O R D E R

W.P Nos.19386/2016, 21468/2016, 22370/2016 and 23622/2016 are filed in public interest and the other writ petitions are filed by the individual persons in their personal interest. Now, we shall go through the facts of each of the writ petitions in seriatim.

I. Brief facts of the case

(a) Writ Petition No.21468/2016 (PIL) by AAB:

2. This writ petition is filed by the Advocates Association, Bengaluru in public interest for a writ of certiorari to quash the notifications dated 19.3.2016 vide Annexures – F, G, H and J. By Annexure-F notification, the Government of Karnataka authorized all the Deputy Superintendents of Police, office of the Anti Corruption Bureau (‘**ACB’** for short) for the purpose of investigation in consonance with the provisions of Section 17 of the Prevention of Corruption Act (‘**PC Act’** for short). By Annexure-G notification, the Government of Karnataka has superseded the Notification No.HD 286 PEG 90 dated 6.2.1991 with immediate effect. This would mean

that the power to investigate any offence under the provisions of the PC Act by the Police Wing of the Karnataka Lokayukta as prescribed under section 17 of the PC Act, is superseded. By Annexure-H notification, the Government of Karnataka, in exercise of the powers under the provisions of Clause (s) of Section 2 of the Code of Criminal Procedure, declared that the office of the ADGP, Anti Corruption Bureau, Bengaluru as Police Station having jurisdiction for the whole of the State of Karnataka. By Annexure-J notification, the Government of Karnataka, in exercise of the powers under the provisions of Clause (s) of Section 2 of the Code of Criminal Procedure, has superseded the Notifications NO.HD 292 PEG 2000, dated 8.5.2002 and HD 324 PEG 2002, dated 5.12.2002 with immediate effect. With this notification, the office of the ADGP, Lokayukta would no longer have the effect of that of a Police Station.

3. It is the case of the petitioner/Advocates association that the Association was registered under the provisions of the Karnataka Cooperative Societies Act to cater to the needs and necessities of the Advocates fraternity and office bearers are

elected by the enrolled and practicing Lawyers, who are further enrolled as members of the Advocates Association. The petitioner Association has been keenly interested and is actively concerned with the problems of the common man and has actively voiced in various forums and platforms. It is further case of the petitioner that prior to the Karnataka Lokayukta Act,1984 (**'KL Act'** for short) came into force, there used to be a Vigilance Commission to look into the grievances of the people. That in view of more effectively ensuring better administrative action, check the omissions and commissions, cater to the common man, the State Legislature in its endeavour to clean the Augean stables, was pleased to enact KL Act which was intended to be a pro people Act as a self contained mechanism through which the grievances of the people of the State can get effective redressal as also the mischief of the erstwhile Vigilance Commission could also be cured.

4. The Provisions of Section 3 of the KL Act regulates the method of appointment of Lokayukta and Upa-Lokayukta. A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief

Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years and a person to be appointed as a Upa-Lokayukta shall be a person who has held the office of a Judge of a High Court for not less than five years. There would be sufficient number of officers to ensure the effective functioning of the Institution. The State of Karnataka has framed rules for recruitment of the staff in the Lokayukta called Karnataka Lokayukta (Cadre, Recruitment and conditions of service of the officers and employees) Rules, 1988. Rule 3 thereof provides for the strength and composition of the staff of the Lokayukta and states that the staff shall be recruited as detailed in the first schedule of the Rules. Rule 4 of the said Rules prescribes the method of recruitment. The first schedule divides the staff into four wings viz.,

i) Administrative and Enquiry Wing

ii) Technical Wing

iii) Police Wing

iv) General Wing

The Administrative and Enquiry Wing consists of District Judge, Senior Civil Judge, Civil Judge, Public Prosecutor and others to handle the charge sheeted cases before the jurisdictional Courts; Technical Wing consists of Chief Engineer, Superintendent Engineer, Executive Engineer and others; Police Wing consists of Additional Director General of Police or Inspector General of Police, Deputy Inspector General of Police and others; General Wing consists of Audit Officer, Office Superintendent and others. The aspirations and the grievances of the common man have been met with since the time Lokayukta has been constituted, which has further received the Presidential Assent. It is hence holding the corruption prevention mechanism by an enactment.

5. It is further submitted that by a notification dated 6.2.1991, the Police Inspectors of the Lokayukta were authorized with the powers of investigation to meet the requirement of Section 17 of the PC Act. That thereafter by notification dated 2.11.1992, the State Government in exercise of the power conferred by the first proviso to Section 17 of the PC Act, authorized all the Inspectors of Police, Office of the Karnataka Lokayukta, for the

purpose of the said proviso, subject to the general and overall control and supervision by the Lokayukta or Upa-Lokayukta as the case may be.

6. As there were certain issues which stood raised against the creation of post of an Additional Director General of Police and the control of the Police officers working in the Lokayukta organization, the matter reached the Hon'ble Supreme Court. The Apex Court in the case of ***C. Rangaswamaiah and others -vs- Karnataka Lokayukta and others***[1] decided on 21.7.1998 laid down the law that the Police officers on the rolls of the Karnataka Lokayukta work under the supervision and control of the Lokayukta and Upa-Lokayukta and there can always be a solution to the deputation of the police officers to the Lokayukta, **keeping in view the independence of the Lokayukta and its effective functioning as maters of utmost importance.** The Hon'ble Supreme Court also observed that the legislative intent behind the enactment is to see that public servants covered by the sweep of the Act should be answerable for their actions as such to the

[1] AIR 1998 SC 2496

Lokayukta and Upa-Lokayukta, so that these statutory authorities can work as real Ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to cater to the need of the public at large with a view to see that public confidence in the working of the public bodies remains intact. When such authorities consist of high judicial dignitaries, it would be obvious that such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned.

7. It is also submitted by the petitioner/Advocates Association that KL Act was amended by Karnataka Act No.35 of 2015 and certain mechanisms to regulate the appointment of Lokayukta and Upa-Lokayukta and the procedure to remove them is

also amended and the said ordinance has received the assent of the Governor on 19.8.2015. With this amendment, the intention of the State Legislature was to make the public feel proud about the establishment of the organization and further make every action of the said organization accountable and in genuine public interest.

8. It is further case of the petitioner/Advocates Association that due to the reasons beyond the reach, there would be pendency of cases, investigation, delay in securing sanction and related issues and the learned Single Judge of this Court in Criminal Petition No.2653/2015 has issued a series of directions to the State to ensure that the office of *Lokayukta* is strengthened, capable officers appointed, officers serving more than the period prescribed weeded out, the public prosecutors appointed to ensure speedy trial, the vacancies to be filled up within a time bound period and the Lokayukta manual be prepared and circulated etc., In fact, the respondent/State have represented to the learned Single Judge of this Court by an affidavit that it is their endeavour to ensure that the office of the Lokayukta is strengthened at all costs and it would be more accountable and worthy of public trust. The learned Single

Judge of this Court has relied upon several judgments of the Apex Court covering the field to strengthen the office of Lokayukta to ensure that the mal administration is stemmed at the bud.

9. When the things stood thus, the State Government created Anti Corruption Bureau in Karnataka by Government Order dated 14.3.2016 and issued notifications dated 19.03.2016 authorizing all the Deputy Superintendents of Police in consonance with Section 17 of the PC Act for the purpose of investigation. The notification issued by the State Government is to defunct the *Lokayukta* and it would virtually defeat the very purpose for which the office of Lokayukta was constituted and created a parallel body through an executive notification to achieve the same purpose with lesser intent. Therefore, the notification constituting the ACB is unsustainable, suffers from *malafides* and legal infirmities. When the Karnataka Lokayukta Act was assented by the President, that would prevail and the field occupied cannot be eroded and the respondents cannot trench upon the occupied field. It is nothing, but transgression by an administrative order to usurp the powers of Lokayukta. It is further submitted that the impugned executive

order passed by the State Government has indirectly diluted the powers of the *Lokayukta* and the ACB cannot function either as a parallel body or an alternate body or substitute the Lokayukta. Therefore, the notification constituting the ACB for a function already being conferred to the Lokayukta, is impermissible in law. Hence the present writ petition is filed for the relief sought for.

(b) <u>Writ Petition No.19386/2016 (PIL) by Advocate:</u>

10. This writ petition is filed by Mr.Chidananda Urs., Practising Advocate, in public interest for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the 1st respondent constituting ACB as per Annexure D so also subsequent supporting notifications dated 19.3.2016 issued by the 5th respondent as per Annexure – E, E1 E2 and E3.

11. It is the case of petitioner that he is a practicing Advocate for more than 15 years and he has co-authored a commentary titled "Commentaries on Foreign Exchange Management Act, and Money Laundering Law" which is published by Lexis Nexis Butterworth. The petitioner is also a Chartered

Accountant and has been a speaker in various forums on Taxation Laws and also on the law of money laundering. It is further case of the petitioners that the Respondent Nos.1 to 5 by issuance of impugned notifications have caused closure of Police Wing attached to the premier anti corruption institution in the State of Karnataka viz., The Karnataka Lokayukta. The institution of Karnataka Lokayukta has been created under the provisions of the KL Act, which came into existence for improving the standards of public administration, by looking into complaints against administrative actions including cases of corruption, favouritism and official indiscipline in administrative machinery. The Police Wing attached to the Karnataka Lokayukta was known to be discharging its dual role, under the KL Act and also under the PC Act. The common man has immense faith in the institution of Karnataka Lokayukta and also its Police Wing, that too after handling investigation relating to mining scam. Further, the common man could have filed complaint against anybody to set the law in to motion especially under the PC Act and there was no bureaucratic impediment or decision required to initiate the proceedings against a complaint. However, ACB was set up abruptly with an

intention to take control of the pending investigation against the high functionaries of the State, Bureaucrats etc., It also raises a very pertinent question as to whether the process/proceedings/investigation initiated by the Police Wing of Karnataka Lokayukta need any reconsideration by the ACB and also how would such proceedings be completely taken over by another wing when these investigations are being completed by the Police, which amounts to waste of public money and time and also would have deleterious consequences.

12. It is further case of the petitioner that the State Government by the notification dated 6.2.1991 deputed Police Personnel of various ranks to Karnataka Lokayukta and in addition to that the notification was also issued under the provisions of Section 17 of the PC Act empowering the rank of Police Inspector and above to investigate offences under the PC Act. By such notification, the Police personnel on deputation to Karnataka Lokayukta were placed under the Administrative and Supervisory control of Lokayukta and Upa-Lokayukta, as the case may be. The very object of the notification referred above was to remove the

bureaucratic control and political interference in the matter relating to corruption, irrespective of the rank and position of the accused either in the bureaucractic or political circles. At this stage, it has to be stated that a person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years and a person to be appointed as a Upa-lokayukta shall be a person who has held the office of a Judge of a High Court for not less than five years. Thus, the Police personnel who were deputed to Karnataka Lokayukta were placed under the direct control and supervision of a retired judge of the Supreme Court or the Chief Justice/Judge of the High Court with an intention to command highest respect and fearless, impartial and fair investigation to be conducted even though Lokayukta and Upa-Lokayukta are not the authorities under the provisions of the Code of Criminal Procedure. The object of both the enactments i.e., KL Act and PC Act was to achieve common object and goal of corruption free society. Both the legislations entail civil and criminal consequences and both the authorities under these Acts are two different sides of the same

coin. With this laudable object, the Police Wing was deputed to Karnataka Lokayukta for performing a dual role.

13. It is further case of the petitioner that various reformative measures were taken and implemented by the State Government in compliance of the orders passed in Criminal Petition No.2653/2015. In the meanwhile, various complaints were reported to have been filed against the incumbent Chief Minister of the State relating to corrupt practices followed in de-notification of lands in Arkavathi layout. It is learnt through the print media that disproportionate asset case was also registered against one Mr. Kapil Mohan, who is a Senior IAS Officer of the Karnataka Cadre. It is also learnt that there are cases of corruption pending investigation against certain MLAs and bureaucrats. In order to protect and scuttle the investigation against political class and bureaucrats, notification dated 14.3.2016 came to be issued constituting ACB as authority for investigation under the PC Act, thereby the very purpose of KL Act was indirectly defeated.

14. It is further case of the petitioner that as per the provisions of the Code of Criminal Procedure, the complainant

himself should not be an Investigating Officer. As per the notification, if any complaint filed as against the Chief Minister or the Minister in the Council of Ministers, the Chief Minister himself has to oversee the investigation and also permit investigation, thereby the notification issued would be opposed to the rule of law and contrary to the dictum of the Hon'ble Supreme Court in the case of ***C. Rangaswamaiah***[2]***.*** Thereby, he filed the present writ petition for the reliefs sought for.

(c) <u>W.P. No.23622/2016(PIL) by Samaj Parivarthana Samudaya:</u>

15. This writ petition is filed in public interest by *Samaj Parivarthana Samudaya* represented by its founder President – Sri S.R. Hiremath, for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the State Government as per Annexure-A so also the subsequent supporting notifications dated 19.3.2016 issued by the 2nd respondent as per Annexures – B,C,D and E.

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[2] Supra at Footnote No.1

16. It is the case of the petitioner – 'Samaj Parivarthana Samudaya' that it is a voluntary organization working in Karnataka, and other parts of India since 1984. It works in close cooperation with several other voluntary organisations, networks and movements, to promote actions with people's power of participation on a broader scale towards social transformation and to bring about larger collective impacts on the Governmental policies, deliberated legislations and programmes, for human wellbeing. It is also engaged in the activities for betterment of the society in general and for protection of natural resources, in particular and working in the said direction for more than four decades and it has filed several successful Public Interest Litigations before the Hon'ble Supreme Court and this Court. The petitioner/organisation has taken strenuous efforts for public cause by seeking judicial redressal in a number of litigations and several reported judgments in the name of the organisaton before the Hon'ble Supreme Court and this Court clearly depict petitioner's concern for preservation of natural resources and its fight against corruption at all levels.

17. It is further case of the petitioner that anti corruption institution that existed prior to 1984 was Vigilance Commission. During the year 1984, the State Legislature enacted the KL Act which provided for a self-contained mechanism through which the grievance of the people of the State can get effective redressal. The Act also provided to cure some of the defects found in the Vigilance Commission. The Act created the offices of Lokayukta and Upa-Lokayukta. Section 3 of the KL Act regulates the method of appointment of Lokayukta and Upa-Lokayukta. A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years and a person to be appointed as a Upa-lokayukta shall be a person who has held the office of a Judge of a High Court for not less than five years. There would be sufficient number of officers to ensure the effective functioning of the Institution. The State of Karnataka has framed rules for recruitment of the staff in the Lokayukta called Karnataka Lokayukta (Cadre, Recruitment and conditions of service of the officers and employees) Rules, 1988. Rule 3 thereof provides for

the strength and composition of the staff of the Lokayukta and states that the staff shall be recruited as detailed in the first schedule of the Rules. Rule 4 of the said Rules prescribes the method of recruitment.

18. It is further case of the petitioner that by a notification dated 6.2.1991, the Police Inspectors of the Lokayukta were authorized with the powers of investigation to meet the requirement of Section 17 of the PC Act. That thereafter by notification dated 2.11.1992, the State Government in exercise of the power conferred by the first proviso to Section 17 of the PC Act, authorized all the Inspectors of Police, Office of the Karnataka Lokayukta, for the purpose of the said proviso, subject to the general and overall control and supervision by the Lokayukta or Upa-Lokayukta as the case may be.

19. It is further case of the petitioner that as there were certain issues which stood raised against the creation of post of an Additional Director General of Police and the control of the Police officers working in the Lokayukta organization, the matter reached the Hon'ble Supreme Court. The Apex Court in the case of ***C.***

Rangaswamaiah decided on 21.7.1998 laid down the law that the Police officers on the rolls of the Karnataka Lokayukta work under the supervision and control of the Lokayukta and Upa-Lokayukta and there can always be a solution to the deputation of the police officers to the Lokayukta, keeping in view the independence of the Lokayukta and its effective functioning as matters of utmost importance. The Hon'ble Supreme Court also observed that the legislative intent behind the enactment is to see that public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta and Upa-Lokayukta and such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers etc.,

20. It is also the case of the petitioner that KL Act was amended by Karnataka Act No.35 of 2015 and certain mechanisms to regulate the appointment of Lokayukta and Upa-Lokayukta and the procedure to remove them is also amended. It is also submitted

that the learned Single Judge of this Court in Criminal Petition No.2653/2015 has issued a series of directions to the State to ensure that the office of *Lokayukta* is strengthened, capable officers appointed, officers serving more than the period prescribed weeded out, the public prosecutors appointed to ensure speedy trial, the vacancies to be filled up within a time bound period and the Lokayukta manual be prepared and circulated etc., In fact, the respondent/State have represented to the learned Single Judge of this Court by an affidavit that it is their endeavour to ensure that the office of the Lokayukta is strengthened at all costs and it would be more accountable and worthy of public trust.

21. It is the case of the petitioner that when things stood thus, contrary to the representations made before the learned Single Judge, the State Government by Government Order dated 14.3.2016, has created Anti Corruption Bureau in Karnataka, which would in effect virtually replace the very establishment of the Lokayukta or make it redundant. Further, the State Government by the notification dated 19.3.2016 authorized all the Deputy Superintendents of Police in consonance with Section 17 of the PC

Act for the purpose of investigation. The notification issued by the State Government is to defunct the *Lokayukta* and it would virtually defeat the very purpose for which the office of Lokayukta was constituted and created a parallel body through the executive notification to achieve the same purpose with lesser intent. Therefore, the notification constituting the ACB is unsustainable, suffers from *malafides* and legal infirmities.

22. It is further case of the petitioner that the very constitution of ACB by the Government is to shield corrupt politicians, Ministers and the officers from the watchful eyes of the Lokayukta and that Government is weakening the institution of Lokayukta to protect these persons from prosecution, inter alia under the PC Act. In fact, the petitioner made representations from time to time before the Lokayukta against the politicians, Ministers and the officers of the Government alleging serious corruption and requesting the Lokayukta to initiate action. The State is bent upon saving its corrupt Ministers and Officers and therefore the impugned Government Order and subsequent

supporting notifications are contrary to the very object of the KL Act.

23. It is also the case of the petitioner that as per the List II of the 7th Schedule to the Constitution of India, any law of the nature of the Lokayukta Act and its enactment would be within the competence of the State Legislature and is insulated from administrative transgression. When the KL Act was assented by the President, that would prevail and the field occupied cannot be eroded and the respondents cannot trench upon the occupied field. It is nothing but transgression by an administrative order to usurp the powers of Lokayukta. It is further submitted that the impugned executive order passed by the State Government has indirectly diluted the powers of the *Lokayukta* and the ACB cannot function either as a parallel body or an alternate body or substitute the Lokayukta. Therefore, the Government Order constituting the ACB for a function already being conferred to the Lokayukta, is impermissible in law.

24. It is further case of the petitioner that the impugned Government Order constituting ACB empowers the Chief Minister to

veto investigation or the sanction of investigation. This itself defeats the very purpose of the Anti Corruption Drive and ACB is not at all an independent body. The Deputy Superintendent of Police of the ACB being a Class I Officer works under the authority of the Chief Minister and any independent investigation is only a mirage. No serving officers would be in a position to conduct an enquiry against the Chief Minister under whom they would be working as subordinates. Therefore by the constitution of ACB, the basic investigation apparatus/mechanism is dysfunctional. The ACB is constituted virtually to defeat the very purpose of PC Act itself. Such an intention of the State must not be allowed to be accomplished. In the circumstances, the present writ petition is filed for the reliefs sought for.

(d) <u>W.P. No.16222/2017 (filed in personal interest):</u>

25. This writ petition is filed by one Mr.K.T. Nagaraja, who is working in the cadre of Chief Engineer in Bruhat Bengaluru Mahanagrapalike (‘**BBMP’** for short) in his **personal interest** for a writ of certiorari to quash the Government Order dated 14.3.2016 constituting ACB.

26. It is the case of the petitioner that he has maintained unblemished service record and working sincerely in BBMP. However, the 3rd respondent/ACB has suo motu took up the matter alleging that he has amassed wealth disproportionate to his known sources of income. On 23.10.2017 the Inspector of Police attached to the 3rd respondent/ACB has submitted the report which depicts 200% disproportionate assets accumulated by him. Based on the said report, FIR came to be registered in Crime No.8/2017 under the provisions of Section 13(1)(e) read with Section 13(2) of the PC Act, on 27.2.2017. On the very next day, the 3rd respondent/ACB has conducted raid on the house situated at No.455, III Block, 21st Cross, 4th Link Road, Jayanagar, Bengaluru. The petitioner challenged the FIR before this Court in Criminal Petition No.3044/2017 and this Court by the order dated 11.4.2017 granted interim order of stay of further proceedings.

27. It is further contended by the petitioner that the Karnataka Lokayukta Act, 1984 has received the assent of the President of India. The KL Act created the offices of Lokayukta and Upa-Lokayukta. Section 3 of the KL Act regulates the method of

appointment of Lokayukta and Upa-Lokayukta. Further, there would be sufficient number of officers to ensure the effective functioning of the Institution. The Karnataka Lokayukta establishment was divided into four wings viz.,

i) Administrative and Enquiry Wing
ii) Technical Wing
iii) Police Wing
iv) General Wing

The public servants covered under the KL Act include –

- Chief Minister
- All other Ministers
- Members of the State Legislature
- All Officers of the State Government
- Chairman, Vice Chairman of local authorities
- Statutory bodies/Corporation established under any law of the State Legislature.

28. It is further contended that by a notification dated 6.2.1991, the Police Inspectors of the Lokayukta were authorized with the powers of investigation to meet the requirement of Section

17 of the PC Act. The State of Karnataka has also issued notifications declaring the offices of Lokayukta as Police Stations under Section 2(s) of the Code of Criminal Procedure .

29. When things stood thus, the 1st respondent passed an Executive Order on 14.3.2016 constituting ACB which lacks statutory force. This order passed under Article 162 of the Constitution of India is contrary to the law. When the Police Force has already been established under the KL Act, the State cannot pass Executive Order constituting the ACB. The constitution of ACB is one without authority of law and though it purports to create an independent wing, it is controlled by the Chief Minister. The petitioner submits that after the constitution of ACB by way of executive order, the 2nd respondent issued notifications dated 19.3.2016, thereby superseding the earlier notifications dated 6.2.1991, 8.5.2012 and 5.12.2012. Thus, the Lokayukta Police Force is virtually abolished by the aforesaid notifications. It is further contended that the constitution ACB itself is without basis and without statutory backing. The 1st respondent cannot constitute an independent Police Force when the field is occupied by

the Karnataka Police Act, 1963. The Lokayukta Police was established under the provisions of the KL Act and therefore backed by statute. However, the ACB is established by means of an executive order, which has no legs to stand. The 3rd respondent cannot perform the duty of Police unless it is established by means of statute. Therefore, constitution of ACB itself is shaky, opposed to the provisions of law and therefore cannot perform the duty of the Police.

30. It is further contended that the Karnataka Lokayukta was primarily established for making enquiries into administrative action relatable to matter specified in List II or List III of the Seventh Schedule to the Constitution of India. However, alongside the said function, a separate Police Wing was constituted known as 'Lokayukta Police' which was entrusted with the function of registering, investigating and enforcement of the provisions of the PC Act. The said Police Wing was an independent investigating agency. The said independent investigating agency is what was envisaged by the Hon'ble Supreme Court in the case of

Prakash Singh -vs- Union of India[3]. Therefore, the establishment of ACB is against the letter and spirit of the judgment of the Hon'ble Supreme Court. Therefore, the petitioner sought for quashing the Government Order dated 14.3.2016 constituting ACB by allowing the present writ petition.

(e) <u>Writ Petition No.16223/2017 (filed in personal interest):</u>

31. This writ petition is filed by one Mr. Kale Gowda, who is working as Assistant Engineer in the Public Works Department, Mandya, in his **personal interest** for a writ of certiorari to quash the Government Order dated 14.3.2016 constituting ACB so also the First Information Report dated 6.2.2017 registered against him in Crime No.1/2017 by the ACB and all further proceedings pending against him on the file of the ACB.

32. It is the case of the petitioner that the 2nd respondent/ACB collected source information regarding his alleged income. The source report collected by the respondent No.2 includes the independent income earned by his brother-in-law and

[3] (2006)8 SCC 1

mother-in-law. The said source report depicts that the he has disproportionate income of 105.44% including the independent income of his mother-in-law and brother-in-law. Based on the said report, the 2nd respondent/ACB registered FIR against him on 6.2.2017. The petitioner further submits that Respondent No.2/ACB sent a copy of the FIR to the concerned Court and obtained warrant from the Court to search his house, his office and the house belonging to his brother-in-law and mother-in-law. The Court below, without applying mind, issued warrant permitting to search the house belonging to his brother-in-law and mother-in-law. The petitioner being a public servant, is governed by Karnataka Civil Service (conduct) Rules. In fact, he has intimated his income received from the lawful sources by filing his statement of assets and liabilities every year. The search mahazar drawn by the respondent No.2 does not indicate that the petitioner has other sources of income and therefore, the petitioner has not committed any offence under the provisions of Section 13(1)(e) of the PC Act. Without holding proper preliminary enquiry in corruption cases, FIR is registered, which is bad in law.

33. The petitioner further contended that the 1st respondent passed an Executive Order on 14.3.2016 constituting ACB which lacks statutory force. The order passed under Article 162 of the Constitution of India is contrary to the law. The executive power of the State with respect to which the Legislature of the State has powers to make laws is subject to and limited by executive power. When the Police force has already been established under the Karnataka Police Act, the State cannot pass Executive Order constituting ACB. The constitution of ACB is one without authority of law and though it purports to create an independent wing, it is controlled by the Hon'bie Chief Minister. The ACB is under the exclusive control of the political executive. Therefore, there is an inherent danger of making ACB as a tool for subverting the process of law. The petitioner submits that after the constitution of ACB by way of executive order, the 2nd respondent issued notifications dated 19.3.2016, thereby superseding the earlier notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to investigate and had declared the offices of Police Inspectors of Lokayukta as Police Stations. Thus, the Lokayukta Police Force is abolished by the aforesaid

notifications. It is further contended that the constitution ACB itself is without basis and without statutory backing. The 1st respondent cannot constitute an independent Police Force when the field is occupied by the Karnataka Police Act, 1963. The Lokayukta Police was established under the provisions of the KL Act and therefore backed by statute. However, the ACB is established by means of an executive order which has no legs to stand. The 2nd respondent cannot perform the duty of Police unless it is established by means of statute. Hence, constitution of ACB itself is shaky, opposed to the provisions of law and therefore cannot perform the duty of the Police. Therefore, the petitioner sought for allowing the writ petition by quashing the Government Order dated 14.3.2016 constituting ACB so also the FIR registered against him.

