coming then to the 2nd facet of the question viz., whether Police Officers sent on deputation to assist the Lokayukta and the Upalokayukta can register cases independent of the directions of the said two authorities and conduct investigations into the same, it is essential to refer to the provisions of the Act in some detail to correctly appreciate the scheme and the purpose underlying the same. The Act as is clear from the preamble is aimed at constituting authorities for making enquiries

into administrative actions taken by or on behalf of the Government or certain public authorities in the State of Karnataka. Section 2(12) of the Act defines 'Public Servant' and includes the Chief Minister, other Ministers in the Council of Ministers, Members of the State Legislature and Government Servants including Chairman and Vice-Chairman or members of the local authorities, statutory bodies, corporations etc. Section 3 of the Act provides for appointment of Lokayukta and Upalokayukta and inter alia prescribes that a person who has held the Office of a Judge of the Supreme Court or that of the Chief Justice of a High Court shall be appointed as Lokayukta on the advice tendered by Chief Minister in consultation with the Chief Justice of the State High Court. The Office of Upalokayukta under the Act can be held by a person, who has been a Judge of the High Court and can like the Lokayukta be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice and other authorities mentioned in Section 3(2)(b) of the Act. Section 6 of the Act prescribes the procedure for removal of the Lokayukta or the Upalokayukta whereas Section 7 sets out the matters, which may be investigated by them. Among others, the Lokayukta may investigate any action, which is taken by a general or specific approval of the Chief Minister, a Minister or a Secretary to the Government, a Member of the State Legislature or any other public servant. Section 8 details the matters, which are not subject to investigation and inter alia provides that a grievance in respect of any action against which the complainant has or had any remedy by way of an appeal, revision or review or other proceedings before any Tribunal, Court or other authority shall not be investigated. Section 9 stipulates the manner in which complaints can be filed before the Lokayukta or the Upalokayukta and provides that where either the Lokayukta or the Upalokayukta proposes to conduct any investigation under the Act after making such preliminary enquiry as he may deem fit, he shall forward a copy of the complaint to the Public Servant and the competent authority and shall afford to the Public Servant an opportunity to offer his comments on such complaint. The investigation to be conducted may in terms of Section 9(4) be held either in public or in camera, as the Lokayukta or the Upalokayukta may consider appropriate in the circumstances. Sub-section (5) of Section 9 empowers the Lokayukta in his discretion either to refuse to investigate or to cease to investigate any complaint in the situations stipulated

therein for the reasons, which the Lokayukta or the Upalokayukta shall record and communicate to the complainant and the Public Servant concerned. Section 10 empowers the Lokayukta to issue search warrants authorising any Police Officer not below the rank of an Inspector to enter and search any building, break open any door, box or locker, seize property, documents, money, jewellery, bullion etc., in accordance with the Code of Criminal Procedure, 1973 and a warrant so issued shall for all purposes be deemed to be a warrant issued by a Court under Section 93 of the said Code. Section 11 confers powers upon the Lokayukta and the Upalokayukta to record evidence and exercise all such powers in that regard as are exercised by a Civil Court while trying a suit under the Code of Civil Procedure. Section 12 relates to reports, which the Lokayukta may make after investigation. A declaration that a Public Servant, against whom a complaint has been made should not continue to hold the office held by him, would if accepted by the competent authority, enjoin upon the public servant, if he is the Chief Minister or a Minister to resign his office and if he be any other official, be deemed to have been placed under suspension by the order of the Appointing Authority. Section 14 empowers the Lokayukta to institute prosecution proceedings in a Court of law, if after investigation into any complaint he finds that the Public Servant has committed any criminal offence and should be so prosecuted. Section 15 relates to the staff of the Lokayukta to which reference shall in greater detail be made at a later stage. Section 20 provides for prosecution of the persons making false and frivolous or vexatious complaint under the Act whereas Section 22 enjoins upon Public Servants to submit a property statement in the prescribed form and within the period stipulated.

