

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT APPEAL No. 995 of 2022

BETWEEN:-

SMT. MEERA DEVI SAXENA W/O SHRI RAMSWAROOP SAXENA, AGED-69 YEARS, OCCUPATION: SOCIAL WORKER, EX-PRESIDENT, NAGAR PANCHAYAT, LATERI, DISTRICT VIDISHA (MADHYA PRADESH), R/O-TAHSIL-LATERI, DISTRICT VIDISHA (MADHYA PRADESH)

.....APPELLANT

(SHRI N.K. GUPTA- SENIOR COUNSEL WITH SHRI S.D. SINGH- COUNSEL FOR THE APPELLANT)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE OFFICE OF THE LOKAYUKTA, STATE OF MADHYA PRADESH THROUGH THE REGISTRAR, LOKAYUKT BHAWAN, BHOPAL (MADHYA PRADESH)**
- 3. THE DEPUTY POLICE COMMISSIONER, SPECIAL**

**POLICE ESTABLISHMENT, OFFICE OF
LOKAYUKTA, BHOPAL (MADHYA PRADESH)**

- 4. THE COLLECTOR, DISTRICT VIDISHA (MADHYA PRADESH)**
- 5. THE CHIEF MUNICIPAL OFFICER, MUNICIPAL COUNCIL LATERI, VIDISHA, DISTRICT VIDISHA (MADHYA PRADESH)**
- 6. RAMESH KUMAR THAKRE S/O SHRI BALCHAND THAKRE, AGED-47 YEARS, OCCUPATION- AGRICULTURE (EX COUNSELLOR NAGAR PANCHAYAT) LATERI, DISTRICT VIDISHA (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI ANKUR MODY-ADDITIONAL ADVOCATE
GENERAL FOR RESPONDENTS/STATE;***

***SHRI SANKALP SHARMA-ADVOCATE FOR THE
RESPONDENT-LOKAYUKT ORGANIZATION;***

***SHRI J.P. MISHRA AND SHRI ANURAJ SAXENA-
ADVOCATES FOR RESPONDENT NO.5.)***

Reserved on : 19/09/2022
Delivered on : 12/10/2022

This appeal coming on for hearing this day, JUSTICE

ROHIT ARYA passed the following:

ORDER

This intra-court appeal preferred under Section 2(1) of Madhya Pradesh Uchha Nayalaya (Khand Nyayapeeth Ko

Appeal) Adhinyam, 2005 is directed against the order dated 26.07.2022 passed in Writ Petition No.21614/2018.

(2) Before advertng to the rival contentions, it is expedient to reiterate the relevant factual matrix. The petitioner/appellant has been an elected President of Nagar Palika Lateri, District Vidisha (M.P.) for a term of five years 01.01.2015 to 31.12.2020.

(3) It appears that a complaint was filed in the office of Lokayukt, Madhya Pradesh. The complaint was made over to the Divisional Vigilance Committee for enquiry. After completion of enquiry, the enquiry report was forwarded by the Legal Advisor, Lokayukt office, to the Collector, District Vidisha (M.P.) to initiate action on the basis of the report vide communication dated 23.07.2018 (Annexure P-2). The Collector, in turn, vide communication dated 20.08.2018, (Annexure P-1) directed the Chief Municipal Officer, Nagar Palika, Lateri District Vidisha (M.P.) to lodge the FIR.

(4) Petitioner challenged the legality, validity and propriety of the aforesaid two communications in Writ Petition No.21614/2018. The learned Single Judge, vide interim order dated 19.09.2018, stayed the effect and operation of the aforesaid two communications, until further orders.

(5) Upon notice, though Lokayukt Organization and the Chief Municipal Officer, Nagal Palika Lateri, District Vidisha (M.P.)-respondent No.5, filed counter-affidavits but none of the remaining respondents including the State Government filed counter-affidavit.