(f) <u>W.P. No.16697/17 (filed in personal interest):</u>

34. This writ petition is filed by one Mr. Sidharth Bhupal Shingadi in his **personal interest** praying to quash the Government Order dated 14.3.2016 constituting ACB so also the First Information Report dated 6.3.2017 registered against him in

Crime No.3/2017 by the ACB and all further proceedings pending against him on the file of the ACB.

35. It is the case of the petitioner that he was appointed as a Village Accountant on 21.3.1986 and posted to Jallapur village, Raibag Taluk and he worked in the said place for a period of five years. Thereafter, he worked in several places of Belgavi district. While he was working as Village Accountant at Hirekodi village, the 5th respondent/complainant has filed false and frivolous complaint dated 6.3.2017 before the 4th respondent alleging that the complainant had given an application to change the revenue entry to his name on 18.6.2016 in the office of the Tahasildar and when he enquired about the same, he was informed by the officials of the Tahsildar office that, he will be issued notice through the petitioner (Village Accountant) and thereafter to submit the relevant documents. Accordingly, the complainant visited the office of the petitioner on 9.2.2017 and the petitioner directed him to approach the Village Assistant by name Mr. Patel. Thereafter, the said Patel demanded bribe amount of Rs.5,000/- stating that the petitioner has directed to take money for doing the said work. The 4th

respondent based on the said baseless complaint dated 6.3.2017 registered FIR in Crime No.3/2017 against the petitioner and others under the provisions of Sections 7, 13(1)(d) r/w 13(2) of the PC Act. Thereafter, the 4th respondent has drawn an Entrustment *panchanama* on 7.3.2017 to make an attempt to trap the petitioner and the said Village Assistant. Accordingly, the 4th respondent went to the office of the petitioner for conducting the trap on 7.3.2017 and alleged to have conducted trap panchanama. It is forthcoming in the Trap panchanama that though the complainant offered the bribe amount, the petitioner refused to accept the same. Though the petitioner has not committed any offence under the provisions of PC Act, he had been falsely implicated by the 3rd respondent/ACB, which is contrary to the material on record . Therefore, the petitioner sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint and FIR registered against him.

(g) <u>W.P. No. 16703/17 (filed in personal interest):</u>

36. The petitioners have filed this writ petition in their **personal interest** for a writ of certiorari to quash the Government

Order dated 14.3.2016 issued by the State Government constituting ACB.

37. It is the case of the petitioners that 1st and 2nd petitioners are the employees of Bruhuth Bangalore Mahanagar Palike and the 3rd and 4th Petitioners are government servants holding civil posts. The Petitioners have maintained unblemished service records and working sincerely in their respective places. One Mr. H.S. Manjunath gave a complaint before the 3rd Respondent against the 1st and 2nd Petitioners on the ground that they have demanded illegal gratification to do an official favour. Based on the Complaint by the private person, First Information Report was registered against the 1st and 2nd Petitioners in Crime No.22/2016 dated 29/11/2016. Further, one Mr. H.C. Umesh gave a complaint to the 3rd Respondent alleging that the 3rd Petitioner has asked for bribe to get the pending work done. Based on the said complaint, FIR was registered in Crime No.27/2016. The 4th Petitioner was working as Deputy Director of Land Records, Bangalore Rural District. While working so, one Sri. Mune Gowda gave a complaint to the 3rd Respondent complaining that 4th

petitioner has demanded Rs.50,000/- illegal gratification to do an official favour. Based on the said complaint, FIR came to be registered in Crime No.8/2016. All the Petitioners have approached this Court challenging the registration of First Information Report and all the proceedings including investigation pending on the file of the 3rd Respondent in Writ Petition No. 2131-32/2017, Writ Petition No. 2134/2017, Writ Petition No. 6/2017, Writ Petition No. 3146/2017 and Writ Petition No. 3147/2017. This Court was initially granted an interim Order of Stay and thereafter, after hearing the matter at length, this Court vacated the interim Order. Against the vacation of interim Order, the 3rd and 4th Petitioners have approached the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 2303/2017 and the Hon'ble Supreme Court stayed the Order of this Court until further Orders. Therefore, the petitioners sought to allow the writ petition by quashing the Government Order dated 14.3.2016.

(h) <u>Writ Petition No. 16862/17 (filed in personal interest):</u>

38. This writ petition is filed by one Mr. Deepak Kumar in his **personal interest** for a writ of certiorari to quash the

Government Order dated 14.3.2016 constituting ACB so also the complaint dated 26.8.2016 lodged by the 4th respondent and the FIR registered in Crime No.01/2016 by the ACB.

39. It is the case of the petitioner that he joined the service on 29.06.2010 in Karnataka Power Transmission Corporation Limited, Bengaluru and in the same year, he was transferred to Wadi, Gulbarga District and thereafter transferred to Hassan. In the year 2015, the Petitioner transferred to KIADB Section of CHESCOM, Hassan. He served the CHESCOM in a proper manner and upto the satisfaction of his superiors as well as consumers. There are no complaints against him during his tenure for all the years prior to filing of the writ petition.

40. When things stood thus, the 4th Respondent - K.M.Ahmed lodged a false and frivolous complaint against the Petitioner on 26.08.2016 before the 3rd Respondent, alleging that he applied for sanction of 20 H.P. Power and that the petitioner demanded for illegal gratification of Rs.20,000/- and the same has been reduced to Rs.15,000/- towards sanction of power. On the basis of said false complaint dated 26.8.2016, the 3rd respondent

conducted a trial mahazar and trap mahazar on 26.8.2016. Consequently, the CHESCOM by its order dated 7.9.2016 suspended the petitioner. Thereafter, the CHESCOM by an order dated 30.01.2017, revoked the said suspension order. The petitioner sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint lodged by the 4th respondent and the FIR registered against him.

(i) <u>W.P. No.28341/2017 (filed in personal interest):</u>

41. The petitioner filed this writ petition in his **personal interest** for a writ of certiorari to quash the Government Order dated 14.3.2016 constituting ACB and the subsequent supporting Government notifications dated 19.3.2016, 30.3.2016 and 21.4.2016.

42. It is the case of the petitioner that he was working as an Assistant Executive Engineer, Municipal Corporation, Tumkur during 2016. On the basis of the complaint lodged by one Syed Abu Sayeed, the respondent/ACB registered a case against the petitioner and two others for the offences punishable under the

provisions of the P.C. Act, in Crime No.3/2016. On 13.10.2106, a forceful trap was laid where Accused No.2 was purportedly caught with the bribe money of Rs.40,000/- and he was arrested along with Accused No.3. Since petitioner/Accused No.1 was out of station, he had a providential escape from human dishonest design. Therefore, the petitioner sought to allow the writ petition by quashing the Government Order dated 14.3.2016 and the subsequent supporting Government notifications dated 19.3.2016, 30.3.2016 and 21.4.2016.

(j) W.P. No.108010/2017 (filed in personal interest)

43. The petitioner has filed this writ petition in his **personal interest** for a writ of certiorari to quash the Government Order dated 14.3.2016 constituting ACB so also the complaint dated 13.2.2017 given by the 4th respondent and the FIR dated 13.2.2017 registered in Crime No.2/2017 by the 3rd respondent/ACB.

44. It is the case of the petitioner that he was initially appointed as Junior Engineer in the year 1994 in the Department of Public Works, Ports and Inland Water Transport. Thereafter, he

was promoted as Assistant Engineer Grade – II and he has been deputed to Hubli-Dharwad Urban Development Authority in the year 2004 and while working there, the 4th respondent has made an application on 6.12.2016 in respect of 6 guntas of land situated in Sy.No.22/4. The petitioner has processed the same and has sent the file to the Town Planning Member.

45. When things stood thus, the 4th respondent has lodged a complaint with the 3rd respondent on 13.2.2017 alleging that on making the application, the spot was inspected on 17.12.2016. It is further alleged that after about a week, the 4th respondent has visited the office of the Hubli-Dharwad Urgan Development Authority and has met the petitioner. It was informed by the petitioner that the cess challan amount was Rs.27,000/- and that a further amount of the same value should be given in order to process the file. It is further alleged that the 4th respondent refused to pay the said amount and left the place and thereafter, the petitioner has telephoned and informed the 4th respondent that at least Rs.15,000/- has to be paid, which is alleged to have been recorded on the mobile phone of the 4th respondent. It is further

alleged that even after several days, the file was not processed since the 4th respondent did not pay the said amount demanded. Therefore, the 4th respondent lodged a complaint before the 3rd respondent.

46. On receipt of the complaint dated 13.2.2017 by the 3rd respondent, the 3rd respondent/ACB has registered the FIR against the petitioner under Section 7 of the PC Act in Crime No.2/2017. Thereafter, the raiding team along with the panch witnesses have raided the office of the petitioner. However, the trap laid by the 3rd respondent was unsuccessful and the petitioner was not caught either in demanding or taking bribe. Inspite of trap being unsuccessful, the petitioner was taken to custody and subsequently was released on bail on 15.2.2017.

47. It is further case of the petitioner that being aggrieved, the petitioner has approached this Court in Criminal Petition No.100663/2017 seeking to quash the proceedings in Crime No.2/2017 and the said criminal petition came to be rejected, which is confirmed by the Hon'ble Supreme Court. It is further submitted that in the Criminal Petition, the constitution of ACB or

the competence of the Inspector of Police was never called in question. Therefore, the judgment rendered in criminal petition would not be a bar to question the constitution of ACB and the registration of FIR in the present writ petition. Hence, the petitioner sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint and FIR registered against him by the ACB

(k) <u>Writ petition No.108689/17 (filed in personal interest):</u>

48. This writ petition is filed by the petitioner in his personal interest for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the State Government constituting ACB so also the complaint dated 9.6.2017 given by the 4th respondent and the FIR dated 9.6.2017 registered by the ACB in Crime No.10/2017.

49. It is the case of the petitioner that he is engaged in his own employment of doing computer servicing and repair. On 5.6.2017, an anonymous complaint was received by the Superintendent of Police, ACB, North Zone, Belgaum, alleging that

the officers of the Commercial Tax Department in the outward check post at Nippani were collecting illegal gratification from lorries which were transporting various materials/goods. The said complaint was forwarded to the 4th respondent, who in turn visited the spot. Thereafter, the 4th respondent has brought to the notice of the 3rd respondent with regard to the complaint and the 3rd respondent has registered the FIR for the offences punishable under Sections 7,8, 13(i)(d) r/w Section 13(2) of the PC Act. The name of the petitioner is not found in the FIR. Based on the complaint and the FIR, the 3rd respondent has conducted a raid at the Commercial Tax Office, Outward Check Post, Nippani on 11.6.2017. It is submitted that on the same day, the petitioner was called to the said check post to repair some malfunctioning computers and when the petitioner was repairing the computers, the 3rd respondent has conducted the raid. It is further submitted that on conducting the raid, the petitioner was checked and an amount of Rs.540/- was found with him, which was his personal money. Inspite of the trap being unsuccessful, the petitioner was taken to custody. Subsequently, he has been released on bail on 20.6.2017. The petitioner sought to allow the writ petition by

quashing the Government Order dated 14.3.2016 so also the complaint and the FIR registered by the ACB.

(I) <u>Writ Petition No.108690/2017 (filed in personal interest):</u>

50. The petitioners have filed this writ petition in their personal interest for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the State Government constituting ACB so also the complaint dated 9.6.2017 given by the 4th respondent and the FIR dated 9.6.2017 registered by the 3rd respondent/ACB.

51. It is the case of the petitioners that petitioner Nos.1 to 3 are working in the office of the Joint Commissioner of Commercial Taxes, Belgaum. While they were working in the Commercial Tax Office, Outward Checkpost, Nippani, on 5.6.2017 an anonymous complaint was received by the office of the Superintendent of Police, ACB, North Zone, Belgaum, alleging that the officers in the outward Check post, Nippani were collecting illegal gratification from lorries which were transporting various materials/goods. The said complaint was forwarded to the 4th respondent, who in turn,

has visited the spot. Thereafter, the 4th respondent has sent the complaint to the 3rd respondent. Based on the said complaint, the 3rd respondent has registered the FIR for the offences punishable under Sections 7,8, 13(i)(d) r/w Section 13(2) of the PC Act. The names of the petitioners are not found in the FIR, but a vague statement was made in the FIR that the case is registered against the officials working in the said check post. Thereafter, trap mahazar was conducted and it is found that there is absolutely no material to show that the petitioners had demanded and accepted the illegal gratification. Inspite of the trap being unsuccessful, the petitioners and others were taken to custody and subsequently, they were released on bail. The petitioners sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint and FIR registered by the ACB.

(m) **Writ Petition No. 22851/2018 (filed in personal interest)**

52. The petitioners have filed this writ petition in their personal interest for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the State Government constituting

ACB so also the complaint dated 12.4.2018 given by the 4th respondent and the FIR dated 12.4.2018 registered in Crime No.3/2018 by the 3rd respondent/ACB.

53. It is the case of the petitioners that the 1st petitioner is a public servant working as Sub-Registrar in the Revenue Department; 2nd petitioner is a practicing advocate in Kadur taluk; and the 3rd petitioner is working as Computer Operator in the office of the Sub-Registrar, Kadur. It is further contended that the petitioner Nos.2 and 3 are not public servants.

54. It is further case of the petitioners that one Smt. Seethamma, who is ailing and bed ridden made a request for private attendance for registration of Will and absolute sale deed on 23.4.2018 to the 1st petitioner. After seeing the relevant records, the 1st petitioner has personally visited the house of Smt. Seethamma and registered two documents viz., Will and absolute sale deed.

55. When things stood thus, the 4th respondent has given complaint to the 3rd respondent alleging that the 1st and 2nd

petitioners have demanded illegal gratification to do official work by registering the Will and absolute sale deed. The complaint given by the 4th respondent shows that he is not connected to the transaction and documents executed by Smt. Seethamma. Based on the allegation made in the complaint, the 3rd respondent/ACB has registered a case against the petitioner Nos.1 and 2 under the provisions of Sections 7,8 and 13(1)(d) r/w Section 13(2) of the PC Act in Crime NO.3/2018 on 12.4.2018. In the complaint, it is alleged that the 2nd petitioner is a stamp vendor, which is factually incorrect and in fact, he is a practicing advocate.

56. Based on the version of the 4th respondent, an entrustment mahazar was drawn on 12.4.2018 and the alleged money was given to the 4th respondent to lay a trap against the petitioners in presence of two panchas. However, they could not lay trap on the petitioners. Again, on 23.4.2018 one more entrustment mahazar was drawn to lay a trap against the petitioners. Even on the said date, they could not lay a trap against the petitioners and therefore one more mahazar was drawn on 23.4.2018. The petitioners further submit that again on the 3rd

occasion, the entrustment mahazar was drawn on 24.4.2018 at 7.45 a.m. and prepared to lay a trap on the petitioners. Even on that day, the petitioners have not been caught red handed and the trap was not successful. The trap mahazar shows that he 4th respondent has given the alleged money to the 3rd petitioner who is no way in picture till the alleged trap has taken place. The trap mahazar does not disclose that there was a demand on the part of the petitioner No.1 and the petitioner No.1 has accepted the alleged illegal gratification. The purchaser, namely, one Smt. S. Sendhamarai has appeared before the 1st petitioner and has given a statement that there is no demand of bribe by the petitioners and she has not given any instructions to the 4th respondent to give a complaint against the petitioners. The petitioners sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint and FIR registered against them by the ACB

(n) <u>Writ Petition No.9147/2019 (filed in personal interest):</u>

57. The petitioner has filed this writ petition in his personal interest for a writ of certiorari to quash the Government Order

dated 14.3.2016 issued by the State Government constituting ACB so also the complaint dated 20.11.2018 given by the 4th respondent and the FIR dated 20.11.2018 registered in Crime No.30/2018 by the 3rd respondent/ACB.

58. It is the case of the petitioner that he is a Government servant belonging to Public Works Department and on deputation working in Bruhath Bengaluru Mahanagara Palike as Assistant Director of Town Planning, Mahadevapura, during the year 2018. At that time, one Sri Ajay Jayanthilal has applied for sanction of building plan for construction of property in Varthu Hobli, Bangalore East taluk, Bangalore. It is the allegation of the 4th respondent on behalf of said Sri Ajay Jayanthilal that the petitioner and another namely Sri Srinivas Gowda, Assistant Engineer are demanding huge amount of bribe for sanctioning of the building plans. Since the client of the 4th respondent is not willing to pay the bribe amount, he has recorded the conversation of the petitioner on 19.11.2018 when he visited the office of the petitioner. Thereafter on 20.11.2018, the 4th respondent has given the complaint to the 3rd respondent alleging that the petitioner and another have demanded

illegal gratification to the tune of Rs.5,00,000/- for sanction of building plan. Based on the said complaint, the 3rd respondent/ACB has registered the case against the petitioner under Section 7(a) of the PC Act. The entrustment mahazar was drawn by the 3rd respondent in presence of the panch witness on 20.11.2018. Thereafter, the 3rd respondent has laid a trap against the petitioner and the trap mahazar was also drawn in presence of two witnesses. The trap mahazar shows that the petitioner is not caught red-handed and the alleged money has not been recovered from the petitioner. It further discloses that the petitioner has absolutely not made any demand from the 4th respondent. Therefore, The petitioner sought to allow the writ petition by quashing the Government Order dated 14.3.2016 so also the complaint and FIR registered against him by the ACB.

(o) <u>Writ Petition No.18042/2019 (filed in personal interest):</u>

59. The petitioner has filed this writ petition in his personal interest for a writ of certiorari to quash the Government Order dated 14.3.2016 issued by the State Government constituting ACB

so also the subsequent supporting Government notifications dated 19.3.2016, 30.3.2016 and 21.4.2016.

60. It is the case of the petitioner that on 19.5.2017, the respondent No.2/ACB generated a source report by gathering information and particulars with regard to his alleged disproportionate assets. The said source report was transmitted to the Superintendent of Police on 9.5.2017. On the said date, the Superintendent of Police directed Deputy Superintendent of Police, ACB to register a case under Section 13(1)(e) and Section 13(2) of the PC Act and to conduct further enquiry. The Dy.S.P. had registered a case on 9.5.2017 in Crime No.20/17 for the offences punishable under the provisions of Section 13(1)(e) and 13(2) pf the PC Act. In the source report, it is alleged that the petitioner has amassed disproportionate wealth in a sum of Rs.1,20,50,000/- at 102.12% of known sources of income. The registration of the case as aforesaid is entirely illegal and contrary to law. The respondent/Police have usurped the powers to investigate from the legally constituted body under the Karnataka Lokayukta Act by registering a case without there being duly constituted legal body to

work as a Police Station. Therefore sought to allow the writ petition by granting the reliefs sought for.

61. While reiterating the grounds urged in Writ Petition No.16222/2017 and connected PILs., with regard to –

- Presidential assent to the Karnataka Lokayukta Act, 1984;
- setting up an institution of Karnataka Lokayukta by abolishing the Vigilance Commission;
- Government notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to investigate and had declared the offices of Police Inspectors of Lokayukta as Police Stations;
- method of appointment of Lokayukta and Upa-Lokayukta;
- strength and composition of the staff of Lokayukta;
- Division of the staff of Lokayukta into four wings viz., Administrative and Enquiry Wing, Technical Wing, Police Wing and General Wing;

- public servants covered under the KL Act;
- the independent nature of power of the Police Wing of the Karnataka Lokayukta as held by the Hon'ble Supreme Court in the case of **C. Rangaswamaiah** etc.,
- Issuance of Government Order dated 14.3.2016 and subsequent supporting notifications dated 19.3.2016 etc.,

the petitioners in all these writ petitions which are filed in personal interest sought to allow the writ petitions by quashing the Government Order dated 14.3.2016 so also the subsequent supporting Government notifications dated 19.3.2016, 30.3.2016 and 21.4.2016.

II. Objections filed by the respondent No.1/State of Karnataka in W.P. No.19386/2016

62. In the statement of objections filed by the State of Karnataka, it is stated at the outset that the writ petition is mis-conceived and is not maintainable, both on facts as well as law and the same is liable to be dismissed in *limine*. The petitioner has

made references to several issues which are factually incorrect, misleading and completely lacking in *bonafides*. The petitioner is a practising Lawyer and claims to have filed the present writ petition in public interest. The petition lacks any kind of public interest and it is politically motivated and lacks *bonafides*. The petitioner also has no *locus-standi* to prefer this writ petition and on these preliminary issues itself, the writ petition is liable to be dismissed in *limine*.

63. It is further stated in the objections that the Police Wing attached to the Karnataka *Lokayukta*, as it stood prior to the impugned Notifications, in so far as its functions and powers to investigate the cases arising out of the offences committed under the provisions of PC Act, were independent of any control by the office of *Lokayukta* and was never under the control of the Karnataka *Lokayukta*. Investigations '*qua*' offences under PC Act were 'additional duties' entrusted to such Police of the Police Wing, which by practice was being referred to as '*Lokayukta* Police', and in so far as its jurisdiction to investigate the offences arising out of PC Act, it carried out its duties as contemplated under the provisions of

Code of Criminal Procedure, Karnataka Police Act and, the PC Act, independent of any 'control' by the Institution of the Karnataka *Lokayukta*. This 'Police Wing' was part of the State Police, in the same manner as the rest of the Police, in terms of the Karnataka Police Act, in so far as it exercised its powers to investigate the offences under the PC Act. Therefore, hue and cry that has been made out by the petitioner to the effect that by creating the Anti Corruption Bureau, the State Government has weakened the institution of *Lokayukta*' or it has interfered with its functioning in some manner, is wholly mis-conceived, imaginary and lacking in bonafides; especially since petitioner claiming to be a practicing advocate.

64. It is further stated in the objections that as can be noticed from a reading of Sections 7, 8, 9 and 12 of KL Act, investigations contemplated are of civil nature ultimately resulting in reports and recommending appropriate action to be taken thereon. Under Section 14 of KL Act, when *Lokayukta* is satisfied that public servant has committed any 'criminal offence' and should

be prosecuted for such offence, then he may pass an order to that effect and initiate prosecution of the public servant concerned.

65. It is further stated in the objections that on enactment of 1984 Act, the *Lokayukta* Institution was provided with a 'police wing', a ' technical wing' and, an 'enquiry wing for carrying out the functions, under the KL Act. The KL Act empowers the *Lokayukta* to inquire into complaints against public servants. However, it does not empower *Lokayukta* to conduct or supervise criminal investigations into the offences of corruption by the public servants and others, punishable under the Indian Penal Code or the PC Act or under any other statute. The State Government is empowered to designate an 'office' as a Police Station' under section 2(s) of the Code of Criminal Procedure.

66. It is further stated in the objections that the PC Act and, the Indian Penal Code. define the offences of corruption and prescribe punishments. The procedure for investigation into offences relating to corruption is laid down in the Code of Criminal Procedure and the PC Act. Accordingly, the Government, exercising its powers under Section 17 of the PC Act, had earlier issued a

notification on 06.02.1991 entrusting the Inspectors of Police, on deputation to the Karnataka *Lokayukta* "police wing', with the powers of investigation under the PC Act. In addition, the State Government exercising its power under section 2(s) of the Criminal Procedure Code, had declared the offices of the Police wing of Karnataka *Lokayukta* as the 'police stations' vide Notifications dated 08.05.2002 and 05.12.2002.

67. It is also stated in the objections that in the year 1992, the Government by executive order, created a Bureau of Investigation (BOI) in the Karnataka *Lokayukta*, which was headed by a Director General (DG) in the rank of Additional Director General of Police. The Director General was made an independent head of the department with a separate Budget Head. However, in 1998, the Government abolished the 'Bureau of Investigation' and the 'post of Director General' and the power of the Head of the Department was also withdrawn. The Registrar, Karnataka *Lokayukta*, was authorized to operate the finances of the Police wing. This action of the Government brought the 'police wing' under the administrative and financial control of the office of *Lokayukta*.

As a result, Police officers having powers of investigation under the PC Act, were brought administratively subordinate to the *Lokayukta* who had however no statutory powers or duties to administer any penal statute, like Indian Penal Code, PC Act. The *Lokayukta* has powers of a Civil Court in terms of provisions of *Lokayukta* Act, but not a Criminal Court.

68. It is further stated in the objections that the issue of competence of *Lokayukta* Police Wing to investigate the cases under the PC Act was challenged before this Court and later before the Hon'ble Supreme Court. The Apex Court in the case of ***C. Rangaswamaiah -vs- Karnataka Lokayukta[4],*** finally decided (in 1998) on this issue, stating that, the police officers of the State on deputation to Karnataka *Lokayukta* continued to remain public servants in the services of the State Government, as long as they were not absorbed in the Karnataka *Lokayukta*. The Hon'ble Supreme Court has held as under:

> "This legal position is absolutely unassailable because the State of Karnataka has merely lent the

[4] Supra at Footnote No.1

services of these officers to the *Lokayukta* and, the officers continued to be employees of the State. In spite of the deputation of the officers with the *Lokayukta*, the relationship of master and servant between the State of Karnataka and these officers does not stand terminated".

