

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH 2018

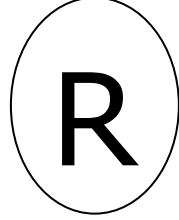
PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

WRIT PETITION NOs.6458-6459/2018 (GM-KLA)



BETWEEN:

1. ADARSH R.IYER
AGED ABOUT 45 YEARS
S/O N.RAMANATHA IYER
CO-PRESIDENT, JANAADHIKAARA
SANGHARSHA PARISHATH (JSP)
R/AT #508/A/20, I FLOOR
7TH MAIN, 5TH CROSS
MAHALAKSHMI LAYOUT
BANGALORE – 560 086
2. PRAKASH BABU B.K
AGED ABOUT 43 YEARS
S/O LATE B.N.KRISHNAPPA
CO-PRESIDENT, JANAADHIKAARA
SANGHARSHA PARISHATH (JSP)
R/AT #42/1, 8TH CROSS, 6TH MAIN
MALLESHWARAM, BANGALORE – 560 003 ...PETITIONERS

(PETITIONERS-IN-PERSON)

AND:

1. LOKAYUKTA
REPRESENTED BY REGISTRAR
OFFICE OF KARNATAKA LOKAYUKTA
M.S.BUILDINGS, DR. AMBEDKAR VEEDHI
BANGALORE – 560 001

2. CHAIRMAN OF LEGAL CELL
OFFICE OF KARNATAKA LOKAYUKTA
M.S.BUILDINGS, DR. AMBEDKAR VEEDHI
BANGALORE – 560 001
 3. THE SECRETARY
KARNATAKA LEGISLATIVE ASSEMBLY
VIDHANA SOUDHA,
BANGALORE – 560 001
- ...RESPONDENTS
(GOVERNMENT ADVOCATE SERVED)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 24.08.2017 (ANNEXURE-D) PASSED BY THE KARNATAKA LOKAYUKTA (RESPONDENT NO.1) AND TO ISSUE A DIRECTION TO AN APPROPRIATE JUDICIAL AUTHORITY TO CONDUCT A FAIR ENQUIRY WITH REGARD TO THE COMPLAINT DATED 18.06.2016 (ANNEXURE-B) OF THE PETITIONERS.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, **H.G.RAMESH J.**, MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (Oral):

1. In these petitions, petitioners who appear in person are challenging the order dated 24.08.2017 bearing No. LOK/ADM-1/28/2016-17 passed by Lokayukta, State of Karnataka, rejecting the petitioners' complaint dated 18.06.2016 given to initiate action against 78 members of Karnataka State Legislative Assembly on the ground that they have committed the offence punishable under Section 17(2) of the Karnataka Lokayukta Act, 1984 ('the Act' for short), as their notice of motion given in writing under

Section 6(2) of the Act for removal of an Upa-lokayukta failed by operation of Section 6(10) of the Act. The petitioners submit that the members of the Legislative Assembly, by their aforesaid failed notice of motion, put the Upa-lokayukta into disrepute, and therefore, they have committed the offence punishable under Section 17(2) of the Act.

2. To examine as to whether failure of a notice of motion given under Section 6(2) of the Act will give rise to the liability under Section 17(2) of the Act, it is necessary to refer to Sections 6 and 17 of the Act; they read as follows:

"6. Removal of Lokayukta or Upa-lokayukta.- (1) The Lokayukta or an Upa-lokayukta shall not be removed from his office except by an order of the Governor passed after an address by each House of the State Legislature supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the Governor in the same Session for such removal on the ground of proved misbehaviour or incapacity.

(2) A notice of motion for removal of Lokayukta or an Upa-lokayukta may be given in writing to;

(a) the Speaker of the Karnataka State Legislative Assembly duly signed by not less than one-third of the total membership of that House; or

(b) the Chairman of the Karnataka State Legislative Council duly signed by not less than one-third of the total membership of that House.

(3) Soon after the receipt of notice of motion referred in sub-section (2), the Speaker or Chairman, as the case may be, after consulting such persons, if any, as

he thinks fit and after considering such materials, if any, as may be available to him and after satisfying himself as to the prima facie case regarding incapacity or misbehaviour of the Lokayukta or Upa-lokayukta, as the case may be, either admit the motion or refuse to admit the same.

(4) Where a notice of a motion referred to in sub-section (2) is admitted, the Speaker or the Chairman, as the case may be, shall keep the motion pending and refer the matter to the Chief Justice of the High Court of Karnataka for the purpose of making an investigation into the grounds on which the removal of Lokayukta or an Upa-lokayukta is prayed for:

Provided that where notices of a motion referred to in sub-section (2) are given on the same day in both the Houses of the Legislature, no reference to the Chief Justice of the High Court of Karnataka shall be made unless the motion has been admitted in both the Houses and where such a motion is admitted in both Houses, the matter shall be referred to the Chief Justice of the High Court of Karnataka jointly by the Speaker and the Chairman:

Provided further that where notices of a motion as aforesaid are given in the Houses of Legislature on different dates, the notice which is given later shall stand rejected.