(6) Upon perusal of the impugned order, it appears that the learned Single Judge was of the view that once the report has been forwarded by the Legal Advisor of the Lokayukt vide communication dated 23.07.2018 (Annexure P-2) and thereafter on the direction vide communication dated 20.08.2018 (Annexure P-1) of the Collector, District Vidisha, the Chief Municipal Officer, Nagar Palika Lateri, District Vidisha (M.P.) lodged an FIR, no interference is warranted as the suspect/accused has no right of pre-hearing before lodging of an FIR and the criminal machinery can be put into motion by any complainant. The learned Single Judge also opined that the Collector by his letter dated 20.08.2018 in his wisdom directed the Chief Municipal Officer, Nagar Palika Lateri, District Vidisha (M.P.) to lodge the FIR. Hence, no exception can be taken thereto and accordingly dismissed the petition. It may be mentioned that there was no FIR either before or on the date of the impugned order in the wake of interim order dated 19.09.2018.

(7) Shri N.K. Gupta, learned Senior Counsel assisted by Shri S.D. Singh, learned counsel appearing on behalf of the petitioner/appellant, submits that the learned Single Judge in fact and in effect misdirected itself while justifying the impugned communications as contained in para 8 of the impugned order, unmindful of the scheme of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (for brevity "1981 Act") and provisions made thereunder. Further elaborating his submissions, Shri Gupta, learned Senior

Counsel, submits that Divisional Vigilance Committee is constituted by the State Government by way of notification in the official gazette **under Section 13-A of the 1981 Act**. Under **sub-section (5) of Section 13-A of the 1981 Act**, the Divisional Vigilance Committee is empowered to enquire into a complaint referred to it by the Lokayukt or Up-Lokayukt and submit report to the Lokayukt or Up-Lokayukt, as the case may be. **Sub-section (6) of Section 13-A of the 1981 Act** provides that in holding the enquiry, the Committee shall ensure that the principles of natural justice are observed.

(8) **Section 12 of the 1981 Act** provides, *inter alia*, under **sub-section (1)** that if, after enquiry into the allegations the Lokayukt or an Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations alongwith the relevant document, materials and other evidence to the **Competent Authority**.

Sub-section (2) thereof provides that the **competent authority** shall examine the report forwarded to it under **sub-section (3)** and intimate, within three months of the date of receipt of the report, the Lokayukt or, as the case may be, the Up-Lokayukt, the **action** taken or proposed to be taken on the basis of the report.

The word “**action**” has been defined under **Section 2(d) of the 1981 Act** which means **action** by way of **prosecution** or otherwise taken on the report of the Lokayukt or Up-

Lokayukt and includes failure to act; and all other expressions connecting **action** shall be construed accordingly.

Section 2(h) of the 1981 Act defines **Competent Authority**, in relation to a public servant, which means:

“(i) xx xx xx

(ii) in the case of any other public servant. -Such authority, as may be prescribed.”

(9) Shri Gupta, learned Senior Counsel, further refers to the Madhya Pradesh Lokayukt Evam Up-Lokayukt (Investigation) Rules, 1982 (for short “1982 Rules”) and *inter alia* submits that Rule 5 provides “**Competent Authority**” referable to item (ii) of clause (h) of **Section 2 of the 1981 Act**, which denotes **competent authority** other than the one in the case of Minister or Secretary, shall where appropriate disciplinary **action** is recommended by the Lokayukt or Up-Lokayukt be the appointing authority of public servant.

Learned Senior Counsel also refers to **Section 3(26) of the M.P. Municipalities Act, 1961** (for brevity “1961 Act”) which defines “**Prescribed Authority**” which means:-

“an authority which the State Government may, by notification, generally or with respect to any provision of this Act, declare to be a prescribed authority.”

He refers to **Section 45 of the 1961 Act** which prescribes **Notification of election of [President and Councillors]. -**

“Every election of the President and Councillors from wards shall be notified by the State Election

Commission in the official gazette.”

He further refers to **Section 41-A of the 1961 Act** which empowers the State Government to remove the President or Vice President or Chairman of a Committee for the reasons stated **under sub-section (1)** and consequences flowing from under **sub-section (2)** thereof.

(10) Turning to the facts, learned Senior Counsel states that in para 5.4 of the petition (Writ Petition No.21614/2018), it is specifically pleaded that the Legal Advisor to the Lokayukt had no jurisdiction to forward the report to the Collector and the Collector in turn had no jurisdiction to direct the CMO to lodge an FIR on the basis of the said report. In the counter-affidavit filed by the Lokayukt Organization; reply to para 5.4 of the petition is evasive and does not dispute that the Legal Advisor has directly sent the report to the Collector.