69. It is further contended that the Lokayukta derives powers and functions under the KL Act, which gives power to inquire into any action taken by any public servant, in any case where a complaint involving a grievance or an allegation is made in respect of such action. For such enquiry, he is given the power of civil court and the assistance of an 'enquiry wing', a 'technical wing' and a 'police wing'. After such enquiry/investigation, the Lokayukta is empowered to ask the competent authority to remedy or redress the injustice or hardship. He is also empowered to send a detailed report of investigation to the competent authority, which shall examine and take action based on the report. The above powers of the Lokayukta under the Lokayukta Act do not envisage any

authority to Lokayukta, under criminal statues like Indian Penal Code and PC Act.

70. In view of the above legal position and after considering all the aspects of the matter, the State Government in the interest of effective implementation of both the KL Act and the PC Act, took a conscious decision to formalize the space between the *Lokayukta* and the Police wing by separating the powers of the *Lokayukta* Police Wing investigating into the criminal offences under Indian Penal Code and PC Act. Accordingly, the State Government issued the G.O.No.DPAR 14 SLU 2016, dated 14.03.2016 constituting an independent Anti Corruption Bureau (ACB) on the lines of the Central Bureau of Investigation, without disturbing the powers and functions of the *Lokayukta* under the *Lokayukta* Act. In view of the constitution of the new Anti Corruption Bureau in the State of Karnataka, the powers of investigation given to the Police of *Lokayukta* Police Wing earlier under Section 17 of the PC Act and the Police Station status given to the offices of the Inspectors of Police under Section 2(s) of the Code of Criminal Procedure for the purpose of Prevention of Corruption Act were withdrawn.

Thereby, the respondent/State denied the averments made in the writ petition and sought to reject the writ petition.

III. Objections filed by the 2nd respondent/ACB in WP 16223/17 and WP 16697/17

71. The 2nd respondent - ACB filed objections denying the averments made in the writ petitions and contended that in cases pertaining to the PC Act, 1988, there exists a statutory bar to the grant of interim relief in the form of stay of proceedings under the Act. The petitioners in the present writ petitions have not alleged that due to any stated irregularity or omission on behalf of the 2nd respondent, any failure of justice has been occasioned. Further, as per the decision of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh -vs- Virender Kumar Tripathi***[5]***,*** the stage at which failure of justice may be claimed has not even reached in the present cases. It is further contended that Writ Petition is not maintainable and the same is liable to be dismissed in *limine* for the following reasons :

a. The Petitioner has deliberately misled this Court on issues of fact through

[5] ***(2009) 15 SCC 533***

averments in the Writ Petition. It is submitted that the Petition deserves to be rejected with costs in limine.

b. The Petitioner has not raised any substantive grounds challenging the institution of the proceedings against him by the 2nd Respondent, but has raised irrelevant and inconsequential grounds, which should be rejected.

c. There exists strong prima facie basis to fully investigate the Petitioner for the offences under Sections 13(1)(e) read with S.13(2) of the PC Act, based on the complaint.

72. Thus, the respondent/State has denied the averments made in the writ petition and sought for dismissal of the writ petition.

73. Except in the above writ petitions, neither the State nor any other respondent has filed statement of objections in other writ petitions including in the PILs filed by the **Advocates' Association, Bengaluru** in Writ Petition No.21468/2016 and also in the writ

petition filed by ***Samaj Parivarthana Samudaya*** in Writ Petition No.23622/2016.

IV. Statement of legal submissions of Karnataka *Lokayukta* in W.P. No. 19386/2016, W.P. No.23622/2016, 58252-58256/2017, 3109-3113/2018, 4319-4328/2018 and 47109/2018

74. It is contended that as per the recommendations of the Administrative Reforms Commission, the Institution of *Lokayukta* was set up "for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery." The Institution of *Lokayukta* was created in 1985 under the KL Act, which received the assent of President of India on 16.1.1985. As per Statement of Objects and Reasons of the KL Act, apart from looking into complaints against administrative actions, including cases of corruption, the KL Act deals with definition of "corruption", which includes anything made punishable under the provisions of the PC Act. The terms, 'Action', 'Allegation', 'Grievance', and 'Maladministration' are defined under Section 2; Section 7 deals

with matters which may be investigated by Lokayukta and an Upa-Lokayukta; Section 9 deals with provisions relating to complaints and investigations; Section 12 relates to reports of Lokayukta etc.; Section 14 deals with initiation of prosecution; Section 15 relates to staff of *Lokayukta*; and Sections 17, 17A and 19 deal with insult, contempt, inquiry, delegation etc.,

75. By a combined reading of the objects of the KL Act and provisions of the said Act, it is clear that the Act is substantive law dealing with cases of corruption in public administration. The Government of Karnataka filled up certain gaps in the KL Act, by issuing the earlier notifications dated 26.5.1986 under section 2(s) of the Code of Criminal Procedure and notification dated 26.5.1986 under Section 17 of the PC Act for the purpose of investing the Police Officers of the Karnataka *Lokayukta* for investigation of the offences under PC Act. To the same effect were the subsequent notifications dated 6.2.1991, 2.11.1992, 8.5.2002 and 5.12.2002; whereby the Government of Karnataka empowered and entrusted the powers of investigation in the officers of *Lokayukta* for the purpose of PC Act, subject to the overall control and supervision by

the *Lokayukta* or Upa*Lokayukta* as the case may be. The said actions of the Government of Karnataka entrusting additional functions in the police officers attached to the Police Wing to the *Lokayukta* has been considered and approved by the Hon'ble Apex Court in the case of ***C. Rangaswamaiah -vs- Karnataka Lokayukta***[6]***.*** In the said case, the Hon'ble Supreme Court specifically considered the issue of deputation and entrustment of additional functions by seeking to harmonize Section 17 of the PC Act and Section 15 of KL Act. As observed by the Apex Court in paragraphs 23 to 28, consent of the *Lokayukta* was necessary for the purpose of entrusting the functions of the investigation under Section 17 of the PC Act. The relevant portion of paragraph 23 is as under:

> "The lending authority cannot entrust extra duties without the consent of the borrowing authority".

76. In view of the observations and findings in the case of ***Rangaswamaiah***[7] stated supra, it is submitted that the converse of the same is true, in as much as, the consent of borrowing

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[6] Supra at Footnote No.1
[7] Supra at Footnote No.1

authority should be obtained before withdrawing from the extra duties. The Hon'ble Supreme Court subsequently described how the process of consultation should be followed in the case of **Justice *Chandrahekaraiah (Retd.) -vs- Janekere C. Krishna and others*[8].**

77. It is further contended that for the issue of the notification dated 19.3.2016, purporting to withdraw the powers of the *Lokayukta* Police, the Government of Karnataka seeks to derive its power from Section 21 of General Clauses Act, 1897 for the purpose of withdrawing the police powers granted to the *Lokayukta* Police for issuing earlier notification of 1986, 1991, 1992 and 2002. The Apex Court has held the consent of the borrowing authority is necessary for entrustment of extra duties. As soon as such duties were entrusted, the power under Section 17 of the PC Act is used up. In view of the fact that similar conditions were not fulfilled and since the requirement of 'information', or 'approval' or 'consultation' or 'obtaining consent' has not been complied with, by the Government of Karnataka for the purpose of withdrawing or

[8] AIR 2013 SC 726.

superseding the earlier notifications, the Government of Karnataka should have fulfilled the conditions which would have enabled them to exercise the power. However, since the consent of the Karnataka *Lokayukta* was not obtained for the withdrawal of the police powers by the issue of notification dated 19.3.2016, the power under Section 21 of the General Clauses Act is not available. As held by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh -vs- Ajay Singh***[9]***,*** the general power under Section 21 of the General Clauses Act, to rescind the notification has to be understood in the light of the subject matter, context and effect of the relevant provisions of the statute under which notification is issued and the power not available after an enforceable right as accurate under notification.

78. It is further contended that the Hon'ble Supreme court in the case of **Justice *Chandrahekaraiah (Retd.) -vs- Janekere C. Krishna and others***[10] ***s***tated supra has referred to the recommendations of the Administrative Reforms Commission which has recommended for appointment of the authority which is

[9] AIR 1993 SC 825
[10] AIR 2013 SC 726

independent of the Executive, Legislature and the Judiciary. It is further observed that the Institution of the *Lokayukta* should be demonstrably independent and impartial.

79. The power of initiating prosecution is invested with the *Lokayukta* under Section 14 of the KL Act, the formation of another Bureau, Department, Wing or any other Team, which is not under the supervision and control of the *Lokayukta* does not align with object of the KL Act.

80. Since the 'decision making' Public Servants have been placed differently, compared to the other Public Servants in terms of the notification dated 14.3.2016, there is violation of fundamental right under Articles 14 and 21 of the Constitution of India. A Police officer who is working under the disciplinary control of the Home Department and/or Government of Karnataka, while being an Investigating officer under the Anti Corruption Bureau cannot be expected to conduct a fair and impartial inquiry or investigation in relation to high ranking Public Servants. On the other hand , a police officer working under the supervision of the *Lokayukta* is insulated from such influence. Article 21 of the

Constitution of India ensures right to life and liberty to every person. The said rights are required to be protected and safeguarded even in respect of 'public servants' falling within the definition of Section 2(12) of the KL Act, in the larger public interest. The representatives of the people, who are public servants and also full time government officials, who are government servants, are well protected if the investigation powers under the PC Act, are with the *Lokayukta*. There is absolutely no chance for vindictive action at the instance of political opponent against the representatives of the people. Same is the position in respect of the bureaucrats who take an independent decision in the larger public interest. If the investigation agency is not independent then the right to life and liberty guaranteed to the citizens under Article 21 is threatened.

81. Under the KL Act and Karnataka *Lokayukta* Rules - 1985, undisputedly *Lokayukta* and Upa-*Lokayukta* are declared to be persons of high responsibility and of impeccable character and is given status akin to the Chief Justice of India. Some of the relevant

provisions which ensure independence of *Lokayukta* as provided under the provisions of KL Act and Rules are as under:

(1) The Hon'ble *Lokayukta* is appointed by the Governor on the advice of the Chief Minister in consultation with the Chief Justice of High Court of Karnataka, the Chairman of the Karnataka Legislative Council, the Speaker of the Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly as contemplated under the provisions of Section 3(1) and 3(2) of the KL Act..

(ii) The Hon'ble *Lokayukta*, before entering office, make and subscribe before the Governor or some other person appointed in that behalf, an oath of affirmation as contemplated under the provisions of Section 3(3) of the KL Act.

(iii) The service conditions, the allowance and pension of the Hon'ble *Lokayukta* is the same as that of the Chief Justice of India and the salary is that of the Chief

Justice of High Court as contemplated under Rule 6 of the Karnataka *Lokayukta* Rules.

(iv) Removal of the Hon'ble *Lokayukta* is by a process (impeachment) which is similar as that of the Hon'ble Judges of the High Court and Supreme Court as contemplated under Section 6 of the KL Act.

(v) To ensure independence and no-conflict, Hon'ble *Lokayukta*, shall not be connected with any political party, cannot hold any office of Trust or profit, must sever his connections with the conduct and management of any business, must suspend practice of any profession as contemplated under Section 4 of the KL Act; and

(vi) To ensure independence and no-conflict, on ceasing to hold office, the Hon'ble *Lokayukta* is ineligible for further employment to any office of profit under the Government of Karnataka or any other Authority.

Corporation, Company, Society or University relating to Government of Karnataka.

82. It is further contended that the Police Officers who are working for the Karnataka *Lokayukta* cannot be removed without the consent of the *Lokayukta* as contemplated in terms of Section 15 of the KL Act. The object of this provision is to ensure the independence of the investigating agency. Under Section 15(3) of the KL Act, the said Police Officers are under the direct supervision and disciplinary control of the *Lokayukta* as per Section 15(3) of the KL Act. So far as the ACB Police are concerned, they are under the direct control of the Executive and their tenure in it is not ensured. The interference in their investigation by the Executive is not ruled out. Therefore, the fear/threat of transfer or vindictive action against them is also not ruled out. The notification dated 19.3.2016 issued by Government of Karnataka withdrawing status of the Police Station on *Lokayukta* is contrary to the provisions of Section 14 of KL Act read along with other provisions of the said Act and PC Act as well as Karnataka Police Act, 1963. Even if it is held that the notification dated 19.3.2016 withdrawing the status

of Police Station as per Section 2(s) of the Code of Criminal Procedure on the Officers of the *Lokayukta*, is valid in law, it is permissible for *Lokayukta* to independently exercise the power of getting an FIR registered on the basis of the complaint laid before *Lokayukta* etc.,

83. A careful reading of Section 14 of the KL Act makes it clear that, after investigation into any complaint, in case the *Lokayukta* or an Upa*Lokayukta* is satisfied that a public servant has committed "any" criminal offence and should be prosecuted in a court of law for such offence, then he may pass an order to that effect and initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then notwithstanding anything contained in any law, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order.

84. As already stated supra, the KL Act has been passed on the basis of the recommendation made by the Administrative Reforms Commission, recommending for setting up of an Institution of *Lokayukta* for the purpose of improving the standard of public

administration, by looking into the complaints against the administrative actions, including cases of corruption, favouritism and official indiscipline in administrative measure. It is further contended that there cannot be two views that by means of legislation itself it was open to the Legislature to create an institution conferring powers of investigation both under criminal and civil jurisdiction. The reading of several provisions of the Karnataka *Lokayukta* Act makes it clear that the *Lokayukta* as an institution having been created for the purpose of preventing maladministration in public administration of the State, is empowered to do so not only by instituting disciplinary action against erring public servants but also by initiating criminal proceedings, wherever required on the basis of the materials on record.

85. The provisions of Sections 7(1) and 7(2A) of the KL Act confers the power to the *Lokayukta* to investigate against the several authorities/public servants of the State and empower the *Lokayukta* or an Upa*Lokayukta* to investigate any action taken by or with the general or specific approval of the public servant, if it is

referred to him by the State Government. Section 8 of the KL Act specifically bars the matter set out in the said Section from investigation and section 9 of the KL Act enables any persons to make a complaint under the said Act to the *Lokayukta* or Upa-*Lokayukta*. No doubt the Act does not define what is meant by 'complaint'. The provisions of section 9(2) of the KL Act stipulates that the complaint should be made in the prescribed form under Rule 4 of the Karnataka *Lokayukta* Rules. Though the definition of 'complaint' is not provided in the Act, the Act defines the terms 'Allegation' under Section 2(2); 'Grievance' under Section 2(8); 'Corruption' under Section 2(5); and 'Mal-administration' under Section 2(10) of the KL Act. In the absence of specific provision in the Act, it is well settled that the Courts can look into the definition of those terms provided in the similar statutes or general definition provided.

86. It is further contended that under the provisions of Section 2(e) of the Lokpal and Lokayuktas Act - 2013, the 'complaint' is defined as under:

"Complaint means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the PC Act, 1988"

87. It is further contended that Section 15 of the KL Act relates to staff of Lokayukta. The object of Section 15 is to make the institution of Lokayukta autonomous and its staff to be under the direct administrative supervision and disciplinary control of the Lokayukta, with a view to ensure independence and objectivity to the said staff of the Lokayukta in assisting the Lokayukta/Upalokayukta in discharge of their duties. It is further contended that the object of the enactment is to provide transparency in public administration. In this context, it is relevant to refer to Section 190 of the Code of Criminal procedure, which deals with powers of the Magistrate to take cognizance of the offence by Magistrates. In view of the provisions of Section 190 of the Code of Criminal Procedure, the Magistrate can take cognizance on the basis of the (1) complaint. (2) Police Report and (3) suo motu (Upon his own knowledge). Therefore, cognizance of an

offence can be taken on the basis of the police report or on the basis of a complaint filed as provided under Section 200 of the Code of Criminal Procedure and also *suo motu*, that is on the basis of information.

88. Section 23 of the KL Act empowers the State Government by Notification in its official gazette to make rules for the purpose of carrying into effect the provisions of the said Act. In exercise of the said power, the State Government has framed the Karnataka Lokayukta (Cadre, Recruitment and Conditions of Service of the Officers and Employees) Rules, 1988. Rule 3 of the said Rules provides for strength and composition of the staff of Lokayukta. Rule 4 provides for recruitment and minimum qualification of the Staff. First Schedule of the said Rules provides for four wings in the Lokayukta. They are:

(1) Administration and Enquiry Wing;

(2) Technical Wing;

(3) Police Wing; and

(4) General Wing.

89. It is further contended that 2nd Schedule of the said Rules provide for the qualification of the staff to be recruited or deputed. Technical Wing consists of officials in the cadre of Chief Engineer/Engineers and Deputy Director of Statistics as well as Deputy Controller of Accounts. The Police Wing consists of the staff deputed from Police Department in the cadre of IPS as well as Karnataka Police Service.

90. The cadre of the officers who are part of the institution of Lokayukta includes one Police Officer in the rank of Additional Director General of Police, who is an IPS Officer, one police officer in the rank of Deputy Inspector General of Police, 23 police officers in the rank of Superintendent of Police, 43 police officers in the rank of Deputy Superintendent of Police, 90 police officers in the rank of Police Inspector, 13 police officers in the rank of Police Sub-Inspector, 4 police officers in the rank of Assistant Sub-Inspector of Police and 145 police officers in the cadre of Head Constable. Apart from the above, 234 Civil Police Constables, 15 Head Constable Drivers, 30 Armed Police Constables and 148 Armed Police Constable Drivers. Therefore, statutorily a Police Wing is created

and made as an inseparable part of the Lokayukta Institution. The powers of the Police Wing in no way can be taken away by virtue of the two notifications impugned in the present writ petition, one withdrawing status of police stations of Lokayukta and the second constituting ACB. The Police Wing attached to the institution of Lokayukta has all the powers and duties conferred on it under the Karnataka Police Act, 1964, and also under the Code of Criminal Procedure.

91. It is further contended that Section 2(16) of the Karnataka Police Act defines the term "Police Officer", which means any member of the Police force appointed or deemed to be appointed under the said Act and includes a special or an additional police officer appointed under section 19 or 20 of the said Act. Section 65 of the Police Act provides for duties of a Police Officer.

92. It is also contended that the only restriction provided under the provisions of PC Act is that the officer to investigate the offences punishable under the PC Act should not be below the rank of DySP, as is clear from the reading of Section 17(c) of PC Act. Therefore, cadre strength of the Karnataka Lokayukta referred to

above shows that there are police officers in the cadre of ADGP, DIGP, SP and Dy.SPs in all around 747 officers. As such, there cannot be any difficulty or objection for the Lokayukta Police in the cadre referred to above to conduct investigation in respect of the offences punishable under PC Act. There is no prohibition under the PC Act in relation to the power of the Lokayukta Police, referred to above, to conduct any investigation with regard to the offences punishable under PC Act.

93. It is further contended that KL Act is a self contained code providing for investigation, filing of complaint and all other incidental matters with the police attached to the Lokayukta institution by virtue of statutory provisions. Thereby, when the Karnataka Lokayukta .Act is holding the field, it is not permissible for the State in exercise of its executive power under Article 162 of the Constitution of India to constitute ACB to nullify the power conferred on the Lokayukta as an institution under the KL Act. In support of its contention, Lokayukta relied upon judgment of the

Hon'ble Supreme Court in the case of ***I.T.C. Bhadrachalam Paperboards vs. Mandal Revenue Officer, AP*** [11].

94. It is further contended that the State Government under Article 162 of the Constitution of India, has issued notification constituting ACB on an erroneous understanding of the judgment of the Hon'ble Supreme Court of India in the case of ***C. Rangaswamaiah and others -vs- Karnataka Lokayukta and others*** [12].In fact the said judgment curtails the power of the State Government to constitute ACB or any alternative mode of investigating agency and interfere with the functioning of the Lokayukta. The only principle in the ***Rangaswamaiah***[13] case is that, it permits entrustment of extra work to any other investigating agency/ACB only to a limited extent and that too with the consent of Lokayukta. In the present case, the consent of the Lokayukta has not been obtained. It is further contended that the power is conferred on a very high authority, who is either the former Judge of Supreme Court or who was the Chief Justice of the High Court or

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[11] (1996)6 SCC 634.
[12] Supra at Footnote No.1
[13] Supra at Footnote No.1

who has been a Judge of the High Court for a period more than 10 years to be Lokayukta and any High Court Judge to be Upalokayukta. It is well settled principle of law that while interpreting the provisions of law, the object of the legislation is required to be kept in mind, as held by the Hon'ble Supreme Court in case of ***Manmohan Das v. Bishun Das***[14]***.***

95. In view of the dictum of the Hon'ble Supreme Court in the case of ***Institution of A.P. Lokayukta UpaLokayukta & Others v. T. Rama Subba Reddy & Another***[15] (Para 17) and the mandate of Section 63 of the Lokpal and Lokayukta Act, 2013, any effort to disband the Institution of the Karnataka Lokayukta will be regressive. Hence, the Government Order dated 14.03.2016, notification dated 19.03.2016 and all subsequent notifications issued pursuant to the Government Order dated 14.03.2016 for the purpose of formation and working of the ACB, could not have been issued. The same is hit by the requirement of Section 21 of the General Clauses Act.

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[14] AIR 1967 SC 643.

[15] (1997) 9 SCC 42

96. The notifications dated 19.3.2016 withdrawing the powers of the Lokayukta Police under Section 17 of the PC Act read with Section 21 of the GC Act, is bad in law and there is no source of power to issue such notifications.

97. It is further contended that the Government Order dated 14.03.2016, is not tenable in view of the same being contrary to the law laid down by the Hon'ble Apex Court. Paragraph 5 of the Government Order seeks to create an additional layer, which is not in consonance with the judgements of the Hon'ble Supreme Court in the case of ***Vineet Narain v. Union of India***[16] and ***Dr. Subramanian Swamy v. Director, CBI & Another***[17]***.*** In the circumstances sought to pass appropriate orders in the interest of public at large.

98. We have heard the learned counsel for the parties.

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[16] AIR 1998 SC 889
[17] (2014) 8 SCC 682

V. Arguments advanced by Sri Ravi B. Naik, learned senior counsel for Sri K.B. Monesh Kumar, learned counsel for the petitioners in W.P. Nos.19386/2016 and 21468/2016

99. Sri Ravi B. Naiik, learned senior counsel for the petitioners in Writ Petition Nos.19386/2016 and 21468/2016 contended that the provisions of Section 17 of the P.C. Act specifies the persons authorized to investigate any offence punishable under the said Act. He would further contend that earlier notifications dated 6.2.1991 and 2.11.1992 were issued by the State Government in support of the Lokayukta. In view of the provisions of section 15 of the KL Act, there shall be such officers and employees as may be prescribed to assist the Lokayukta and the Upa-Lokayukta in the discharge of their functions under the said Act. He would further contend that without prejudice to the provisions of Section-1 of the Lokpal and Lokayuktas Act, 2013, the Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organization or investigating agency of the Central Government or any State Government, as the case may be with prior concurrence of Central and State Government.

100. The learned senior counsel further contended that the statutory powers assigned to Lokayukta and Upa-Lokayukta under the provisions of the KL Act cannot be diluted by the executive orders passed by the State Government under Article 162 of the Constitution of India. The provisions of Section 23 of the KL Act empowers the Government to make rules. He would further contend that earlier the State Government, in exercise of the powers conferred by Clause (s) of Section 2 of the Code of Criminal Procedure, has issued notification declaring the offices of Lokayukta Police as Police Stations, thereby they have power to investigate the offences punishable under the PC Act. The same is withdrawn by the impugned executive order, thereby made the Lokayukta and Upa-Lokayukta powerless - paper tigers. He would further contend that the State Government by notification dated 2.11.1992 and in partial modification of the earlier Notification dated 6.2.1991, has authorized all the Inspectors of Police, Office of the Karnataka Lokayukta for the purpose of the proviso to Section 17 of the PC Act, subject to the overall control and supervision by the Lokayukta or Upa-Lokayukta as the case may be. Now by virtue of the present notification, the said power is withdrawn which is

impermissible. The learned senior counsel further contended that the field occupied under the provisions of the KL Act, cannot be taken away by the State Government by way of the notification dated 14.3.2016, thereby he sought to allow the petition.

101. In support of his contentions, learned senior counsel relied upon the dictum of the Hon'ble Supreme Court in the case of ***C. Rangaswamaiah -vs- Karnataka Lokayukta***[18] (paragraphs 26 to 30).

VI. Arguments advanced by Sri M.S. Bhagwat, learned senior counsel for the petitioners in Writ Petition Nos.9147/2019, 16222/2017, 16223/2017, 16703/2017, 108010/2017, 108689/2017, 108690/2017 and 22851/2018

102. Writ Petition Nos.9147/2019, 16222/2017, 16223/2017, 16703/2017, 108010/2017, 108689/2017, 108690/2017 and 22851/2018 are filed by the individual petitioners in their personal interest challenging the Government Order dated 14/03/2016 constituting ACB under Article 162 of Constitution of India.

103. Sri M.S. Bhagwat, learned senior counsel appearing for petitioners in the above writ petitions contended that Entry-2 of List

[18] Supra at Footnote No.1

II to the 7th Schedule of the Constitution of India contemplates Police (including railway and village police) subject to the provisions of Entry 2A of List-I. Entry 2A of List-I contemplates deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the Civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. He would further contend that the provisions of Section 3 of the Karnataka Police Act, 1963 contemplates that "there shall be one Police Force for the whole State", thereby the State cannot create one more police wing i.e., ACB under Article 162 of the Constitution of India. He would further contend that the provisions of Section 4 of the Karnataka Police Act contemplates Superintendence of Police Force to vest in the Government. The provisions of Section 20-A of the Karnataka Police Act contemplates the State Security Commission. When there is a specific wing under the Karnataka Police Act, introducing of one more authority would not arise, thereby the Executive order of the Government dated 14/03/2016 is contrary to the provisions of Sections - 3, 4 and 20-A of the Police Act. Absolutely, there is no possibility of impartial

investigation at the instance of the authority constituted under the notification. He further contended that the object of the Lokayukta Act depicts that the Administrative Reforms Commission had recommended for setting up of the institution of Lokayukta for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery. He referred to the provisions of Section 2 (2) of the KL Act, which contemplates that 'allegation' in relation to a public servant means any affirmation that such public servant –

> (a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;
>
> (b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; and
>
> (c) is guilty of corruption, favourtisim, nepotism, or lack of integrity in his capacity as such public servant.