11. It is apparent from the provisions and the scheme of the Act that the same envisages the constitution of an independent statutory Institution for purposes of investigations into allegations of corruption, favouritism, nepotism, lack of integrity or abuse of official position against Public Servants with a view to obtaining any gain or favour for themselves or any other person. The term 'allegation' has been defined under Section 2(2) to include all such acts of misbehaviour including acts that show that the Public Servant had failed to act in accordance with the norms of integrity and conduct, which ought to be followed by a Public Servant of the class to which he belongs. The term 'corruption' as used in Section 2(2) includes

anything made punishable under the [Prevention of Corruption Act, 1947](#). It is also apparent that the Act aims at providing a highly credible and impartial machinery for investigation into allegations of corruption against persons holding high offices in public life. The power to issue search warrants, seize documents including money, bullion, jewellery etc., and record evidence exercising all such powers as are otherwise vested in a Civil Court clearly shows that the Lokayukta and the Upalokayukta not only by reason of the qualifications prescribed for their appointments, but also for reason of the nature of the duties which the Act enjoins upon them are required to function as independent statutory authorities for purposes of providing a fearless and independent agency for investigating allegations made against Public Servants. The very fact that the Institution envisaged by the Act is headed by no less a person, than a former Chief Justice of a High Court or a former Judge of the Supreme Court in the case of Lokayukta and a former Judge of the High Court in the case of Upalokayukta shows that the Legislature intended to provide an authentic machinery for investigation of cases of corruption that may be brought up before it. The autonomous institution created under the Act was not, meant to be yet another Wing or Department of the State Government nor can the Institution or its establishment be confused with its predecessor viz., the Commissioner of Vigilance established under the Vigilance Commission Rules framed under Article 309 of the Constitution. Seen in that light, Section 15 of the Act, which provides for staff of Lokayukta assumes significance and may therefore be extracted in extenso:

'(1) There shall be such officers and employees as may be prescribed to assist the Lokayukta and the Upalokayukta or the Upalokayuktas in the discharge of their functions under this Act;

(2) The categories, recruitment and conditions of service of the officers and employees referred 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 Upalokayukta may for the purpose of conducting investigations under this Act

utilise the service 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 occurrence of that 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 Upalokayukta or if there are more than one Upalokayukta, the seniormost among them may discharge the functions of the Lokayukta under this sub-section'.

12. A bare reading of the above would show that the Act concedes to the Lokayukta an establishment of his own comprising such officers and employees as may be prescribed to assist him in the discharge of his functions under the Act. But more important than that are three distinct features which stand-out prominently and deserve to be noticed in particular. These are.-

'(i) The staff of the Lokayukta comprising such officers and employees as are prescribed shall 'assist the Lokayukta and the Upalokayukta in the discharge of their functions under the Act'. The words 'Assist in the discharge of their duties under the Act' are significant and imply that the purpose behind providing staff to the Lokayukta and Upalokayukta is to assist them in the discharge of the statutory functions enjoined upon them under the Act;

(ii) The Cadre and Recruitment Rules prescribing the conditions of service of the officers and employees comprising such staff may include such conditions as may be necessary for enabling them 'to act without fear in the discharge of their functions'. The underlined expression signifies that the Act, envisages the Members of the Lokayukta staff to be free from any external control insofar as discharge of their functions are concerned. This implies that fearless functioning

by the staff is an object underlying the rules and can be ensured by the relevant rules making special provisions as to the conditions of service of such staff; and

(iii) The officers and other employees comprising the staff shall be under the 'Administrative and Disciplinary Control of the Lokayukta', The purpose behind vesting the administrative and disciplinary control in the Lokayukta clearly is to ensure that the staff provided to the Lokayukta is independent of any external strings which may interfere with the discharge of their functions under the Act'.