(11) It is submitted by learned Senior Counsel, that **Section 12 of the 1981 Act** has also been frightfully violated in the matter of **action** to be taken on the report submitted by the Divisional Vigilance Committee. First, the Lokayukt or Up-Lokayukt ought to have recorded its satisfaction on the report submitted to it and thereafter if found appropriate forwarded the same to the **competent authority** i.e. the State Government, the authority empowered to notify the election of the President **under Section 45 of the 1961 Act** and remove the President **under Section 41A of the 1961 Act**. That has not been done. The Collector is neither the **competent authority** to

notify the election of the President of the Nagar Palika nor the **competent authority** to remove him/her under the 1961 Act. As such, the Legal Advisor to the Lokayukt who otherwise is not competent to act on the report submitted by the Divisional Vigilance Committee has vide communication dated 23.07.2018 (Annexure P-2), on his own volition, forwarded the same to the Collector Vidisha and who in turn without authority in law directed the CMO, Nagar Palika Lateri, District Vidisha (M.P.) vide communication dated 20.08.2018 (Annexure P-1) to lodge the FIR. Therefore, all the three authorities, namely, Legal Advisor, Collector and the CMO have acted without authority of law in the context of impugned communications Annexure P-1 and P-2.

(12) That apart, learned Senior Counsel submits that Divisional Vigilance Committee while conducting the enquiry as an agency of the Lokayukt is required to follow the procedure with due observance of the principles of natural justice as provided for **under sub-section (6) of Section 13 of 1981 Act** and a fair hearing. Mere issuance of show-cause notice with copy of complaint and annexures though is a step forward in conformity with the principles of natural justice, nevertheless, the Divisional Vigilance Committee ought to have afforded a reasonable opportunity to inspect copy of the affidavit of the complainant and other documents or statements filed in original as provided for Rule 16 of the 1982 Rules, so that the petitioner upon scrutiny of documents may have the

opportunity to question the veracity, relevancy, authenticity and falsity of the documents as solemnity is attached to the enquiry conducted under the 1981 Act having serious penal consequences. In no case, the said enquiry may be construed to be a summary enquiry as has been done in the instant case. Learned Senior Counsel submits that the enquiry report submitted by the Divisional Vigilance Committee has been sent to the Principal Secretary and the Commissioner, Local Bodies and Development, Bhopal as provided **under sub-section (1) of Section 12 of the 1981 Act**. Action thereupon has been solicited on or before 26.11.2018 as is well evident in para 1 of the counter-affidavit filed by the Lokayukt Organization.

(13) Hence, if on one hand, the Lokayukt Organization had submitted the report to the State Government, the Competent/Prescribed authority, the 1981 Act does not contemplate that the Legal Advisor to the Lokayukt may forward the report to the Collector vide impugned communication dated 23.07.2018 (Annexure P-2). It is submitted that the impugned communications deserve to be quashed for want of authority and jurisdiction.

(14) Learned Single Judge has failed to appreciate the aforesaid legal provisions in context of the impugned communications Annexure P-1 and P-2 and, by applying first principle of law that the suspect has no right to pre-hearing before the FIR is lodged, found no fault in the impugned communications. The impugned order is, therefore, in ignorance of law and statutory provision. Hence, cannot

withstand the judicial scrutiny. It is submitted that lodging of FIR after dismissal of the writ petition on 03.08.2022 is of no consequence and therefore the same also deserves to be quashed as the report after being forwarded to the State Government was required to be looked into by the Government before initiation of any **action**. With the aforesaid submissions, Shri Gupta, learned Senior Counsel, prays for setting aside of the order impugned.