(5) When the motion is referred to the Chief Justice of the High Court of Karnataka, the Chief Justice of Karnataka or as the case may be, by such other Judge of the High Court nominated by him shall frame definite charges against the Lokayukta or an Upa-lokayukta, as the case may be, on the basis of which the investigation is proposed to be held. Such charges together with a Statement of the grounds on which each such Charge is based shall be communicated to the Lokayukta or Upa-lokayukta and he shall be given a reasonable opportunity of presenting a written Statement of defence within such time as may be specified in this behalf by the Chief Justice of the High Court of Karnataka or the other Judge of High Court so nominated.

(6) The State Government may, if required by the Speaker or the Chairman, or by both, as the case may be, appoint an Advocate to conduct the case against the Lokayukta or Upa-lokayukta, as the case may be.

(7) The Chief Justice of the High Court of Karnataka or the Judge of the High Court nominated by him shall have power to regulate his own procedure in making the investigation and shall give a reasonable opportunity to the Lokayukta or the Upa-lokayukta, as the case may be, for presenting a written statement of defence, for cross-examining witnesses, adducing evidence

and of being heard in his defence by himself or through his Advocate.

(8) For the purpose of making any investigation under this Act, the Chief Justice of the High Court of Karnataka or the Judge of the High Court nominated by him shall have the powers of the civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, viz.,:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on oath;
- (d) issuing commissions for the examination of witnesses or documents.

(9) The Chief Justice of the High Court of Karnataka or the Judge of the High Court nominated by him after investigating into the matter referred to him shall prepare a report and submit the same to the Speaker or to the Chairman as the case may be, and to the Speaker and the Chairman in case the matter is referred by both, within ninety days from the date of such reference.

(10) If the report of the Chief Justice of the High Court of Karnataka or the Judge of the High Court nominated by him contains a finding that the Lokayukta or Upa-lokayukta against whom charges were framed is not guilty of any misbehaviour or does not suffer from any incapacity, then no further steps shall be taken in either House of the State Legislature in relation to the report and no further proceeding is necessary in respect of pending motion.

(11) If the report of the Chief Justice of the High Court of Karnataka or the Judge of the High Court contains a finding that the Lokayukta or Upa-lokayukta against whom charges were framed is guilty of any misbehaviour or suffers from any incapacity, then the motion referred to in sub-section (2) shall, together with the report of the Chief Justice of the High Court of Karnataka or the Judge of the High Court, as the case may be, taken up for consideration by the House or the Houses of the State Legislature in which the motion is pending.

(12) If the motion referred to in sub-section (2) is adopted by each House of the State Legislature in accordance with the provisions of sub-section (1), then the misbehaviour or incapacity of Lokayukta or Upa-lokayukta, as the case may be, shall be deemed to have been proved and an address praying for removal of Lokayukta or Upa-lokayukta shall be presented to the Governor of the State duly signed by the Speaker and the Chairman.

(13) Once the Governor gives assent to the address made under sub-section (12), the Lokayukta or Upa-lokayukta shall be deemed to have been removed from office in accordance with law.

(14) The Lokayukta or Upa-lokayukta, as the case may be, against whom a motion is moved before the House or the Houses of the State Legislature for his removal, is precluded from discharge of his duties during the pendency of motion for his removal before the House or the Houses of the State Legislature.

17. Intentional insult or interruption to or bringing into disrepute the Lokayukta or Upa-lokayukta.-

(1) Whoever intentionally insults or causes any interruption to the Lokayukta or Upa-lokayukta while the Lokayukta or Upa-lokayukta is conducting any investigation or inquiry under this Act shall, on conviction be punished with simple imprisonment for a term which shall not be less than six months but may extend to one year or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or an Upa-lokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which shall not be less than six months but may extend to one year or with fine, or with both.

(3) The provisions of Section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said Section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokayukta or the concerned Upa-lokayukta:

Provided that the Court may for any adequate and special reasons to be mentioned in the judgment impose a lesser sentence of imprisonment and fine."

3. As could be seen from Section 6 extracted above, a notice of motion for removal of Lokayukta or an Upa-lokayukta is permitted under Section 6(2) of the Act. Section 6 of the Act is not made subject to Section 17 of the Act. As a notice of motion is permitted in law and as it is not

made subject to any liability, failure of the motion does not result in any liability created under Section 17(2) of the Act. In other words, the members who gave the notice of motion cannot be said to have committed the offence punishable under Section 17(2) of the Act. Hence, the order of the Lokayukta rejecting the petitioners' complaint, though for reasons different from the one stated above, cannot be said to be erroneous warranting interference by this Court. The writ petitions are accordingly dismissed. In view of dismissal of the writ petitions, IA.No.2/2018 does not survive for consideration; it stands disposed of accordingly.

Petitions dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

LB