13. A reference to the Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and Employees) Rules, 1988 would show that most of the staff in the 4 Wings of the Lokayukta viz., Administration and Enquiry Wing, Technical Wing, Police Wing and General Wing have to be appointed by deputation from different department of the State Government including officers taken from the Karnataka Judicial Service. It is also significant to note that the appointments made by deputation are appointments to the staff of the Lokayukta, which means that whatever be the lending service or cadre from which the appointee is drawn the person so lent on deputation is from the date of his appointment a staff of the Lokayukta an employee, who is governed by the provisions of the rules mentioned above and is under the administrative and disciplinary control of the Lokayukta in terms of Section 15(4), supra. The very fact that an officer or an employee, who has been so appointed continues to be on the cadre of his parent service or maintains a lien in the said cadre would not make any material difference for once he is so appointed on the staff of the Lokayukta, he by reason of the provisions of Section 15(4) falls within the exclusive administrative and disciplinary control of the Lokayukta till such time he continues serving as a member of his staff. Section 15(4) of the Act giving exclusive administrative and disciplinary control to the Lokayukta over the members of his staff shall therefore have overriding effect notwithstanding any provision to the contrary made in any rule regulating the service conditions of such employees or officers in their parent departments, except of course in situations, where the disciplinary control over any such employee is by a constitutional or other provision made in a statute enacted by the Parliament, vested in a different authority, As to what would be the effect of any such provision vis-a-vis Section

15(4) of the Act does not fall for consideration immediately hence need not be examined. Suffice it to say that the provisions of Section 15(4) sufficiently convey the legislative intent of the Lokayukta staff being made independent of any outside controls for a proper discharge by their functions. The fact that Section 15(2) itself envisaged special conditions of service to be prescribed in consultation with the Lokayukta or the Upalokayukta to enable them to act without fear in the discharge of their functions is sufficient to show not only that the employees and officers working on the staff of the Lokayukta are meant to be a part and parcel of the Institution under the control and discipline of the Lokayukta but also that the law takes special care to provide for special conditions of their service, so that such employees and officers may discharge their duties and functions without fear. It would not therefore be incorrect to say that the officers and employees prescribed by the rules and appointed as staff of Lokayukta are so appointed to assist the Lokayukta and placed under the Lokayukta's administrative and disciplinary control, so that they discharge their functions independent of any outside interference or control over them. The expression administrative control has not been defined in the Act or the rules framed thereunder. The meaning assigned to the said expression in the ordinary parlance as given in the dictionary is how the same shall have to be understood. Webster's Dictionary of English Language describes the meaning of Administration thus:

'The Act of administering; direction; management; Government of public affairs'.

The word administer has been defined as under:

'To manage or conduct as chief agent or directing and controlling official; to direct or superintend the execution of, as of laws'.

14. It follows that the staff of Lokayukta whether such staff is appointed in the Police or any other Wing has to function in the manner and as per the directions of the Lokayukta not only because their administrative control vests in the Lokayukta but also because such staff has been appointed solely for the purpose of assisting the Lokayukta and the Upalokayukta as the case may be in the discharge of their functions. No member of the staff of the Lokayukta appointed against any post included in the I Schedule to the Cadre and Recruitment Rules can claim that he is

not under the control of the Lokayukta or that apart from being under the control of the Lokayukta or the Upalokayukta he is also under the control of some other authority outside the said Institution. The provision of Section 15 are wholly incompatible with the concept of any member of the Lokayukta staff being under a dual control of the Lokayukta or the Upalokayukta on the one hand and the Government or any of its officers on the other. So long as the officer or the employee concerned is on the staff of the Lokayukta he is subject to Section 15 of the Act and therefore only under the control of the Lokayukta or the Upalokayukta as the case may be.