104. Learned senior counsel contended that as per sub-section (5) of Section 2 of the KL Act, 'corruption' includes anything made punishable under Chapter IX of the Indian Penal Code or under the provisions of PC Act. He also contended that sub-section(8) of Section 2 of the KL Act defines 'grievance', which means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration. He further contended that Section 7 of the KL Act deals with matters which may be investigated by the Lokayukta and an Upa-Lokayukta. Section 7(2) of the KL Act prescribes that subject to the provisions of the said Act, an Upa-lokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant refereed to in sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upa-Lokayukta recorded in writing, the subject of a grievance or an allegation.

105. Learned senior counsel further contended that the provisions of Section 14 of the KL Act contemplates initiation of prosecution and Section 23 of the KL Act contemplates power to make rules. He further contended that a separate police wing has been constituted to look after the allegation of corruption against the public servant. In view of the aforesaid provisions of KL Act and the Rules, the State Government has no authority to pass an executive order under the provisions of the Article 162 of the Constriction of India, diluting the statutory powers as contemplated under the KL Act and the Police Act. He would further contend that Section 63 of the Lokpal and Lokayuktas Act, 2013 relates to establishment of Lokayukta and as per the said Section, every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of the said Act. He would further contend that the object of the Lokpal and Lokayuktas Act as stated supra is that there must be a Lokayukta to deal with complaints and eradicate the corruption under certain public functionaries, thereby

the executive order passed by the State Government is impermissible and the State Government indirectly encouraging the corruption in the State. Therefore, he sought to allow the writ petitions.

106. In support of his contentions, the learned senior counsel relied upon the following judgments:

(1) *State Of Sikkim vs Dorjee Tshering Bhutia And Ors [1991(4) SCC 243 (paragraphs 14 & 15)*

(2) *Dr. D.C. Wadhwa & Ors vs State Of Bihar & Ors [1987(1) SCC 378] (Paragraph No.7)*

(3) *Bishambhar Dayal Chandra Mohan vs. State Of Uttar Pradesh & Ors [(1982)1 SCC 39]* (paragraph No.27)

(4) *B.N.Nagarajan & others vs. State of Mysore & others [AIR 1966 SC 1942]* (paragraph No.5)

(5) *M.V.Dixit vs. State of Karnataka & others [2004(6) Kar. L.J. 69]* (Paragraph No.24)

(6) *C.Rangaswamaiah & others vs. Karnatka Lokayukta & others [(1998) 6 SCC 66]:* (paragraph No.24)

(7) *Prakash Singh & others vs. Union of India & others [(2006)8 SCC 1]* (paragraph No.31):

(8) *State of Gujarat & others vs. State of Gujarat & others [(2010) 12 SCC 254]*

VII. Arguments advanced by Sri V. Lakshminarayana, learned senior counsel/amicus curiae

107. Sri V. Lakshminarayana, learned senior counsel, on instructions from the instructing counsel, submitted that W.P. No.58252/2017, 3109/2018 and 4319/2018 may be dismissed as withdrawn and accordingly, the said writ petitions were dismissed as withdrawn by separate orders on 27.6.2022. However, since he was appearing for some of the private parties and has argued the matter at length, this Court by the order dated 27.6.2022 requested him to assist the Court as an *amicus curiae*. Accordingly, he assisted the Court as amicus curiae.

108. Sri V. Lakshminarayan, learned senior counsel/amicus curiae while referring to the impugned notification dated 14.3.2016, has contended that notification contemplates that the Government has realized necessity of a strong and effective vigilance system in

addition to the Karnataka Lokayukta, in order to prevent the inappropriate operation of the administrative apparatus and improve the administration and therefore, it has been decided to divest Karnataka Lokayukta of its additional responsibility under the PC Act, thereby the Government has ordered to create an Anti Corruption Bureau so as to effectively enforce and conduct independent investigations under the PC Act, establish Vigilance Cells in all the departments of the government and a Vigilance Advisory Board to supervise such a system of vigilance. He would further contend that vide Notification dated 14/03/2016, the ACB was created with the following designations:

1. Additional Director General of Police (ADGP)
2. Inspector General of Police (IGP)
3. Superintendent of Police (SP)
4. Deputy Superintendent of Police (DySP)
5. Police Inspectors (PI)
6. Head Constable/Police Constable (HC/PC)

In order to supervise the Vigilance System in the State, a Vigilance Advisory Board has been created consisting of -

1. Chief Secretary
2. Additional Chief Secretary, Internal Administration
3. Principal Secretary, Department of Finance
4. Principal Secretary, DPAR
5. D.G. & I.G.P.
6. Two Eminent personalities experienced and experts in the field of Administration and Public issues
7. Secretary, Vigilance Wing of DPAR

109. Learned senior counsel/amicus curiae further pointed out that the Notification contemplates that the ACB will function under the overall supervision of the Department of Personnel and Administrative Reforms and in order to provide the necessary administrative support to the ACB, a post of the rank of Secretary would be created in the Department of Personnel and Administrative Reforms and under his leadership, a Vigilance Wing is created. The Secretary of the DPAR Vigilance Wing will report to the Hon'ble Chief Minister through the Chief Secretary.

110. Learned senior counsel/amicus curiae would further contend that by virtue of Government Order, the independent powers conferred under the statute has been removed which is impermissible. He would further contend that the Hon'ble Chief Minister has no role in the independent investigation by the competent authority, thereby the Government Order dated 14/03/2016 is contrary to the object of the KL Act. The investigation has to be done by the Lokayukta under the PC Act and the State cannot appoint other agency by way of executive order to proceed under the provisions of Section 17 of the PC Act. He would further contend that the authority should be independent of the Executive, Legislature, Judiciary and the fourth wing-Press & Media.

111. Learned senior counsel would further contend that under the provisions of Section 15(3) of the KL Act, the Lokayukta or an Upa-lokayukta may for the purpose of conducting investigations under this Act utilise the services of any officer or investigating agency of the State Government or the Central Government.

112. Learned senior counsel/amicus curiae further contended that 'United Nations Convention against Corruption' is committed to pursue the policy of zero tolerance against corruption and the instrument of ratification is dated 9.5.2011. He further contended that the Police Officers are under the administrative control of the Lokayukta or Upa-lokayukta under the Act. He invited the attention of the Court to Article 1 of United Nations Convention against corruption, which relates to statement of purpose. The purposes of Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

113. Learned senior counsel/amicus curiae also invited the attention of the Court to Article-3 of United Nations Convention against corruption, which relates to scope of application. Article-3 prescribes that the convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the convention.

114. Learned senior counsel/amicus curiae contended that Chapter-II of United Nations Convention against Corruption contemplates preventive measures and it is relevant to refer to certain Articles of the said chapter. Article 5 deals with preventive anti-corruption policies and Article-6 relates to preventive anti-corruption body or bodies. Sub-clause (2) of Article 6 contemplates that each state party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. Article -

7(1)(d) relates to promoting education and training programmes. Article 30 contemplates prosecution, adjudication and sanctions. Article 36 contemplates specialized authorities and it stipulates that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the state Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their task.

115. Learned senior counsel/amicus curiae would further contend that the provisions of Article 253 of the Constitution of India relates to legislation for giving effect to international agreements. It contemplates that notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other

country or countries or any decision made at any international conference, association or other body.

116. Learned senior counsel would further contend that the statement of objects and reasons of the KL Act depicts that the institution of Lokayukta was set up for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favoritism and official indiscipline in the administration machinery. He brought to the notice of the Court the definition of 'public servant' as defined under sub-section (12) of Section 2 of the KL Act so also provisos (1) and (2) of Section 17 of the P.C. Act and contends that there cannot be any dilution of powers. The learned Senior Counsel would further contend that the investigation has nothing to do with the administration. Once the notification for investigation is issued under Section 17(c) of the PC Act, it becomes statutory enforcement and the same cannot be withdrawn by the executive orders of the State Government. He further pointed out that the corruption can be investigated only by one investigating agency and there should not be any influence. He

would further contend that the investigation should be fair and proper on the part of the investigating officer, who is the backbone of the Rule of Law. He further contended that investigation should be independent without any bias, fear or favour.

117. Learned senior counsel/amicus curiae would further contend that the allegation with regard to corruption can be investigated only by one authority under the provisions of PC Act and not two authorities viz., Lokayukta as well as ACB. The creation of ACB parallel to the institution of Lokayukta is bad in law. He would further contend that the Government Order dated 14.3.2016 issued under the provisions of Article 162 of the Constitution of India clearly depicts that at every step there will be political influence on the officer concerned which is impermissible. ACB should work under the provisions of the KL Act in view of the dictum of the Hon'ble Supreme Court in the case of ***Rangaswamaiah***[19] stated supra. The provisions of Section 21 of the General Clauses Act is not applicable as contended by the

[19] Supra at Footnote No.1

learned Advocate General, in view of **Vineet Narain**[20] case. Therefore, learned senior counsel/amicus curiae sought to quash the Government Order dated 14.3.2016 constituting ACB and allow the writ petitions.

118. In support of his contentions, learned senior counsel/amicus curiae relied upon the following judgments:

1. *Vineet Narain -vs- Union of India reported in (1998)1 SCC 226 (relevant paras - 38, 39, 40, 41, 42, 43, 44 and 58), particularly at paragraph-38 it is stated that the meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Act, 1946 determines the scope of the authority of the Central Government in this context.*

2. *Justice Chandrashekaraiah (Retired) vs. Janekere C.Krishna & others* reported in (2013)3 SCC 117 (relevant paragraphs - 19, 107, 108, 112, 124).

3. *K.T.M.S. MOHD -VS- UNION OF INDIA* reported in (1992)3 SCC 178 (paragraph-23).

[20] (1998)1 SCC 226

4. *M.C. Mehta (Taj Corridor Scam) -vs- Union of India and others reported in (2007)1 SCC 110 (paras 24, 26 and 27)*

5. *Subramanian Swamy -vs- Director, Central Bureau of Investigation and another reported in (2014)8 SCC 682 (constitution Bench) (paras 54, 57, 59, 64(44), 70, 71 and 72).*

6. *Rakesh Kumar Paul -vs- State of Assam reported in (2017) 15 SCC 67 (paragraph-26);*

7. *Prakash Singh & Others -vs- Union Of India And Others reported in (2006)8 SCC 1 (paragraphs-13, 21 to 25 and 32)*

8. *T.P. Senkumar, IPS -vs- Union of India and Others reported in (2017) 6 SCC 801 (paragraph 70);*

9. *R. Sarala -vs- T.S. Velu and Others reported in (2000) 4 SCC 459 (paragraphs-11 to 15, particularly paragraph-18)*

10. *Mithilesh Kumar Singh -vs- State of Rajasthan and Others reported in (2015)9 SCC 795 (paragraph-6)*

11. Northern India Caterers (P) Ltd. v. State of Punjab, reported in AIR 1967 SC 1581 (paragraph-11).

VIII. Arguments advanced by Sri Basavaraju .S, learned senior counsel for Sri Gowtham A.R, learned counsel for the petitioner/s in Writ Petition No.23622/2016

119. Sri Basavaraju, learned Senior Counsel along with Sri Gowtham A.R., learned counsel for the petitioner in W.P. No.23622/2016 contended that the present writ petition is filed in public interest challenging the Government Order dated 14.03.2016 at Annexure-A as well as subsequent notifications at Annexures-B, C, D, E, all dated 19.3.2016. Learned senior counsel contended that the Government Order dated 14.03.2016 is contrary to the provisions of Articles 14, 19, 21 and 300 of the Constitution of India. He further contended that every institution should maintain institutional responsibility and integrity and any attempt to dilute the same is undemocratic and against the basic structure of the Constitution, which is impermissible. He contended that the Government Order dated 14.03.2016 suffers from legal *malafides* since it protects certain persons and has not taken into

consideration the definition of 'public servant' as contemplated under Section 2(12) and 7 of the KL Act.

120. In support of his contentions, learned Senior Counsel relied upon the following judgments:

1. *Yakub Abdul Razak Memon v. State of Maharashtra*, reported in *(2013)13 SCC 1* (paragraphs 91 to 100)
2. Institution of *A.P. Lokayukta/Upa-Lokayukta and others vs. T. Rama Subba Reddy and another reported in (1997) 9 SCC 42* **(**paragraph 19)

IX. Arguments advanced by Sri D.L. Jagadish, learned senior counsel for Ms. Rakshitha D.J., learned counsel for the petitioner in W.P. No.16862/2017

121. Sri D.L.Jagadish, learned Senior Counsel for Ms.Rakshitha D.J., learned counsel for the petitioner contended that the impugned Government Order dated 14.03.2016 passed by the State Government cannot be sustained as the same is contrary to the dictum of the Hon'ble Supreme Court in the case of Sri **C.**

Rangaswamaiah[21] (paragraphs-29 and 30). He further contended that by virtue of the Government Order dated 14.03.2016, independence of Lokayukta and its effective functioning as a matter of utmost importance has been removed/diluted and people's faith in the working of public servants is shaken. He further contended that the dictums/decisions of Lokayukta or Upa-Lokayukta should not become mere paper directions. Lokayukta and Upa-Lokayukta must be armed with proper tooth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned.

122. Learned senior counsel further contended that the Government Order dated 14.03.2016 is contrary to the provisions of Section 15(1) and (2) of the KL Act. He further contended that the 'public servant' as defined under the provisions of Section 2(12) of the KL Act includes the Hon'ble Chief Minister. But the impugned Government Order dated 14.03.2016 indirectly excludes some of the authorities mentioned in Section 2(12) of the KL Act including the Hon'ble Chief Minister.

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[21] Supra at Footnote No.1

123. In support of his contentions, learned Senior Counsel relied upon the dictum of the Hon'ble Supreme Court in the case of **Chandrashekaraiah v. Janekere C. Krishna**[22] (paragraphs 20, 21 and 36).

X. Arguments advanced by Sri C.V. Sudhindra, learned counsel for the petitioners in W.P.No.28341/2017 and W.P.No.18042/2019

124. These writ petitions are filed by the individual petitioners in their personal interest challenging the Government Order dated 14/03/2016 constituting ACB under Article 162 of Constitution of India so also the subsequent supporting notifications dated 19.3.2016, 30.03.2016 and 21.04.2016 issued by respondent No.1.

125. Sri C.V. Sudhindra, learned counsel for the petitioners contended that Section 17 of the PC Act contemplates the persons authorized to investigate the cases under the PC Act and first proviso to the said section envisages that if a police officer not

[22] ***(2013)3 SCC 117***

below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant. The second proviso to the said section provides further that an offence referred to in clause (b) of sub-section (1)] of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. He further contended that the said provisions contemplate to investigate -

(a) trap cases

(b) disproportionate assets cases, as contemplated under Sections 7 and 13(a)(b)(c)(d)(e) of the PC Act.

126. Learned counsel further contended that by the impugned Government Order dated 14.03.2016, the ACB is constituted with the following posts.

Sl. No.	Designation of posts	No. of posts
1	Addl. Director General of Police (ADGP)	01
2	Inspector General of Police (IGP)	01
3	Superintendent of Police (SP)	10
4	Deputy Superintendent of Police (DySP)	35
5	Police Inspectors (PI)	75
6	Head Constables/Police Constables (HC/PC)	200
	Total	322

127. Learned counsel also contended that in order to supervise the Vigilance system in the State, a Vigilance Advisory Board has been created comprising of the following persons:

Sl. No.	Designation of posts	
1	Chief Secretary	President of Board
2	Addl. Chief Secretary, Internal Administration	Member
3	Principal Secretary, Department of Finance	Member
3	Principal Secretary, DPAR	Member
4	D.G. & I.G.P.	Member
5	Two prominent persons having specialisation and experience in Administration and Public Matters	Member
6	Secretary, DPAR Vigilance Division	Member Secretary

128. Learned counsel further contended that the Vigilance Advisory Board will meet atleast once in three months, to review the operations of the Vigilance Cells in the Government and to review the progress of the ACB and the cases pending before it. In case the Vigilance Advisory Board decides to refer the investigation to be conducted by an outside agency/ogranization, such matter after approval of the Chief Minister may be handed over to the Criminal Investigation Department (C.I.D.). Therefore, he contended that one cannot expect the Vigilance Advisory Board functions independently, since even to refer the investigation to C.I.D., approval of the Chief Minister must be obtained.

129. Learned counsel also contended that Section 2(16) of the Karnataka Police Act contemplates that, 'Police Officer' means any member of the police force appointed or deemed to be appointed under the said Act and includes a special or an additional police officer appointed under Section 19 or 20. He further contended that Section 2(22) of the Karnataka Police Act contemplates that 'Superior Police' means members of the Police Force above the rank of Inspector. He further contended that, the

provisions of Section 6 of the Karnataka Police Act, 1963, contemplates that, for the direction, control and supervision of the Police service, the Government shall appoint a Director General and Inspector General of Police, who shall subject to the control of the government, exercise such powers and perform such functions and duties and shall have such responsibilities and such authority as may be provided by or under the said Act. Sub Section (2) of Section (6) of the Karnataka Police Act, 1963, contemplates that the Director General and Inspector General of Police shall be selected by the State Government from amongst officers of the Indian Police Service in the rank of Director General of Police who have been empanelled for promotion to that rank on the basis of their length of service, very good history of service, professional knowledge and ability to lead Police Force in the State. Therefore, he contended that the impugned Government Order dated 14.03.2016 is in utter violation of Articles 14 and 21 of the Constitution of India and the provisions of Section 6(1) and (2) of the Karnataka Police Act, thereby the very intention and enactment of the Karnataka Police Act, 1963 is frustrated. Therefore, he sought to allow the writ petition.

XI. Arguments advanced by Sri Sharath S. Gowda, learned counsel for the petitioner/s in Writ Petition No.16697/2017

130. The petitioner filed this writ petition in his personal interest challenging the validity of the Government Order dated 14.3.2016 constituting the ACB and the complaint dated 6.3.2017 and the FIR registered thereon dated 6.3.2017.

131. Sri Sharath S Goiwda, learned counsel for the petitioner while adopting the arguments of Sri M.S. Bhagwath, learned senior counsel and Sri V. Lakshminarayana, learned senior counsel/amicus curiae contended that the definition of 'public servant' as contemplated under the provisions of Section 2(12) of the KL Act includes the Chief Minister; a Minister; a Member of the State Legislature, a Government servant etc., By virtue of the impugned Government Order constituting ACB, ultimately the investigation or report has to be approved by the Chief Minister and thereby, he cannot decide his own case. Therefore, he sought to allow the writ petition by quashing the Government order dated 14.3.2016 etc.,

XII. Arguments advanced by Sri Ashok Haranahalli, learned senior counsel for Karnataka Lokayukta

132. Sri Ashok Haranahalli, learned senior counsel along with Sri B.S.Prasad and Sri Venkatesh S.Arabatti, learned counsel for Lakayukta contended that KL Act enacted for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery. Where, after investigation into the complaint, the Lokayukta considers that the allegation against a public servant is *prima facie* true and makes a declaration and in case, the declaration is accepted by the Competent Authority, the public servant concerned, if he is a Chief Minister or any other Minister or Member of State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated his office, and, if an official, shall be deemed to have been kept under suspension, with effect from the date of the acceptance of the declaration. Learned senior counsel further contended that if, after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without

reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted. The Vigilance Commission is abolished, but all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission got transferred to the Lokayukta. The Bill became an Act with some modifications as the Karnataka Lokayukta Act, 1984. Thereby, he contended that the impugned Executive Order passed by the State Government under the provisions of Article 162 of the Constitution of India dated 14/03/2016 is contrary to the very object of the KL Act.

133. Learned senior counsel further refers to the provisions of Section 14 of the KL Act which states about the initiation of prosecution. If after investigation into any complaint the Lokayukta or an Upa Lokayukta is satisfied that the public servant has committed any criminal offence and should be prosecuted in a Court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then, notwithstanding anything contained in any law, such sanction

shall be deemed to have been granted by the appropriate authority on the date of such order or any other agency.

134. Learned senior counsel would further contend that Section 15(3) Lokayukta Act, 1984 contemplates that 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 services of any officer or investigating agency of the State Government; or any officer or investigating agency of the Central Government with the prior concurrence of the State Government. He specifically pointed out that Section 15(4) of the KL Act contemplates that the officers and other employees referred to in sub-section (1) shall be under the administrative and disciplinary control of the Lokayukta. He further contended that 'United Nations Convention against Corruption' is committed to pursue the policy of zero tolerance and the India has ratified it and this convention imposed number of obligations, some mandatory, some recommendatory, some optional etc.

135. Learned senior counsel would further refer to the provisions of Sections 11 and 12 of the Lokpal and Lokayuktas Act,

2013 with regard to enquiry wing and prosecution wing. He would further refer to the provisions Section 23 of the said Act which deals with power of Lokpal to grant sanction for initiating prosecution. Sub-section (2) of Section 23 contemplates that no prosecution under sub-section (*1*) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal. He also refers to the provisions of Section 24 of the Lokpal and Lokayuktas Act, which deals with action on investigation against public servant being Prime Minister, Ministers or Members of Parliament and the said section contemplates that where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the PC Act by a public servant referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (*1*) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority. He also refers to the provisions of Section 63 of the Lokpal and Lokayuktas Act, which relates to establishment of Lokayukta. The

said section contemplates that every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of the said Act.

136. Finally, learned senior counsel contended that the impugned Executive Order passed by the State is in utter violation of the provisions of Sections 11, 12, 15, 23 and 24 of the Lokpal and Lokayuktas Act. He would further contend that the powers of Lokayukta should be on par with the powers of Lokpal. Therefore, the Executive Order passed by the State Government under the provisions of Article 162 of the Constitution of India is contrary and bad in law. In support of the said contention, he relied upon the dictum of Hon'ble Supreme Court in the case of ***Ashwini Kumar Upadhyay vs. Union of India & others***[23] (paragraph-6).

[23] ***[W.P.(Civil).No. 684/2016 – SLP(C)No.22841/2016 dated 19/04/2018]***

137. Learned senior counsel further contended that the Lokpal Act enacted under Article 223 of the Constitution of India. The powers to prosecute was given by the Notification dated 06/02/1991 under the provisions of Section 17(c) of the PC Act and the same was withdrawn on 19/03/2016.

138. Learned senior counsel mainly drawn the attention of the Court to paragraph No.25 of the judgment in ***Rangaswamaiah*** [24]cited supra, wherein it is stated that " *if the State Government wants to entrust such extra work to the officers on deputation with the Lokayukta, if can certainly inform the Lokayukta of its desire to do so. If the Lokayukta agrees to such entrustment, there will be no problem. But if for good reasons the Lokayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the view point of the Lokayukta, then it will be open to the Lokayukta-having regard to the need to preserve its independence and effective functioning to take action*

[24] Supra at Footnote No.1

under section 15(4) (read with section 15(2)) and direct that these officers on deputation in its police wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lok Ayukta will avoid any such unpleasant situations but will act reasonably in their respective spheres."

139. Learned senior counsel also drawn the attention of the Court to paragraph 28 of the judgment in ***Rangaswamaiah***[25] cited supra, where it is stated that "if instead of deputation of police officers from the Government, any other solution can be found, that is a matter to be decided amicably between the State Government and the Lok Ayukta, - keeping in view the independence of the Lok Ayukta and its effective functioning as matters of utmost importance."

140. Learned senior counsel would further contend that with regard to the powers of the Lokayukta, the Hon'ble Supreme Court in the case of ***Institution of A.P. Lokayukta/Upa-Lokayukta,***

[25] Supra at Footnote No.1

A.P. & others .vs. T.Rama Subba Reddy and another[26] at paragraph No.17 has held as under:

> *"17. Before parting with these matters, it may be necessary to note that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in appropriate cases to the Upa-Lokayukta who is a District Judge of Grade 1 as recommended by the Chief Justice of the High Court, so that these statutory authorities can work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to cater to the need of the public at large with a view to seeing that public confidence in the working of public bodies remains intact. When such authorities consist of high judicial dignitaries it would be obvious that such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be*

[26] (***1997)9 SCC 42***

armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned. When we turn to Section 12, sub-section (3) of the Act, we find that once the report is forwarded by the Lokayukta or Upa-Lokayukta recommending the imposition of penalty of removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such public servant from his office and for making him ineligible for being elected to any office etc. Even if it may be lawful for the Government to act on such recommendation, it is nowhere provided that the Government will be bound to comply with the recommendation of the Lokayukta or Upa-Lokayukta. The question may arise in a properly-instituted public interest litigation as to whether the provision of Section 12(3) of the Act implies a power coupled with duty which can be enforced by a writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Upa-Lokayukta so that the public confidence in the working

of the system does not get eroded and these institutions can effectively justify their creation under the statute."

141. Learned senior counsel also relied upon the dictum of the Hon'ble Supreme Court in the case of ***Dr. Subramanian Swamy vs. Director, Central Bureau of Investigation & another***[27] wherein at paragraphs 58, 59, 67, 71, 74 it is held as under:

> ***"58.*** *It seems to us that classification which is made in Section 6-A on the basis of status in the Government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants*

[27] ***AIR 2014 SC 2140***

against whom there are allegations amounting to an offence under the PC Act, 1988.

59. *Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. In the words of Mathew, J. in Ambica Mills Ltd.72, "The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify..... A reasonable classification is one which includes all who are similarly situated and none who are not". Mathew, J., while explaining the meaning of the words, 'similarly situated' stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crime-doer. The provision thwarts an independent, unhampered,*

unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants.

67. *Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under PC Act, 1988 and inquiry/investigation into such allegations is to be carried out. Our answer is in the negative. The provision in Section 6-A, thus, impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI cannot even hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. The CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A*

itself is discriminatory. That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

71. *Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation.*

74. *Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country."*

142. In support of his contentions, learned senior counsel further relied upon the following judgments:

1. ***Prakash Singh & others vs. Union of India & others***[28] (paragraph Nos.19, 22, 25 and 29)

2. ***C. Rangaswamaiah and others vs. Karnataka Lokayukta and others***[29]**,** (paragraph Nos.19, 20, 25, 27 and 28)

3. ***Justice K.P.Mohapatra vs. Sri Ram Chandra Nayak & others***[30] **(**paragraph Nos.11 and 12)

Therefore, he sought to allow the writ petitions.