(15) *Per contra*, Shri Ankur Mody, learned Additional Advocate General, while supporting the impugned order, submits that two writ petitions i.e. **WP.24598/2018 [Dayaram Sahu & Anr. Vs. State of the M.P. And others]** and **WP.24594/2018 [Amol Singh Sahu Vs. State of the M.P. And others]** wherein challenge was made to the similar order dated 20.08.2018 by which the Collector, Vidisha had directed the CMO, Municipal Council Lateri, District Vidisha to lodge the FIR in case of persons, namely, Dayaram Sahu, Sudhir Upadhyaya and Amol Singh Sahu based on the report of the Divisional Vigilance Committee i.e. the same report forwarded to the Collector by Legal Advisor to Lokayukt, have been dismissed by Single Bench vide order dated 27.10.2018. Subject thereto, learned counsel further submits that once the criminal action has been recommended by the Divisional Vigilance Committee, no interference was warranted, therefore, neither any exception can be taken to the impugned communications Annexure P-1 and P-2 nor to the

consequential act of lodging of FIR, after dismissal of the writ petition.

(16) However, he has no answer to the scheme of the 1981 Act and mandate of law as contained in **Section 12** and it is indeed uncanny that he maintained blissful silence over the fact that the report of the Divisional Vigilance Committee forwarded by the Lokayukt to the State Government is pending consideration. However, he still insisted on his submissions relying upon the judgment of the Hon'ble Supreme Court in the case of “**Ram Kishan Fauji Vs. State of Haryana and Others [(2017) 5 SCC 533]**”, little paying heed over the facts which are distinguishable.

(17) Shri Sankalp Sharma, learned counsel appearing on behalf of the respondent/Lokayukt Organization, adopts the submissions put forth by Shri Ankur Mody, learned Additional Advocate General while justifying the order of the learned Single Judge. Besides, he submits that even if the report of the Divisional Vigilance Committee is sent to the State Government and the same is pending consideration before it, the same shall have no effect if otherwise a complaint has been lodged at the instance of the Collector on a communication made by the Legal Advisor based on the allegations in the report. The learned Single Judge has rightly held that the petitioner, a suspect, had no right of pre-hearing before lodging of an FIR. With the aforesaid submissions, learned counsel relies upon the judgment of this Court in the case of “**Dr. Rajesh Rajora Vs. State of M.P. and another [2011(3)**

M.P.H.T. 44 (DB)]”.

(18) Shri J.P. Mishra, learned counsel appearing on behalf of respondent No.5/CMO, Nagar Palika Lateri, District Vidisha (M.P.), supported the order impugned and prayed for dismissal of the present appeal.

(19) Before advertng to the rival contentions on merits, it is expedient to refer to some other relevant provisions of 1981 Act, whereunder provisions for the appointment and functions of certain authorities for the enquiry into the allegations against public servants and for matters connected therewith have been made. The 1981 Act itself is a self-contained code.

(20) **Section 7 of the 1981 Act**, which provides matters which may be enquired into by Lokayukt or Up-Lokayukt, is as under:

7. Matters which may be enquired into by Lokayukt or Up-Lokayukt. - Subject to the provisions of this Act, on receiving complaint or other information,-

(i) the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority;

(ii) the Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than that referred to in clause (i) :

Provided that the Lokayukt may enquire into an allegation made against any public servant referred

to in clause (ii).

[*Explanation.* - For the purposes of this section the expressions "may proceed to enquire" and "may enquire" include investigation by police agency put at the disposal of Lokayukt and Up-Lokayukt in pursuance of sub-section (3) of section 13.

Section 10 of 1981 Act provides for procedure in respect of **each enquiry**. It provides that the Lokayukt or Up-Lokayukt while deciding the procedure to be followed for making enquiry shall ensure that the principles of natural justice are satisfied.

Section 13 of 1981 Act provides for staff of Lokayukt and Up-Lokayukt and **sub-section (3)** thereof provides:

“13(3) Without prejudice to the provisions of sub-section (1), the Lokayukt or an Up-Lokayukt may for the purpose of conducting enquiries under this Act, utilize the services of-

- (i) Divisional Vigilance Committee constituted under Section 13-A;
- (ii) any officer or investigation agency of the State or Central Government with the concurrence of that Government; or
- (iii) any other person or agency.”

(21) At this juncture, it is relevant to mention here that M.P. Special Police Establishment (for brevity “Police

Establishment”) has been constituted under **Section 2** of the M.P. Special Police Establishment Act, 1947 (for brevity “1947 Act”) for the purposes of investigation of offences notified under **Section 3**. The State Government is empowered to specify the offences or classes of offences which are to be investigated by Police Establishment by way of notification **under Section 3**.