15. When seen in the above background, the Police Officers and other employees appointed to different posts in the Police Wing of the Lokayukta cannot claim a different treatment, just because they are Police Officers. Such Police Officers even when they continue to be so, and are entitled to exercise their powers under the Cr. P.C. are upon their appointment as staff of the Lokayukta duty bound to function as Police Officers but only with a view to assisting the Lokayukta or the Upalokayukta in the discharge of their functions under the Act. They cannot claim that since they are Police Officers, they continue apart from lending assistance to the authorities under the Act to discharge other functions also such as register cognizable cases and investigate the same as though Section 15 of the Act made no difference. Reliance by me. Vijaya Shankar upon the decision of this Court in C.M. Prasad's case, *supra*, is of no assistance. In that case the Court was dealing with Police Officers sent on deputation to the State Vigilance Commission constituted under the Karnataka State Vigilance Commission Rules, 1980. The Scheme of the Lokayukta Act and the provisions of Section 15 thereof are not comparable with the Scheme of the rules aforementioned. Unlike the rules the Act aims at establishing an institution which is independent in character enjoying a significant measure of autonomy in its functioning, with a wide range of powers including jurisdiction to investigate allegations made against those holding important public offices like the Members of the Council of Ministers and even the Chief Minister. The question whether Police Officers comprising the staff of the Lokayukta or the Upalokayukta can act independent of the said two authorities has therefore to be seen in the light of the purpose and the scheme of the enactment besides the language employed in Section 15 thereof. The Division Bench had no

occasion to examine the question in the context of the provisions of the Act, so that any opinion expressed by it in relation to the erstwhile Vigilance Commission or its staff may not be of much assistance.

16. There is yet another circumstance, why the officers and agencies of the State Government cannot be confused or equated with the staff of the Lokayukta. Sub-section (3) of Section 15 provides that the Lokayukta or the Upalokayukta may for the purpose of conducting investigations under the Act utilise the service of any officer or Investigating Agency of the Central or the State Government with the concurrence of that Government. They can even utilise the services of any other agency not necessarily under the control of the State or the Central Government. This means that the Act makes a clear distinction between the agency at the command of the Lokayukta as a part and parcel of its establishment on the one hand and officers and Investigating Agencies under the control of the State or the Central Government on the other. The Police Wing of the Lokayukta cannot therefore be termed as an Investigating Agency of the State Government nor can officers working in the said Wing be deemed to be officers of the State Government so as to be under its administrative or disciplinary control.

17. It was contended by the learned Advocate General that the declaration of the Offices of the Police Officers deputed to the Lokayukta as Police Stations and the authorisation made by the State Government empowering Inspectors of Police in the establishment of the Lokayukta to conduct investigations under the Prevention of Corruption Act unmistakably suggested that such officers continued to act as Police Officers empowered to register cases in their respective Police Stations not only under the Lokayukta Act, but also in regard to offences punishable under other enactments. I see no merit in the submission for the same overlooks the fact that the Lokayukta can direct investigation into allegations of corruption against any public servant. The expression 'corruption' includes anything made punishable under the Prevention of Corruption Act, 1947. Any investigation into an offence punishable under the said Act can in turn be made only by an officer competent to do so under Section 17 thereof. It follows that if the Lokayukta directs an investigation into an offence punishable under the Act, such investigation shall have to be not only by the person competent to do so, but also on the basis of a

case to be registered in a Police Station. Declaration of the Offices of the Police Officers working in the Lokayukta staff as Police Stations and authorising Inspectors of Police in the said offices have therefore to be understood in the context of the provisions of the Lokayukta Act, Section 14 whereof empowers the Lokayukta to initiate prosecution of the public servant by an order to that effect, which order is by reason of the said provision deemed to be a sanction granted by the Appropriate Authority for such prosecution. Suffice it to say that the declaration of the Offices of the Lokayukta Police as Police Stations or authorisations granted to the said officers for investigation was not meant to empower the said officers to function independent of the control of the Lokayukta or the Upalokayukta as the case may be. Such declarations and authorisations are consistent with the Scheme of the Lokayukta Act and cannot be torn out of context to read into the same any intention to constitute such Police Stations as Police Stations for registration of ordinary offences without the directions of the Lokayukta or the Upalokayukta.