XIII. Arguments advanced by Sri Prabhuling K. Navadgi, learned Advocate General for the respondent/State

143. Sri Prabhuling K.Navadgi, learned Advocate General while justifying the impugned Government Order dated 14.3.2016 passed by the State Government constituting ACB, has contended that in order to decide the controversy raised between the parties, following issued would arise for consideration:

> *" I) Whether the impugned notification constituting ACB is in excess of the power conferred*

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[28] ***(2006)8 SCC 1***
[29] Supra Footnote No.1
[30] ***2002(8) SCC 1***

upon the Government under Article 162 of the Constitution of India?

a) Whether the constitution of ACB by way of executive instructions is impermissible- since according to the petitioners there are two enactments operating in the same field viz.. Karnataka Police Act, 1963 and Karnataka Lokayukta Act, 1984.

b) The parameters and general principles under Article 162 of the Constitution of India?

II] Whether the constitution of ACB violates the provisions of the Karnataka Lokayukta Act, 1984?

a) Whether it is impermissible for any jurisdictional police to investigate offences under the Prevention of Corruption Act, 1988- since it is an occupied field by the Karnataka Lokayukta Act, 1984?

b) Whether the present impugned notification impinges upon the autonomy, independence and functioning of the Lokayukta under the Karnataka Lokayukta Act, 1984?

III] Whether the impugned notification is in conflict with the Lokpal and Lokayuktas Act, 2013?

IV] Whether the impugned notification, which in turn constitutes vigilance advisory board or which provides for obtaining prior approval of the competent authority, is arbitrary, unguided and undermines the independence of ACB?

V] Tabulation of number of cases filed by the ACB after its constitution."

144. Learned Advocate General further contended that under Article 162 of the Constitution of India, the Executive can make any order under List - II or List III to the 7th Schedule of the Constitution of India. He draws the attention of the Court to the three enactments viz., Karnataka Police Act, 1963, KL Act and PC Act.

145. Learned Advocate General further contended that as per the provisions of Section 5 of the Karnataka Police Act, the Police Force shall consist of such number in the several ranks and have such organisation and such powers, functions and duties as the

Government may by general or special order determine, but all are working under the Police Act. ACB is created under Article 162 of the Constitution of India for the purpose of investigating the offences under the provisions of the PC Act.

146. Learned Advocate General further contended that the Executive Order passed by the State Government dated 14.3.2016 does not conflict any of the provisions either under the KL Act or the Police Act. In terms of the Executive order dated 14.3.2016, the ACB is working under the provisions of the PC Act as a separate Wing or authority and the same is nothing to do with the provisions of the KL Act. The powers and functions of the Lokayukta and ACB are entirely different. He further contended that under the provisions of Section 2(c) of PC Act, 'public servant' means persons falling under any of the 12 sub-clauses of the said section. In view of the provisions of Sections 7, 7A, 8, 9, 10, 13, 17 (a) and (b) and 23 of the P.C. Act, the ACB has to register, investigate and proceed in accordance with law. The investigation can be done by the ACB as contemplated under the provisions of the P.C. Act. He would further contend that the provisions of

Sections 17A and 19 of the P.C. Act clearly depict that Section 3 of the P.C. Act is a complete code in itself. The provisions of Section 2(s) of the Code of Criminal Procedure contemplates the in-charge Police Station. Under the provisions of Sections 9, 12, 13, 14 of the KL Act, ACB has no role and it is only the officers working in Lokayukta can investigate. He further contended that as on today, the Lokayukta has 747 Police Officers to investigate and work under the KL Act and on the other hand only 447 Police Officers are working in ACB.

147. Learned Advocate General further pointed out that with regard to Clause-5 of the Government Order dated 14.3.2016, the Chief Secretary, Government of Karnataka has filed the affidavit before this Court on 28.3.2021 stating that a notification shall be issued by the State Government with the following modifications to the Government Order dated 14.3.2016:

a) Clause 5 of the order dated 14.03.2016 shall be deleted.

b) The ADGP of the ACB will have security of tenure for a minimum period of two years. He will not be

transferred by the government before the completion of his tenure of two years unless he is:

i) convicted by a court of law in a criminal case or where charges have been framed against him by a court in a case involving corruption or offences which amounts to moral turpitude; or

ii) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as ADGP; or

iii) appointed to any other post with his consent; or

iv) imposed punishment of dismissal, removal or compulsory retirement from service or of reduction to a lower post, awarded under the provisions of the All India Services (Discipline and Appeal) Rules, 1969 or any other relevant rule; or

v) under suspension from service; or

vi) When a prima facie case of misconduct or gross negligence is established after a preliminary enquiry.

148. Though an affidavit filed, learned Advocate General fairly submits that no such modification notification has been issued as on today.

149. Learned Advocate General further contended that the Hon'ble Supreme Court in the case of ***C. Rangaswamaiah***[31] ***at*** paragraph-6 observed that even after deputation, there could be a "dual" role on the part of the Police Officers in their functions, namely, functions under the Lokayukta and functions in discharge of the duties entrusted to them by the State of Karnataka, under the PC Act. Further, the notification issued under Section 17 of the PC Act designating all Inspectors on deputation in the Lokayukta as officers competent for purposes of Section 17 of the PC Act and the notification issued under Section 2(s) of the Code of Criminal procedure designating all offices of the Lokayukta in the State as Police stations, indicated that these Police officers though on deputation, were entrusted with these powers of investigation, by virtue of statutory powers.

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[31] Supra at Footnote No.1

150. Learned Advocate General further contended that by earlier notifications, in exercise of the powers under the provisions of Section 17 of the PC Act and Section 2(s) of the Code of Criminal Procedure, extra power was assigned to Lokayukta and after came to know that there is extra burden, the same has been withdrawn. Once the State has power to grant, it has power to withdraw also, in view of the provisions of Section 21 of the General Clauses Act.

151. Learned Advocate General contended that the petitioners are under wrong notion that by creating ACB, the powers entrusted to Lokayukta has been withdrawn. The powers of the Lokayukta under the provisions of KL Act have not been disturbed. The ACB is working under the provisions of the PC Act as a separate Wing or authority and the same is nothing to do with the institution of Lokayukta, which is working under the provisions of the KL Act and no powers of Lokayukta have been diluted as contended by the learned counsel for the petitioners. Learned Advocate General contended that the provisions of KL Act and the provisions of PC Act are distinct.

152. Learned Advocate General also contended that the ACB is a separate wing under the Karnataka Police Act to discharge the work assigned to it. The executive Government Order dated 14.03.2016 is a policy of the State Government and cannot be interfered with by this Court while exercising writ jurisdiction under Article 226 of the Constitution of India. The provisions of Section 4 of the Karnataka Police Act, 1963 contemplates that, the superintendence of the Police Force throughout the State vests in and is exercisable by the Government and any control, direction or supervision exercisable by any officer over any member of the Police Force shall be exercisable subject to such superintendence(Government).

153. Learned Advocate General further contended that Entry-2 of List II to the 7th Schedule of the Constitution of India contemplates Police (including railway and village police) subject to the provisions of entry 2A of List I. It is brought to the notice of the Court that there are 16 States in the country where both ACB and Lokayuktha are in existence.

Sl. No.	State	Provisions of PC Act 1988- investigation by (a) Name of Institution (b) Head of the Institution (c) Administrative control	Lokayukta	Jurisdiction of Lokayukta
1	Karnataka	(a) Anti Corruption Bureau (b) ADGP (c) DPAR	In existence	Karnataka Lokayukta Act, 1984
2	Tamil Nadu	(a) Directorate of vigilance and anti corruption (DVAC) (b) Vigilance Commissioner (c) DPAR	In existence	Tamil Nadu Lokayukta and deputy Lokayukta Act , 2018
3	Maharashtra	(a) Maharashtra State Anti Corruption & Prohibilition intelligence Bureau (b) General Director (c) Home Department	In existence	Maharashtra Lokayukta & Upalokayukta Act,1971
4	Telangana	(a) Anti-Corruption Bureau (b) DGP (C) General administration Department	In existence	Lokayukta Act
5	Punjab	(a) Vigilance Bureau, Punjab (b) ADGP/Chief Director (C) Government	In existence	Lokayukta Act
6	Odisha	(a) Vigilance Directorate (b) DG & IGP, Director of Vigilance (C) General Administrative Department of Govt.	In existence	Odisha Lokayukta Act 2015
7	Rajasthan	(a) Anti Corruption Bureau (b) Director General (c) Government	In existence	Lokayukta Act
8	Jharkhand	(a) Anti Corruption Bureau (b) Director General (c) Government vigilance Department	In existence	Jharkhand Lokayukta Act 2001
9	Kerala	(a) Vigilance and Anti-Corruption Bureau. (b) ADGP/DGP/Director of Vigilance (C) Reporting to Ministry of Vigilance and Home	Not In existence	
10	Gujarath	(a) Anti Corruption Bureau (b) ADGP (c) Home and Civil Supplies Department	In existence	Gujarath Lokayukta Act
11	Goa	(a) Directorate of Vigilance (b) Director (c) Government	In existence	Goa Lokayukta Act -2011

12	Assam	(a) Vigilance and Anti Corruption (b) ADGP (c) Government	In existence	Assam Lokayukta Act & Upalokayukta Act - 1985
13	Himachal Pradesh	(a) State Vigilance and Anti Corruption Bureau (b) ADGP (c) Government	In existence	Himachal Pradesh Lokayukta Act - 2014
14	Uttar Pradesh	(a) Anti Corruption Organisation (b) ADGP (c) Government	In existence	Uttar Pradesh Lokayukta Act
15	Nagaland	(a) State Vigilance Commission (b) Vigilance Commissioner (c) Government	In existence	Nagaland Lokayukta Act - 2017
16	Sikkim	(a) Sikkim Vigilance Police Force (b) ADGP (c) Government	In existence	Sikkim Lokayukta And Deputy Lokayukta Act-2014

154. Learned Advocate General further contended that the State Government issued the Government Order dated 14.3.2016 constituting ACB, in exercise of powers under Article 162 of the Constitution of India and such policy decision cannot be interfered by this Court. He would further contend that there are two types of writ petitions before this Court. One filed in the public interest and the other in personal interest and the petitioners have not made out any case to interfere with the executive order passed by the State Government and sought to dismiss the writ petitions.

155. In support of his contentions, learned Advocate General relied upon the following judgments:

1. *C. Rangaswamaiah -vs- Karnataka Lokayukta*[32] (paragraphs 7,8,15, 23, 24 and 29)

2. Vineet Narain and others vs. Union of India[33] and another (paragraphs 40, 41 and 42)

3. *Municipal Council, Neemuch v. Mahadeo Real Estate*[34], (paragraph 13).

4. *State of Karnataka and others v. Kempaiah,*[35] (paragraph 6 and 8).

XIV. Points for determination

156. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in these writ petitions are:

1. Whether the State Government is justified in constituting Anti Corruption Bureau by an executive Government Order dated 14.3.2016, in exercise of the powers under Article 162 of

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[32] AIR 1998 SC 2496
[33] (1998)1SCC 226
[34] *(2019)10 SCC 738*
[35] *(1998)6 SCC 103*

the Constitution of India, when the Karnataka Lokayukta Act, 1984 has occupied the field to eradicate the corruption in the State of Karnataka, in the facts and circumstances of the present case?

2. *Whether the State Government is justified in issuing the impugned notifications dated 19.3.2016 superseding the earlier notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to investigate under the provisions of Prevention of Corruption Act,1988 and had declared the offices of Police Wing of the Karnataka Lokayukta as Police Stations under the provisions of Section 2(s) of the Code of Criminal Procedure ?*

157. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused all the papers including the original records carefully.

XV. <u>Consideration</u>

158. Before proceeding to the merits of the case, it is relevant to refer to the statement of objects and reasons of the

Karnataka Lokayukta Act, 1984 and certain important sections of the said Act.

159. The Legislature - State Government on the basis of the recommendations of the Administrative Reforms Commission enacted the KL Act w.e.f 15th January 1986 for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in the administration machinery and abolished the Vigilance Commission, but all inquiries, investigations and other disciplinary proceedings pending before the Vigilance Commission transferred to Lokayukta.

160. As per sub-section (2) of Section 2 of the KL Act, 'Allegation' in relation to a public servant means any affirmation that such public servant -

> *(a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;*

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

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

(d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs;

161. As per sub-section (5) of Section 2 of the KL Act, 'corruption' includes anything made punishable under Chapter IX of the Indian Penal Code or under the PC Act.

162. Sub-section (10) of Section 2 of the KL Act defines "Maladministration", which means *action taken or purporting to have been taken in the exercise of administrative functions in any case where,—*

(a) such action or the administrative procedure or practice governing such action is unreasonable, unjust,

oppressive or improperly discriminatory; or

(b) there has been wilful negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;

163. As per sub-section (12) of Section 2 of the KL Act, 'public servant' means a person who is or was at any time -

(a) the Chief Minister;

(b) a Minister;

(c) a member of the State Legislature;

(d) a Government Servant;

(e) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State of Karnataka or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section 617 of the Companies Act, 1956 and such other corporations or boards as the State government may, having regard to its

financial interest in such corporations or boards, by notification, from time to time, specify;

(f) member of a Committee or Board, statutory or non-statutory, constituted by the Government; and

(g) a person in the service or pay of,—

(i) a local authority in the State of Karnataka;

(ii) a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other board or corporation as the State Government may having regard to its financial interest therein, by notification from time to time, specify;

(iii) a company registered under the Companies Act, 1956, in which not less than fifty one per cent of the paid up share capital is held by the State Government, or any company which is a subsidiary of such company;

(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is

subject to the control of the State Government and which is notified in this behalf in the official Gazette;

(v) a co-operative society;

(vi) a university;

Explanation.- In this clause, "Co-operative Society" means a co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959, and "university" means a university established or deemed to be established by or under any law of the State Legislature.

164. As per Sub-section (13) of Section 2 of the KL Act, "Secretary" means *the Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Secretary, or a Secretary-II to the Government of Karnataka and includes a Special Secretary, an Additional Secretary and a Joint Secretary.*

165. The provisions of Section 3 of the KL Act contemplates appointment of Lokayukta and Upa-Lokayukta, which reads as under:

(1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upalokayukta or Upalokayuktas.

(2) (a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.

(b) A person to be appointed as an Upalokayukta shall be a person who has held the office of a judge of a High Court for not less than five years and shall be appointed on the advice tendered by

the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.

(3) A person appointed as the Lokayukta or an Upalokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule.

166. A careful reading of the above provisions make it clear that a person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years *and shall be appointed on the advice tendered by the Chief Minister in consultation with the -*

a) Chief Justice of the High Court of Karnataka,

b) the Chairman, Karnataka Legislative Council,

c) the Speaker, Karnataka Legislative Assembly,

d) the Leader of the Opposition in the Karnataka Legislative Council and

e) the Leader of the Opposition in the Karnataka Legislative Assembly.

167. The above provisions also make it clear that a person to be appointed as an Upa-Lokayukta shall be a person who has held the office of a judge of a High Court for not less than five years and shall be appointed on the advice tendered by the Chief Minister in consultation with -

i) the Chief Justice of the High Court of Karnataka,

ii) the Chairman, Karnataka Legislative Council,

iii) the Speaker, Karnataka Legislative Assembly,

iv) the Leader of the Opposition in the Karnataka Legislative Council; and

v) the Leader of the Opposition in the Karnataka Legislative Assembly.

168. In view of the above, it is clear that while appointment of either Lokayukta or Upa-Lokayukta, the procedure as contemplated under the provisions of Sections 3(2)(a) and 3(2)(b) of the KL Act has been followed meticulously from the date of enactment of the KL Act i.e. from 15.1.1986 till today.

169. *The provisions of Section 4 of the KL Act contemplates that the Lokayukta or Upalokayukta shall not be a Member of the Parliament or be a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lokayukta or Upalokayukta) or be connected with any political party or carry on any business or practice any profession and accordingly, before he enters upon his office, a person appointed as the Lokayukta or an Upalokayukta shall,—*

(a) if he is a Member of the Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, suspend practice of such profession.

170. Sub-section (1) of Section - 5 of the KL Act, contemplates that a person appointed as the Lokayukta or Upaloakayukta shall hold office for a term of five years from the date on which he enters upon his office, provided that -

(a) the Lokayukta or an Upalokayukta may, by writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta or an Upalokayukta may be removed from office in the manner provided in Section 6.

171. Sub-section (2) of Section 5 of the KL Act contemplates that on ceasing to hold office, the Lokayukta or an Upalokayukta shall be ineligible for further employment to any office of profit under the Government of Karnataka or in any authority,

corporation, company, society or university referred to in item (g) of clause (12) of Section 2 of the KL Act.

172. The provisions of Section 9 of the KL Act deals with provisions relating to complaints and investigations. Section 10 of the KL Act contemplates issue of search warrant; Section 12 of the KL Act contemplates reports of Lokayukta; Section 14 of the KL Act contemplates initiation of prosecution; and Section 15 of the KL Act relates to the staff of Lokayukta. Sub-section (3) of Section 15 of the KL Act contemplates that w*ithout prejudice to the provisions of sub-section (1), the Lokayukta or an Upa-Lokayukta may for the purpose of conducting investigations under this Act utilise the services of,—*

> *(a) any officer or investigating agency of the State Government; or*
>
> *(aa) any officer or investigating agency of the Central Government with the prior concurrence of the Central Government and State Government;*
>
> *(b) any person or any other agency.*

173. By careful perusal of the provisions of the KL Act stated supra and other provisions, it clearly depict that the scheme ensures preservation of the right, interest and dignity of the Lokayukta or Upalokayukta and is commensurate with the dignity of all the institutions and functionaries involved in the process. It also excludes the needless meddling in the process by busy bodies confining the participation in it, to the Members of the Legislative Assembly or Council, Speaker/Chairman of the Legislature and the Chief Justice to the High Court of Karnataka, the highest judicial functionary in the State apart from the Lokayukta. If the allegations are permitted to be made only in the prescribed manner, justify an inquiry into the conduct of the Upalokayukta. As the Office in question is a public office as public is vitally interested, the process prescribed in the Act is to be complied with expeditiously, which is also both in public interest as well as in the interest of the incumbent of the office.

174. During the year 2011, the Lokayukta while exercising powers under the provisions of KL Act and PC Act has made the Hon'ble Chief Minister and the Hon'ble Minister, who were in power

at the relevant point of time to resign and has send them to prison by creating history in the State of Karnataka and has become a model to the entire country. It is also not in dispute that at one point of time, since the son of the Lokayukta was involved in corruption charges, the Lokayukta was made to resign and that has become possible, in view of the provisions of the KL Act and PC Act. Such was the independence of the Lokayukta and its effective functioning in the matters of utmost importance from the date of the inception of the Lokayukta in the year 1986 till 14.3.2016, the date of passing the impugned executive order under Article 162 of the Constitution of India i.e., for more than three decades.

175. When the Karnataka Lokayukta Act was assented by the Hon'ble president of India that would prevail and the field occupied cannot be eroded and the Government cannot trench upon the occupied field. It is nothing, but transgression by an executive administrative order to usurp the powers of Lokayukta. The very Constitution of ACB by the Government is to shield the Corrupt politicians, Ministers, and the officers from the watchful eyes of the Lokayukta and that Government is weakening the institution of

Lokayukta to protect these persons from prosecution, inter alia under the provisions of the P.C. Act.

176. As already stated supra, the KL Act was enacted for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery. In order to ensure effective enforcement of the PC Act, in exercise of the powers conferred by the first proviso to Section 17 of the PC Act, the State Government issued the notification dated 6.2.1991 authorizing all the Inspectors of Police, Office of the Karnataka Lokayukta for the purpose of the investigation.

177. The provisions of Section 17 of the Prevention of Corruption Act reads as under:

> *17. Persons authorised to investigate.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—*

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of Section 13 shall not be

investigated without the order of a police officer not below the rank of a Superintendent of Police.

178. It is also not in dispute that the state Government vide notifications dated 8.5.2002 and 5.12.2002 declared the offices of the Police Inspectors of Karnataka Lokayukta as Police Stations under the provisions of Clause (s) of Section 2 of the Code of Criminal procedure.

179. Sub-Clause (s) of Section -2 of the Code of Criminal Procedure reads as under:

2(s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

180. When things stood thus, the Director General and Inspector General of Police ('DG & IG' for short) by a letter dated 3.2.2016 addressed to the State Government, has proposed the creation of an Anti Corruption Bureau in the State, due to the necessity of modifications required so as to enforce PC Act, keeping in perspective the judgment of the Hon'ble Supreme Court in the

case of ***C. Rangaswamaiah***[36]. The DG & IG has informed that the duties of the officers of the Lokayukta Police Wing can be classified into two categories viz.,

1) As per Section 15(1) KL Act, the Police Wing is to primarily assist the Lokayukta in enforcing the KL Act.
2) The Government of Karnataka, through its many orders, has declared the offices of the Police Inspectors of Lokayukta as Police Stations; the Police officers can investigate the cases registered under the PC Act. Since such cases are out of jurisdiction of Lokayukta, the Government has issued several orders regarding the same.

Thereby, the State Government proceeded to pass the impugned executive order dated 14.03.2016 under the provisions of Article 162 of the Constitution of India.

181. A careful perusal of the impugned Government Order dated 14.3.2016 clearly depicts that the State Government mainly

[36] Supra at Footnote No.1

based on the recommendations of the DG & IG letter dated 3.2.2016, has constituted ACB on the following grounds:

a) In order to avoid dual duties by the Lokayukta Police.

b) There are no approved systems to supervise the cases arising from investigation of the Police Wing Officers acting under the provisions of P.C. Act.

c) The DG & IG recommends to withdraw the previous Government notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorised the Lokayukta Police with powers to investigate and had declared the offices of Police Inspectors of Lokayukta as Police Stations.

d) The DG & IG has proposed to limit the current Police wing to assist only in the effective enforcement of the KL Act.

e) The DG & IG requested to form ACB and to provide them with the powers to investigate in an independent manner so as to independently investigate the cases referred to by the Head of the Police and the Government.

f) The independent nature of power of the Police Wing of the KL Act as held by the Hon'ble Supreme Court in the case of ***C. Rangaswamaiah***[37].

g) In view of the interim order dated 8.2.2016 made in Criminal Petition No.5378/2014 and connected maters

h) To reduce the burden of the Lokayukta Police.

182. On meticulous perusal of the aforesaid reasons, it is not forthcoming as to why the DG & IG recommended to withdraw the notifications dated 6.2.1991 8.5.2002 and 5.12.2002 that had given the Lokayukta Police, the powers to investigate under the provisions of PC Act and had declared the offices of Police Inspectors of Lokayukta as Police Stations under the provisions of Section 2(s) of the Code of Criminal Procedure. It is also stated in the impugned Government Order that this Court in Criminal Petition No.5378/2014 and connected matters has further directed the State Government to establish vigilance cells in the same lines as those established by the Central Government. The impugned Government Order merely depicts that the Government has realized

[37] Supra at Foot Note No.1

the necessity of a strong and effective vigilance system, in addition to Karnataka Lokayukta to improve the quality of administration and created an ACB, thereby indirectly diluted the independent effective functioning of the Karnataka Lokayukta, which is a matter of utmost importance. "If really the State Government wanted to maintain the independence of the Lokayukta", it could have strengthened the hands of Lokayukta by giving more independent power or allowed the ACB to work under the Lokayukta to eradicate the corruption, favouritism and official indiscipline in administrative machinery in the entire state, in the interest of Government and in the interest of general public at large. Though the KL Act prescribes to take action against any public servant as contemplated under Section 2(12) of the KL Act, it is not forthcoming in the present impugned executive order as to who is the authority to take action, in case DG & IG involved in corruption, favouritism and official indiscipline in administration machinery. So also in case the Hon'ble Chief Minister, a Minister, a Member of the State Legislature are involved or in case 'Secretary' i.e., Chief Secretary, an Addl. Chief Secretary etc., are involved, there is no

power or authority in the impugned executive order to take action against such persons.

183. On careful perusal of the impugned executive Government Order, it also clearly depicts that the "Hon'ble Chief Minister is the supreme" and absolutely there is no independent application of mind by the State Government before passing the impugned executive order and the same is based only on the recommendation made by the DG & IG, thereby the executive order passed by the State Government cannot be sustained.

184. The executive order passed by the State Government constituting ACB is parallel to the institution of Karnataka Lokayukta and absolutely no reasons are assigned except stating that Government has realized the necessity of a strong and effective vigilance system in addition to Lokayukta. It is not the case of the State Government that the Karnataka Lokayukta Police Wing, which is working under the control of the Lokayukta under the provisions of Section 15(3) of the KL Act not effectively implementing the provisions of the PC Act nor it is the case of the Government that any general public lodged complaints against the

functions of the Lokayukta or its Police Wing. It is also not the case of the State Government in the impugned executive order that the Lokayukta or an Upa-Lokayukta expressed any inability to discharge their functions under the provisions of PC Act or expressed that it is an additional burden. In the absence of the same, it is the State Government which has passed the impugned executive order, in exercise of the powers under Article 162 of the Constitution of India mainly based on the recommendation made by the DG & IG, without independent application of mind. Thereby, the impugned order erroneous and contrary to the provisions of K.L. Act.

185. The State Government while passing the impugned executive orders, has ignored the fact that Lokayukta and Upa-Lokayukta are appointed under the provisions of Section 3 of the KL Act. That is, their appointment is by a consultation process with all the stake holders i.e, they are appointed on the advice tendered by the Chief Minister in consultation with the -

- Chief Justice of the High Court of Karnataka;
- the Chairman, Karnataka Legislative Council;

- the Speaker, Karnataka Legislative Assembly;
- the Leader of the Opposition in the Karnataka Legislative Council; and
- the Leader of the Opposition in the Karnataka Legislative Assembly.