Any member of the police establishment of or above the rank of Sub-Inspector, subject to any orders of the State Government, exercises any of the powers of an officer-in-charge of a police station which he may exercise within the limits of his station and such member shall be deemed to be an officer in charge of a police station as provided **under sub-section (3) of Section 2 of 1947 Act**. Further, by virtue of **Section 4 of 1947 Act**, the superintendence of the Police Establishment shall vest in the Lokayukt appointed under 1981 Act, however, the administration of the said Police Establishment shall vest in the Inspector General of Police.

Section 13-A of 1981 Act provides for Constitution of Divisional Vigilance Committee by the State Government by way of notification in the official gazette with three members for each division as prescribed under **sub-section (1)** thereof.

Under **sub-section (5) of Section 13-A of 1981 Act**, Divisional Vigilance Committee is empowered to enquire into complaint referred to it by the Lokayukt or Up-Lokayukt and submit a report to the Lokayukt or Up-Lokayukt, as the case

may be.

Sub-section (6) of Section 13-A of 1981 Act provides that in holding the enquiry, the committee shall ensure that the principles of natural justice are observed, besides the power of summoning, requiring the discovery etc. etc.

Section 12 of 1981 Act provides for **action** on the report of Lokayukt and UP-Lokayukt. **Sub-section (1) of Section 12 of the 1981 Act** provides, if, after enquiry into the allegations the Lokayukt or an Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations alongwith the relevant document, materials and other evidence to the **competent authority**.

Sub-section (2) of Section 12 of the 1981 Act provides that the **competent authority** shall examine the report forwarded to it and intimate, within three months of the date of receipt of the report, the Lokayukt or, as the case may be, the Up-Lokayukt, the **action** taken or proposed to be taken on the basis of the report.

Sub-section (3) of Section 12 of the 1981 Act provides that if the Lokayukt or the Up-Lokayukt is satisfied with the **action** taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the public servant and the **competent authority** concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Governor and also

inform the complainant concerned.

The word “**action**” has been defined **under Section 2(d) of the 1981 Act** and expression “**Competent Authority**” has been defined under **Section 2(h) of 1981 Act** (supra at Page 5 and 6 respectively).

(22) Since purpose of the 1981 Act as reflected from the preamble thereto is to conduct an **enquiry** into the allegations against public servant and for matters connected therewith, hence, the enquiry is sacrosanct. Therefore, the enquiry under the 1981 Act is neither a summary enquiry nor a mere formality. A public servant may be subjected to penal action on the basis of the enquiry under 1981 Act. The Lokayukt or Up-Lokayukt or the Divisional Vigilance Committee is required to decide the procedure to be followed for making enquiry in each case and while so doing ensure that principles of natural justice are satisfied as required under **Sections 10 and 13(6) of 1981 Act**.

(23) Infraction or deviation of such procedure established by law shall, indeed in the matter of **enquiry** or **action** on enquiry report, be violative of Article 14 and 21 of the Constitution of India.

(24) In the instant case, the Lokayukt entrusted the Divisional Vigilance Committee to enquire into the complaint made against the petitioner and others.

(25) Indeed, the principles of natural justice cannot be reduced to hard and fast formulae or be put in straight-jacket. Their applicability depends upon the context and the facts and

circumstances of each case. The object is to ensure a fair hearing, a fair deal to the person whose rights are going to be affected. [Please See “**A.K. Roy Vs. Union of India and another (AIR 1982 SC 710)**”, “**Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others (AIR 1978 SC 851)**” and “**Swadeshi Cotton Mills etc. etc. Vs. Union of India etc. etc. (AIR 1981 SC 818)**”].

The applicability of the principles of natural justice and a fair hearing assumes significance, applying the test of prejudice. [Please See “**Managing Director, ECIL, Hyderabad, etc. etc. Vs. B. Karunakar, etc. etc. (AIR 1994 SC 1074)**”].