18. It is time now for me to turn to what appears to be a distressing tendency apparently aimed at eroding not only the independent character of the Institution but seriously jeopardising its prestige and position. Contrary to the provisions of Section 15 of the Act, the Government have by an order dated 21st of December, 1992 created what is termed a post of Director General, Bureau of Investigation, Lokayukta in the rank of an Additional Director General of Police and placed the Investigating staff including the Inspector General of Police, Deputy Inspectors General of Police, Deputy Superintendent of Police and Inspectors of Police etc., attached to the Police Wing of the Karnataka Lokayukta under his direct control and supervision. Not only that by an order dated 22nd of December, 1992 the Government have in supersession of notification dated 2nd of November, 1992 authorised all the Inspectors of Police, Karnataka Lokayukta for purposes of proviso to Section 17 of the [Prevention of Corruption Act, 1988](#) subject to the general and overall control and supervision by the Director General, Bureau of Investigation, Lokayukta, Bangalore. The previous notification dated 2nd of November, 1992 it is noteworthy similarly authorised the Inspectors of Police attached to the Lokayukta under the proviso to Section 17 of the Prevention of Corruption Act but the officers were subject to the general and overall control and

supervision of the Lokayukta and the Upalokayukta as the case may be. By yet another order dated 30th June, 1997, the incumbent Director General, Bureau of Investigation, Lokayukta was promoted to the rank of Director General of Police in the supertime scale of Rs. 7,600-8,000/- and continued as Director General, Bureau of Investigation, Karnataka Lokayukta until further orders in the upgraded post. The effect of all these orders may be summarised thus.-

'(i) The Government have without any statutory authority and without an appropriate amendment to the Cadre and Recruitment Rules rechristened the Police Wing of the Lokayukta as Bureau of Investigation, Lokayukta. Neither the Act nor the Cadre and Recruitment Rules envisage the creation or recognition of any such Bureau;

(ii) The Investigation Staff comprising the Police Wing of the Lokayukta and headed by an Inspector General of Police, which was till the date of the issue of order dated 21st of December, 1992 working under the general and overall control and supervision of Lokayukta and Upalokayukta has been taken out of their general, administrative and supervisory control and placed under the control of the Director General, Bureau of Investigation a post and an officer, which neither the Act nor the rules create, envisage or recognise. As already noticed, the Police Wing of the Lokayukta has in terms of the Cadre and Recruitment Rules to be headed by an Inspector General of Police. The Government have without bringing a suitable amendment to the rules not only created a post and made an appointment against the same, but taken out the officers working in the Police Wing of the Lokayukta from the administrative and supervisory control of the Lokayukta and placed them under the administrative and supervisory control of the Director General in total violation of provisions of Section 15 of the Act;

(iii) The Director General, Bureau of Investigation has been declared as an 'independent head of the department' with a separate budget head thereby giving him a status, which no longer remains subservient to the Lokayukta who heads the Organisation under the Lokayukta Act'.

19. The result is that what was a part and parcel of the Lokayukta establishment till 21st of December, 1992 and constituted an independent investigating agency

under the direct control and the supervision of the Lokayukta and the Upalokayukta is no longer so, the supervisory and administrative control having been taken away and placed in the hands of an officer, who is not a part of the staff of the Lokayukta and the Upalokayukta and is therefore strictly speaking not subject to their administrative and disciplinary control. The institution is reduced to an innocuous ornamental existence without the teeth to bite. It is expected to perform an unenviable task of rooting out corruption in the system including that which is prevalent at the higher echelons of public life, but without the power to question the Police Officers supposed to assist it, or monitor their work and conduct. That right now vests in an outsider, heading the Bureau of Investigations, who is made answerable to the Lokayukta not by reason of Section 15(4) of the Act but because of the executive courtesy contained in the Government order which places the Director General under his control. The State may claim the credit of having established an Ombudsman-like institution, but how legitimate would any such claim be when one looks to the attempt made by the powers that be, to subvert the very edifice which guaranteed its efficacy?