186. It is not in dispute that when the KL Act was enacted in the year 1984, on the recommendation made by the Administrative Reforms Commission for the purpose of improving the standards of public administration, by looking into the complaints against administrative actions, including the cases of corruption, favouritsm and official indiscipline in administration machinery, there was no necessity for the State Government to constitute ACB parallel to the institution of Lokayukta, that too when a person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court or a person who has held the office of a Judge of a High Court for not less than ten years and a person to be appointed as an Upa-Lokayukta shall be a person who has held the office of a Judge of a High Court for not less than five years.

187. It is not the case of the State Government that ACB is a powerful independent body headed by any former Supreme Court Judge, in order to curb corruption, favouritism and official indiscipline in administration machinery, in addition to Lokayukta. If really the Government intends to curb corruption, favouritism and official indiscipline in administration machinery, the ACB should have been allowed to work under the control of Lokayukta as contemplated under the provisions of Section 15(3) of the KL Act instead of Hon'ble Chief Minister as stated in the executive order. Therefore, there is more scope in the executive order for the political influence and the Hon'ble Chief Minister in power can misuse ACB to control his opponents within his party or the opposite parties. The conditions of the executive Government Order clearly depict that there is a possibility to favour the party in power or the party men.

188. It is most unfortunate that even after lapse of 75 years of Independence, no political party in the country is willing or dare enough to allow independent authority like the Lokayukta to discharge its duties in a transparent manner in the interest of the

general public at large. Very strangely, a separate Anti Corruption Bureau is created with the following designations:

Sl. No.	Designation of posts	No. of posts
1	Addl. Director General of Police (ADGP)	01
2	Inspector General of Police (IGP)	01
3	Superintendent of Police (SP)	10
4	Deputy Superintendent of Police (DySP)	35
5	Police Inspectors (PI)	75
6	Head Constables/Police Constables (HC/PC)	200

189. In order to supervise the Vigilance System in the State, a Vigilance Advisory Board has been created consisting of -

1	Chief Secretary	President of Board
2	Addl. Chief Secretary, Internal Administration	Member
3	Principal Secretary, Department of Finance	Member
3	Principal Secretary, DPAR	Member
4	D.G. & I.G.P. (who recommended to constitute ACB for the Government)	Member
5	Two eminent personalities experienced and experts in the field of Administration and Public issues.	Member
6	Secretary, Vigilance Wing of DPAR	Member Secretary

190. The ACB and the Vigilance Advisory Board are working under the direct administrative control of the State Government and they cannot act independently as the "Final authority is the Hon'ble Chief Minister". In fact the executive order dated 14.3.2016 clearly depicts that in case the Vigilance Advisory Board based on sufficient prima facie reasons, decides to refer the investigation to be conducted by an outside agency/organization, such matter after approval of the Chief Minister may be handed over to the Criminal Investigation Department (C.I.D). Therefore, one cannot expect the Vigilance Advisory Board functions independently, since even to refer the investigation to be conducted by an outside agency/organization like C.I.D., approval of the Chief Minister must be obtained.

191. Further, the State Government while withdrawing the statutory notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that had given the Lokayukta Police the powers to investigate under the P.C. Act and had declared the offices of Police Inspectors of Karnataka Lokayukta as Police Stations under the provisions of Section 2(s) of the Code of Criminal Procedure, had not consulted

the Lokayukta. Without consultation of Lokayukta, statutory notifications cannot be withdrawn by the executive order of the State Government. Absolutely no independent reasons are assigned by the State Government in the executive order to constitute ACB parallel to the Lokayukta and Upa-Lokayukta, who are appointed under the provisions of the KL Act. The executive order dated 14.3.2016 depicts that the State Government after examining the recommendation made by the DG & IG, keeping in perspective the judgment of the Hon'ble Supreme Court in the case of *C. Rangaswamaiah,* has created the ACB and classified the duties of the officers of the Karnataka Police Wing into two categories. The same is an erroneous understanding of the dictum of the Hon'ble Supreme Court.

192. In the case of ***C. Rangaswamaiah***[38]**,** the Hon'ble Supreme Court observed that "*even after deputation, there could be a "dual" role on the part of the police officers in their functions, namely, functions under the Lokayukta and functions in discharge of the duties entrusted to them by the State of Karnataka under the*

[38] Supra at Foot No.1

Prevention of Corruption Act, 1988". The Hon'ble Supreme Court further observed that "*though the Director General of Police newly attached w.e.f 21.11.1992 to the Bureau of Investigation of the Lokayukta by way of an administrative order of the Government was to be in control and supervision of the police staff in the Lokayukta and though the said post of Director General of Police was not - by appropriate amendment of the recruitment rules of the Lokayukta staff - included in the cadre of posts in the Police Wing of the Lokayukta - still it had to be taken that the said Director General of Police was under the administrative and disciplinary control of the Lokayukta*". The Hon'ble Supreme Court also observed that "*dual functions could be performed by these officers in relation to two Acts, namely Prevention of Corruption Act and the Lokayukta Act and such a situation of dual control could not be said to be alien to criminal jurisprudence concerning investigation of crimes. In other words, these officers who were of the requisite rank as per Section 17 of the Prevention of Corruption Act, 1988 could not be said to be incompetent to investigate into offences assigned to them under that Act by the competent authority by virtue of statutory powers under Section 17 thereof or to that*

extent not excluded by the Lokayukta. The Division Bench, therefore, held that the further investigation against the petitioners could be continued through the Police Officers on deputation with the Lokayukta". The Hon'ble Supreme Court further observed that "*the entrustment being under statutory powers of the State traceable to Section 17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. May be, if it is done without consulting the Lokayukta and obtaining its consent, it can only be treated as an issue between the State and the Lokayukta. Such entrustment of duties has statutory backing, and obviously also the tacit approval of the Lokayukta.*" The Hon'ble Supreme Court further observed that "*having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) read with Section 15(2) and direct that these officers on deputation in its Police Wing will not take up any such work entrusted to them by the State Government*". The Hon'ble Supreme Court further observed that "*if instead of deputation of police officers from the Government, any other solution can be found, that is a matter to be decided amicably between the State Government and the*

Lokayukta, keeping in view the independence of the Lokayukta and its effective functioning as matters of utmost importance".

193. In view of the above, the judgment in the case of ***C. Rangaswamaiah*** decided on 21.7.1998 will no way assist the State Government to constitute separate ACB for the first time on 14.3.2016, after lapse of nearly 18 years of the said judgment and the State Government erroneously interpreted the judgment of the Hon'ble Supreme Court in the impugned order. On that ground also, the impugned executive order cannot be sustained.

194. It is relevant to consider the provisions of Article 162 of the constitution of India, on which basis the impugned executive order came to be issued, which reads as under:

> *"162. Extent of executive power of State.— Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:*
>
> *Provided that in any matter with respect to which the Legislature of a State and Parliament have power to*

make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

195. A plain reading of Article 162 of the Constitution of India makes it clear that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws, provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. When statutory powers of the Lokayukta under the KL Act and the Rules thereof govern the field for eradication of corruption, the executive order passed by the State Government is contrary to the provisions of the KL Act and creation of ACB parallel to the institution of Lokayukta is bad in law. Executive instructions can only fill the gaps not covered by rules and cannot be in

derogation of statutory rules. The executive power of the State can be exercised only on two occasions –

a) if any law or Act have been made by the State Legislature conferring any functions or any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of the executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him.

b) vesting the Governor with the executive power of the State Government does not create any embargo for the Legislature of the State from making any and or enacting any law conferring functions on any authority subordinate to the Governor.

196. In the present case, admittedly the KL Act has been in force from 15th January 1986 for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery, thereby the State Government has exceeded in power to issue

executive order by constituting ACB parallel to the institution of Lokayukta. The impugned executive order issued by the State Government is to defunct the *Lokayukta* and it has virtually defeated the very purpose for which the institution of Lokayukta has been constituted The impugned executive order only created a parallel body to the institution of Lokayukta to achieve the same purpose with lesser intent. Therefore, the Government Order constituting the ACB is unsustainable, suffers from *malafides* and legal infirmities. The impugned executive order passed by the State Government has indirectly diluted the powers of the *Lokayukta* and the ACB cannot function either as a parallel body or an alternate body or substitute the Lokayukta. Therefore, the Government Order constituting the ACB for a function already being conferred on the Lokayukta, is impermissible in law.

197. It is high time for the State Government to take necessary steps to ensure to reform the Lokayukta and to amend the provisions of the K.L. Act and abolish the ACB and the recommendation of the Lokayukta or Upa-Lokayukta should be binding on the Government. It is for the Government to take

proper steps to reform at the stage of the recruitment itself While appointing police force in the Karnataka Police Department.

198. After the enactment of KL Act, Lokayukta and Upa-Lokayukta, in exercise of their powers used to register the criminal cases against the erring public servants prior to passing of the impugned executive order. In fact, the term, 'public servant' is defined under the provisions of Section 2(12) of the KL Act.

199. The statement showing the statistics relating to criminal cases conducted against MLAs, MPs, Ministers, BBMP Corporators etc., by the Lokayukta is as under:

Sl. No.	Name and their position Sriyuths	Status of the case						
		Under Investigation	Final Report submitted	PSO awaited	B/C report submitted	Charged Sheeted	Other disposal	Cr.No.
1	Katta Subramanya Naidu, and others					Yes		57/2010
2	B.S. Yediyurappa,					Yes		33/2011
3	B.S. Yediyurappa, and others					Yes		48/2011
4	R. Ashok, And another				Yes			51/2011
5	Murugesh R. Nirani, and others					Yes		53/2011
6	S. Munirajı and others					Yes		55/2011
7	B.S. Yediyurappa and others					Yes		60/2011
8	S.R. Vishwanath and others					Yes		66/2011
9	C.T. Ravi, former MLA					Yes		70/2011
10	H.D. Kumaraswamy,					Yes		02/2012

12	Krishnappa, former MLA				Yes			06/2012
13	M.S. Somalingappa,					Yes		19/2012
14	D.K. Shivakumar,					Yes		26/2012
15	E. Krishnappa,					Yes		34/2012
16	N. Dharamsingh,				Yes			36/2012
17	M. Srinivasa, former						Yes	37/2012
18	Murugesh R. Nirani,					Yes		49/2012
19	H.D. Kumaraswamy,				Yes			60/2012
20	V. Somanna, former				Yes			63/2012
21	Roshan Baig, former				Yes			66/2012
22	Gowramma,					Yes		82/2012
23	H.D. Devegowda,					Yes		84/2012
24	Smt. Awwai,					Yes		87/2012
25	Aravind Limbavalli,						Yes	89/2012
26	Baburao Chinchanasooru,	Yes						92/2012
27	Somashekara Reddy,		Yes					09/2013
28	B. Govindaraju,				Yes			38/2013
29	Qumrul Islam,	Yes						57/2014
30	R.V. Deshpande,				Yes			11/2015
31	Munirathna,				Yes			25/2015
32	B.S. Yediyurappa,	Yes						27/2015
33	B.S. Yeidiyurappa,						Yes	38/2015
34	B.S. Yeidiyurappa,						Yes	39/2015
35	B.S. Yeidiyurappa,						Yes	40/2015
36	B.S. Yeidiyurappa						Yes	42/2015
37	B.S. Yeidiyurappa						Yes	43/2015
38	B.S. Yeidiyurappa						Yes	44/2015
39	B.S. Yeidiyurappa						Yes	45/2015
40	B.S. Yeidiyurappa						Yes	46/2015
41	B.S. Yeidiyurappa						Yes	47/2015
42	B.S. Yeidiyurappa						Yes	48/2015
43	B.S. Yeidiyurappa						Yes	49/2015
44	B.S. Yeidiyurappa						Yes	50/2015
45	B.S. Yeidiyurappa						Yes	52/2015

46	B.S. Yeidiyurappa						Yes	53/2015
47	B.S. Yeidiyurappa						Yes	54/2015
48	B.S. Yeidiyurappa	Yes						55/2015
49	B.S. Yeidiyurappa	Yes						76/2015
50	Gali Janardhan Reddy	Yes						79/2015
51	Veeranna Chandrashekaraiah Charanthimath							06/2012
52	Abhay Kumar Patil	Case transferred to ACB						14/2012
53	Sanjay B. Patil					Yes		3/2014
54	B. Sriramulu					Yes		09/2013
55	C.T. Ravi				Yes			06/2014
56	N.Y. Gopalakrishna				Yes			09/2013
57	Madal Virupakshappa				Yes			28/2013
58	Renukacharya						Yes	05/2015
59	Renukacharya	Yes						06/2015
60	Nehuru C. Olekar				Yes			12/2011
61	Manohar H. Tahasildar				Yes			09/2013
62	Raghunath Vishwanath Deshpande							02/2014
63	Varthur Prakash				Yes			02/2015
64	Varthur Prakash	Yes						03/2015
65	Papareddy						Yes	01/2017
66	Suresh Gowda				Yes			04/2015
67	Dr. M.R. Hulinaykar				Yes			10/2015

200. The statement showing the statistics relating to criminal cases conducted against IAS Officers by the Lokayukta is as under:

Sl. No.	Name	Status of the case						
		Under Investigation	Final Report submitted	PSO awaited	B/C report submitted	Charged Sheeted	Other disposal	Cr.No.
1	Neeraj Rajkumar				Yes			26/1989
2	J. Alexander				Yes			14/1990

3	B.S. Patil				Yes			23/2019
4	Maheshwar				Yes			52/1994
5	Ramamurthy					Yes		47/1998
6	I.R. Perumal					Yes		02/2000
7	N. Vijayabhaskar					Yes		06/2002
8	I.S.N. Raju					Yes		09/2004
9	Baburao	Yes						14/2008
10	S. Lakshman Singh					Yes		23/2008
11	I.D.S. Ashwath						Yes	63/2011
12	Mohammad A Sadiq					Yes		72/2011
13	M.V. Veerabhadraiah				Yes			73/2011
14	Siddaiah					Yes		74/2011
15	Siddaiah Bharath Lal Meena Subhi Harisingh Veerabhadraiah					Yes		18/2012
16	Shamla Iqbal						Yes	20/2012
17	Shamla Iqbal					Yes		25/2012
18	Syed Zameer Pasha					Yes		53/2012
19	Veerabhadraiah						Yes	57/2012
20	N.K. Ayappa					Yes		80/2012
21	N.K. Ayappa					Yes		85/2012
22	Bharath Lal Meena						Yes	89/2012
23	Rajaneesh Goel	Yes						04/2013
24	Ramesh Bindurao Zalki				Yes			63/2013
25	D.M. Vijayashankar				Yes			23/2015
26	Kapil Mohan				Yes			64/2015
27	Rajneesh Goel				Yes			10/2012
28	N.S. Channappagowda				Yes			11/1994

201. The statement showing the statistics relating to criminal cases conducted against IPS officers by the Lokayukta is as under:

Sl. No.	Name and their position	Status of the case						
		Under Investigation	Final Report submitted	PSO awaited	B/C report submitted	Charged Sheeted	Other disposal	Cr.No.
1	Javadagi,, DIG					Yes		16/2003
2	Srinivas Yer					Yes		38/2007
3	M.C. Narayana gowda					Yes		07/2009
4	Dr. Krishnamurthy					Yes		95/2012
5	Srikantappa					Yes		02/2018
6	Srikantappa				Yes			03/2008
7	Chandrashekaraiah					Yes		05/2006
8	Srikantappa							05/2008

202. After conducting enquiry, the Lokayukta/Upa-Lokayukta send the report/recommendations to the Government as contemplated under the provisions of Section 12(3) of the KL Act. Statement showing the 12(3) reports sent to the Government in respect of Ministers, MLAs. and MLCs., is as under:

12(3) SENT ON MINISTER		
Case Number	**Respondent details**	**Enquiry Officer**
LOK/BCD/3756/2014	Mahadev Prasad, Minister of Co-Operation , Vidhana Soudha, Bangalore	ARE-2
LOK/BCD/3756/2014	Krishna Byregowda, Agriculture Minister Bangalore	ARE-2

12(3) SENT ON M.L.A		
Case Number	**Respondent details**	**Enquiry Officer**
LOK/BD/143/2011	Raju. K., M.L.A. Ramanagar, Ramanagar District.	ARE-2
LOK/BGM/2183/2014	M.L.A. Byadagi Constituency Haveri Dist.	ARE-2

12(3) SENT ON M.L.C.		
Case Number	**Respondent details**	**Enquiry Officer**
LOK/BCD/4059/2014	Narayana Swamy Y.A., M.L.C., (Kolar Constituency), S/o Late Aadi Narayanappa, R/O No.461, 7th Cross, 4th Main, R.M.V. 2nd Stage, Bangalore-94.	ARE-2
LOK/BGM/816/2019	Sri Shrikant L. Ghotnekar, Member of Karnataka Legislative Council, Uttara Kannada District.	ARE-2

203. The statement showing the 12(3) reports sent to the Government in respect of IAS, IPS and IFS Officers, is as under:

Sl. No.	Complaint No.	Name and designation or Respondents	Date of report	Department	Remarks
1.	LOK/MYS/1/2000 ARE-9	Sri R. Ramanna , Chief Accounts Officer Mandya	29/08/2008	RDPR	Closed 07/06/2013 Other
		BABURAO MUDABI CHIEF EXECUTIVE OFFiCER,ZP MANDYA			

		Sri T. Madaiah Accounts Officer Zilla panchyath Mandya			
2.	LOK/MYS/2/2000 ARE-9	BABU RAO MUDABI CHIEF EXECUTIVE OFFICER MANDYA	17/05/2007	RDPR	Closed 07/06/2013 Other
3.	LOK/MYS/76/2002 ARE-5	CHIKKERUR, K.S.N. IFS., REGISTRAR, UNI VERSITY OF MYS.	09/05/2013	EDUCATION	Closed 21/08/2013 eng by CA
4.	LOK/MYS/10/2003 ARE-9	Sri A.M. Annaiah, IFS Deputy Conservator of Forests, Karnataka Forest Department, Hunsur wild Life Division, Hunsur, Mysore District.	05/01/2004	FOREST	Closed 13/06/2013 Other
5.	LOK/BCD/166/2003 ARE-1	S.M.Raju, IAS Director, Employment and Training, Bangalore Shivalinga Murthy Joint Director, Employment Exchange and Training, Subbaiah Circle, Bangalore	11/12/2003	LABOUR	Go recd 25/11/2004
6.	LOK/MYS/19/2005 ARE-/	Commissioner Endowment, Bangalore. B.M.Sukumara Shetty, Managing Trustee, Sri Mookambika Temple, Kollur, Udupi 576220. Executive officer, Kollur Temple.	20/09/2013	OTHERS	Closed 04/08/2014 enq_dy_CA
7.	LOK/BCD/67/2005 ARE-1	Shivaram,I.A.S., Commissioner, Social Welfare Depot, 8angalore.	24/05/2005	SOCIAL WELFARE	Closed 23/08/2013 Not Maintainable
8.	LOK/BGM/440/2005 ARE-2	Prabhakar, Deputy Commissioner, Bagalkot District, Bagalkot.	03/08/2013	REVENUE	Closed 29/03/2019 Compliance report
9.	LOK/BCD/220/2007 ARE-1	S.S.Topgi The Joint Director of Town Planning, B.B.M.P. Bangalore Dr. S. Subramanya Commissioner, Bruhath Bangalore Mahanagara Palike. Bangalore	13/01/2010	URBAN DEVLPNT	Closed 17/10/2013 In Accd wt law

10	LOK/BCD/18/2008 ARE-1	Khaleel UL Rehman Inspector General of Police, Home Guards, Bangalore.	28/06/2014	HOME	12(3) sent 28/06/2014
11	LOK/MYS/122/2008 ARE-5	G.A. Sudarshan, IFS the then Conservator of Forests. Kodagu Circle. Madikeri	19/05/2011	DPAR	Go recd 20/02/2013
12	LOK/MYS/123/2008 ARE-7	B.K.chandra shekar the then Range Forest Officer, Mangalore Region, (Presently Assistant Conservator of Forests) Smt.Anitha S. Arekal Conservator of Forest and General Manager, Karnataka Cashew Development Corporation, Mangalore.	05/06/2014	DPAR	Closed 09/04/2019 Central Govt. emp.
13	LOK/BCD/241/2008 ARE-1	D.K.Rangaswamy I.A.S.. Director, Mass Education Department. Malleshwaram, Bangalore.	06/11/2009	EDUCATION	Closed 26/08/2010 enq_by_CA
14	LOK/BCD/404/2010 ARE-1	Sham Bhat Chief Executive Officer, K.I.A.D.B., Nrupathunga Road, Bangalore.	29/04/2014	C & I	Closed 19/09/2014 enq_by_CA
		Nagaraja Nayak Secretary, K.I.A.D.B., Nrupathunga Road, Bangalore.			
		Swamy.T.R Chief Development Officer. K.I.A.D.B., Nrupathunga Road, Bangalore.			
		Rama Development Officer - 2, K.I.A.D.B.. Nrupathunga Road, Bangalore.			
15	LOK/BCD/493/2010 ARE-6	Chief Executive Officer Bangalore Zilla Panchayathi, 2nd Floor, Krushi Bhavan Building, Hudson Circle, Bangalore.	17/05/2014	RDPR	Closed 26/07/2019 enq_by_CA
		Panchayath Development Officer			
		Bommasandra Grama Panchayathi, Atthibele Hobli, Anekal Taluk, Bangalore.			
		Principal Secretary Rural Development and Panchayath Raj Department, No.2, M.S.Building, Bangalore.			

		Secretary, Bommasandra Grama Panchayathi, Bommasandra, Atthibele Hobli, Anekal Taluk, Bangalore.			
		Executive Officer Anekal Taluk Panchayathi, Anekal, Bangalore.			
16	LOK/BCD/505/2010 ARE-7	Chandrashekar M., IPS Deputy Commissioner of Police East Division, Bangalore City. Bangalore.	01/10/2013	HOME	Closed 12/08/2014 enq by CA
		Santhosh S Police Sub-Inspector, Byappanahalli Police Station, Byappanahalli, Bangalore City			
		Srinivas K.V Police inspector, Byappanahalli Police Slation. Byappanahalli, Bangalore City			
		ManjunathG.B Asst.Commissioner of Police Halasuru Sub-Division, Bangalore City, Bangalore.			
17	LOK/BCD/505/2010 ARE-7	Chandrashekar M., IPS Deputy Commissioner of Police East Division, Bangalore City, Bangalore.	01/10/2013	HOME	Closed 12/08/2014 enq_by_CA
		Srinivas K.V Police Inspector, Byappanahalli Police Station, Bangalore City, Bangalore			
		Manjunath G.B Asst.Commissioner of Police, Halasuru Sub-Division, Bangalore City. Bangalore.			
		Santhosh S Police Sub-Inspector, Byappanahalli Police Station, Byappanahalli Bangalore city.			
18	LOK/BCD/116/2011 ARE 1	Bharathlal Meena Commissioner, Bangalore Development Authority, K.P. West, Bangalore - 560020. Srinivasa R. Engineer Member, Bangalore Development Authority. K.P. West, Bangalore - 560020.	28/O2/2013	BDA	Closed 03/01/2014 Not Maintainable

19	LOK/BCD/124/2011 ARE-2	Jagadish Shettar Minister, Rural Development and Panchayat Raj Department, Vidhana Soudha, Bangalore.	02/07/2015	DPAR	Go recd 29/09/2015
		Jayadevappa H.R. Managing Direclor, Government Tools and Training Center, Rajajinagar Industrial Area, Bangalore-560010.			
		Ravi Kumar P. Secretary to Government, Rural Development end Panchayath Raj Department, M.S.Building, Bangalore.			
20	LOK/BD/143/2011 ARE-2	Raju K., M.L.A., Ramanagar, Ramanagar District.	25/01/2014	REVENUE	Go recd 15/12/2020
		Shailaja.C.P Asst.Deputy Commissioner, Ramanagar, Ramanagar District.			
		Srinivasa, Case Worker, City Municipal Council, Ramanagar, Ramanagar District.			
		Chandrashekaraiah.G.L The Then Deputy Commissioner, Ramanagar, Ramanagar District.			
		Gopinath.T Judicial Head Munsi, D.C Office, Ramanagar, Ramanagar District.			
		Natesh.D.B The Then Tahasildar, Ramanagar, Ramanagar District. (Presently W/@ Theertha Halli, Shimoga District)			
		Nagaraju Revenue Inspector, City Municipal Council, Ramanagar, Ramanagar District. Sidda Raju Commissioner, City Municipal Council, Ramanagar, Ramanagar District. Narayana Revenue Officer, City Municipal Council, Ramanagar, Ramanagar District.			