The object of principles of natural justice which is now understood as synonymous with the obligation to provide a fair hearing, is to ensure that justice is done, that there is no violation of justice and that every person whose rights are going to be affected by the proposed **action** gets a fair hearing. Such recourse, as aforesaid, as mandated by law, does not appear to have been adhered to in the matter of enquiry by the Divisional Vigilance Committee.

(26) Therefore, the enquiry, the paramount object of 1981 Act, being serious in nature and having penal consequences, may be detrimental to the rights and liberty of a public servant. Thus, the procedure of enquiry must be in conformity with the mandate of Article 14 and 21 of the Constitution of India.

It is also settled law that office of the Lokayukt or Up-

Lokayukt is a quasi-judicial authority and its functions or duties, particularly in the context of enquiry, are not purely administrative or executive but are quasi-judicial in nature.

In the matter of enquiry, Lokayukt or Up-Lokayukt or for that matter the Divisional Vigilance Committee, in all fairness, must afford opportunity of personal hearing to the public servant not only to facilitate him/her to inspect the complaint, affidavit attached thereto and the documents [as provided under Rule 16 of 1982 Rules] but also to ascertain veracity, authenticity and relevancy of the contents of the complaint, affidavit and the documents before any adverse inference is drawn therefrom to the prejudice of public servant; besides if complainant or other witnesses are examined, an opportunity to cross-examine them. These are the sentinel requirements of a fair hearing and a fair deal in conformity with the principles of natural justice. The authorities with respect to 1981 Act are required under the law to consider the point of view of the person against whom the complaint has been made while forwarding the report and to ensure that the investigation reaches its logical conclusion, one way or the other.

At this juncture, the judgment rendered by the Hon'ble Apex Court in the case of “**Justice Chandrashekaraiiah (Retired) Vs. Janekere C. Krishna And Others reported in [(2013) 3 SCC 117]**” is worth mentioning, relevant paras whereof are reproduced below for ready reference and convenience:

“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.

(iii) Decisions on the subject

108.The final decision rendered by the Upa-lokayukta, called a report, may not bear the stamp of a judicial decision, as would that of a court or, to a lesser extent, a tribunal, but in formulating the report, he is required to consider the point of view of the person complained against and ensure that the investigation reaches its logical conclusion, one way or the other, without any interference and without any fear. Notwithstanding this, the report of the Upa-lokayukta does not determine the rights of the complainant or the person complained against. Consequently, the Upa-lokayukta is neither a court nor a tribunal. Therefore, in my opinion, the Upa-

lokayukta can best 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.”

(Emphasis Supplied)

Upon perusal of the skeletal counter-affidavit of Lokayukt and UP-Lokayukt, it appears that neither any procedure is prescribed in the case in hand as contemplated under Section 10 of the 1981 Act, nor aforementioned sentinel requirements of principles of natural justice have been followed, as the Divisional Vigilance Committee at its end unilaterally prepared the enquiry report after submission of reply by the petitioner. Thereafter, the Legal Advisor set at motion the report forwarding the same to the Collector vide impugned communication dated 23.07.2018 (Annexure P-2).

(27) Further, as evident from para 1 of counter-affidavit submitted by Lokayukt Organization, the enquiry report has been sent to the State Government. Under such circumstances, as per the procedure prescribed **under sub-section (3) of Section 12 of 1981 Act**, the Lokayukt should have waited for the response from the State Government as regards **action** on such report. It stated at the bar that the said stage has not so far arrived.

(28) Legal Advisor to the Lokayukt is neither the authority competent under the 1981 Act to communicate with the Collector in the matter of **action** on the report of the Divisional Vigilance Committee nor has authority in law. As such, communication dated 23.07.2018 (Annexure P-2) is held to be bad in law and ultra vires to 1981 Act.

(29) As a matter of fact, even the Divisional Vigilance Committee is not empowered to order for **action** on the enquiry report submitted by it. It is the Lokayukt or Up-Lokayukt who is required to communicate the enquiry report as per procedure prescribed **under Section 12 of 1981 Act**.

(30) In other words, the Lokayukt or Up-Lokayukt is to first record its satisfaction that the allegation after such an enquiry is established. Thereafter, a report shall be prepared in writing with findings and recommendations along with the relevant documents, material and other evidence. This complete set of documents shall be communicated to the **Competent Authority**.