20. The learned Advocate General, to whom these disturbing consequences were put, did not dispute that the post of Director General was not borne on the staff of the Lokayukta and was not therefore subject to the administrative and disciplinary control of the Lokayukta by reason of Section 15, which confers such control upon the Lokayukta only insofar as officers and employees appointed to the staff as per the rules framed in that regard are concerned. He however contended that even though the Director General of Bureau of Investigation is not a part of the Lokayukta establishment under the Cadre and Recruitment Rules yet the Government order creating the Bureau of Investigation and appointing a Director General to head the same has placed the Bureau Chief under the overall control and supervision of the Lokayukta. As regards the conferment of the status of an independent head of the department upon the Director General, Bureau of Investigation, he urged that the same was only for purposes of providing a separate budget head and no more. I am not impressed by these submissions. If the Scheme of the Act and the rules envisage the Investigating Agency comprising the staff of the Lokayukta to be a part of the Institution of the Lokayukta under the latter's administrative and disciplinary control, I see no reason how or why the

Government should have tinkered with the said system or taken out the Police Wing of the Lokayukta from his control. Institutions provide security, to the citizens and ensure consistency in approach to reduce the element of subjectivity which is inherent if it is an individual who acts as the final arbiter. Institutional safeguards therefore provide the surest guarantee against arbitrariness, and discriminatory treatment. Institutions also provide continuity and promote objectivity, in dealing with vastly diverse situations, which eventually strengthen the faith of the citizen in the rule of law and sustain the democratic fibre of our system. But then institutions need vision, thought, selfless service and dedication to the ideals they are founded on. They need time to take root and are often exposed to the vicissitudes of opposition, challenges and subversion from within and without. They need to be nurtured while in infancy till they gain acceptance, and attain permanence, as an icon of abiding faith of the people. 'Lokayukta' is the Indian equivalent of Ombudsman an institution that symbolises the State's endeavour to fight corruption and breach of trust in relation to the power that is entrusted to public functionaries for being used only for public good. The legislature has spared nothing in making the institution independent, fearless and efficacious. The qualification of the person who can be appointed as Lokayukta and Upalokayukta and the terms of their appointment sufficiently show that the institution is meant to be a symbol of the State's Sovereign authority to be exercised without any let or hindrance from any quarter. Any attempt made to emasculate or devalue the institution shall therefore have to be curbed with a heavy hand. Nothing has been produced before me to justify the issue of Government Order dated 21st of December, 1992 and notifications under Section 17 dated 22nd of December, 1992, which have introduced a system totally different from the one that had effectively prevailed till then. It is not as though the Lokayukta has not noticed the change. In his Tenth Annual consolidated report for the period 1-4-1995 to 31-3-1996, the Lokayukta has made a specific complaint and pointed out that placing the entire staff of the Police Wing under the direct control and supervision of the Director General is contrary to the provisions of Section 15(4) of the Act. The relevant portion of the report reads as follows.-

'There is no post of Director General in the First Schedule of Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and Employees)

Rules, 1988 as required under Section 15(1) and 15(2) of the Act and the provision in the Government proceedings-dated 21-12-1992 placing the entire staff of the Police Wing under the direct control and supervision of Director General is contrary to the Hon'ble Lokayukta's administrative and disciplinary control under Section 15(4) of the Act'.

21. The question however is whether the statutory provisions of Section 15 can be rendered nugatory and the administrative and disciplinary control, which the Lokayukta enjoys over its officers and employees including such of them as have been appointed on deputation rendered ineffective or redundant by a mere executive order issued by the State Government. The answer has to be in the negative. A statutory provision cannot be rendered meaningless leave alone abrogated by a mere executive order issued by the Government. The executive power of the State can be invoked to achieve a given end only if the area in which such power is exercised is not otherwise covered by a validly made law. Once it is found that the field is covered by a statutory provision, the executive has no option but to act in aid thereof. An act in derogation of any such provision would be ineffective and can even be termed illegal. It follows that the Government order in question notwithstanding the administrative and disciplinary control of the Lokayukta over its officers and employees including those working in its Police Wing now renamed as Bureau of Investigation shall vest in the Lokayukta under Section 15(4) of the Act. I may also point out that even though the Government Order places the Director General, Bureau of Investigation under the control of the Lokayukta, such control cannot be compared with the one exercised by the Lokayukta over its officers and employees under Section 15(4) of the Act. The Government would therefore do well to take appropriate steps in this direction for avoidance of confusion by amending the Cadre and Recruitment Rules and providing for the post of a Director General in the Police Wing of the Lokayukta.