21.	LOK/BCD/218/2011 ARE-2	Principal Secretary Revenue Department, M.S.Building, Bangalore - 560 001.	22/08/2014	BDA	12(3) sent 22/08/2014
		Karunakara Reddy.G Revenue Minister, Government of Karnataka, Vidhana Soudha, Bangalore - 1.			
		Special Land Acquisition Officer Podium Block, Visveshwaraiah Towers, Bangalore.			
		Commissioner B.B.M.P., N.R.Square, Bangalore - 560 002.			
		Commissioner Bangalore Development Authority, T.Chowdaiah Road, Bangalore - 560 020.			
22.	LOK/BD/8730/2011 ARE-6	Sri. N.Jayaram Chief Executive Officer 7/7/2011 to 25/6/2012 ZP,Chitradurga	26/12/2014	RDPR	Go recd 09/03/2017
		Rangegowda, The Then CEO, Zilla Panchayat. Chitradurga.			
		Sri.Vithal Project Director 2008-09 to 2010-11 ZP. Chitradurga			
		Sri.H P.Prakash Chief Executive Officer 28/5/2007 to 3/6/2009 ZP, Chitradurga			
		Sri Lakshminarayana Project Director Zilla Panchayath Chitradurga			
		SriBasavaraj Project Director 2007-08 to 2008-09 ZP, Chitradurga			
23	LOK/BCD/519/2012 ARE-1	Bharath Lal Meena Commissioner, B.D.A., Kumara Park West Extn., Bangalore - 560 020.	17/05/2014	BOA	Closed 23/09/2014 enq_by_CA
24.	LOK/BCD/2973/2012 ARE-1	Bharat Lal Meena IAS The Then Managing Director, BESCOM, Bangalore.	20/03/2014	KPTCL	12(3) sent 20/03/2014

25	LOK/BCD/81/2013 ARE-1	MuniveeregowdaR former Joint Commissioner, Department of Transport Multi Storied Building, Bengaluru	01/07/2015	DPAR	Closed 09/05/2017 In Accd wt law
		T Sham Bhat, IAS former Transport Commissioner, Department of Transport, Bengaluru Bhaskar Rao, IPS former Transport Commissioner, Department of Transport, Bengaluru			
26.	LOK/BCD/1114/2013 ARE-1	Sri.Anjaneya Reddy Deputy Conservator of Forest (Retd.,), No. 111, 4th Cross, 16th Main Road, J.C Nagar, Kurubarahalli, Bangalore.	26/03/2015	FOREST	Closed 17/07/2015 In Accd wt law
		Sri.Gangadharaiah, Range Forest Officer and Estate Officer, Aranya Bhavan, Malleshwaram, Bangalore.			
		Sri.Ameer Jan Forest Guard, Forest Squad, Opposite to Bangalore CET, 18th Cross, Malleshwaram, Bangalore.			
		Sri.Vijaykumar Gogi, IFS Chief Conservator of Forest, O/o Land Records and Chief Conservator of Forest (Chairman of Forest Force), Malleshwaram, Bangalore.			
		Sri.R.Rangaswamy Assistant Conservator of Forest (Retd.,), No. 54, 2nd Main Road, Bikashipura, Bangalore-61.			
		Sri.Srinivas Assistant Conservator of Forest, Chintamani Sub-Division, Chintamani.			
		Sri.B.M.Parameshwar, IFS Chief Conservator of Forest and Managing Director of Karnataka Co-operative Marketing Federation, Bangalore.			
		Sri.Shivanand.T Range Forest Officer, Social Forest Range, Magadi, Bangalore.			

		Sri.Bylappa Range Forest Officer, Social Forest, Anekal Range, Anekal, Chandapura.			
		Sri.S.Shanthappa, IFS Chief Conservator of Forest, Mangalore Circle, Mangalore.			
		Sri.Chawan.N.B. Assistant Conservator of Forest (Retd.,), Social Forest, Koppa Taluk and District.			
		Sri.Hanumaiana (Expired) Forest Guard, Vishwesharaiaha Layout, 4th Block, New Layout, Jyananabharathi Post, Doddabasthi, Bangalore- 56.			
27	LOK/MYS/2525/2013 ARE-6	Narayanaswamy.K.M IFS Deputy Conservator of Forest, (Wild Animal), Kollegala Taluk, Chamarajanagar District.	11/05/2017	FOREST	12(3) sent 11/05/2017
28	LOK/BCD/3304/2013 ARE-1	Gourav Gupta, President, BWSSB, Cauvery Bhavan, Bangalore-09	14/05/2014	BWSSB	Closed 22/09/2014 enq_by_CA
		Kemparamaiah Chief Engineer, BWSSB, Cauvery Bhavan, Bangalore- 09			
29	LOK/BCD/100/2014 ARE-1	Manjunath Prasad IAS Managing Director, K.S.R.T.C., Central Office, K.H.Road, Shanthinagar, Bangalore - 560 027.	20/11 /2018	TRANSPORT	Go recd 12/04/2019
		S.S.Bharathi Security and Vigilence Officer, Shanthinagar, Bangalore			
30	LOK/BCD/1559/2014 ARE-2	Mr. Bharath lal Meena, The then Commissioner, Bangalore Developement Authority, Bangalore.	27/11/2014	URBAN DEVLPNT	Closed 10/02/2021 Compliance report
31	LOK/BCD/2387/2014 ARE-6	Ayyappa Dy. Commissioner, Bangalore Urban Dist., Bangalore. Manjunath K.A.S., Tahsildar, Bangalore South Tq., Bangalore. Sub-Registrar Tavarekere, Bangalore South Taluk, Bangalore Urban Dist.	05/04/2017	REVENUE	Closed 20/01/2022 Other

32	LOK/BCD/3756/2014 ARE-2	Sham Bhat, Commissioner, Bangalore Development Authority, T.Chowdaiah Road, Kumara Park West, Bangalore-560 020.	24/04/2015	PARLIMENTARY	12(3) sent 24/04/2015
		Satish Joint Registrar of Co-operative Societies, Pampa Mahakavi Road, Chamarajapete, Bangalore - 560 052.			
		Hegde.G.S Ex-Registrar of Co-Operative Societies. No.1, Ali Askar Road, Bangalore-560 052.			
		Channappa Gowda Registrar of Co-Operative Societies, No.1, Ali Askar Road. Bangalore-560 052.			
		Mahadev Prasad Minister of Co-Operation, Vidhana Soudha, Bangalore			

204. It is also relevant to refer to Karnataka Lokayukta Crime Statistics from 26.5.1986 to 30.6.2022 (Disposals), which is as under:

KarnatakaLokayukta CrimeStatisticsfrom26/05/1986to30/06/2022(Disposals)

Sl.No.	Year	Conviction	Acquitted	Discharged	Abated	FIR quash
1	1986	1	4	0	0	0
2	1987	0	6	0	0	0
3	1988	3	8	2	1	0
4	1989	8	19	0	1	0
5	1990	7	12	0	2	0
6	1991	4	10	0	4	0
7	1992	6	23	0	3	1
8	1993	14	39	1	2	0
9	1994	18	71	0	2	0
10	1995	14	49	1	5	1

11	1996	17	75	3	3	0
12	1997	15	77	6	4	0
13	1998	12	77	12	9	0
14	1999	9	93	3	5	0
15	2000	10	128	5	8	0
16	2001	14	123	3	9	2
17	2002	11	90	4	9	1
18	2003	21	139	4	8	3
19	2004	32	182	0	10	0
20	2005	36	166	10	12	0
21	2006	28	184	5	8	0
22	2007	31	127	3	6	1
23	2008	18	102	3	6	3
24	2009	24	102	13	11	0
25	2010	67	143	12	9	1
26	2011	84	158	22	7	7
27	2012	70	106	12	7	10
28	2013	51	109	3	8	22
29	2014	49	140	10	8	17
30	2015	63	161	18	16	20
31	2016	72	178	19	16	6
32	2017	66	222	27	9	3
33	2018	44	173	14	11	2
34	2019	51	133	10	7	0
35	2020	31	82	6	12	1
36	2021	32	81	7	20	2
37	2022	13	44	2	8	3
TOTAL		**1046**	**3636**	**240**	**266**	**106**

205. It is also relevant to refer to the powers of Lokayuktas in different States in respect of registration of FIRs and filing of report under section 173 of the Code of Criminal Procedure, which is as under:

Sl. No.	STATE	WHETHER LOKAYUKTA HAS POWER TO REGISTER FIR	RELEVANT ACT/RULES
1	Madhya Pradesh	**(Yes)** Superintendence of investigation by Madhya Pradesh Special Police Establishment is vested in the Lokayukt appointed under the MP Lokayukt and Uplokayukt Act, 1981, which is empowered to investigate and file charge sheet for the offences punishable under Prevention of Corruption Act, 1988.	Madhya Pradesh Special Police Establishment Act, 1947
2	Uttarakhand	**(Yes)** Section 12 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Uttarakhand Lokayukta Act, 2014
3	Himachal Pradesh	**(Yes)** Section 11 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Himachal Pradesh Lokayukta Act, 2014
4	Mizoram	**(Yes)** Section 11 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific	Mizoram Lokayukta Act, 2014

		Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	
5	Manipur	**(Yes)** Section 12 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Manipur Lokayukta Act, 2014
6	Meghalaya	**(Yes)** Section 12 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Meghalaya Lokayukta Act, 2014
7	Sikkim	**(Yes)** Section 11 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Sikkim Lokayukta Act, 2014
8	Arunachala Pradesh	Section 12 empowers to investigate the offences under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and to file final report under Sec. 173 CrPC.	Arunachala Pradesh Lokayukta Act, 2014

9	Nagaland	**(Yes)** Notwithstanding anything contained in Section 197 of CrPC and Section 19 of Prevention of Corruption Act, Section 26 of the Nagaland Lokayukta Act confers power on Lokayukta to grant sanction for prosecution for any matter pending before it. Organizational structure in sthe official website of Nagaland Lokayukta describes the head of police wing as IGP and Director and OC Nagaland Lokayukta Police Station.	Nagaland Lokayukta Act

206. The material on record clearly depicts after creation of ACB w.e.f 14.3.2016, ACB has not registered any criminal cases against the Ministers, MPs, MLAS or MLCs, but only registered few cases against some authorities and conducted raids. No material is produced by the Government or the ACB to prove that ACB is more powerful than Lokayukta for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administration machinery. Infact, creation of ACB is only to protect the vested interest and not

to protect the interest of the general public at large. It is high time for the State Government (any Government) or its authorities to act as a trustee of the society and infact, in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 14, 21 and 300 of the Constitution of India and all inter-related directive principles of state policy under the Constitution, should exhibit transparency in implementation and of accountable for due effectuation of constitutional goals. Further, the Government should allow the Lokayukta/Upa-Lokayukta to work independently without intervention or undue influence from anybody so that citizen of the State can redress a grievance before them "without fear or favour".

207. Even though, we got independence about 75 years ago by the struggle of our forefathers, who fought for our freedom by pricing their blood, unfortunately, we are not in a position to

eradicate corruption till today since, no successive Governments have taken drastic steps in that direction. Though the KL came into force w.e.f. 15th January 1986, it worked independently only till 14.3.2016, the date on which the impugned executive order came to be passed.

208. Unfortunately, the institution of Lokayukta has been diluted by the executive order passed by the State Government by creating ACB, thereby indirectly made the authority of Lokayukta and Upa-Lokayukta "paper tigers without any teeth and claws", which is impermissible. The legislative intent behind the KL Act is to see that public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta and Upa-Lokayukta and such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become "mere paper directions". The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to "mere paper tigers" etc., Therefore, it is high time for the State

Government to strengthen the institution of Lokayukta and Upa-Lokayukta and get back its "glory".

209. "It is also relevant to state at this stage that the Lokayukta and Upa-Lokayukta are appointed under the provisions of Section 3(2)(a) and 3(2)(b) of the KL Act on the advice tendered by the Chief Minister in consultation with the several constitutional authorities. If the Government and constitutional authorities are really interested in public welfare and interest in the development of Karnataka, they should take conscious and unanimous decision to recommend persons with track record of integrity and competence and fair both on the public and personal life, to the posts of Lokayukta and Upa-Lokayuktas uninfluenced by caste, creed etc., and maintain transparency in the appointment. The appointment should be non-political and the posts of Lokayukta and Upa-Lokayuktas should not be accommodation centre for anybody." The Government should allow the authorities to work independently without fear or favour, for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism

and official indiscipline in administration machinery. In addition to the above, Administrative and Enquiry Wing, Technical Wing, Police Wing and General Wing of the Lokayukta as contemplated under the first schedule of Rule 6(2) of the Karnataka Lokayukta (C & R etc.) Rules, 1988 should also be strengthened by appointing honest persons.

210. It is high time for the Legislature and the judiciary to curb the "menace of corruption which is very dangerous to the future generation than the disease of cancer and also it is a major obstacle to the growth of India and in particular, the State of Karnataka." If a public servant, who is convicted for corruption, is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently, that would erode the already shrunk confidence of the people in such institutions besides demoralizing the other honest public servants, who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fall out would be one of the shaking system itself.

211. The Hon'ble Supreme Court while considering the provisions of Section 389 (1) of the Code of Criminal Procedure, Article 311(2) of the Constitution of India and Section 13(2) of the PC Act in the case of ***K.C. Sareen –vs- C.B.I. Chandigarh***[39], at paragraphs 11 and 12 has held as under:

> *"**11**. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an*

[39] *2001 AIR SCW 3339*

appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of 6 the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue

to hold such public office even without the help of a court order suspending the conviction.

12. *The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."*

(Underline supplied)

212. The Hon'ble Supreme Court while considering the provisions of Sections 19(1) and 22 of the PC Act in the case of ***Subramanian Swamy –vs- Manmohan Singh***[40] has strongly condemned the corruption in the Country as under:

"***11.*** *Today, corruption in our country not only poses a grave danger to the concept of*

[40] *(2012) 3 SCC 64*

constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes a development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."

(Underline supplied)

213. It is also not in dispute that India is a Member of 'United Nations Convention Against Corruption' where certain measures were adopted for preventing corruption. Corruption is an insidious plague that has wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to

violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. Article 36 of 'United Nations Convention Against Corruption' relates to specialized authorities and the said Article contemplates that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

214. It is also relevant to state at this stage that the Lokpal and Lokayuktas Act, 2013 is enacted to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental

thereto. Section 63 of the Lokpal and Lokayuktas Act, 2013 specifically mandates that every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.

215. The object of PC Act is to consolidate and amend the law relating to prevention of corruption and the matter connected thereto, thereby strengthening of the Lokayukta and Upa-Lokayukta is inevitable and "it is high time to say goodbye to the ACB", to strengthen the institution of Lokayukta, which is functioning under the provisions of the KL Act.

216. It is an undisputed fact that the Lokayukta as an institution has all the trappings of a police station conferred on it by virtue of several provisions of K.L. Act and Rules framed thereunder. Section 14 of the K.L. Act makes it clear that whenever sanction of the Competent Authority is required for prosecution and if such action is required to be taken by the

Lokayukta/Upalokayukta, it is deemed to have been granted. When the power of investigation is conferred on the Lokayukta or Upalokayukta and the Police Wing is attached to the institution of Lokayukta as per the statutory provisions, it cannot be reasonably imagined that in the course of the investigation by them, even if commission of an offence is detected either by the Lokayukta or by the Upalokayukta, it will not have jurisdiction to deal with the matter and that they have to be only a helpless spectator to condone the offences committed and stay their hands and that their power is limited only to initiate disciplinary proceedings. The object of the legislation is to bring about transparency in the administration and that could be brought about by initiating both criminal and disciplinary proceedings. It cannot be contended that Lokayukta or Upalokayukta or the Police Wing have no power to initiate criminal proceedings and conduct an investigation on that behalf. The power of initiating prosecution includes all the incidental power that is required to complete the investigation.

217. As already stated supra, the K.L. Act is a self contained code providing for investigation, filing of complaint and all other

incidental matters with the police attached to the Lokayukta institution by virtue of statutory provisions. Thereby, when the K.L. Act is holding the field, it is not permissible for the State in exercise of its executive power under Article 162 of the Constitution of India to constitute ACB to nullify the power conferred on the Lokayukta as an institution under the K.L.Act.

218. Our view is fortified by the judgement of the Hon'ble Supreme Court in the case of **I.T.C. Bhadrachalam Paperboards vs. Mandal Revenue Officer, AP**[41] , wherein it is held as under:

> *"Where the field is occupied by an enactment the executive has to act in accordance therewith, particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent Legislature, the executive can act in its executive capacity since the executive power of the State extends to matters with respect to which the Legislature of a State has the power to make laws"*

[41] (1996)6 SCC 634

Thereby, the very notification issued by the State Government dated 14.3.2016 constituting ACB, cannot be sustained.

219. The Hon'ble Supreme Court in the case of ***Subramanian Swamy –vs- Director, Central Bureau of Investigation and another***[42], at paragraphs 54, 57, 58, 59, 64, 69 and 70 has held as under:

> *"**54.** The Court then discussed the earlier decisions of this Court in J.A.C. Saldanha [State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554 : 1980 SCC (Cri) 272] and K. Veeraswami [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] and also the provisions of the DSPE Act and held that : (Vineet Narain case [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , SCC p. 262, para 42)*
>
> *Powers of investigation which are governed by the statutory provisions and they cannot be curtailed by any executive instruction.*
>
> *Having said that, this Court stated that the law did not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. Every person*

[42] (2014)8 SCC 682

accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as decision-making officers. Negativing that any distinction can be made for them for the purpose of investigation of an offence of which they are accused, this Court in paras 45 and 46 held as under : (Vineet Narain case [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , SCC p. 263)

> *"45. Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision-making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases i.e. of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to*

support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive.

46. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the

hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of CBI with the aid of that advice and not that of anyone else. It would be more appropriate

to have such a body within the infrastructure of CBI itself."

57. *Can classification be made creating a class of the government officers of the level of Joint Secretary and above level and certain officials in public sector undertakings for the purpose of inquiry/investigation into an offence alleged to have been committed under the PC Act, 1988? Or, to put it differently, can classification be made on the basis of the status/position of the public servant for the purpose of inquiry/investigation into the allegation of graft which amounts to an offence under the PC Act, 1988? Can the legislature lay down different principles for investigation/inquiry into the allegations of corruption for the public servants who hold a particular position? Is such classification founded on sound differentia? To answer these questions, we should eschew the doctrinaire approach. Rather, we should test the validity of the impugned classification by broad considerations having regard to the legislative policy relating to prevention of corruption enacted in the PC Act, 1988 and the powers of inquiry/investigation under the DSPE Act.*

58. *The Constitution permits the State to determine, by the process of classification, what should be regarded*

as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

59. *It seems to us that classification which is made in Section 6-A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public*

power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988.

64. *As a matter of fact, the justification for Section 6-A which has been put forth before us on behalf of the Central Government was the justification for Single Directive 4.7(3)(i) in Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] as well. However, the Court was unable to persuade itself with the same. In Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] in respect of Single Directive 4.7(3)(i), the Court said that : (SCC pp. 262-63, para 44)*

> *"44. … Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone."*

We are in agreement with the above observation in Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , which, in our opinion, equally applies to Section 6-A.

In Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , this Court did not accept the argument that the Single Directive is applicable only to certain class of officers above the specified level who are decision-making officers and a distinction can be made for them for the purpose of investigation of an offence of which they are accused. We are also clearly of the view that no distinction can be made for certain class of officers specified in Section 6-A who are described as decision-making officers for the purpose of inquiry/investigation into an offence under the PC Act, 1988. There is no rational basis to classify the two sets of public servants differently on the ground that one set of officers is decision-making officers and not the other set of officers. If there is an accusation of bribery, graft, illegal gratification or criminal misconduct against a public servant, then we fail to understand as to how the status of offender is of any relevance. Where there are allegations against a public servant which amount to an offence under the PC Act, 1988, no factor pertaining to expertise of decision making is involved. Yet, Section 6-A makes a distinction. It is this vice which renders Section 6-A violative of Article 14. Moreover, the result of the impugned legislation is that the very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into,

would decide whether CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage.

69. *The signature tune in Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] is, 'However high you may be, the law is above you." We reiterate the same. Section 6-A offends this signature tune and effectively Article 14.*

70. *Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any*

distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14."

220. The Hon'ble Supreme Court while considering the provisions of section 3(2)(a) and (b) of the KL Act in the case of ***Justice Chandrashekaraiah vs. Janekere C. Krishna and others***[43], at paragraphs 36, 37, 106, 107 and 112 has held as under:

*"**36.** The Lokayukta or Upa-Lokayukta under the Act are established to investigate and report on allegations or grievances relating to the conduct of public servants which includes the Chief Minister; all other Ministers and Members of the State Legislature; all officers of the State Government; Chairman, Vice-Chairman of local authorities, corporations, owned or controlled by the State Government, a company in which not less than fifty-one per cent of the shares are held by the State Government, societies registered under the Societies Registration Act, cooperative societies and universities established by or under any law of the legislature.*

[43] (2013)3 SCC 117

37. *The Lokayukta and Upa-Lokayukta while exercising powers under the Act, of course, is acting as a quasi-judicial authority but his functions are investigative in nature. The Constitution Bench of this Court in Nagendra Nath Bora v. Commr. of Hills Division and Appeals [AIR 1958 SC 398] held : (AIR p. 408, para 14)*

> *"14. … Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder."*

106. *The conditions of service of the staff of the Upa-Lokayukta are referred to in Section 15 of the Act. They may be prescribed in consultation with the Lokayukta in such a manner that the staff may act without fear in the discharge of their functions. Section 15 of the Act also enables the Upa-Lokayukta to utilise the services of any officer or investigating agency of the State or even of the Central Government, though with the prior concurrence of the Central Government or the State Government. Section 15(4) of the Act makes it clear that the officers and other employees of the Upa-*

Lokayukta are under the administrative and disciplinary control of the Lokayukta.

107. *The broad spectrum of functions, powers, duties and responsibilities of the Upa-Lokayukta, as statutorily prescribed, clearly bring out that not only does he perform quasi-judicial functions, as contrasted with purely administrative or executive functions, but that the Upa-Lokayukta is more than an investigator or an enquiry officer. At the same time, notwithstanding his status, he is not placed on the pedestal of a judicial authority rendering a binding decision. He is placed somewhere in between an investigator and a judicial authority, having the elements of both. For want of a better expression, the office of an Upa-Lokayukta can only be described as a sui generis quasi-judicial authority.*

112. *As mentioned above, an Upa-Lokayukta does function as an adjudicating authority but the Act places him short of a judicial authority. He is much more "judicial" than an investigator or an inquisitorial authority largely exercising administrative or executive functions and powers. Under the circumstances, taking an overall view of the provisions of the Act and the law laid down, my conclusion is that the Upa-Lokayukta is a quasi-judicial authority or in any event an authority*

exercising functions, powers, duties and responsibilities conferred by the Act as a sui generis quasi-judicial authority."

221. The Hon'ble Supreme Court while considering the provisions of Articles 14, 21, 32, 141, 142 and 144 of the Constitution of India in the case of ***Vineet Narain and others – vs- Union of India and others***[44], at paragraphs 38 39 40, 41, 42 and 43 has held as under:

*"**38**. Section 3 of the Police Act, 1861 is in pari materia with Section 4 of the Delhi Special Police Establishment Act, 1946. These sections read as under:*

Section 3 of the Police Act, 1861:

> *"3. Superintendence in the State Government.—The superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or court shall be empowered by the State*

[44] (1998)1 SCC 226

Government to supersede or control any police functionary."

Sections 3 and 4 of the Delhi Special Police Establishment Act, 1946:

> *"3. Offences to be investigated by SPE.—The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.*
>
> *4. Superintendence and administration of SPE.—(1) The superintendence of the Delhi Special Police Establishment shall vest in the Central Government.*
>
> *(2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector General of Police in respect of the police force in a State, as the Central Government may specify in this behalf."*

The meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Act, 1946 determines

the scope of the authority of the Central Government in this context.

39. *There can be no doubt that the overall administration of the said force, i.e., CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).*

40. *It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory*

provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.

41. *This view does not conflict with the decision in J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] as earlier indicated. In Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] the question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to*

prevent the investigation of an offence. The Single Directive has the effect of restraining recording of FIR and initiation of investigation and not of proceeding with investigation, as in Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] . No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except K. Veeraswami [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

42. *Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.*

43. *There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a prerequisite for the court to take cognizance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognizance of an offence punishable under Section 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner*

in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

222. The Hon'ble Supreme Court while considering the provisions of Section 3 of the Gujarath Lokayukta Act with regard to public accountability, vigilance and prevention of corruption, in the case of ***State of Gujarat and another –vs- Justice R.A. Mehta (Retired) and others***[45], at paragraphs 85 to 89 has held as under;

> *"**85.** Without reference to any constitutional provision or any judgment of this Court referred to earlier, even if we examine the statutory provisions of the Act, the statutory construction itself mandates the primacy of the opinion of the Chief Justice for the simple reason that Section 3 provides for the consultation with the Chief Justice. Section 6 provides for the removal of Lokayukta and lays down the procedure for such removal. The same can be done only on proven misconduct in an inquiry conducted by the Chief Justice/his nominee with respect to specific charges. Section 8(3) further provides for recusal of the Lokayukta in a matter where a public functionary has*

[45] (2013) 3 SCC 1

raised the objection of bias and whether such apprehension of bias actually exists or not shall be determined in accordance with the opinion of the Chief Justice.

86. *The purpose of giving primacy of opinion to the Chief Justice is for the reason that he enjoys an independent constitutional status, and also because the person eligible to be appointed as Lokayukta is from among the retired Judges of the High Court and the Chief Justice is, therefore, the best person to judge their suitability for the post. While considering the statutory provisions, the Court has to keep in mind the Statement of Objects and Reasons published in the Gujarat Gazette (Extraordinary) dated 1-8-1986, as here, it is revealed that the purpose of the Act is also to provide for the manner of removal of a person from the office of the Lokayukta and the Bill ensured that the grounds for such removal are similar to those specified for the removal of the Judges of the High Court.*

87. *As the Chief Justice has primacy of opinion in the said matter, the non-acceptance of such recommendations by the Chief Minister remains insignificant. Thus, it clearly emerges that the Governor, under Section 3 of the 1986 Act has acted*

upon the aid and advice of the Council of Ministers. Such a view is taken considering the fact that Section 3 of the 1986 Act does not envisage unanimity in the consultative process.