(31) As is evident from page 2 of the counter-affidavit placed

on record by respondent No.2 compliance of **sub-section (1) of Section 12 of 1981 Act** has been done as the enquiry report dated 07.05.2018 has been sent to the Principal Secretary and the Commissioner, Local Bodies and Development, Bhopal with the note to report on or before 26.11.2018, the **action** taken on the report.

(32) Indeed, if compliance is not received from the concerning **Competent Authority**, the Lokayukt or Up-Lokayukt under **sub-section (3) of Section 12 of 1981** may make a special report upon the case and forward the same to the Governor.

(33) The 1981 Act or **Section 12** thereof in particular does not empower the Legal Advisor either himself or on the directions of the Divisional Vigilance Committee or for that matter Lokayukt or Up-Lokayukt to communicate with the Collector to initiate **action** on the enquiry report. Hence, for the aforesaid reason also, the impugned communication Annexure P-2 is bad in law.

It may be stated that 1981 Act does not empower the Lokayukt, Up-Lokayukt or Divisional Vigilance Committee constituted under 13-A of 1981 Act to lodge an FIR. The procedure for **action** on the report is provided for only under **Section 12(2) of 1981 Act** by the Competent Authority and not otherwise.

(34) That apart the petitioner was the elected President of Nagar Palika Lateri, District Vidisha (M.P.).

(35) **Section 45 of the 1961 Act** provides for notification of

election of President and Councillors by the State Election Commission in the official gazette.

“Prescribed Authority” is defined under **Section 3(26) of the 1961 Act**.

Section 41A of the 1961 Act empowers the State Government to remove the President or Vice-President or Chairman of the Committee for the reasons stated **under sub-section (1)** and consequences flowing from **under sub-section (2)** thereof.

(36) Indeed, the **Competent Authority** in case of the petitioner is the State Government and not the Collector.

(37) The judgment cited i.e. **Dr. Rajesh Rajora (supra)** is distinguishable on facts and is of no assistance to the respondent/Lokayukt Organization.

Firstly, in the said case, challenge was made to the FIR lodged **under Section 13(1)(d)/13(2) of the Prevention of Corruption Act** against the applicant & others therein upon the Preliminary Enquiry No.01/09 initiated by the Special Police Establishment. This distinctive fact assumes significance if understood in the context of the provisions of **Section 3 and 4 of 1947 Act**. Besides, **preliminary enquiry**, conducted by an Officer of M.P. Police Establishment Act not below the rank of Sub-Inspector acting as Station House Officer of a Police Station under section 3 of the 1947 Act, is excluded from the purview/scope of investigation/enquiry defined under Rule 16 of the 1982 Rules.

Secondly, challenge to the FIR has been dealt with as

regards scope of interference on the merits of the allegations made in the FIR exercising inherent powers **under Section 482 Cr.P.C.** regard being had to the contours/limits of the inherent powers as reiterated by the Hon'ble Supreme Court.

Thirdly, the co-ordinate Bench though recorded the submissions of learned counsel for the applicants therein relating to violation of **Section 12(1) of 1981 Act** but did not deal either with scheme of the 1981 Act or perused/considered the mandate of law provided for under Sections 12 and 13-A of the 1981 Act with reference to the definition of word **action** defined under Section 2(d) of 1981 Act. Likewise, the common order dated 27.10.2018 passed in the case of **Dayaram Sahu (supra) & Amol Singh Sahu (supra)** relied upon by learned counsel for the State as well as Lokayukt Establishment has been carefully perused by this Court. The learned Single Judge, though referred to Section 12 of 1981 Act, yet neither has dealt with the scope of 1981 Act with due regard to its preamble nor dealt with the mandate of law under Section 12 of 1981 Act in entirety, particularly with reference to the word **action** as defined under Section 2(d) of 1981 Act; besides nature, scope, compliance of sub-sections (5) and (6) of 13-A of 1981 Act read with Rule 16 of the 1982 Rules. That apart, Rule 2(iv) which defines “**Investigation**” and Rule 16 have also not been considered. Further status, jurisdiction and authority in law of the legal advisor forwarding the report of the Divisional Vigilance Committee to the Collector, who is not the competent