22. The next question then is whether the investigation conducted by the Bureau of Investigation heretofore should be quashed as illegal or saved to be taken up by the agency competent to do so. It cannot be disputed that the registration of the case is based on an information, which discloses the commission of an offence by the petitioner punishable under the Prevention of Corruption Act. Counsel for the

petitioner also did not argue and in my opinion rightly so that there was any room for quashing the registration of the case and the consequent investigation by the Bureau of Investigation on the ground that the First Information Report did not disclose the commission of any such offence. What was urged was that the officers conducting the investigation were not legally competent to do so. It cannot however be disputed that the officers of the Bureau of Investigation, who registered the cases and initiated investigation against the petitioner did so under the colour of the authority, which they assumed vested in them. It is noteworthy to recall that the Bureau of Investigation has been consistent in the assertion of its authority to conduct investigations and that there has never been any challenge from any quarter to the exercise of the said power by it till the question was brought up by the petitioner in the present proceedings. There has thus been a certain amount of public acquiescence in the exercise of the power to register and investigate cases independent of the directions of the Lokayukta which power has on a closer scrutiny and examination been found to be missing, thereby jeopardising the legal validity of the action taken by it. Such being the situation, I see no reason why the doctrine of de facto authority cannot be invoked to save what has already been done by the Agency. The Supreme Court in *Gokaraju Rangaraju v State of Andhra Pradesh*, while tracing the historical perspective of the development of the doctrine quoted with the approval, the following passage from Cooley's *Constitutional Limitations*, Eighth Edition, Volume II:

'An officer de facto is one who by some colour or right is in possession of an office and for the time being performs its duties with public acquiescence, though having no right in fact. His colour of right may come from an election or appointment made by some officer or body having colourable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on

the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence.

No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by someone claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is suffered to retain the office as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally'

23. The Apex Court also approved the following statement of law made by a Full Bench of the Kerala High Court in *P.S. Menon v State of Kerala* .-

'This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires, should be considered valid'.

The doctrine is born out of necessity to prevent endless confusion that may result by reason of a defect in the assumption or exercise of authority by a public functionary. Mr. Gurumath has not been able to show that the doctrine is or ought to be restricted only to validating the acts performed by Judges under the colour of their office no matter their apartments as Judges were otherwise defective for any reason. I am therefore inclined to hold that even when the Lokayukta Police had no jurisdiction to register a case against the petitioner without an order to that

effect from the Lokayukta, yet, the act of registration of the case and consequent steps taken in the course of the investigation, would stand saved to be continued and taken to their logical end by an agency competent to do so.

To summarise.-

(a) The provisions of Section 17 of the [Prevention of Corruption Act, 1988](#), are mandatory in nature rendering illegal any investigation conducted in violation thereof. Any such illegality can be pointed out and corrected at any stage before the competent Court takes cognizance of the offence, whereafter the illegality is relevant only for purposes of finding out whether the accused has suffered any prejudice on that account;

(b) Police Officers deputed to the Karnataka Lokayukta do not lose their status as Police Officers while they serve in its Police Wing, now named Bureau of Investigation of the Karnataka Lokayukta. Such officers cannot however exercise powers except to the extent and for the purpose the same are necessary to assist the Lokayukta or the Upalokayukta in the discharge of their statutory functions;

(c) The officers and employees comprising the staff of the Lokayukta and the Upalokayukta including Police Officers, appointed on deputation are by reason of Section 15(4) under the Administrative and Disciplinary Control of the Lokayukta, Government Orders and notifications to the contrary notwithstanding;

(d) The registration of the case against the petitioner and the investigation started into the same by the Bureau of Investigation although incompetent in law, can and is saved in the instant case in public interest on the doctrine of de facto Authority.

In the result I make the following:

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