88. *Leaving the finality of choice of appointment to the Council of Ministers would be akin to allowing a person who is likely to be investigated to choose his own judge. Additionally, a person possessing limited power cannot be permitted to exercise unlimited powers.*

89. *However, in light of the facts and circumstances of the case, it cannot be held that the process of consultation was incomplete and was not concluded as per the requirements of the 1986 Act."*

223. The Hon'ble Supreme Court in the case of ***Ashwini Kumar Upadhyay –vs- Union of India***[46], in respect of State of Tamil Nadu, has observed as under:

"This Court by its judgment/order dated 27th April, 2017 passed in Writ Petition (Civil) No.245 of 2014 [Common Cause: A Registered Society vs. Union of India reported in (2017)7 SCC 158 had already expressed the view that the appointment of Lokpal at

[46] Writ Petition (Civil) No.684/2016 decided on 19.4.2018

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

224. The Hon'ble Supreme Court while considering the provisions of Section 15 of the KL Act and Section 17 of the PC Act in the case of ***C. Rangaswamaiah and others –vs- Karnataka Lokayukta and others***[47], at paragraphs 19, 20, 25, 26, 27 and 28 has held as under:

*"**19.** We may first deal with the crucial question as to whether the Director General of Police in the office of the Lokayukta who is to supervise the work of the police officers on deputation in the Lokayukta is independent*

[47] Supra at Footnote No.1

of the Lokayukta and is outside the administrative and disciplinary control of the Lokayukta. We agree with the Division Bench when it took the view, — differing from the learned Single Judge, — that though the newly-created post of Director General of Police in the office of the Lokayukta was created on 21-12-1992 by an administrative order and the relevant recruitment rules of the staff of the Lokayukta were not amended to bring the said post into the cadre under the Lokayukta, still the said post created in the Lokayukta Police Wing was intended to be and must be treated as part of the staff of Lokayukta in the Police Wing. It is well settled that administrative orders even creating posts can be issued so long as they are not inconsistent with rules, that is to say, as long as there is no prohibition in the statutory rules for creation of such posts. The learned Single Judge's view that the independence of the Lokayukta was under threat was mainly based upon his decision that the post of the Director General created on 21-12-1992 was outside the control of the Lokayukta. This view, in our opinion, is not correct for the reasons mentioned above.

Therefore, while it is true that as per the notification dated 21-11-1992 issued by the Government, the Police Wing in the Lokayukta is to be under the general and

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

the threat to the independence of the Lokayukta which appealed to the learned Single Judge stands rejected.

Point 2

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

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

course, it is expected that the State Government and the Lokayukta will avoid any such unpleasant situations but will act reasonably in their respective spheres.

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

27. *In the matters before us, as already stated, there has been no objection by the Lokayukta at the initial stage of the entrustment of work under Section 17 of the Central Act to these police officers on deputation. It is therefore not possible to interdict the further investigation by these officers at this stage at the instance of the public servants. As stated above, if no objection has come from the Lokayukta at the time of initial entrustment, it is certainly not permissible for the public servants against whom the investigation is being done, to raise objection. The Division Bench was right in holding that the memorandum dated 2-9-1997 issued by the Lokayukta is, in fact, purely consequential to the judgment of the learned Single Judge and in declaring the same to be invalid and also redundant.*

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

225. The Hon'ble Suprme Court while considering the provisions of Section 3(3) and Section 8A(2) of the Commissions of

Inquiry Act and Section 21 of the General Clauses Act in the case of ***State of M.P. –vs- Ajay Singh and others***[48], at paragraph-17 held as under:

> ***"17.*** *The Commissions of Inquiry Act, 1952 was enacted to provide for the appointment of Commissions of Inquiry and for vesting such commissions with certain powers. Section 2 of the Act contains definitions. Section 3 provides for appointment of a Commission of Inquiry. Sub-section (1) of Section 3 lays down that a Commission of Inquiry for the purpose of making an inquiry into any "definite matter of public importance" may be appointed by the appropriate Government if it is of opinion that it is necessary so to do and shall make such an appointment if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the official Gazette. Sub-section (2) of Section 3 says that the Commission may consist of one or more members appointed by the appropriate Government, and where the number is more than one, one of them may be appointed as the Chairman. Sub-section (3) of Section 3 enables the appropriate Government to fill any vacancy which may arise in the office of a member*

[48] (1993)1 SCC 302: AIR 1993 SC 825

of the Commission whether consisting of one or more than one member, at any stage of an inquiry. Sub-section (4) of Section 3 requires the appropriate Government to cause to be laid before each House of Parliament or, as the case may be, the legislature of the State, the report, if any, of the Commission of Inquiry together with a memorandum of the action taken thereon, within a period of six months from the submission of the report by the Commission to the appropriate Government. Section 4 prescribes that the Commission shall have the powers of a civil court while trying a suit under the Code of Civil Procedure in respect of the matters mentioned therein. Section 5 deals with the additional powers of the Commission. Section 5-A relates to the power of the Commission for conducting investigation pertaining to ~ inquiry. Section 5-B deals with the power of the Commission to appoint assessors. Section 6 provides for the manner of use of the statements made by persons to the Commission. Section 6-A provides that some persons are not obliged to disclose certain facts. Section 7 deals with the manner in which a Commission of Inquiry appointed under Section 3 ceases to exist in case its continuance is unnecessary. It provides for a notification in the official Gazette by the appropriate Government specifying the date from which the Commission shall

cease to exist if it is of the opinion that the continued existence of the Commission is unnecessary. Where a Commission is appointed in pursuance of a resolution passed by the Parliament or, as the case may be, the Legislature of the State, then a resolution for the discontinuance of the Commission is also to be passed by it. Section 8-A provides that the inquiry is not to be interrupted by reason of vacancy or change in the constitution of the Commission and it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place. Section 8-B prescribes that persons likely to be prejudicially affected by the inquiry must be heard. Section 8-C deals with the right of cross-examination and representation by legal practitioner of the appropriate Government, every person referred to in Section 8-B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission. Sections 9, 10 and 10-A relate to ancillary matters while Section 12 contains the rule-making power of the appropriate Government. Section 11 provides that the Act is to apply to other inquiring authorities in certain cases and where the Government directs that the said provisions of this Act shall apply to that authority and issues such a notification, that authority shall be deemed to be a

Commission appointed under Section 3 for the purposes of this Act. Admittedly, it is by virtue of Section 11 that the Commission of Inquiry appointed in the present case is deemed to be a Commission appointed under Section 3 for the purposes of this Act because the Commission was constituted by a resolution of the Government pursuant to the direction of the M.P. High Court in the writ petition filed in public interest by Kailash Joshi as indicated earlier. For the purposes of this case, the material provisions of the enactment are Sections 3, 7 and 8-A apart from Section 21 of the General Clauses Act, 1897 with reference to which the rival contentions were made. These provisions are as under:

The Commissions of Inquiry Act, 1952

"3. Appointment of Commission.— (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the

Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

7. Commission to cease to exist when so notified.—

(1) The appropriate Government may, by notification in the Official Gazette, declare that—

> *(a) a Commission (other than a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State) shall cease to exist, if it is of opinion that the*

continued existence of the Commission is unnecessary;

(b) a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State, shall cease to exist if a resolution for the discontinuance of the Commission is passed by each House of Parliament or, as the case may be, the Legislature of the State.

(2) Every notification issued under sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.

8-A. Inquiry not to be interrupted by reason of vacancy or change in the constitution of the Commission.— (1) Where the Commission consists of two or more members, it may act notwithstanding the absence of the Chairman or any other member of any vacancy among its members.

(2) Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any

vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place."

The General Clauses Act, 1897

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.— Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued."

226. The Hon'ble Supreme Court while considering the provisions of Section 3(1)(a), 7 and 2(h) of the Orissa Lokpal and Lokayuktas Act, 1995 in the case of Justice ***K.P. Mohapatra –vs- Sri ram Chandra Nayak and others***[49], at paragraphs 11 and 12 has held as under:

[49] (2002)8 SCC 1

*"**11.** Further, Section 4(1) inter alia provides that Lokpal or Lokayukta should not be connected with any political party. In any case, if he is connected, he is required to sever the connection on being appointed to the said post. That means, he must be an independent non-political person. Under Section 7, Lokpal has inter alia to investigate any action which is taken by or with a general or specific approval of the Chief Minister or a Minister or a Secretary, in a case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokpal, the subject of a grievance or an allegation. The word "Minister" is defined under Section 2(i) to mean a member of the Council of Ministers and includes the Chief Minister, Deputy Chief Minister, a Minister of State, a Deputy Minister and the Leader of the Opposition or a Parliamentary Secretary.*

***12.** In context of the aforesaid functions of the Lokpal and the required qualification of a person who is to be appointed to hold such office, the word "consultation" used in Section 3 is required to be interpreted. As provided under Section 3, a person is not qualified to be appointed as Lokpal unless he is or has been a Judge of the Supreme Court or of a High Court. In the context of the functions which are to be discharged by the Lokpal,*

it is apparent that they are of utmost importance in seeing that unpolluted administration of the State is maintained and maladministration as defined under Section 2(h) is exposed so that appropriate action against such maladministration and administrator could be taken. The investigation which Lokpal is required to carry out is that of quasi-judicial nature which would envisage not only knowledge of law, but also of the nature and work which is required to be discharged by an administrator. In this context, the word "consultation" used in Section 3(1) proviso (a) would require that consultation with the Chief Justice of the High Court of Orissa is a must or a sine qua non. For such appointment, the Chief Justice of the High Court would be the best person for proposing and suggesting such person for being appointed as Lokpal. His opinion would be totally independent and he would be in a position to find out who is most or more suitable for the said office. In this context, primacy is required to be given to the opinion of the Chief Justice of the High Court. It is true that proviso (a) provides that Leader of the Opposition, if there is any, is also required to be consulted. Therefore, if there is no Leader of the Opposition, consultation is not required. This would indicate the nature of such consultation and which is to apprise him of the proposed action but his opinion is not

binding on the Government. At the same time, his views or objections are to be taken into consideration. If something is adverse against the person proposed by the Government, he would be entitled to express his views and point it out to the Government. This, however, would not mean that he could suggest some other name and the Government is required to consider it. It would, therefore, be open to the Government to override the opinion given by the Leader of the Opposition with regard to the appointment of a Lokpal who is statutorily required to be a sitting or retired Judge of the Supreme Court or of a High Court. Under Section 3(1) of the Act, there is no question of initiation of proposal by the Leader of the Opposition."

(Underline supplied)

227. The Hon'ble Supreme Court while considering with regard to Police reforms and measures to insulate Police machinery from political/executive interference, in the case of ***Prakash Singh and others –vs- Union of India and others***[50], at paragraphs 19, 22, 26 and 29 has held as under:

[50] (2006)8 SCC 1

*"**19.** In the above noted letter dated 3-8-1997 sent to all the State Governments, the Home Minister while echoing the overall popular perception that there has been a general fall in the performance of the police as also a deterioration in the policing system as a whole in the country, expressed that time had come to rise above limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before the country is overtaken by unhealthy developments. It was expressed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference at various levels starting from transfer and posting of policemen of different ranks, misuse of police for partisan purposes and political patronage quite often extended to corrupt police personnel. The Union Home Minister expressed the view that rising above narrow and partisan considerations, it is of great national importance to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful functions of prevention and control of crime including investigation of cases and maintenance of public order.*

22. *For separation of investigation work from law and order even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without of course any watertight compartmentalisation in view of both functions being closely interrelated at the ground level.*

26. *Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of the rule of law; (iii) pendency of even this petition for the last over ten years; (iv) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of the criminal justice system in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to*

issue the requisite directions. Nearly ten years back, in Vineet Narain v. Union of India [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] this Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralising effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralising the police force, it has also the adverse effect of politicising the personnel and, therefore, it is essential that prompt measures are taken by the Central Government.

29. *The preparation of a model Police Act by the Central Government and enactment of new Police Acts by the State Governments providing therein for the composition of the State Security Commission are things, we can only hope for the present. Similarly, we*

can only express our hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the rule of law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments."

228. It is also not in dispute that the Lokpal and the Lokayukta Act, 2013 enacted by the Parliament has provided for the establishment of the body of the Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The provisions of the said Act provide for establishment of a separate inquiry and Prosecution Wing and for filing of cases in accordance with the findings arrived at. The provisions of Section 63 of the Lokpal and Lokayuktas Act requires every State to establish a body to be known as the Lokayukta for

the State, if not so established, constituted or appointed by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries. Though it is not so expressly provided, but such Lokayukta is expected to have the same powers as, the Lokpal. Further, though the Legislature of Karnataka had prior thereto established the Lokayukta in the year 1986 and from 1986 till 14.3.2016, the date of passing the impugned executive order, the Lokayukta dealt with the complaints relating to corruption against certain public functionaries, but the said Lokayukta does not have the same powers as the Lokpal under the Lokpal Act, 2013. Yet further, the provisions of Section 63 required the State Legislature to make such an enactment within one year from the date of commencement of the Lokpal Act, 2013 Act. Therefore, it is high time for the State Government to provide for establishment of a separate Inquiry and Prosecution Wing and for filing of cases in accordance with the findings arrived at. On that ground also the impugned executive order cannot be sustained.

229. In the light of the settled legal position, it is not possible to accede to the submission of the learned Advocate General that the Lokayukta has no power to call for records in a preliminary inquiry. The exercise of calling for the records was to satisfy that there was a prima facie case to proceed with. The objections raised by the State Government, in view of the executive order, are purely technical and the contention of the State Government that they are withdrawing extra powers assigned to Lokayukta by virtue of the executive order, might seriously impede the statutory and independent functioning of the Lokayukta under the KL Act. The nature of proceedings conducted by the Lokayukta or Upa-Lokayukta are altogether different from a civil and criminal lis. Unlike civil or criminal proceedings, a citizen making allegations against a public functionary may not be in possession of complete facts or documents, unless the allegation arises out of his personal transaction with any public functionary. The powers conferred on the Lokayukta are advisedly very wide and 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

redressal of grievances of the individuals against administrative acts or omissions. 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 Lokayukta institution will act as a check and will be helpfui in checking the canker of corruption and maladministration. Moreso, 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. (As stated in the book called, '*Corruption-Control of Maladministration*' by John D. Monteiro).

230. The provisions of KL Act, which is enacted for the eradication of the evil of corruption and maladministration must be construed liberally so as to advance the remedy. In our opinion,

there is absolutely no merit in the impugned executive order passed by the State Government, in exercise of the powers under the provisions of Article 162 of the Constitution of India and the impugned order cannot be sustained. It is also not in dispute that before enacting the KL Act, public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that cases coming up before the independent authorities like Lokayukta or Upa-Lokayukta might involve allegations or actual evidence of corrupt motive and favouritism. We think that the institution of Lokayukta should deal with such cases as well.

231. It is also relevant to refer to the main features of the institutions of Lokpal and Lokayukta, which are as under:

a) They should be demonstrably independent and impartial.

b) Their investigations and proceedings should be conducted in private and should be informal in character.

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 and powers in obtaining information relevant to their duties.

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

232. We have no doubt that the working of the Institution of Lokayukta in Karnataka will be watched with keen expectation and interest by the other states in India. We hope that this aspect would also be fully borne in mind by Government in considering the urgency and importance of the independence of the Lokayukta. A

Lokayukta is to function as a sentinel to ensure a corruption free administration.

233. As already stated supra, the object of the KL Act and PC Act was to achieve common object and goal of corruption free society. Common man has immense faith in the institution of Karnataka Lokayukta and also its Police Wing, that too after handling investigating relating to mining scam. Earlier, the common man could have filed the complaint against anybody to set the law into motion under the PC Act and there was no bureaucratic impediment or decision required to initiate the proceedings against a complaint. However, ACB was set up abruptly with an intention to take control of the pending investigations against the high functionaries of the State Bureaucrats etc., In order to protect and scuttle the investigation against political class and bureaucrats, Government Order dated 14.3.2016 came to be issued constituting ACB as authority for investigation under the PC Act, thereby the very purpose of KL Act was indirectly defeated. As per the provisions of the Code of Criminal Procedure, the complainant himself should not be an Investigating Officer. As per the

impugned executive order, if any complaint filed as against the Chief Minister or the Minister in the Council of Ministers, the Chief Minister himself has to oversee the investigation and also permit investigation, thereby the impugned executive order is opposed to the rule of law and contrary to the dictum of the Hon'ble Supreme Court in the case of ***C. Rangaswamaiah***[51]. The impugned Government Order constituting ACB empowers the Hon'ble Chief Minister to veto investigation or the sanction of investigation. This itself defeats the very purpose of the Anti Corruption Drive and ACB is not at all an independent body. The Police force of ACB works under the authority of the Hon'ble Chief Minister and any independent investigation is only a mirage. No serving officers would be in a position to conduct an enquiry against the Hon'ble Chief Minister under whom they would be working as subordinates. Therefore by the constitution of ACB, the basic investigation apparatus/mechanism is dysfunctional. The ACB is constituted virtually to defeat the very purpose of PC Act itself. The State is bent upon saving its corrupt Ministers and Officers and therefore the impugned Government Order and subsequent supporting

[51] Supra at Footnote No.1

notifications are contrary to the very object of the KL Act. The constitution of ACB is one without authority of law and though it purports to create an independent wing, it is controlled by the Hon'ble Chief Minister. Thus, the Lokayukta Police Force is virtually abolished by creation of ACB. The State Government issued the impugned Government Order constituting ACB on an erroneous understanding of the judgment of the Hon'ble Supreme Court of India in the case of ***C. Rangaswamaiah***[52]**.** In fact the said judgment curtails the power of the State Government to constitute ACB or any alternative mode of investigating agency and interfere with the functioning of the Lokayukta. The statutory powers assigned to Lokayukta and Upa-Lokayukta under the provisions of the KL Act cannot be diluted by the executive orders passed by the State Government under Article 162 of the Constitution of India. After the constitution of ACB by way of executive order, the State Government issued notifications dated 19.3.2016, thereby superseding the earlier notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to

[52] Supra at Footnote No.1

investigate and had declared the offices of Police Wing of Lokayukta as Police Stations.

234. The ACB is established by means of an executive order, which has no legs to stand and the ACB cannot perform the duty of the police unless it is established by means of a statute. The constitution of ACB itself is shaky, oppose to the provisions of law and cannot perform the duty of the police. The police wing is an independent investigating agency and though ACB purports to create an independent wing, it is controlled by the Hon'ble Chief Minister i.e., control of political executive. The ACB cannot constitute an independent police force when already the field is occupied by the Karnataka Police Act, 1963. A Police Officer who is working under the control of the Home Department or State while being investigating officer under ACB cannot be expected to conduct a fair and impartial investigation in relation to high ranking public servants and it is likely to be insulated from such influence.

235. For the reasons stated above, the impugned Government Order dated 14.03.2016 constituting ACB, notifications dated 19.03.2016 and all subsequent notifications issued pursuant

to the Government Order dated 14.03.2016 for the purpose of formation and working of the ACB, are liable to be quashed. Consequently, Anti Corruption Bureau is liable to be abolished. But, all inquiries, investigations and other disciplinary proceedings pending before the ACB will get transferred to the Lokayukta. To be specific, the proceedings in respect of some of the private petitioners which are pending before the ACB will get transferred to the Lokayukta and the said petitioners cannot escape from the clutches of law and they have to face the proceedings before the Police Wing of the Karnataka Lokayukta, who shall proceed in accordance with law.

236. Before parting with the matter, we deem it proper to observe that in order to eradicate corruption, keeping in view the object of the KL Act and in the interest of justice for public at large, we request the constitutional authorities as contemplated under the provisions of Section 3(2)(a) and 3(2)(b) of the KL Act to take conscious and unanimous decision to recommend persons with track record of integrity, competence and fair, both on the public and personal life, to the posts of Lokayukta and Upa-Lokayuktas

uninfluenced by caste, creed etc., and maintain transparency in the appointment. The appointment should be non-political and the posts of Lokayukta and Upa-Lokayukta should not be accommodation centre for anybody.

XVI. Recommendations

237. In view of the above discussion, we are of the considered opinion to make following recommendations to the State Government:

a) There is immediate necessity for amending Section 12(4) of the Karnataka Lokayukta Act, 1984 to the effect that once the recommendation made by Lokayukta under Section 12(3) of the KL Act, the same shall be binding on the Government.

b) The Police Wing of Karnataka Lokayukta shall be strengthened by appointing/deputing honest persons with track record of integrity and fairness.

c) The Police Personnel, who at present working in Anti Corruption Bureau shall be transferred/deputed to the Karnataka Lokayukta Police Wing, in order to strengthen the existing Police Wing of Lokayukta and to enable them to prosecute and investigate the matters effectively. The officers/officials, who at present working in the ACB hereinafter shall be under the administrative and exclusive disciplinary control of Lokayukta.

d) The officers and officials, who assist the Lokayukta and Upa-Lokayuktas in discharge of their functions shall not be transferred for a minimum period of three years, without the consent of Lokayukta/Upa-Lokayukta, as the case may be.

e) The investigation once started shall be completed within the reasonable period. In case any proceedings are pending before the Lokayukta or

Upa-Lokayuktas on account of pendency of the matters before the Courts, necessary steps shall be taken for early disposal of the matters before the Courts.

XVII. Conclusion

238. On appreciation of the entire material placed on record and in the light of the judgments of the Hon'ble Supreme Court cited supra, we answer the points raised in these writ petitions as under:

i) The 1st point is answered in the **negative** holding that the State Government is not justified in constituting Anti Corruption Bureau by an executive Government Order No.DPAR 14 SELOYU 2016, Bengaluru dated 14.3.2016, in exercise of powers under Article 162 of the Constitution of India, when the Karnataka Lokayukta Act, 1984 has occupied the field to eradicate the corruption

in the State of Karnataka, in the facts and circumstances of the case.

ii) The 2nd point is answered in the **negative** holding that the State Government is not justified in issuing the impugned notifications dated 19.3.2016 superseding the earlier notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to investigate under the provisions of Prevention of Corruption Act, 1988 and had declared the offices of Police Wing of Lokayukta as Police Stations under the provisions of Section 2(s) of the Code of Criminal Procedure. All subsequent notifications issued pursuant to the impugned Government Order dated 14.3.2016 for the purpose of formation and working of ACB, are also liable to be quashed.

XVIII. Result

239. In view of the above, we pass the following order:

1) (a) W.P. No.21468/2016 (PIL) by the Advocates Association, Bengaluru;

(b) W.P. 19386/2016 (PIL) by Mr. Chidananda Urs B.G., Advocate; and

(c) W.P. No.23622/2016 (PIL) by 'Samaj Parivarthana Samudaya'

are hereby **allowed**.

2) The impugned Government No.DPAR 14 SELOYU 2016, Bengaluru dated 14.3.2016 creating ACB, is hereby **quashed**.

3) The impugned notifications –

(a) No.HD 71 PoSiPa(i) Bengaluru, dated 19.3.2016

(b) No.HD 71 PoSiPa(ii)2016 Bengaluru, dated 19.3.2016

(c) No.HD 71 PoSiPa(iii) 2016 Bengaluru, dated 19.3.2016

(d) No.HD 71 PoSiPa(iv) 2016 Bengaluru, dated 19.3.2016

issued by the State Government superseding the earlier notifications dated 6.2.1991, 8.5.2002 and 5.12.2002, are hereby **quashed**. All subsequent notifications issued pursuant to the Government Order dated 14.3.2016 for the purpose of formation and working of Anti Corruption Bureau, are also hereby **quashed**.

4) The notifications dated 6.2.1991, 8.5.2002 and 5.12.2002 that authorized the Lokayukta Police with powers to investigate under the provisions of Prevention of Corruption Act, 1988 and had declared the offices of Police Wing of Lokayukta as Police Stations under Section 2(s) of the Code of Criminal Procedure, are hereby **restored**.

5. (a) W.P. No.16222/2017 filed by Mr. K.T. Nagaraja;

(b) W.P. 16223/2017 by Mr. Kale Gowda;

(c) W.P. No.16697/2017 by Sri Sidharth Bhupal Shingadi;

(d) W.P.No.16703/2017 by Mr. Basavaraju and others;

(e) W.P. No.16862/2017 by Mr. Deepak Kumar H.R.;

(f) W.P. No.28341/2017 by Mr. Channabasavaradhya;

(g) W.P. 108010/2017 by Mr. Prakash Hasaraddi;

(h) W.P. No.108689/2017 by Mr. Basavaraj @ Sachin;

(i) W.P.No.108690/2017 by Mr. Shankar Ramachandra Ambure;

(j) W.P. No..22851/2018 by Mr. Hemesha S.M.;

(k) W.P. No.9147/2019 by Mr. T.N. Rangaswamy; and

(l) W.P. No.18042/2019 by Mr. K.C. Yathish Kumar,

which are filed in **personal interest** are accordingly **disposed off,** in view of quashing of

the Government Order dated 14.3.2016 in PILs stated supra.

6) Since this Court quashed the impugned Government Order dated 14.3.2016 and the impugned Government Notifications dated 19.3.2016, the Anti Corruption Bureau is **abolished**. But all inquiries, investigations and other disciplinary proceedings pending before the ACB will get transferred to the Lokayukta. However, all inquiries, investigations, disciplinary proceedings, orders of convictions/acquittals and all other proceedings held by ACB till today, are hereby saved and the Police Wing of Karnataka Lokayukta shall proceed from the stage at which they are pending as on today, in accordance with law.

7) Consequently, the proceedings in respect of some of the private petitioners which are pending before the ACB, will get transferred to the

Lokayukta and the said petitioners cannot escape from the clutches of law and they have to face the proceedings before the Police Wing of the Karnataka Lokayukta, who shall proceed in accordance with law.

8) In crafting this judgment, the erudition of the learned counsel for the parties, their industry, vision and above all, dispassionate objectivity in discharging their role as officers of the Court must be commended. We acknowledge the valuable assistance rendered by Sri Ravi B. Naik, learned senior counsel for Sri K.B. Monesh Kumar, advocate; Sri V. Lakshminarayana, learned senior counsel/amicus curiae; Sri M.S. Bhagwat, learned senior counsel for Sri Satish .K, advocate; Sri D.L. Jagadeesh, learned senior counsel a/w Smt. Rakshitha D.J.; Sri Basavaraj S., learned senior counsel for Sri Gowtham A.R.; Sri Sharath S. Gowda and Sri C.V. Sudhindra, learned counsel

for the petitioners in these writ petitions so also Sri Prabhuling K. Navadgi, learned Advocate General a/w Sri V. Sreenidhi, AGA and Sri Kiran Kumar, learned HCGP for the respondent/State; Sri Ashok Haranahalli, learned senior counsel a/w Sri Venkatesh S. Arabatti, Spl. PP and Sri B.S. Prasad, learned counsel for the respondent/Lokayukta; and Sri P.N. Manmohan, learned counsel for respondent/ACB. We place on record their valuable services.

240. The Registry is directed to send a copy of this Order to the Chief Secretary to the Government, State of Karnataka, forthwith for taking necessary steps.

Sd/-
JUDGE

Sd/-
JUDGE

Gss*