authority, by the impugned communication dated 23.07.2018 (Annexure P-2) who in turn directed the Chief Municipal Officer, Nagar Palika, Lateri District Vidisha (M.P.) to register complaint against the petitioner herein, has not been examined in the context of the scheme underlying 1981 Act and the provisions made thereunder. That apart, the learned Single Judge has also not considered the competence of the Collector in law, regard being had to the provision of Section 2(h) 1981 Act defining **Competent Authority** read with the provision of Section 3(26) of 1961 Act defining **Prescribed Authority** which means an Authority which the State Government may by notification generally or in respect to any provision of this Act declare to be the **Prescribed Authority**. These aforementioned provisions have direct and relevant bearing over the factual matrix of the case.

Hence, for want of consideration of relevant provisions of the 1981 Act, we are of the considered view that the conclusion drawn therein cannot withstand judicial scrutiny. Therefore, the said order is hereby *overruled*.

(38) The ratio laid down by Hon'ble Apex Court in the case of **Ram Kishan Fauji (supra)**, as a matter of fact, is in the context of maintainability of intra-court appeal/LPA against an order passed by the High Court under Article 226 of the Constitution of India in a petition seeking quashment of the order recommending registration of FIR by the Lokayukt, wherein it has been held that if the proceeding, nature and relief sought pertain to anything connected with criminal

jurisdiction, intra-court appeal/LPA would not lie as character of the proceeding does not depend upon the nature of the Tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.

(39) This Court has carefully perused the impugned order. The learned Single Judge while addressing on the criticism to impugned communications Annexure P-1 and P-2 reiterated the general law that FIR is only an information and there is no scope of pre-hearing before lodging of FIR citing judgment of the Hon'ble Supreme Court but learned Single Judge was oblivious of the fact that till decision of the writ petition no FIR was lodged. Hence, reason or justification as culled out in para 8 is found to be misplaced in the backdrop of the facts and circumstances of the case. That apart, learned Single Judge failed to take note of the fact that the enquiry under the 1981 Act is a quasi-judicial enquiry. Adherence to the provisions of the 1981 Act regarding the enquiry and **action** on the enquiry report as provided for under **Sections 12, 13-A(5) and 13-A(6) of 1981 Act** are mandatory, non-compliance/avoidance thereof indeed shall render the mandate of **Sections 12, 13-A(5) and 13-A(6)** otios.

(40) During the course of hearing, it is transpired that during the currency of writ petition interim order dated 19.09.2018 was passed to the following effect:

“Issue notice to the respondents No. 5 and 6 on payment of process fee within three working days.

Learned counsel for respondents No. 1 and 4 and also respondent No.2 and 3 are directed to seek instructions and file reply positively before the next date of hearing.

Challenge herein is to the letter of the Collector, Vidisha (Annexure P/2) directing registration of offence against the petitioner who happens to be sitting president of the Nagar Panchayat Lateri.

Let the case be taken up on 25th September, 2018 for consideration on admission as well as I.R.

Since this court has taken cognizance of the matter, it is expected of the respondents not to precipitate the matter.”

(41) Interpretation and mandate of **Section 12 of 1981 Act**, reiterated by this Court in this order, is in conformity with the judgment of the co-ordinate Bench (DB) in “**Dharmendra Vs. State of M.P. [2011 (3) MPLJ 598]**”.

(42) The upshot of the discussion leads to the success of the appeal. The impugned orders dated 23.07.2018 (Annexure P-2) and 20.08.2018, (Annexure P-1) stand quashed. As a necessary corollary, the FIR lodged after disposal of the writ petition quashment whereof is sought in this intra-court appeal cannot stand and therefore it is also quashed.

However, before parting with the case, it is considered apposite to observe that inaction on the part of the State Government within the time frame provided for under sub-

section (2) of Section 12 of the 1981 Act entitles the Lokayukt to take recourse to provisions contained under sub-section (3) of 1981 Act.

(43) With the aforesaid, the present appeal stands **allowed** to the extent indicated above.

(Rohit Arya)
Judge

(Milind Ramesh Phadke)
Judge

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